SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 88156 / February 7, 2020

Admin. Proc. File No. 3-17560r

In the Matter of the Application of

KIMBERLY SPRINGSTEEN-ABBOTT

For Review of Disciplinary Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION — REVIEW OF DISCIPLINARY PROCEEDING

Associated person of member firm appeals from FINRA disciplinary action finding that she misused investor funds by improperly allocating personal expenses, control person expenses, and expenses for other businesses to investment funds. *Held*, findings of violations are sustained and the sanctions imposed are modified.

APPEARANCES:

Steven M. Felsenstein, *Elaine C. Greenberg*, and *Donald N. Cohen*, of Greenberg Traurig, LLP, for Kimberly Springsteen-Abbott.

Alan Lawhead and *Lisa Jones Toms* for FINRA.

Appeal filed: August 17, 2017
Last brief received: February 6, 2018

Kimberly Springsteen-Abbott, an associated person of FINRA member firm Commonwealth Capital Securities Corp. ("CCS"), seeks review of FINRA disciplinary action. FINRA found that Springsteen-Abbott violated FINRA Rule 2010 by improperly allocating to investment funds personal expenses, control person expenses, and expenses for other businesses from 2009 through 2011. FINRA barred her from associating with any FINRA member firm and imposed a fine, disgorgement, and costs. After we remanded the proceeding to FINRA in a prior opinion,[1] FINRA again found that Springsteen-Abbott violated FINRA Rule 2010, again imposed a bar, but modified the amount of the fine and disgorgement. We now affirm the findings of violation and the bar and disgorgement that FINRA imposed, but set aside the fine.

I. Background

Springsteen-Abbott entered the securities industry in 1980, and has served as CCS's Chair, Chief Executive Officer, and Chief Compliance Officer since 2005. CCS is the managing broker-dealer of thirteen investment funds ("the Funds") sponsored by its parent company, Commonwealth Capital Corp. ("CCC"), of which Springsteen-Abbott is the sole shareholder. During the relevant period, Springsteen-Abbott also served as the Chair, CEO, and CCO for both CCC and the Funds' general partner, Commonwealth Income and Growth Fund, Inc. ("CIG").

The Funds include both publicly and privately offered funds that invest in equipment leases. Springsteen-Abbott's husband, Henry "Hank" Abbott, handles the leasing operations for the Funds and is a Director of CCS, CCC, and CIG. A number of Springsteen-Abbott's other family members are also employed by CCS, CCC, and CIG.

The Funds have no employees. Instead, employees of the related businesses handle the Funds' business and either charge related expenses directly to the Funds or seek reimbursement from the Funds. The Funds' offering documents contain a list of enumerated expenses that can be charged to or reimbursed by the Funds. There is also a catchall provision allowing "other related administrative expenses as are necessary to the prudent operation of the [Funds]" to be charged to the Funds. The offering documents offer little other guidance regarding allowable expenses, but they specify that the expenses of control persons—essentially senior and executive management for CIG and its affiliates—cannot be charged to or reimbursed by the Funds.

The expenses at issue in this case were all charged to a single American Express account issued to CCC. Springsteen-Abbott, Henry Abbott, and Lynn Franceschina, the Principal Financial Officer and Chief Operating Officer of CCS, CIG, and CCC, all held credit cards for the CCC account. They used these cards for various business and personal expenses. As head of the Commonwealth entities, Springsteen-Abbott had sole responsibility for determining whether charges were business expenses allocable to the Funds and had final approval of the allocations.

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[1] *Kimberly Springsteen-Abbott*, Exchange Act Release No. 80360, 2017 WL 1206062 (Mar. 31, 2017).

A. FINRA brought charges against Springsteen-Abbott for improperly allocating expenses.

In May 2013, FINRA's Department of Enforcement filed a Complaint against Springsteen-Abbott alleging that 2,272 charges on the CCC American Express account, totaling $344,378.79, were improperly allocated to the Funds between December 2008 and February 2012. After Springsteen-Abbott provided explanations for some charges, Enforcement filed an Amended Complaint in October 2013 alleging that 1,840 charges totaling $208,954.44 were inappropriately allocated to the Funds between December 2008 and February 2012; an attached exhibit listed these charges. According to the Amended Complaint, Springsteen-Abbott directed this "misuse of investor funds to pay for American Express charges [] not related to legitimate fund business." The Amended Complaint alleged that, as a result, Springsteen-Abbott violated FINRA Rule 2010's requirement that members and associated persons "observe high standards of commercial honor and just and equitable principles of trade" in conducting their business.

Springsteen-Abbott claimed in her Answer that certain charges made to the Funds, amounting to approximately $35,000, had been reallocated away from the Funds at her direction in August 2012 in response to FINRA's investigation. Springsteen-Abbott also provided Enforcement with a spreadsheet ("the 2013 Spreadsheet") that purported to identify those charges and which also included some explanations for the remaining expenses. Though Springsteen-Abbott did not provide supporting documentation that the reallocations were actually made, Enforcement nevertheless subtracted $35,000 from the $208,954.44 identified in the Amended Complaint, and as a result sought only $174,321.73 in restitution.

Springsteen-Abbott also asserted as an affirmative defense that, due to FINRA's concerns, she had "implemented new procedures to better monitor the allocation of expenses by the [F]unds." As an example, Springsteen-Abbott stated that she had created "an allocable expense ticket," or "tick" sheet, that described an expense and its business purpose and attached supporting documentation. In addition to applying the procedure moving forward, Springsteen-Abbott created and produced to Enforcement in early 2014 tick sheets and supporting documentation for the charges at issue in the action. Some of these tick sheets noted instances beyond those identified in the 2013 Spreadsheet where Springsteen-Abbott claimed a charge had been partially or fully reallocated away from the Funds after FINRA began its investigation.

A FINRA examiner testified that the exhibit to the Amended Complaint detailing the alleged misallocations included charges made during vacations and other family events, charges of meals and car rentals in the towns in which Abbott and Springsteen-Abbott lived, and charges from airport stores. Enforcement argued that these charges were personal expenses or otherwise inappropriate to charge to the Funds, and that the tick sheets and supporting documentation Springsteen-Abbott provided did not establish that the expenses were appropriately charged to the Funds.

The examiner also testified about a series of spreadsheets she had prepared that sorted the charges into categories, including one labeled "Summary of CE/CRD Licensing Charges"

("CE/CRD Spreadsheet").[2] This latter spreadsheet included 57 charges for items like FINRA training materials, as well as food and travel expenses related to FINRA trainings and conferences. The examiner explained that the CE/CRD Spreadsheet relied in part on notations in the 2013 Spreadsheet indicating that the charges "were related to CE or CRD related charges." The examiner also confirmed that there were no expense sharing agreements for the relevant period between CCS and the Funds.

Springsteen-Abbott stated that she used her business judgment and industry knowledge to determine what charges, per the Funds' operating agreement, constituted "administrative expenses . . . necessary to the prudent operation of the [Funds]." She claimed that, apart from some charges allocated in error, the 1,840 line items were all legitimate business expenses and reflected that the Funds' business often occurred outside of regular working hours, on short deadlines, and on the road, and included employees who were also family members. She claimed that the expenses at issue often saved the Funds money in the long term because they allowed CCC to operate with fewer personnel and less equipment.

B. A Hearing Panel found a pattern and practice of misconduct and imposed sanctions.

A FINRA Hearing Panel found that Springsteen-Abbott violated FINRA Rule 2010 by misallocating expenses to the Funds over at least three years, and that her practice of doing so inured to her personal benefit at the expense of the Funds. The Hearing Panel made specific findings regarding dozens of charges it deemed improperly allocated personal expenses. It performed this exercise "to convey the day-in, day-out nature of Springsteen-Abbott's misconduct," and stated that while not every improperly allocated expense proven at the hearing was included, "these expenses are sufficient to show Springsteen-Abbott's pattern and practice over the three years from 2009 through 2011." The Hearing Panel found that Springsteen-Abbott and Abbott lacked credibility in offering justifications for the allocations and that Springsteen-Abbott's claimed business justifications for many of the expenses were either "not credible" or "demonstrably false."

The Hearing Panel also found that the 57 charges on the CE/CRD Spreadsheet, as well as one additional charge omitted from the spreadsheet inadvertently, constituted "Broker-Dealer expenses," that is, expenses associated with CCS licensing requirements. The Hearing Panel concluded that such expenses should not have been charged to the Funds because they could not be construed as Fund business under the offering documents. The Hearing Panel found further that Springsteen-Abbott improperly allocated control person expenses, as defined in the offering documents, to the Funds—both her own and those of Abbott, whom the Hearing Panel found became a control person sometime in 2010.

The Hearing Panel barred Springsteen-Abbott from associating with any FINRA member firm in any capacity, fined her $100,000, assessed costs, and ordered $208,953.75 in

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[2] CE stands for Continuing Education and CRD for Central Registration Depository. Both are terms associated with annual certification requirements FINRA requires of its members and associated persons. *See Registration, Exams and CE*, FINRA, https://www.finra.org/registration-exams-ce.

disgorgement (plus prejudgment interest).[3] The $208,953.75 disgorgement amount was based on a schedule attached to the decision ("the Expense Schedule"), which totaled all 1,840 charges listed in the exhibit to the Amended Complaint with some *de minimis* corrections of errors.[4] The Hearing Panel found that while not every charge had been individually proven to be improperly allocated at the hearing, Enforcement had successfully proven "a purposeful pattern and practice of improperly allocating expenses to the Funds." The Hearing Panel also noted that there was "reason to distrust" some of Springsteen-Abbott's explanations that led Enforcement to drop items from the original complaint, which had decreased the amount of the charges against Springsteen-Abbott by over $135,000. The Hearing Panel also declined to decrease its disgorgement figure by the $35,000 in reallocations from the 2013 Spreadsheet on the ground that the total amount of disgorgement ordered was a "fair and reasonable estimate" of Springsteen-Abbott's unjust enrichment, and therefore the full amount of improperly allocated charges was "more appropriately remedial."

C. FINRA's National Adjudicatory Council also found that Springsteen-Abbott violated Rule 2010 and upheld all of the sanctions the Hearing Panel imposed.

Springsteen-Abbott appealed the Hearing Panel's decision to FINRA's National Adjudicatory Council (the "NAC"). The NAC agreed with the Hearing Panel's determination that Springsteen-Abbott violated Rule 2010 and affirmed the sanctions imposed, along with additional costs.

The NAC adopted as its own the Hearing Panel's factual findings. The NAC then affirmed the Hearing Panel's "findings of violation against Springsteen-Abbott to include all of the 1,840 improperly allocated charges identified in the *Expense Schedule*." The NAC rejected Springsteen-Abbott's argument that Enforcement had improperly shifted the burden to her to disprove the allegations it brought against her. The NAC stated:

> Enforcement has the burden of proving a prima facie case based on a preponderance of the evidence that Springsteen-Abbott committed the alleged violation. The entire itemized list of the 1,840 charges at issue was presented and accepted into evidence. We are unpersuaded by Springsteen-Abbott's argument in view of the full record. We find that, based on the evidence presented, Enforcement established its prima facie case of her alleged violation. An explanation detailing each of the 1,840 itemized charges was not required. Upon establishing a prima facie case, the burden shifted to Springsteen-Abbott to either discredit or rebut the evidence presented, which she failed to successfully do.

The NAC upheld the total of all the charges in the Expense Schedule as proper disgorgement.

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[3] The Hearing Panel imposed disgorgement rather than restitution because restitution is premised on a quantifiable loss and the record made it impossible to calculate how much restitution would need to be awarded to any specific Fund.

[4] The total amounts differed by less than a dollar.

D. The Commission remanded the proceeding to the NAC.

Springsteen-Abbott appealed the NAC's decision to the Commission, and the Commission remanded the proceeding to the NAC. The Commission explained that it was "unable to discharge [its] review function because the NAC's decision [was] unclear regarding what conduct it found to violate FINRA Rule 2010."[5] The NAC's decision stated that "the entire itemized list of the 1,840 charges at issue was presented and accepted into evidence" and thus established a prima facie case of a violation, and that "it was affirming the Hearing Panel's 'findings of violation against Springsteen-Abbott to include all of the 1,840 improperly allocated charges identified in the *Expense Schedule*.'"[6] However, the Hearing Panel had actually "based its finding of violation on the specific expenses it discussed that showed a 'pattern and practice' of misconduct over the span of three years," and had not found "that all 1,840 charges identified in the Expense Schedule were improperly allocated, that the Expense Schedule itself established a pattern or practice of misconduct, or that no evidence other than the Expense Schedule needed to be considered."[7] Because the Securities Exchange Act of 1934 required the Commission to determine whether the respondent engaged in the conduct FINRA found,[8] a remand was required so that the NAC could "clarify the basis on which it [was] upholding liability."[9]

The Commission also instructed the NAC to "explain how its findings of violation inform[ed] the sanctions imposed"—particularly disgorgement.[10] The Commission explained that "having found that the Hearing Panel determined all 1,840 charges to be violative, the NAC found that Springsteen-Abbott's unjust enrichment was the total amount of the 1,840 violative charges."[11] Thus, the NAC "did not specifically address the Hearing Panel's finding that it was 'fair and reasonable to view all of the alleged improper charges as unjust enrichment'" based on the various factors the Hearing Panel identified.[12] The Commission instructed the NAC on remand to "explain the relationship between any violations found and any disgorgement ordered and whether such disgorgement is a reasonable approximation of unjust enrichment."[13]

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5 *Springsteen-Abbott*, 2017 WL 1206062, at *5.

6 *Id.*

7 *Id.* Springsteen-Abbott's assertion in her brief that the Hearing Panel found she had "acted wrongly with respect to 1,840 expense items" is incorrect.

8 *See* 15 U.S.C. § 78s(e)(1).

9 *Springsteen-Abbott*, 2017 WL 1206062, at *5.

10 *Id.*

11 *Id.* at *6.

12 *Id.*

13 *Id.*

E. Following the remand, the NAC issued another decision again finding that Springsteen-Abbott violated FINRA Rule 2010, again imposing a bar, but modifying the amount of the fine and disgorgement ordered.

Following the remand, the NAC issued a new decision "affirm[ing] the Hearing Panel's finding that Springsteen-Abbott violated Rule 2010 by misusing investment fund monies to pay for personal and non-fund related business expenses." However, the NAC limited its findings of violation "to the specific expenses discussed in the Hearing Panel's decision that exemplified Springsteen-Abbott's pattern and practice of improperly allocating personal and non-fund related business expenses over a three-year period." The NAC stated that while it agreed "Enforcement did not prove that Springsteen-Abbott improperly allocated each of the 1,840 charges alleged in the [A]mended [C]omplaint, we affirm the Hearing Panel's conclusion that a preponderance of the evidence sufficiently demonstrated that Springsteen-Abbott 'engaged in a purposeful pattern and practice of improperly allocating expenses to the Funds.'" In total, the NAC found that Springsteen-Abbott improperly allocated 26 personal expenses to the Funds, 25 additional car rental expenses that were primarily for personal use, 58 broker-dealer expenses, and an unquantified number of control person expenses. The NAC did not include in its findings of violations any charges Springsteen-Abbott claimed to have reallocated on the 2013 Spreadsheet.

The NAC reviewed specific personal items in detail to clarify which it was including in its findings of violation. The NAC also found that the record "amply evidences Springsteen-Abbott's practice of improperly allocating expenses categorized as Control[] Person and broker-dealer expenses to the Funds." The NAC agreed with the Hearing Panel that Springsteen-Abbott was a control person throughout the relevant period, as was Abbott "at least throughout 2011." The NAC further found that Franceschina was a control person. For the 57 charges from the CE/CRD Spreadsheet, plus the one additional charge, the NAC affirmed the Hearing Panel's findings that these were costs unrelated to the Funds "that the Funds should not have borne."

The NAC affirmed the Hearing Panel's bar of Springsteen-Abbott, but reduced her fine from $100,000 to $50,000, and ordered $36,225.85 in disgorgement (plus prejudgment interest). The NAC based the disgorgement amount on a Revised Expense Schedule attached to the decision listing 84 charges: 26 personal expenses and 58 broker-dealer expenses.[14] The NAC did not include the unquantified number of control person expenses or the 25 other car rental expenses in its calculation of disgorgement because those amounts could not be determined with precision. The NAC stated that the disgorgement amount that it ordered "more reasonably approximates [Springsteen-Abbott's] unlawful gains and represents the more limited number of quantifiable expenses that we found were improperly allocated[.]" The 84 charges were all either individually discussed by the NAC in its decision, or included on the CE/CRD Spreadsheet. The NAC rejected some of the reasons the Hearing Panel provided for choosing its higher disgorgement amount, including references to charges not included in the Amended Complaint. The NAC again noted that the disgorgement ordered did not include any of the

[14] Exhibit A to this opinion details the 84 charges FINRA included on the Revised Expense Schedule and breaks down which of these FINRA labeled broker-dealer expenses.

$35,000 in claimed reallocated charges from the 2013 Spreadsheet. The NAC also upheld the Hearing Panel's assessment of $11,037.14 in costs. This appeal followed.

II. Analysis

We review FINRA disciplinary action to determine whether the respondent engaged in the conduct that FINRA found, whether such conduct violates the rules FINRA specified, and whether FINRA's rules are, and were applied in a manner, consistent with the purposes of the Exchange Act.[15] We apply a preponderance of the evidence standard.[16]

A. Springsteen-Abbott improperly allocated personal expenses, control person expenses, and expenses for other businesses to the Funds.

We find that Springsteen-Abbott engaged in the misconduct FINRA found. Over three years, Springsteen-Abbott engaged in a pattern and practice of using money from the Funds to pay for multiple charges that were not related to legitimate Fund business. FINRA's findings of specific improper allocations of expenses to the Funds over an extended period of time support FINRA's finding of a pattern and practice of misconduct.

1. Springsteen-Abbott allocated personal expenses to the Funds.

The evidence supports FINRA's conclusion that Springsteen-Abbott allocated 26 personal expenses to the Funds totaling $6,122.86. These 26 charges, a subset of the 84 charges on the Revised Expense Schedule, comprise 15 from restaurants or fast food establishments, 5 from airport stores or other retail stores, 4 from rental car companies, and 2 from gas stations. The evidence also supports FINRA's conclusion that Springsteen-Abbott improperly allocated an additional 25 car rental charges that were not included on the Revised Expense Schedule. The evidence regarding these 51 charges, which includes receipts, tick sheets, calendars, and emails for those charges and others from the same period, establishes that these meals and other items had no legitimate business purpose; in many instances, the evidence showed affirmatively that the expenses were personal—often related to vacations, holidays, and other family events.

The NAC properly rejected the evidence Springsteen-Abbott offered to claim business purposes for these items. In some cases, the evidence was unrelated to the charge at issue. In other cases, Springsteen-Abbott or Abbott made testimonial claims that were either contradicted by documentary evidence or were otherwise deemed not credible by the Hearing Panel. Springsteen-Abbott further damaged her credibility by providing false documentation to support some business justifications. "Credibility determinations by the fact finder deserve special

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15 15 U.S.C. § 78s(e)(1).

16 *See Richard G. Cody*, Exchange Act Release No. 64565, 2011 WL 2098202, at *9 n.7 (May 27, 2011), *aff'd*, 639 F.3d 251 (1st Cir. 2012).

weight, and can be overcome only when there is substantial evidence for doing so."[17] Our review of the record reveals no such substantial evidence.

Springsteen-Abbott contends that, because the Hearing Panel and NAC accepted Enforcement's "aggressive and unfounded argument that Appellant was a liar without giving any consideration to all of the compelling evidence that controverted that allegation," their decisions "violated the norms for evaluating credibility," did not provide fair procedure, and necessitate either dismissal or a new hearing with a new hearing panel. To the extent Springsteen-Abbott argues that the Hearing Panel's credibility determinations reveal bias, we have held repeatedly that "[a]dverse rulings, by themselves, generally do not establish improper bias."[18] To the extent Springsteen-Abbott challenges the Hearing Panel's credibility findings, our independent review of the record reveals no evidence controverting the Hearing Panel's findings that Springsteen-Abbott was not credible. Rather, the record contains numerous instances where both Springsteen-Abbott's and Abbott's explanations for various charges were unsubstantiated, inconsistent with the other evidence, self-contradictory, or evasive. We provide detailed examples below. These examples include items from each category of misallocated personal expenses mentioned above and illustrate the type of evidence presented at the hearing.

a. Cody's Original Roadhouse meals

Springsteen-Abbott misallocated to the Funds four meals from a restaurant called Cody's Original Roadhouse. Although Springsteen-Abbott submitted a tick sheet indicating a business purpose for each meal and various supporting documents, the receipts included charges for items typically eaten by children such as children's menu portions of chicken fingers and macaroni and cheese. At the hearing, Springsteen-Abbott denied that any children were present and insisted that she consumed the macaroni and cheese herself. But Enforcement produced emails she sent referring to two of the meals and the fact that her young grandchildren attended. Springsteen-Abbott admitted those two meals were allocated erroneously after seeing the emails yet refused to do so for a third meal despite similar children's items appearing on the receipt. The fourth meal included similar items, and Springsteen-Abbott acknowledged they were children's meals and claimed that she had reversed the charge. The tick sheet Springsteen-Abbott provided noting

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17 *Dennis Todd Lloyd Gordon*, Exchange Act Release No. 57655, 2008 WL 1697151, at *9 (Apr. 11, 2008); *accord Dane S. Faber*, Exchange Act Release No. 49216, 2004 WL 239507, at *5 (Feb. 10, 2004).

18 *Scott Epstein*, Exchange Act Release No. 59238, 2009 WL 223611, at *18 (Jan. 30, 2009), *aff'd*, 416 F. App'x 142 (3d Cir. 2010); *see also Steven Robert Tomlinson*, Exchange Act Release No. 73825, 2014 WL 6985131, at *7 (Dec. 11, 2014) (reviewing the record, "find[ing] no evidence of bias or unfairness during [FINRA] proceedings below[,]" and noting that "[t]he fact [Respondent] did not obtain the result he wanted or expected does not alone support a finding of bias"), *petition denied*, 637 F. App'x 49 (2d Cir. 2016).

the putative reversal, however, indicated only a partial reallocation and only after the filing of the original complaint; neither the notation nor the partial reallocation cures the violation.[19]

b. Airport store charges

Springsteen-Abbott misallocated to the Funds three charges from airport stores. One of these charges was accrued on the way home from an Alaskan vacation cruise; the second was accrued on the way home from a family trip to Disney World. Initially, Springsteen-Abbott supplied a tick sheet saying the first charge related to her husband's attendance at a conference. When questioned further, she admitted the charge was personal and allocated in error.

The third charge was for a novel about political espionage. Springsteen-Abbott's tick sheet stated that Abbott had purchased the book to obtain quotations for a conference presentation. But at the hearing, Abbott testified that the book was for his own personal use and changed his response to match Springsteen-Abbott's explanation only after he was told about it.

c. Car rentals and gas purchases

Springsteen-Abbott improperly allocated to the Funds 29 charges for cars her husband rented at their primary residence in Florida over the relevant period. Although Abbott testified that he always had a business purpose for the rental, the supporting evidence provided was vague and generally purported to substantiate a business purpose for only a small portion of the rental period. For example, the business justification for one three-week rental was a two-day conference. That rental period also included a day when Abbott was in New Jersey; a different rental charge for that trip was also allocated to the Funds. Another week-long rental ended the same day that the family's four-day Disney vacation ended; this was the same day as one of the gas charges. For another week-long rental, the supporting documentation indicated it was for a "due diligence guest" who arrived in Florida one day before the end of the rental. The evidence establishes that these expenses were not business charges and should not have been allocated to the Funds.

2. Springsteen-Abbott allocated control person expenses and expenses for other businesses to the Funds.

The evidence also supports FINRA's finding that Springsteen-Abbott improperly allocated certain control-person and broker-dealer business expenses to the Funds.

a. Control person expenses

The Funds' offering documents define control persons as those "performing functions . . . similar to those of . . . executive management . . . [or] senior management" for CIG, and state that the expenses of control persons cannot be reimbursed from the Funds. It is undisputed that Springsteen-Abbott and Franceschina were control persons for the entire relevant period, and

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[19] *Cf. Osborne, Stern & Co.*, Exchange Act Release No. 31211, 1992 WL 252183, at *3 (Sept. 22, 1992) (stating, where respondents failed to offer evidence that they repaid customers charged excessive markups, that "any belated repayment would not cure the earlier violations").

Springsteen-Abbott does not dispute FINRA's finding that Abbott became a control person in 2010. The evidence supports these findings. As a result, control person expenses should not have been allocated to the Funds with respect to Springsteen-Abbott and Franceschina for the entire relevant period and with respect to Abbott at least from 2011 forward. Nonetheless, Springsteen-Abbott improperly allocated such expenses to the Funds, as established by numerous restaurant bills, car rentals, travel, and similar expenses paid in full by these three individuals over a three-year period. Springsteen-Abbott asserts that she later reallocated some of these expenses away from the Funds, but that does not cure the initial violation. Nor do we have sufficient evidence to determine whether full reallocation was made.

b. Broker-dealer expenses

The 58 broker-dealer expenses that FINRA found Springsteen-Abbott improperly allocated to the Funds comprise the 57 charges from the CE/CRD Spreadsheet, totaling $24,478.97, plus a $5,624.02 charge from a restaurant called Alfano's that was inadvertently omitted from the spreadsheet. Fifty-five of the charges have titles or descriptions on the 2013 Spreadsheet that include terms associated with FINRA continuing education and regulatory oversight, such as "CE," "FINRA," "Series 22," "Series 7," "RF training," "compliance," or "SOX." The remaining three charges are described as trainings and a dinner for the board of directors of the Commonwealth entities. These charges occurred at the same time as one or more of the FINRA-labeled charges. All of these events were charged to the Funds in their entirety.

CCS, the broker-dealer, held many of these events as part of its obligations as a FINRA-regulated entity. Agendas appear on CCS letterhead with titles like "Annual Compliance Meeting" and "Annual CE Firm Element Meeting"; invitations were sent by CCS's compliance officer and included FINRA forms to be filled out. Some of the events appear to be more broadly focused—such as the Alfano's charge, which was for a holiday and awards dinner for all of the Commonwealth entities—but there was no noted connection to Fund business (as opposed to general CCC business). Springsteen-Abbott also agreed with Enforcement's characterization of certain charges on the CE/CRD Spreadsheet as being for "an annual compliance meeting of the broker/dealer" and "a 2009 firm element for the broker/dealer."

We agree with the NAC's findings that the record "amply evidences Springsteen-Abbot's practice of improperly allocating . . . broker-dealer expenses to the Funds." The Funds' offering documents list specific expenses that may be charged to the Funds and do not include CCS expenses in that list. And no evidence in the record indicates that these trainings, meetings, and conferences should be considered "administrative expenses necessary to the prudent operation of the [Funds]," even where CCC employees were involved. Nor does the record contain any expense-sharing agreement that would require the Funds to assume any of these costs. We thus find that the broker-dealer expenses were not a permitted expense under the Funds' offering documents.

Springsteen-Abbott argues that the FINRA examiner's characterization of the CE/CRD Spreadsheet was false and misled the Hearing Panel and the NAC. The FINRA examiner characterized Springsteen-Abbott's identification of the expenses in the Spreadsheet "as related to broker-dealer continuing education" (italics omitted). We find that charges labeled "FINRA Education and Training" and described by Springsteen-Abbott on the 2013 Spreadsheet with

other terms related to FINRA training were fairly interpreted as "pertain[ing] to broker/dealer functions[,]" and "related to CE or CRD related charges[,]" as the examiner testified.

Springsteen-Abbott also argues that her allocation of these expenses to the Fund was an exercise of business judgment. During closing arguments before the Hearing Panel, her counsel stated that Springsteen-Abbott "requires all her employees to attend CE [Continuing Education] and CRD, whether registered or not, because she believes the education benefits the funds" (alterations in original). Springsteen-Abbott claims that, pursuant to the business judgment rule as construed under Pennsylvania law, her allocation of these expenses to the Funds was proper.

The record contains no evidence that would establish that attendance by any employees at broker-dealer training events were "administrative expenses necessary to the prudent operation of the [Funds]"—as the offering documents required to justify allocating expenses to the Funds. The business judgment rule does not supersede this express contractual provision.[20] Springsteen-Abbott claims that the text of a code key she provided with the 2013 Spreadsheet, which labels certain of the charges "Sponsor CE/Training," demonstrates that CCC, rather than CCS, was a beneficiary of training events. But this description of certain charges does not transform the charges into the requisite administrative expenses of the Funds. Nor does her counsel's claim in closing arguments before the Hearing Panel that Springsteen-Abbott had testified to her belief that CE trainings were "relevant and useful" to Fund-servicing personnel. In fact, the record does not show that she offered such testimony.

3. The NAC was not required to conduct a new evidentiary hearing on remand.

Springsteen-Abbott claims that on remand she "offered to present additional, clearer evidence to FINRA and the NAC with respect to the expense items at issue." Although she did not provide any details regarding the nature of the additional evidence she wished to adduce or explain how it might be exculpatory, she characterized the evidence as "a line by line review" of the 1,840 charges at issue in the Amended Complaint. According to Springsteen-Abbott, the original Hearing Panel unfairly prevented her from adducing this evidence, and she asserts that the NAC's failure to consider additional evidence on remand "is contrary to the [Commission's opinion], which requires that the NAC's findings be established by the evidence." But the

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[20] *See Dist. Lodge 26, Int'l Ass'n of Machinists v. United Techs. Corp.*, 610 F.3d 44, 52 (2d Cir. 2010) ("[I]t inheres in the nature of a contract relating to the business of a corporation . . . that to the extent set forth in the contract[,] the corporation has surrendered the ability to act otherwise than according to its lawful obligations thereunder[,] irrespective of the corporation's subsequent contrary 'business judgment.'"); *E. P. Hinkel & Co. v. Manhattan Co.*, 506 F.2d 201, 205 (D.C. Cir. 1974) (holding that arguments regarding business judgment cannot offer "a different meaning to clear and unambiguous contractual provisions"); *see also, e.g., Brazen v. Bell Atl. Corp.*, 695 A.2d 43, 44-49 (Del. 1997) (holding that where a merger agreement contained "express language" addressing the fee under consideration, analysis of the provision under the business judgment test would be inappropriate).

Commission did not direct the NAC to reopen the record to adduce more evidence.[21] And the evidence in the record establishes the NAC's findings.

The NAC based its opinion following remand not on all 1,840 expense items at issue in the original opinion, but rather on 84 specific charges, plus additional car rentals and control person expenses. These items were the focus of the hearing. As discussed above, the record contained explicit evidence regarding each of these expenses, and the NAC's opinion provided specific reasons and evidence that amply supported its conclusion that the record established the conduct alleged in Enforcement's complaint with respect to these charges.

If Springsteen-Abbott, having read the NAC's opinion following remand, had additional evidence she wished to submit to rebut those specific charges, she could have done so when she appealed to the Commission. Rule of Practice 452 allows parties to adduce additional evidence before the Commission so long as they can "show with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously."[22] Springsteen-Abbott's vague reference in her brief to "additional, clearer evidence" does not meet the requirements of Rule 452 or persuade us that a remand is required.[23]

B. Springsteen-Abbott is liable under FINRA Rule 2010.

FINRA Rule 2010 requires that members and associated persons, "in the conduct of [their] business, [ ] observe high standards of commercial honor and just and equitable principles of trade." In determining whether a respondent's conduct is inconsistent with Rule 2010's mandate where the alleged violation is not premised on the violation of another FINRA rule, we must determine whether the respondent has acted unethically or in bad faith.[24] Unethical conduct is that which is "not in conformity with moral norms or standards of professional

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[21] By contrast, when the Commission believes a remand is necessary at least in part to adduce more evidence, it specifically says so. *See Gary L. McDuff*, Exchange Act Release No. 74803, 2015 WL 1873119, at *3 (Apr. 23, 2015) ("[W]e direct the law judge on remand to admit and consider additional evidence to determine whether imposing such sanctions against [respondent] is in the public interest."); *Klaus Langheinrich*, Exchange Act Release No. 32603, 1993 WL 255836, at *1 (July 8, 1993) ("Accordingly, we shall remand this proceeding so that the NASD will have an opportunity to consider additional evidence relating to the issue of [respondent's] compliance with [certain of] NASD's Rules."); *Arthur A. Ross*, Exchange Act Release No. 30950, 1992 WL 188932, at *3 (July 27, 1992) ("On remand, the NASD should permit [respondent] to introduce evidence relating to [charges brought by NYSE].").

[22] 17 C.F.R. § 201.452.

[23] *See, e.g., Constantine Gus Cristo*, Exchange Act Release No, 86018, 2019 WL 2338414, at *5 n.23 (June 3, 2019) (denying Rule 452 motion referring to "unidentified evidence" for failure to provide sufficiently particular materiality explanation).

[24] *See Heath v. SEC*, 586 F.3d 122, 132 & n.5 (2d Cir. 2009).

conduct," while bad faith means "dishonesty of belief or purpose."[25] "Rule 2010 sets forth a standard intended to encompass 'a wide variety of conduct that may operate as an injustice to investors or other participants in the marketplace.'"[26] Harm need not be shown.[27]

We agree with the NAC that Springsteen-Abbott's pattern and practice of misusing the Funds' monies fits within the broad range of conduct that Rule 2010 proscribes. Springsteen-Abbott was entrusted with investor money, and the Fund offering documents specified expenses that the money could be used for, yet she violated this trust over a three-year period by routinely misallocating personal expenses, control person expenses, and expenses of other businesses to the Funds. These were not isolated oversights. And Springsteen-Abbott's use of the CCC American Express card for personal charges and charges for the various related corporate entities comingled expenses and allowed her to conceal her misconduct from oversight for years. Springsteen-Abbott demonstrated the extent of her bad faith when she provided false business justifications for numerous expenses to both Enforcement and the Hearing Panel despite documentary evidence that contradicted her explanations.

Springsteen-Abbott's behavior undermined her duty to her investors.[28] Her actions do not adhere to the "high standards of commercial honor and just and equitable principles of trade" that Rule 2010 requires. Rule 2010 is designed to "protect investors and the securities industry from dishonest practices that are unfair to investors,"[29] and we have previously found similar

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25 *See Edward S. Brokaw*, Exchange Act Release No. 70883, 2013 WL 6044123, at *10 (Nov. 15, 2013) (internal quotation marks, brackets, and citations omitted).

26 *Joseph R. Butler*, Exchange Act Release No. 77984, 2016 WL 3087507, at *7 (June 2, 2016) (quoting *Dante J. DiFrancesco*, Exchange Act Release No. 66113, 2012 WL 32128, at *5 (Jan. 6, 2012)) (additional internal quotation marks and citations omitted).

27 *See Tomlinson*, 2014 WL 6985131, at *6 (quoting *DiFrancesco*, 2012 WL 32128, at *6).

28 *See Blair Alexander West*, Exchange Act Release No. 74030, 2015 WL 137266, at *8 (Jan. 9, 2015) (finding respondent acted in bad faith where he used investor funds to pay his own personal and business expenses and then concealed that fact), *petition denied*, 641 F. App'x 27 (2d Cir. 2016); *Kirlin Sec., Inc.*, Exchange Act Release No. 61135, 2009 WL 4731652, at *14 (Dec. 10, 2009) (labeling respondent's behavior unethical because he acted "in direct violation of [Firm's] written supervisory procedures" and "at best, unacceptably placed administrative convenience above the integrity of customer assets").

29 *Tomlinson*, 2014 WL 6985131, at *5 n.15 (internal quotation marks and citation omitted).

conduct to violate Rule 2010.[30] Accordingly, we agree that Springsteen-Abbott violated Rule 2010. None of Springsteen-Abbott's arguments challenging a finding of liability is convincing.[31]

1. FINRA Rule 2010 applies to Springsteen-Abbott's conduct.

Springsteen-Abbott argues that her conduct does not fall under Rule 2010 because it was too far removed from CCS and not related to securities. She contends that it would be "unreasonable to conclude that business activity of virtually any sort . . . may provide a basis for FINRA sanction if the activity is deemed unethical or inequitable." But Springsteen-Abbott's misconduct did involve CCS. CCS was the Funds' broker-dealer, and Springsteen-Abbott made CCS appear more profitable by using Fund monies to pay CCS's expenses instead of charging them to CCS. Springsteen-Abbott's conduct falls squarely within the scope of Rule 2010.[32]

In any case, Springsteen-Abbott is incorrect that misconduct must involve a security in order to fall under Rule 2010. "It is well established that FINRA's disciplinary authority under [Rule 2010] is broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade even if that activity does not involve a security."[33] Both the Commission and the courts have held repeatedly that Rule 2010 applies "when the misconduct reflects on the associated person's ability to comply with the regulatory requirements of the securities business and to fulfill [their] fiduciary duties in handling other people's money."[34]

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30 *Cf. Stephen Grivas*, Exchange Act Release No. 77470, 2016 WL 1238263, at *1, 4 (Mar. 29, 2016) (finding respondent violated Rule 2010 by transferring money out of investor funds into broker-dealer); *Denise M. Olson*, Exchange Act Release No. 75838, 2015 WL 5172954, at *2 (Sept. 3, 2015) (finding respondent violated Rule 2010 by falsifying expense reports so she was reimbursed for personal expenses); *West*, 2015 WL 137266, at *7-8 (finding respondent violated NASD Rule 2110 (Rule 2010's predecessor) by using investor funds to pay his own personal and business expenses).

31 Because we find that Springsteen-Abbott acted in bad faith as well as unethically, we do not reach her argument that this is a breach of contract case in which a Rule 2010 violation can be premised only on a showing of bad faith.

32 *See, e.g.*, *Grivas*, 2016 WL 1238263, at *5 (finding conversion whose "ultimate purpose . . . was to benefit" a broker-dealer "was squarely within the conduct of [respondent's] business" and therefore fell within the scope of Rule 2010, particularly where the other companies involved "were interrelated" with the member firm).

33 *West*, 2015 WL 137266, at *9 (internal quotation marks, brackets, and citations omitted); *Daniel D. Manoff*, Exchange Act Release No. 46708, 2002 WL 31769236, at *4 (Oct. 23, 2002); *see also, e.g.*, *Grivas*, 2016 WL 1238263, at *5 (rejecting contention that "misconduct must bear a close relationship to the associated person's investment banking or securities business" for Rule 2010 to apply because that "language is not in Rule 2010 and is contrary to the precedent interpreting that rule") (internal quotation marks omitted).

34 *Manoff*, 2002 WL 31769236, at *4 (discussing misconduct that did not involve a security but rather the unauthorized use of co-worker's credit card); *see also, e.g.*, *Vail v. SEC*, 101 F.3d

Springsteen-Abbott's pattern and practice of misusing Fund monies casts grave doubt on her ability to be trusted with investor money or to comply with FINRA regulatory requirements. It was proper, and consistent with case law, to find that her misconduct violated Rule 2010.

2. Springsteen-Abbott's voluntary contributions do not negate a finding of bad faith.

Springsteen-Abbott claims that she voluntarily contributed $2.4 million to the Funds over the relevant time period. Our finding that Springsteen-Abbott acted unethically and in bad faith focuses on her misconduct in misallocating money from the Funds; her claims that she also paid money into the Funds do not cure those violations.[35]

Springsteen-Abbott's voluntary contributions included a portion of employee salaries for work performed on behalf of the Funds, and American Express charges allocable to the Funds, which CCC absorbed instead of charging to the Funds; capital contributions from CCC; CCC's waiving or forgiving of fees to which it was entitled, and financing a tech center that benefitted the Funds but was not charged to them. Springsteen-Abbott argues that these contributions show that she could not have acted unethically or in bad faith with regard to the Funds because they "fit the dictionary definition of altruistic."

These voluntary contributions do not negate a finding of bad faith with respect to the funds Springsteen-Abbott misallocated.[36] She concedes they were made for business purposes, and not out of selflessness, as she now characterizes them. For instance, Springsteen-Abbott explained that often when opening a new fund, CCC would either contribute capital into the new leases or waive fees or expenses due to CCC in order to give the funds a greater chance of recovering from other front-end fees. Franceschina and Springsteen-Abbott testified that when a fund suffered a significant loss—for instance, because of litigation or a bad lease—CCC would often forgive fees or make capital contributions to help the fund recover. And when Springsteen-Abbott's counsel asked at the hearing, "[I]t doesn't sound like [the voluntary contribution] is an altruistic effort. You're doing this for a business reason?" Springsteen-Abbott responded, "I'm doing this for a business reason. . . . I absolutely want these funds to be successful. . . . So I do it so the funds can be successful, and if the funds are successful, then Commonwealth will be a success." That Springsteen-Abbott contributed money to the Funds for business purposes does not absolve her of liability for misallocating money from the Funds by charging the Funds for expenses that lacked a business purpose and that were not authorized to be charged to the Funds.

37, 39 (5th Cir. 1996) (finding respondent's misconduct while serving as a club's fiduciary managing its funds "constituted business-related conduct" that fell within the scope of the rule).

35 *Cf. James C. Dawson*, Investment Advisers Act Release No. 3057, 2010 WL 2886183, at *3 (July 23, 2010) (finding that respondent's conduct of allocating favorable trades to himself rather than his clients was egregious despite respondent's claims that he reduced his compensation to make his investors whole).

36 *Cf. Olson,* 2015 WL 5172954, at *4 (rejecting respondent's argument that her false expense reports were offset by purchases she made for the firm for which she did not seek reimbursement, because "securities professionals are not entitled to self-help in this manner").

3. Springsteen-Abbott's claimed reliance on her employees or outside professionals does not negate our findings.

Although Springsteen-Abbott denies that any violative misallocations occurred beyond a few "mistakes," she attempts to assign the blame for any misallocations that did occur to others. However, it was Springsteen-Abbott's obligation to manage the Funds in accordance with their offering documents, and we have repeatedly held that respondents cannot blame their employees for their own misbehavior, nor shift their compliance responsibilities to outside servicers.[37] Given all of the evidence, we find that she is liable for the misallocations.

Springsteen-Abbott blames Franceschina and the accounting staff, claiming she "relied upon the mistaken belief that what she was given to review was in accordance with the appropriate rules and procedures," after which she "typically just initialed the summary sheet to approve payments." She blames outside "legal and accounting advisors," claiming that "no audit letter ever cited any misallocation or any control issues relating to the allocation of expenses." She blames her late husband, George Springsteen, for bequeathing to her a "flawed and antiquated" allocation system. According to Springsteen-Abbott, her reliance on these individuals counters any argument that she behaved knowingly or recklessly. Springsteen-Abbott concludes that as a result her errors "do not remotely rise to the level of unethical or bad faith behavior required to satisfy the charges brought against her and the draconian sanctions imposed."

The record does not support these claims. Springsteen-Abbott was responsible for, aware of, and involved in the minutia of the misallocations. She charged many of the expenses herself, and attended many of the events where expenses were charged by the two other cardholders, her husband and Franceschina, which gave her first-hand knowledge of them. Franceschina testified at length about Springsteen-Abbott independently going through each American Express account statement, making notes, and discussing specific items. Many of the account statements include Springsteen-Abbott's check marks next to each charged item, as well as her extensive handwritten notes. Springsteen-Abbott testified that her approval included reviewing account statements and summaries "line by line" and "fiercely." While Franceschina might have taken the lead in processing the allocations for accounting, Springsteen-Abbott had the final say.

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[37] *See, e.g., John D. Audifferen*, Exchange Act Release No. 58230, 2008 WL 2876502, at *9 (July 25, 2008) (rejecting respondent's attempt to shift blame to firm's operations department where it was clear he "was aware of what he was doing"); *Prime Inv'rs, Inc.,* Exchange Act Release No. 38487, 1997 WL 163992, at *3 (Apr. 8, 1997) (rejecting respondents' attempts to shift blame to clearing firm); *James Michael Brown*, Exchange Act Release No. 31224, 1992 WL 275520, at *3 (Sept. 23, 1992) (rejecting respondent's attempt to shift responsibilities to outside accountants, as they "were simply retained on a quarterly basis to assist the firm in discharging duties that ultimately were [respondent's] responsibilities as the firm's president"), *aff'd*, 21 F.3d 1124 (11th Cir. 1994) (Table).

C. Rule 2010 is, and was applied in a manner, consistent with the Exchange Act's purposes.

Exchange Act Section 15A(b)(6) requires that FINRA design rules that "promote just and equitable principles of trade."[38] Rule 2010 achieves this purpose.[39] Because Springsteen-Abbott's misallocation of investor funds was inconsistent with just and equitable principles of trade, FINRA acted consistent with the purposes of the Exchange Act in finding her liable.

III. Sanctions

Exchange Act Section 19(e)(2) directs us to sustain FINRA's sanctions unless we find, with due regard for the public interest and the protection of investors, that the sanctions are excessive or oppressive or impose an unnecessary or inappropriate burden on competition.[40] We consider evidence of any aggravating or mitigating factors, as well as whether the sanctions serve remedial rather than punitive purposes.[41] Although they are not binding on us, FINRA's Sanction Guidelines serve as a benchmark in our review.[42]

We agree with FINRA that Springsteen-Abbott's misconduct was egregious and justifies the bar and disgorgement, but we eliminate the fine imposed because we find it to be excessive in light of the other sanctions. We also reject Springsteen-Abbott's argument that the Supreme Court's recent decision in *Kokesh v. SEC* renders the bar and disgorgement punitive (and thus beyond FINRA's power to impose) and instead find them to be remedial sanctions.

A. We sustain the bar and disgorgement that FINRA ordered but set aside the fine.

1. The bar FINRA imposed on Springsteen-Abbott is neither excessive nor oppressive.

For improper use of funds in violation of FINRA Rule 2010, the Sanction Guidelines recommend a fine of $2,500 to $73,000, and consideration of a bar unless mitigating factors exist, in which case they recommend considering a suspension.[43]

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38 15 U.S.C. § 78o-3(b)(6).

39 *See, e.g.*, *Rani T. Jarkas*, Exchange Act Release No. 77503, 2016 WL 1272876, at *10 (Apr. 1, 2016) (holding that Rule 2010 is consistent with the Exchange Act's purposes).

40 15 U.S.C. § 78s(e)(2). Springsteen-Abbott does not allege, nor does the record show, that the sanctions imposed create an undue burden on competition.

41 *See Saad v. SEC*, 718 F.3d 904, 906 (D.C. Cir. 2013); *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1065 (D.C. Cir. 2007).

42 *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 WL 2898033, at *11 & n.68 (June 14, 2013).

43 Sanction Guidelines at 36 (Mar. 2015 ed.).

We find, as FINRA did, that a number of aggravating factors are present and render Springsteen-Abbott's misconduct egregious. Springsteen-Abbott engaged in a pattern and practice of misusing Fund monies for over three years.[44] She unjustifiably enriched herself by misallocating money from the Funds, to the harm of Fund investors.[45] Once FINRA began investigating, Springsteen-Abbott continued to conceal her misconduct by providing false information, both orally and in writing, in an attempt to justify the expenses.[46] As we have found previously, Springsteen-Abbott's "lack of candor in testifying before" FINRA is an aggravating factor that supports the need to bar her in order to protect the public.[47]

Under the circumstances, the bar is not excessive or oppressive and it serves remedial purposes. Springsteen-Abbott's continued association with a FINRA member firm would present a risk to the integrity of the markets and to investors.[48] Given that "[t]he securities industry presents many opportunities for abuse and overreaching and depends very heavily upon the integrity of its participants," behavior like Springsteen-Abbott's cannot be tolerated.[49] Removing her from the industry prevents her from harming additional investors.[50]

Springsteen-Abbott argues that mitigating factors are present. First, she characterizes her misconduct as "errors [that] were not intentional" and that "amount[] to, at most, a few dozen inadvertent misallocations." As explained above, this is not an accurate characterization of the nature and extent of Springsteen-Abbott's misconduct. Rather, Springsteen-Abbott engaged in a pattern and practice of unethical dealing conducted in bad faith.[51] Second, Springsteen-Abbott points to her voluntary contributions to the Funds as "clearly a mitigating factor" because it shows that "she conducted herself in an exemplary fashion" in relation to the Funds "in the same

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44 *See id.* at 7-8 (considering the number of transactions at issue and whether respondents engaged in numerous acts and/or a pattern of misconduct over an extended period of time).

45 *See id*. (considering whether respondent's misconduct resulted in direct or indirect injury to others, and whether it resulted in the potential for respondent's monetary gain).

46 *See id*. (considering whether respondent attempted to conceal information from FINRA or to provide inaccurate or misleading testimony or documentary information).

47 *Sidney C. Eng*, Exchange Act Release No. 40297, 1998 WL 433050, at *8-9 (Aug. 3, 1998).

48 *See* Sanction Guidlines at 2 (stating that sanctions should prevent recurrence of misconduct, improve overall standards in industry, and protect investing public).

49 *See West*, 2015 WL 137266, at *11 (internal quotation marks and citation omitted) (upholding bar applied to misuse of funds).

50 *See Audifferen*, 2008 WL 2876502, at *15 (finding that "a bar serves [a] remedial purpose" when it is "necessary to protect the investing public from harm[,]" particularly respondent's "willingness to place his own financial interests ahead of those of his customers").

51 *Cf., e.g., James Carlton McLamb*, Exchange Act Release No. 29446, 1991 WL 285649, at *3 (July 17, 1991) (finding 73 transactions over a nine-month period constituted a "pattern of misconduct" and justified an industry bar).

time period" and so is relevant "to her intent or motivation." As explained previously, her voluntary contributions are not mitigating because they do not cure her misconduct and in any case appear to have been made not to repay the Funds but in furtherance of Fund business. Third, Springsteen-Abbott points to her "unblemished 26-plus year career." But the Guidelines indicate, and we have repeatedly affirmed, that a lack of disciplinary history is not mitigating.[52]

Springsteen-Abbott characterizes the bar as "unfair and unjust" and "not supported by the evidence." She points to two NAC decisions where, she claims, behavior worse than hers led to suspensions rather than bars. As we have noted repeatedly, "the appropriate sanction depends on the facts and circumstances of each particular case and cannot be precisely determined by comparison with the action taken in other proceedings."[53] Furthermore, the two NAC decisions Springsteen-Abbott cites[54] are inapposite. Neither involved a respondent who lied to FINRA. Here, Springsteen-Abbott lied repeatedly to FINRA over the course of the investigation andhearing. Springsteen-Abbott also compares her case to several FINRA settlements, but "[w]e have repeatedly observed that comparisons to sanctions in settled cases are inappropriate."[55]

We find that the bar FINRA imposed is within the guidelines for Springsteen-Abbott's misconduct and, given the nature of her misconduct, is neither excessive nor oppressive.

2. The disgorgement FINRA ordered is neither excessive nor oppressive.

FINRA's Sanction Guidelines state that adjudicators "should consider a respondent's ill-gotten gain when determining an appropriate remedy[,]" including the possibility of ordering

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52 *See* Guidelines at 6 n.1 ("[W]hile the existence of a disciplinary history is an aggravating factor when determining the appropriate sanction, its absence is not mitigating[.]") (citing *Rooms v. SEC*, 444 F.3d 1208, 1214-15 (10th Cir. 2006)); *see also Kent M. Houston*, Exchange Act Release No. 71589A, 2014 WL 936398, at *7 & n.55 (Feb. 20, 2014) (citing cases).

53 *See PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 WL 1697153, at *9 (Apr. 11, 2008) (citing *Butz v. Glover Livestock Comm'n Co.,* 411 U.S. 182, 186-87 (1973); *Geiger v. SEC*, 363 F.3d 481, 488 (D.C. Cir. 2004)), *aff'd*, 566 F.3d 1172 (D.C. Cir. 2009); *see also Olson*, 2015 WL 5172954, at *8 (same); *West*, 2015 WL 137266, at *10 (same); *Robert D. Tucker*, Exchange Act Release No 68210, 2012 WL 5462896, at *15 n.92 (Nov. 9, 2012) (same).

54 *Chad A. McCartney*, Complaint No. 2010023719601, 2012 WL 6969529 (FINRA NAC Dec. 10, 2012); *Ryan A. Leopold*, Complaint No. 2007011489301, 2012 WL 641038 (FINRA NAC Feb. 24, 2012).

55 *See Michael C. Pattison*, Exchange Act Release No. 67900, 2012 WL 4320146, at *11-12 (Sept. 20, 2012) (noting that "pragmatic considerations" including the "fuller, more developed record of facts and circumstances" that litigated cases present often means that respondents who settle "receive lesser sanctions than they otherwise might have" (internal quotation marks and citations omitted)); *see also Michael Earl McCune*, Exchange Act Release No. 77375, 2016 WL 1039460, at *10 (Mar. 15, 2016) (same), *aff'd*, 672 F. App'x 865 (10th Cir. 2016).

"disgorgement of some or all of the financial benefit derived, directly or indirectly."[56] Disgorgement "serves the remedial purpose of depriving [the wrongdoer] of the benefit of his misconduct."[57] The amount to be ordered disgorged must be a "reasonable approximation" of the profits causally connected to the violation.[58] Other than arguing that *Kokesh* means disgorgement is punitive, Springsteen-Abbott does not challenge FINRA's authority to impose disgorgement.

FINRA ordered Springsteen-Abbott to disgorge $36,225.85, plus prejudgment interest. We find this amount a reasonable approximation of Springsteen-Abbott's ill-gotten gains and appropriately linked to Springsteen-Abbott's misconduct. The figure corresponds to the 84 charges listed on the Revised Expense Schedule attached to the NAC's decision. The NAC discussed all the charges in its decision and found them all to be violative conduct. As the NAC pointed out, this figure includes no expenses that Springsteen-Abbott claimed to have reallocated on the 2013 Spreadsheet. Nor does this figure include certain expenses, like car rentals and control person expenses, which the NAC found to be violative but whose amounts could not be determined with precision. The NAC followed our instructions in our remand opinion, and has "explain[ed] the relationship between any violations found and any disgorgement ordered and whether such disgorgement is a reasonable approximation of unjust enrichment."[59]

Springsteen-Abbott contends that "all [the personal] allocations have been reversed" and that the disgorgement amounts "have already been the subject of a reallocation." But the burden of resolving any uncertainty with respect to the amount to be disgorged falls on the wrongdoer whose wrongful conduct created that uncertainty.[60] Springsteen-Abbott fails to satisfy that

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[56] Guidelines at 5; *see also Mission Sec. Corp.*, Exchange Act Release No. 63453, 2010 WL 5092727, at *14 (Dec. 7, 2010) (noting Commission "encourage[s]" disgorgement in FINRA proceedings where "a professional has acquired a [financial] benefit by failing to meet his obligations").

[57] *William J. Murphy*, Exchange Act Release No. 69923, 2013 WL 3327752, at *24 (July 2, 2013), *aff'd sub nom*. *Birkelbach v. SEC*, 751 F.3d 472 (7th Cir. 2014).

[58] *The Dratel Grp.*, Exchange Act Release No. 77396, 2016 WL 1071560, at *16 (Mar. 17, 2016); *cf. Hateley v. SEC*, 8 F.3d 653, 656-57 (9th Cir. 1993) (reversing SRO disgorgement award where the amount ordered was not a reasonable approximation of the respondent's unjust enrichment).

[59] *Springsteen-Abbott*, 2017 WL 1206062, at *6.

[60] *Dratel Grp.*, 2016 WL 1071560, at *17 (affirming disgorgement amount where respondent "failed to meet his burden of showing that the amount of disgorgement is not a reasonable approximation" after the "deceptive nature of [respondent's] misconduct" led to uncertainty regarding the appropriate figure); *Guy P. Riordan*, Exchange Act Release No. 61153, 2009 WL 4731397, at *20 (Dec. 11, 2009) ("Where disgorgement cannot be exact, the 'well-established principle' is that the burden of uncertainty in calculating ill-gotten gains falls on the wrongdoer whose illegal conduct created the uncertainty." (quoting *Zacharias v. SEC*, 569 F.3d 472 (D.C. Cir. 2009))), *aff'd*, 627 F.3d 1230 (D.C. Cir. 2010).

burden here because her claims that the disgorgement amounts have already been reallocated are unsubstantiated.

Springsteen-Abbott argues further that, even if disgorgement were appropriate under the circumstances, it should amount to "at most the $6,122.86 that is alleged to be personal expenses" because she "did not personally benefit from the $30,102.99 in so-called broker-dealer expenses that actually benefitted the Funds." But in choosing to allocate the broker-dealer expenses to the Funds, rather than to CCC or CCS, Springsteen-Abbott rendered those companies more profitable. And since Springsteen-Abbott controls all of the Commonwealth companies and is the sole shareholder of CCC, which is CCS's parent, any such profits benefitted her and so are proper subjects of disgorgement.[61] Springsteen-Abbott herself, in describing contributions from CCC to the Funds, confirmed that "money that's out of Commonwealth's pocket" is "[o]ut of my pocket."

Springsteen-Abbott also argues that her voluntary contributions to the Funds "make it clear that [she] did not receive and retain any personal profit at the expense of the Funds and that, therefore, disgorgement, which is intended to recapture an unlawful retention of a benefit, is unwarranted and erroneous." According to Springsteen-Abbott, if she wanted to avail herself of the misallocated amounts alleged here she could have done so simply by reducing her voluntary contributions, which were greater than the charges at issue in this case. As we explained earlier, however, Springsteen-Abbott's other activity related to the Funds has no bearing on whether in these 84 instances she unjustly enriched herself at the Funds' expense. These voluntary contributions were not Springsteen-Abbott's attempt to pay the Funds back for what she misallocated, but rather wholly separate transactions with business reasons undergirding them and therefore unrelated to the expenses at issue here. Any voluntary contributions notwithstanding, the $36,225.85 represents unjust enrichment.[62]

3. The fine FINRA ordered is excessive in light of the other sanctions.

For improper use of funds in violation of FINRA Rule 2010, the Sanction Guidelines recommend a fine of $2,500 to $73,000.[63] But the Guidelines in effect at the time of the NAC's decision also stated that FINRA adjudicators "generally should not impose a fine" in cases involving the "improper use of funds" if a respondent "is barred and [FINRA] has ordered . . .

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61 *See, e.g., SEC v. J.T. Wallenbrock & Assoc.*, 440 F.3d 1109, 1114 (9th Cir. 2006) ("[T]he amount of disgorgement should include all gains flowing from the illegal activities.") (internal quotation marks and citation omitted); *cf. Gordon Brent Pierce*, Exchange Act Release No. 71664, 2014 WL 896757, at *24 (Mar. 7, 2014) ("For purposes of disgorgement there is no meaningful distinction between receiving funds outright and having funds paid into an account one controls."), *petition denied*, 786 F.3d 1027 (D.C. Cir. 2015).

62 *Cf. SEC v. First Pac. Bancorp*, 142 F.3d 1186, 1191-92 & n.6 (9th Cir. 1998) (sustaining disgorgement order despite defendant having contributed $1,000,000 of his own money to the scheme because he was still unjustly enriched).

63 Guidelines at 36.

disgorgement."[64] The Guidelines make clear that FINRA adjudicators "may exercise their discretion" in applying this policy, bearing in mind that "the overriding purpose of all disciplinary sanctions is to remedy misconduct, deter future misconduct and protect the investing public."[65]

Although the NAC properly characterized the case as involving the improper use of funds and applied the correct Guideline when considering sanctions generally and the amount of the fine specifically, the NAC did not address the correct provision of the Guidelines when describing the basis for imposing the fine. Instead, the NAC cited to a part of the Guidelines that says adjudicators "generally should impose a fine and require payment of restitution and disgorgement even if an individual is barred *in all sales practice cases* if the case involves widespread, significant, and identifiable customer harm or the respondent has retained substantial ill-gotten gains."[66] This Guideline does not apply to cases involving the improper use of funds. The NAC failed to otherwise explain why the fine was necessary.

The provision of the Guidelines stating that all three sanctions generally should not be imposed in cases involving the improper use of funds, and the absence of an explanation as to why it was necessary to fine Springsteen-Abbott in addition to barring her and ordering that she pay disgorgement, indicates that a fine is excessive in these circumstances.

Our holding is not that the amount of the fine—$50,000—is excessive. We also do not hold that the NAC could not have provided an explanation that would have justified imposing a bar, disgorgement, and fine. Rather, under these particular facts and circumstances, where the NAC did not include such an explanation and instead invoked a guideline that was inapplicable, we find that imposing all three sanctions would be excessive and therefore set aside the fine.[67]

B. The *Kokesh* decision does not require that we invalidate the bar or disgorgement.

Springsteen-Abbott argues that the Supreme Court's recent decision in *Kokesh v. SEC*[68] and the D.C. Circuit's recent decision in *Saad v. SEC*[69] establish that the sanctions FINRA imposed, "especially the bar," are punitive rather than remedial and must be reconsidered. As discussed above, we have already set aside the fine FINRA imposed and therefore need not

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64 *Id*. at 10. FINRA has amended the guidelines to state that in all cases, with certain exceptions, generally a fine should not be imposed if an individual is barred and disgorgement is ordered. *See* https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf at 10.

65 Guidelines at 10.

66 *Id.* (emphasis added).

67 *Cf. Gregory Evan Goldstein*, Exchange Act Release No. 71970, 2014 WL 1494527, at *13 (Apr. 17, 2014) (setting aside fine for failing to provide information to FINRA where FINRA also barred respondent and "did not consider" a provision of the guidelines providing that adjudicators "generally should not impose a fine if an individual is barred" in such cases).

68 137 S. Ct. 1635 (2017).

69 873 F.3d 297 (D.C. Cir. 2017).

consider Springsteen-Abbott's argument with respect to the fine. We find that neither *Kokesh* nor *Saad* establish that the bar or disgorgement FINRA imposed is punitive and not remedial.

1. *Kokesh* does not require that we invalidate the bar ordered against Springsteen-Abbott.

Springsteen-Abbott's argument that *Kokesh* and *Saad* necessitate a reconsideration of her bar fails. *Kokesh* held that disgorgement constitutes a penalty for the purpose of the statute of limitations in 28 U.S.C. § 2462 applicable to civil actions seeking a "fine, penalty, or forfeiture." *Saad* remanded that proceeding to the Commission to address, "in the first instance, the relevance—if any" of *Kokesh* to the bar that FINRA imposed on Saad.[70] In our opinion on remand, we rejected the argument that *Kokesh* rendered FINRA bars "categorically impermissible."[71] Rather, we did "not read *Kokesh* as limiting FINRA's or the Commission's efforts to guard against harm to the public by imposing bars justified by the need to protect investors and others dealing with financial professionals."[72] As in *Saad*, we are cognizant that from Springsteen-Abbott's perspective the bar may feel punitive and that it may have important consequences for her. But the inquiry into whether a remedy constitutes punishment is and must be objective.[73] As discussed above, Springsteen-Abbott's continued association with a FINRA member firm would present a risk to the integrity of the markets and to investors, and preventing her from continuing to associate in the industry inhibits her from harming additional investors in the future. For the reasons articulated in our decision on remand in *Saad,* we reject Springsteen-Abbott's argument that *Kokesh* means her bar is punitive and so cannot be imposed at all.

Springsteen-Abbott's allegation that the NAC "is silent on whether Appellant's bar is intended to be remedial, punitive, or serve another purpose" is inaccurate. The NAC began its discussion of a bar by citing our statement in *Blair Alexander West* that the "misuse of customer funds constitutes a serious violation of the securities laws, involving a betrayal of the most basic and fundamental trust owed to a customer."[74] The NAC explained further that the improper use of funds "undermines the integrity of the securities industry" and supported the bar by citing cases where respondents were barred because their behavior "demonstrated a fundamental unfitness for the securities industry" (internal quotation marks and citations omitted). The NAC also recognized that a bar was necessary because "Springsteen-Abbott harmed the Funds and

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70 *Id.* at 304.

71 *John M.E. Saad*, Exchange Act Release No. 86751, 2019 WL 3995968, at *2-3 (Aug. 23, 2019).

72 *Id.* at *12.

73 *See Coghlan v. NTSB*, 470 F.3d 1300, 1306 (11th Cir. 2006) ("The test for whether a sanction is sufficiently punitive to constitute a 'penalty' within the meaning of § 2462 is an objective one, not measured from the subjective perspective of the accused (which would render virtually every sanction a penalty." (citation and emendations omitted)); *accord United States v. Stoller*, 78 F.3d 710, 715 (1st Cir. 1996) (stating that "an inquiring court must scrutinize a civil sanction objectively rather than subjectively" to determine if it constitutes "punishment").

74 *See West*, 2015 WL 137266, at *11 (Jan. 9, 2015).

Fund investors when she failed to protect the Funds' assets entrusted to her from misuse." We find, as in *West*, that the bar imposed on Springsteen-Abbott is remedial and not punitive because it will prevent Springsteen-Abbott "from harming additional customers."[75]

2. *Kokesh* does not require that we invalidate the disgorgement ordered against Springsteen-Abbott.

We also find that *Kokesh* does not require invalidating the disgorgement ordered here.[76] Outside the context of Section 2462, the courts have held that at least where the amount to be disgorged is causally related to the wrongdoing an "order to disgorge is not a punitive measure; itis intended primarily to prevent unjust enrichment."[77] *Kokesh* does not purport to overturn this precedent, and we do not believe it sound to read that decision as doing so.

The "sole question presented" in *Kokesh* was whether disgorgement constitutes a fine, penalty, or forfeiture "within the meaning" of Section 2462.[78] The Court stated explicitly that nothing in its opinion "should be interpreted as an opinion on whether courts possess authority to order disgorgement in SEC enforcement proceedings."[79] The Court did not mention, let alone address, FINRA's authority to order disgorgement pursuant to its rules and statutory scheme. Therefore, as in *Saad*, we "see no reason that *Kokesh*'s application of Section 2462 should apply in a context so far removed from *Kokesh* itself."[80]

As we discussed in our opinion in *Saad*, Section 15A of the Exchange Act obligates FINRA to have rules providing for the discipline of its members and persons associated with its

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[75] *Id.* at *13; *see also Saad*, 2019 WL 3995968, at *2 & n.16 (citing *West* as an example of a bar that is remedial because it is justified by the need to protect investors).

[76] FINRA's action was brought within five years of Springsteen-Abbott's misconduct, and she does not argue that Section 2462 bars the imposition of FINRA's disgorgement order.

[77] *SEC v. Banner Fund Int'l*, 211 F.3d 602, 617 (D.C. Cir. 2000); *accord SEC v. Contorinis*, 743 F.3d 296, 301, 307 (2d Cir. 2014); *CFTC v. Am. Metals Exch. Corp.*, 991 F.2d 71, 76 (3d Cir. 1993); *see also, e.g., Porter v. Warner Holding Corp*. 328 U.S. 395, 398-99 (1946) (holding that "a decree compelling one to disgorge profits . . . may properly be entered by a District Court once its equity jurisdiction has been invoked"); *SEC v. Monterosso*, 756 F.3d 1326, 1337 (11th Cir. 2014) ("Disgorgement is an equitable remedy intended to prevent unjust enrichment").

[78] 137 S. Ct. at 1639, 1642 n.3.

[79] *Id.*

[80] *Saad*, 2019 WL 3995968, at *6; *see also United States v. Vega-Castillo*, 540 F.3d 1235, 1237 (11th Cir. 2008) ("For the Supreme Court to overrule a case, its decision must have actually overruled or conflicted with this court's prior precedent . . . ."); *United States v. Williams*, 194 F.3d 100, 105 (D.C. Cir. 1999) (explaining that the D.C. Circuit is bound by its precedents unless a Supreme Court decision "effectively overrules, *i.e.*, 'eviscerate[s]'" that precedent) (quoting *Dellums v. U.S. Nuclear Regulatory Comm'n*, 863 F.2d 968, 978 n.11 (D.C. Cir. 1988)), *abrogated on other grounds by Apprendi v. New Jersey*, 530 U.S. 466 (2000).

members "by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction."[81] FINRA has long held that its rules authorizing it to impose any "fitting sanction" includes the authority to order disgorgement because an "order to disgorge ill-gotten gains is a fitting sanction in situations where a member or person associated with a member would otherwise retain profits earned in violation of the rules and regulations governing the securitiesindustry."[82] And recognizing that FINRA may impose sanctions that are remedial but not punitive, we have upheld FINRA's disgorgement orders pursuant to which a violator must give up the ill-gotten gains causally connected to the violations as appropriately remedial.[83] Nothing in *Kokesh*, which involved whether a civil action for disgorgement could be brought after a certain period of time, overturns these holdings that disgorgement may be imposed in a FINRA disciplinary action. *Kokesh*'s holding that disgorgement is a penalty for purposes of the statute of limitations in Section 2462 does not mean that it may never be a fitting sanction in a FINRA disciplinary action where the disgorgement ordered is a reasonable approximation of the violator's ill-gotten gains causally connected to the violations.

The Supreme Court has recognized that a "'[p]enalty' is a term of varying and uncertain meaning,"[84] and a remedy may be punitive for one purpose and in some contexts but not for other purposes and in other contexts.[85] The courts have repeatedly recognized that the inquiry into whether an action may be brought outside the time period prescribed in Section 2462 is distinct from the inquiry into whether a remedy is appropriate as a substantive matter.[86] The

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81 15 U.S.C. § 78o-3(b)(7).

82 *See Proposed Amendments to Article XIV of the NASD By-Laws and Article V, Sections 1 and 2 of the NASD Rules of Fair Practice Concerning Disciplinary Sanctions*, NASD Notice 87-9, 1987 WL 716970, at *1 (Feb. 25, 1987) (proposing amendments to NASD rules to "include disgorgement orders in the enumeration of available sanctions" and stating that the "NASD's authority to impose an order of disgorgement is based upon Section 15A(b)(7) of the [Exchange Act]" allowing it to impose any "fitting sanction"); *see also Order Approving Proposed Rule Change*, Exchange Act Release No. 25760, 1988 WL 902058 (May 27, 1988) (approving amendments).

83 *See, e.g.*, *Kenny Akindemowo*, Exchange Act Release No. 79007, 2016 WL 5571625, at *11 (Sept. 30, 2016); *Murphy*, 2013 WL 3327752, at *24; *Dratel Grp.*, 2016 WL 1071560, at *17.

84 *Life & Cas. Ins. Co. of Tenn. v. McCray*, 291 U.S. 566, 574 (1934).

85 *See, e.g.*, *United States v. Ursery*, 518 U.S. 267, 292 (1996) (holding that, although civil forfeiture is punishment for purposes of the Eighth Amendment, it is not punishment for purposes of the Fifth Amendment's Double Jeopardy Clause); *Tull v. United States*, 481 U.S. 412, 424 (1987) (stating that "disgorgement of improper profits [is] traditionally considered an equitable remedy," but also characterizing disgorgement as a "limited form of penalty").

86 *See Zacharias v. SEC*, 569 F.3d 458, 470 (D.C. Cir. 2009) (per curiam); *see also Krull v. SEC*, 248 F.3d 907, 914 & n.9 (9th Cir. 2001) (distinguishing a case finding that a sanction "was a 'penalty'" for purposes of Section 2462 since that case did not determine that the NASD could

Supreme Court has also recognized outside the context of Section 2462 that the fact that a sanction may deter does not make it a penalty.[87] In *Hudson v. United States*, the Court stated that, for purposes of the Double Jeopardy Clause, to hold "that the mere presence of a deterrent purpose" would render a sanction impermissibly punitive "would severely undermine the Government's ability to engage in effective regulation."[88] The same reasoning holds here: that ordering disgorgement may deter misconduct does not per force transform it into a penalty.

We have classified disgorgement ordered in FINRA disciplinary actions as a remedial sanction serving the remedial purpose not only of deterrence but also of depriving respondents of their ill-gotten gains and thus returning them to their *ex ante* position.[89] As with all FINRA sanctions that the Commission reviews, FINRA disgorgement is evaluated on a case-by-case basis to ensure that, consistent with the Exchange Act, it is neither excessive nor oppressive and aligns with remedial purposes and the public interest.[90] But because "each of the remedies" at FINRA's disposal "has th[e] capacity to varying degrees" to "act[] as a deterrent,"[91] and because we may not affirm FINRA sanctions that are punitive,[92] it would undermine our ability to effectively regulate the securities industry to hold all disgorgement punitive—and thus impermissible—because it may have a deterrent effect.

Existing limitations in Exchange Act Section 19(e)(2) on the manner in which FINRA may impose disgorgement protect against it being imposed punitively. As we explained in our opinion on remand in *Saad* with respect to FINRA bars:

> The Exchange Act limits the manner in which FINRA may impose its bars and FINRA's Sanction Guidelines further elaborate upon the contours of its rules of conduct. The Commission then has an obligation (where review is sought) to ensure that the sanction is not excessive or oppressive. And as prior proceedings in this very case demonstrate, courts can correct missteps in the process that result

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not impose the sanction because it was substantively "punitive rather than remedial"); *Johnson v. SEC*, 87 F.3d 484, 491 (D.C. Cir. 1996) (distinguishing cases holding that a license suspension was not punishment because those cases "do not control the question of whether license suspension is a penalty for purposes of § 2462").

87 *See Ursery*, 518 U.S. at 292.

88 522 U.S. 93, 105 (1997); *see also, e.g.*, *Hecht Co. v. Bowles*, 321 U.S. 321, 329 (1944) ("The historic injunctive process was designed to deter, not to punish.").

89 *See, e.g.*, *Murphy*, 2013 WL 3327752, at *24 (sustaining FINRA disgorgement because it "serve[d] the remedial purpose of depriving [a respondent] of the benefit of his misconduct").

90 *See* Exchange Act Section 19(e)(2), 15 U.S.C. § 78s(e)(2); *PAZ*, 494 F.3d at 1065.

91 *Steadman v. SEC*, 603 F.2d 1126, 1142 (5th Cir. 1979)*, aff'd on other grounds*, 450 U.S. 91 (1981).

92 *See supra* notes 40-41 and accompanying text.

> in inadequately justified sanctions. Therefore . . . importing the "solely remedial" test is unnecessary to limit any FINRA overreach.[93]

To read *Kokesh* as rendering FINRA disgorgement punitive in all cases would be to undo the very protections already in place to ensure it is not excessive or oppressive and serves the public interest.[94] Accordingly, we conclude that *Kokesh* does not preclude us from sustaining the disgorgement that we have already determined to be a reasonable approximation of Springsteen-Abbott's ill-gotten gains from her securities law violations.

An appropriate order will issue.[95]

By the Commission (Chairman CLAYTON and Commissioners JACKSON, PEIRCE, ROISMAN, and LEE).

Vanessa A. Countryman
Secretary

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93 *Saad*, 2019 WL 3995968, at *10 (internal quotation marks and citations omitted).

94 *See Pierce*, 2014 WL 896757, at *26 (explaining that the Commission may order disgorgement "only over property causally related to the wrongdoing" and that ordering disgorgement beyond that amount would be punitive and thus improper).

95 Springsteen-Abbott requested oral argument. Because our decisional process would not be significantly aided by oral argument, that request is denied. Rule of Practice 451(a), 17 C.F.R. § 201.451(a). We have considered all of the parties' contentions and have rejected or sustained them to the extent they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 88156 / February 7, 2020

Admin. Proc. File No. 3-17560r

In the Matter of the Application of

KIMBERLY SPRINGSTEEN-ABBOTT

For Review of Disciplinary Action Taken by

FINRA

ORDER SUSTAINING IN PART DISCIPLINARY ACTION TAKEN BY FINRA

On the basis of the Commission's opinion issued this day, it is

ORDERED that the findings of violation by FINRA against Kimberly Springsteen-Abbott be, and they hereby are, sustained; and it is further

ORDERED that the bar and disgorgement imposed by FINRA against Kimberly Springsteen-Abbott be, and they hereby are, sustained; and it is further

ORDERED that the fine imposed by FINRA against Kimberly Springsteen-Abbott be, and it hereby is, set aside.

By the Commission.

Vanessa A. Countryman
Secretary

Exhibit A: 84 charges included in FINRA's Revised Expense Schedule

Amended Complaint Item No.	Purchaser	Date	Amount	Vendor	Location	Expense Type	"Broker-Dealer" Expense?
57	KS	Thursday, January 29, 2009	$86.34	Cody's Original Roadhouse	Tarpon Springs, FL	Restaurant	No
171	HA	Tuesday, March 03, 2009	$25.49	Hess	Palm Harbor, FL	Gas Station/Store	Yes
322	HA	Tuesday, May 26, 2009	$73.67	Paradies	Philadelphia, PA	Merchandise	No
323	HA	Tuesday, May 26, 2009	$16.63	Quiznos	Phoenix, AZ	Fast Food	No
406	LF	Friday, August 07, 2009	$500.00	Bon Appetit	Dunedin, FL	Restaurant	Yes
407	LF	Friday, August 07, 2009	$1,000.00	Bon Appetit	Dunedin, FL	Restaurant	Yes
418	LF	Wednesday, August 12, 2009	$50.00	FINRA Education & Training	online	Other	Yes
446	LF	Tuesday, August 25, 2009	$69.13	Rockhurst University	online	Other	Yes
449	KS	Wednesday, August 26, 2009	$197.95	Angelo's Pizza	Holiday, FL	Restaurant	Yes
451	LF	Wednesday, August 26, 2009	$25.00	FINRA Education & Training	online	Other	Yes
477	LF	Thursday, September 03, 2009	$45.00	FINRA Education & Training	online	Other	Yes
540	HA	Thursday, October 15, 2009	$566.97	Avis Rent A Car	Tampa, FL	Rental Cars	No
573	LF	Monday, November 09, 2009	$150.00	Dilworthtown Inn	West Chester, PA	Restaurant	Yes
579	KS	Thursday, November 12, 2009	$1,977.36	Bayshore Trophies	Clearwater, FL	Merchandise	Yes
581	KS	Thursday, November 12, 2009	$99.46	Chili's	New Port Ritchie, FL	Restaurant	Yes
585	HA	Friday, November 13, 2009	$29.95	Airside F Gifts	Tampa, FL	Merchandise	No
607	KS	Wednesday, December 02, 2009	$561.09	Pescatores Italian	Glen Mills, PA	Restaurant	Yes
610	LF	Friday, December 04, 2009	$9.17	McDonald's	Concordville, PA	Fast Food	Yes
614	LF	Monday, December 07, 2009	$2,054.63	Bon Appetit	Dunedin, FL	Restaurant	Yes
620	LF	Tuesday, December 08, 2009	$116.64	Pickles Plus Too	Clearwater, FL	Restaurant	Yes
621	LF	Tuesday, December 08, 2009	$69.08	Walgreens	Clearwater, FL	Pharmacy	Yes
623	LF	Wednesday, December 09, 2009	$108.60	Island Way Grill	Clearwater, FL	Restaurant	Yes
624	HA	Thursday, December 10, 2009	$5,624.02	Alfanos Restaurant	Clearwater, FL	Restaurant	Yes
625	LF	Thursday, December 10, 2009	$250.41	Pickles Plus Too	Clearwater, FL	Restaurant	Yes
627	LF	Friday, December 11, 2009	$21.57	Sam Sneads A	Tampa, FL	Restaurant	Yes
628	LF	Friday, December 11, 2009	$31.93	Tilted Kilt	Clearwater, FL	Restaurant	Yes
662	HA	Monday, December 28, 2009	$826.08	Broadway Joes	New York, NY	Restaurant	No
666	HA	Wednesday, December 30, 2009	$116.41	Blue Pear Bistro	West Chester, PA	Restaurant	No
750	HA	Tuesday, February 02, 2010	$137.79	Avis Rent A Car	Newark, NJ	Rental Cars	No
755	HA	Wednesday, February 03, 2010	$1,766.58	Avis Rent A Car	Tampa, FL	Rental Cars	No
916	HA	Saturday, April 03, 2010	$432.06	Porto Leggero	Jersey City, NJ	Restaurant	No
939	HA	Saturday, April 24, 2010	$174.96	Cody's Original Roadhouse	Tarpon Springs, FL	Restaurant	No
973	HA	Sunday, May 09, 2010	$241.93	RA@Longwood Garden	Kennett Square, PA	Recreation	No
1001	KS	Tuesday, May 25, 2010	$224.57	Ruth's Chris Steakhouse	Baltimore, MD	Restaurant	Yes
1002	LF	Tuesday, May 25, 2010	$33.45	Sunoco	Odessa, DE	Gas Station/Store	Yes

1004	KS	Wednesday, May 26, 2010	$440.00	Aldo's Restorante	Baltimore, MD	Restaurant	Yes
1027	HA	Sunday, June 06, 2010	$653.52	Avis Rent A Car	Tampa, FL	Rental Cars	No
1028	HA	Sunday, June 06, 2010	$16.57	Exxon Mobil	Orlando, FL	Gas Station/Store	No
1029	HA	Sunday, June 06, 2010	$20.91	Hudson News	Orlando, FL	Merchandise	No
1030	KS	Sunday, June 06, 2010	$11.37	Qdoba	Orlando, FL	Fast Food	No
1082	HA	Thursday, July 08, 2010	$69.03	McKenzie Brew House	Glen Mills, PA	Restaurant	Yes
1091	HA	Sunday, July 11, 2010	$55.04	Shell Oil	Jersey City, NJ	Gas Station/Store	Yes
1151	LF	Tuesday, August 03, 2010	$8.62	Hudson News	Philadelphia, PA	Merchandise	Yes
1152	LF	Tuesday, August 03, 2010	$76.25	Island Way Grill	Clearwater Beach, FL	Restaurant	Yes
1155	LF	Friday, August 06, 2010	$30.00	Blue Martini	Tampa, FL	Restaurant	Yes
1156	HA	Friday, August 06, 2010	$105.78	Maggiano's	Tampa, FL	Restaurant	Yes
1157	HA	Friday, August 06, 2010	$2,920.96	Maggiano's	Tampa, FL	Restaurant	Yes
1158	HA	Saturday, August 07, 2010	$879.64	Palm Restaurant	Tampa, FL	Restaurant	Yes
1159	HA	Sunday, August 08, 2010	$2,363.02	Avis Rent A Car	Tampa, FL	Rental Cars	Yes
1160	LF	Sunday, August 08, 2010	$4.59	Kennedy BP	Tampa, FL	Gas Station/Store	Yes
1164	LF	Sunday, August 08, 2010	$6.96	Starbucks	Tampa, FL	Fast Food	Yes
1168	KS	Wednesday, August 11, 2010	$104.23	Cody's Original Roadhouse	Tarpon Springs, FL	Restaurant	No
1227	LF	Tuesday, September 07, 2010	$36.03	Tony's Pizzeria	Clearwater, FL	Restaurant	Yes
1251	LF	Tuesday, September 14, 2010	$16.96	Tony's Pizzeria	Clearwater, FL	Restaurant	Yes
1252	LF	Tuesday, September 14, 2010	$16.96	Tony's Pizzeria	Clearwater, FL	Restaurant	Yes
1257	LF	Wednesday, September 15, 2010	$42.48	Tony's Pizzeria	Clearwater, FL	Restaurant	Yes
1284	HA	Saturday, September 25, 2010	$43.86	Best Buy	Paramus, NJ	Merchandise	No
1285	HA	Saturday, September 25, 2010	$24.58	Century Twenty One	Paramus, NJ	Other	No
1288	HA	Saturday, September 25, 2010	$41.82	Sunoco	Cranbury, NJ	Gas Station/Store	No
1319	HA	Sunday, October 10, 2010	$89.67	Cody's Original Roadhouse	Tarpon Springs, FL	Restaurant	No
1392	LF	Monday, November 29, 2010	$7.72	Hudson News	Philadelphia, PA	Merchandise	Yes
1394	LF	Monday, November 29, 2010	$5.07	Maki of Japan	Philadelphia, PA	Restaurant	Yes
1396	LF	Tuesday, November 30, 2010	$185.60	Crabby's Beachwalk	Clearwater, FL	Restaurant	Yes
1401	LF	Tuesday, November 30, 2010	$42.82	Walgreens	Clearwater, FL	Pharmacy	Yes
1403	LF	Wednesday, December 01, 2010	$138.00	Clear Sky Beachside	Clearwater, FL	Restaurant	Yes
1406	LF	Wednesday, December 01, 2010	$47.09	Smokey Bones	Clearwater, FL	Restaurant	Yes
1407	LF	Wednesday, December 01, 2010	$189.89	The Brown Boxer Pub	Clearwater, FL	Restaurant	Yes
1411	LF	Thursday, December 02, 2010	$13.59	Starbucks	Clearwater, FL	Fast Food	Yes
1416	KS	Monday, December 06, 2010	$1,017.50	Enterprise Rentacar	Tarpon Springs, FL	Rental Cars	Yes
1417	KS	Monday, December 06, 2010	$1,108.80	Enterprise Rentacar	Tarpon Springs, FL	Rental Cars	Yes
1418	LF	Monday, December 06, 2010	$26.38	Kennedy BP	Tampa, FL	Gas Station/Store	Yes
1419	LF	Monday, December 06, 2010	$6.53	Starbucks	Tampa, FL	Fast Food	Yes
1439	HA	Tuesday, November 23, 2010	$449.27	Casaludovico	Palm Harbor, FL	Restaurant	Yes
1444	HA	Friday, December 31, 2010	$247.78	Bistecca Florentina	New York, NY	Restaurant	No

1447	HA	Friday, January 07, 2011	$47.59	Asian Kitchen	Ridgefield, CT	Restaurant	No
1448	HA	Friday, January 07, 2011	$44.04	Bernards	Ridgefield, CT	Restaurant	No
1496	HA	Friday, February 04, 2011	$103.50	Johnson Lipman	Coconut Creek, FL	Other	Yes
1624	HA	Saturday, April 16, 2011	$86.72	OAK ROOM (food)	New York, NY	Restaurant	No
1630	HA	Tuesday, April 19, 2011	$220.83	Villa Gallace Italian	Indian Rocks Beach, FL	Restaurant	No
1802	HA	Friday, November 12, 2010	$253.55	Casaludovico	Palm Harbor, FL	Restaurant	Yes
1816	HA	Monday, November 23, 2009	$27.00	Blue Pear Bistro	West Chester, PA	Restaurant	Yes
1817	HA	Monday, November 23, 2009	$221.69	Dilworthtown Inn	West Chester, PA	Restaurant	Yes
1836	HA	Saturday, April 04, 2009	$53.90	Dilworthtown Inn	West Chester, PA	Restaurant	Yes
1837	HA	Saturday, April 04, 2009	$5,888.22	Dilworthtown Inn	West Chester, PA	Restaurant	Yes

Total:	$36,225.85