

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of

Department of Enforcement,

Complainant,

vs.

Michael Ciro Colletti
Glen Cove, New York,

Respondent.

DECISION

Complaint No. 2019061942901

Dated: June 17, 2025

Registered representative engaged in unauthorized and excessive trading in a customer's account. Held, findings and sanctions affirmed.

Appearances

For the Complainant: Jennifer Crawford, Esq., Loyd Gattis, Esq., Richard M. Cella, Esq.,
Financial Industry Regulatory Authority

For Respondent: Pro se

Decision

Respondent Michael Ciro Colletti appeals a February 28, 2024 Hearing Panel decision. The Hearing Panel found that Colletti engaged in unauthorized and excessive trading in a customer's account. For Colletti's misconduct, the Hearing Panel suspended him from association with a FINRA member in any capacity for eight months, fined him \$10,000, ordered him to pay \$5,417 in restitution to the customer, and imposed a requirement that Colletti qualify by examination as a general securities representative.

After an independent review of the record, we affirm the Hearing Panel's findings of violations and the sanctions it imposed.

I. Factual Background

A. Michael Ciro Colletti

Colletti joined the securities industry and first registered with FINRA in 2002. From December 2014 through December 2016, Colletti was registered with Cardaret, Grant & Co., Inc. (“Cardaret Grant”). While at Cardaret Grant, Colletti opened IRA accounts for five or six employees of DSM, a commercial site excavation company. Colletti opened these accounts for DM, who was DSM’s owner, members of DM’s family, and RM, DSM’s part-time office manager.

In January 2017, Colletti joined FINRA member The Investment Center, Inc. (“ICI”) and remained associated with it until January 2020. Colletti was registered with ICI as a general securities representative and, except for a 10-month period, as a general securities principal.¹ The DSM accounts, including RM’s account, transferred to ICI when Colletti joined the firm. The conduct at issue occurred while Colletti was associated with ICI. Colletti is currently registered with another member firm.

B. RM

RM has a degree in accounting and previously owned his own business. In 2015, he sold his business and started working at DSM three days a week. He opened an account at Cardaret Grant to take advantage of the match on contributions offered by DSM. RM’s only investments in the account were deductions from his DSM paychecks and DSM’s matches.

RM opened an IRA account at ICI on January 31, 2017. RM’s new account form reflects that the account was non-discretionary. RM testified that the account opening documents were provided to him by someone at DSM. RM listed his risk tolerance as moderate and his investment objectives as income and growth. On February 1, 2017, \$1,578 in securities positions and \$1,151 in cash were transferred into RM’s ICI account from Cardaret Grant. The securities positions consisted of four mutual funds, five shares of General Electric (“GE”), and two shares of Gilead Sciences (“Gilead”).

C. Colletti’s Trading in RM’s Account at ICI

From March 2017 through April 2018, Colletti made 21 purchases that added to the existing positions in RM’s accounts. Colletti did not charge any commissions for these 21 transactions, which Colletti described as part of a “reinvestment” plan.

¹ On January 29, 2018, Colletti settled pursuant to an order accepting an offer of settlement with FINRA (the “settlement”) allegations that he failed to reasonably supervise cold callers in his branch office that he hired without following firm procedures. Colletti consented to sanctions including a \$7,500 fine and three-month suspension in any principal capacity.

From May 2018 through February 7, 2019, the character of Colletti's trading in RM's account changed. During this period, Colletti engaged in 50 purchases and sales, including multiple instances of in-and-out trading.² See, e.g., *Cody v. SEC*, 693 F.3d 251, 260 (1st Cir. 2012) (explaining that "in-and-out trades" are "investments [that] are acquired and resold within weeks or even days"). For example, on May 16, 2018, Colletti sold shares of GE and used the proceeds to purchase Micron Technology, Inc. ("Micron") the next day. Colletti held the Micron shares for less than two weeks before selling them on May 30, 2018, and repurchasing Micron the next day. A month later, on June 28, 2018, Colletti sold the Micron position, sold shares of Gilead the next day, and used the proceeds to purchase shares of Caterpillar, Inc. on June 29, 2018. On August 21, 2018, Colletti sold the Caterpillar shares and used the proceeds to purchase shares of Advanced Microdevices, Inc. ("Advanced Microdevices"), which Colletti sold after only three days. On September 5, 2018, Colletti used the proceeds to buy shares of Alibaba Group Holding, Ltd. Colletti held the Alibaba stock for 12 days, after which he sold the stock and repurchased Micron, which he sold four days later. Colletti repeated this pattern of buying a stock, holding it a short time, and selling it to buy another stock, which was also sold after a short time, until RM closed his ICI account. Colletti's trading from May 2018 through February 2019 resulted in losses of \$5,417.³ For these trades, Colletti charged \$5,081 in commissions.⁴

Colletti's trading also reflected a pattern of repeatedly purchasing and selling the same stock in RM's account. For example, on May 17, 2018, Colletti purchased 40 shares of Micron in RM's account. On May 30, 2018, Colletti sold the Micron shares and then repurchased 45 shares the next day. On June 28, 2018, Colletti sold the 45 shares of Micron. On September 17, 2018, Colletti purchased 100 shares of Micron in RM's account, which he sold four days later. In total, Colletti's trading of Micron in RM's account resulted in losses of \$441 and RM paid \$474 in commissions.

Colletti engaged in similar trading in Advanced Microdevices. Colletti initially purchased 200 shares of Advanced Microdevices on August 21, 2018. He sold the shares three days later for a \$361.77 profit and charged \$239 in commissions for these transactions. On November 14, 2018, Colletti purchased 160 shares of Advanced Microdevices and sold the shares five days later for a \$329 loss. Colletti charged \$206 in commissions for these trades. On December 27, 2018, Colletti purchased 100 shares of Advanced Microdevices that he sold the next day for a profit of \$2.42. Colletti charged RM \$120 in commissions for this purchase and sale. On January 3, 2019, Colletti again purchased 125 shares of Advanced Microdevices that he

² "In-and-out trading" is "the sale of all or part of the securities in an account and reinvestment of the sales proceeds in other securities, followed by the sale of the newly acquired securities." *Dep't of Enf't v. Davidofsky*, Complaint No. 2008015934801, 2013 FINRA Discip. LEXIS 7, at *9 n.10 (FINRA NAC Apr. 26, 2013).

³ These losses include the commissions RM paid.

⁴ Colletti testified that he set the commissions for his trades and his payout was 90 percent. The total costs of the trades in RM's accounts including charges by the firm totaled \$5,427.23.

sold the next day for a profit of \$51.64. Again, he charged RM \$120 in commissions for this purchase and sale. Finally, Colletti purchased 100 shares of Advanced Microdevices on January 18, 2019. He held this position for six days, selling it for a \$100 loss and charging \$130 in commissions. In total, RM lost \$13.41 from Colletti's trading of Advanced Microdevices and paid \$815 in commissions.

Colletti also repeatedly purchased and sold Dynavax Technologies Corp. ("Dynavax") in RM's account. On October 18, 2018, Colletti purchased 350 shares of Dynavax in RM's account. Thirteen days later, he sold the position for an \$840.55 loss. He charged \$281 in commissions for these trades. On December 10, 2018, Colletti purchased 200 shares of Dynavax in RM's account, which he sold two days later for a \$57.40 loss. He charged \$200 in commissions for these transactions. The day after the sale, Colletti purchased another 200 shares of Dynavax for RM's account. He sold this position two weeks later for a loss of \$622.57 and charged commissions of \$160. On January 8, 2019, Colletti purchased another 200 shares of Dynavax in RM's account. He sold this position eight days later for a \$238.28 gain and charged commissions of \$150. On January 25, 2019, Colletti repurchased 150 shares of Dynavax. He held this position for 12 days, and then he sold it for a \$197.31 loss and charged commissions of \$155. Finally, Colletti purchased 550 shares of Dynavax in RM's account on February 13, 2019. Colletti sold these shares seven days later for a loss of \$292.27. Colletti charged RM \$460 in commissions for these trades. In total, Colletti's trading of Dynavax in RM's account resulted in a \$1,771.82 loss. RM paid total commissions of \$1,406 for these trades.

All the trades executed from May 2018 through February 2019, were marked "solicited." Colletti held positions in RM's account for an average of 10 days and his trading resulted in total losses of \$5,417. RM paid total commissions of \$5,081 in connection with these trades.

D. Colletti Trades in RM's Account After RM Directs Him to Close the Account

On February 7, 2019, RM contacted Colletti to close his ICI account. RM was planning to retire and leave DSM. Colletti subsequently sold all the securities in RM's account. Despite RM's instructions that Colletti close his account, on February 13, 2019, Colletti purchased 550 shares of Dynavax. Colletti sold the stock on February 20, 2019. After receiving the confirmation for this trade, RM emailed Colletti on February 24, asking "[w]hy am I still buying stock when on February 8th I spoke to you about closing this account out[?]" Colletti replied that "[i]t was actually a trade correction," and that the account was in cash and a check would be sent to RM. While Colletti characterized this trade as an error, the commissions RM paid resulting from this trade, which totaled \$752, were never refunded to him.

E. RM Testifies that He Never Authorized Any Trading in His Account

During the hearing, RM testified that he did not authorize any of the trading in his ICI account. RM testified that he never met Colletti prior to the hearing and that he did not speak with him until February 2019, when he contacted Colletti to close his account. RM said that he was told by someone at DSM that all the DSM accounts were going to transfer to ICI, and he filled out the account opening paperwork without meeting with Colletti.

RM acknowledged that he received the statements for his account and was aware of the trading, but he did not know that each trade required his authorization. RM stated that while he asked others at DSM if they also had frequent trading in their accounts, he never raised concerns about the trading with Colletti. RM testified that he never discussed an investment strategy with Colletti for his account and never discussed or authorized a single trade in his account.

F. Colletti's Notes and Telephone Records Support RM's Testimony that He Did Not Authorize the Trades in His ICI Account

Colletti's telephone records⁵ and notes support RM's testimony that he did not authorize the transactions in his ICI account. Colletti's March 1, 2018 note states that RM might retire next year, and he wanted "to be slightly more aggressive to try [and] increase value & [u]se stocks for growth." However, there were no trades executed on or around this date. A note dated March 26, 2018, indicates that Colletti spoke to RM about GE and Gilead and "added both to the account." The same day Colletti purchased shares of GE and Gilead. He also purchased additional shares of GE on April 20, 2018, without any corresponding note to indicate he had spoken to RM.

In an April 25, 2018 note, Colletti states that he had updated RM and "add to GE position 'OK.'" Colletti did not, however, purchase GE that day—he had purchased it five days earlier on April 20, 2018. On May 16, 2018, Colletti wrote "[u]se cash in acct[ount] to buy Micron for more growth." There is no record, however, of a telephone call between Colletti and RM on this date. Moreover, Colletti did not purchase Micron that day. Instead, on May 16, Colletti sold GE stock and used the proceeds to purchase Micron the next day, May 17. Colletti sold the Micron shares on May 30, 2018, and repurchased the stock the next day, May 31. There are no notes to support that Colletti spoke to RM on the days he executed any of these transactions. Moreover, there is no record of any telephone call between Colletti and RM on May 17, 30, or 31.

On June 28, 2018, Colletti's notes state "[s]poke on Micron. Sell position & buy some Catepillar [sic]." There is no evidence in Colletti's telephone records, however, that reflects a telephone call between Colletti and RM that day. Colletti sold Micron on June 28, but did not purchase Caterpillar stock. Instead, the next day, on June 29, 2018, Colletti sold Gilead stock and purchased Caterpillar. There is no note or telephone record indicating that Colletti spoke to RM on June 29.

On August 21, 2018, Colletti's notes state, "[s]poke on [Advanced Microdevices]. Add to account using available monies." Again, Colletti's telephone records do not reflect a telephone call between Colletti and RM that day. Moreover, instead of using "available monies" as stated in his notes, Colletti sold Caterpillar stock on August 21 and used the proceeds to

⁵ The record contains telephone records for Colletti's mobile phone for the period from May 7, 2018, through April 6, 2019. The record also contains telephone records for his work line for the period from May 17, 2018, through April 30, 2019. Thus, there are no telephone records available to compare to his March and April 2018 notes.

purchase Advanced Microdevices. Colletti sold the Advanced Microdevices stock three days later, on August 24. There is no note or telephone record indicating that Colletti and RM spoke on August 24.

Colletti's notes reflect that on September 5, 2018, he and RM "[s]poke on Alibaba[.] Sell Advanced Micro & [b]uy shares." There is no telephone record supporting that Colletti and RM actually spoke that day. And while Colletti purchased Alibaba that day, he did not sell any Advanced Microdevices. Indeed, RM's account did not contain any shares of Advanced Microdevices on September 5, 2018, because Colletti had sold the shares on August 24, 2018.

On September 17, 2018, Colletti wrote in his notes, "[a]dd to Micron position ok." That day, Colletti sold Alibaba and purchased Micron. There is no record of a telephone call between Colletti and RM on September 17. Four days later, on September 21, 2018, Colletti sold the Micron shares and purchased shares of Transocean Ltd. Colletti subsequently sold Transocean on October 17, 2018, and purchased Dynavax on October 18, 2018. There are no notes or telephone records indicating that Colletti and RM spoke on September 21, October 17, or October 18.

On October 31, 2018, Colletti sold Dynavax and purchased Alibaba. There is no note or telephone record indicating that he and RM spoke on this day. On November 2, 2018, Colletti wrote in his notes, "[s]poke on Square [sic] sell Alibaba and buy Square. Trade tensions are escalating again." Colletti's telephone records do not reflect, however, that he actually spoke to RM on November 2. Nonetheless, on that day Colletti sold Alibaba shares and purchased Square, Inc. in RM's account. Colletti sold the Square shares five days later, on November 7, and purchased shares of Dropbox, Inc. Colletti then sold the Dropbox shares a week later, on November 14, and purchased Advanced Microdevices again. There are no notes or telephone records showing that Colletti and RM spoke on November 7 or 14.

On November 19, 2018, Colletti wrote, "[t]hinks we should take a small gain in Advanced Micro." Once again, however, Colletti's telephone records do not reflect any call with RM that day. Nonetheless, Colletti sold Advanced Microdevices that day and purchased shares of GE. Despite his note about taking a "small gain," this sale of Advanced Microdevices resulted in a loss of \$329. Colletti sold the GE shares seven days later, on November 26. Again, there is no note or telephone record that supports that Colletti spoke to RM prior to this sale.

In a November 27, 2018 note, Colletti wrote that he and RM "[s]poke on JDcom [sic] add to portfolio w/ monies in acct." Colletti purchased JD.com that day in RM's account. Colletti's telephone records do not support that Colletti spoke with RM on November 27. Colletti sold the JD.com shares on December 10, 2018, and again purchased shares of Dynavax that day. Two days later, on December 12, Colletti sold the Dynavax shares. There is no note or telephone record that shows that Colletti spoke with RM on December 10 or 12.

On December 13, 2018, Colletti wrote in his notes, "[s]poke on Dynavax add to portfolio on recent weakness[.] Get rid of JDcom because of trade tensions." Colletti had already sold RM's position in JD.com three days earlier. In any event, Colletti's telephone records do not reflect a call with RM on December 13. Nonetheless, Colletti purchased Dynavax in RM's

account on December 13. On December 27, 2018, Colletti sold the Dynavax shares and purchased shares of Advanced Microdevices. He sold the position in Advanced Microdevices the next day, December 28. There are no notes or telephone records that demonstrate that Colletti spoke with RM on December 27 or 28.

In a January 3, 2019 note, Colletti wrote, “[s]poke on [Advanced Microdevices] ante earnings[.] Wants to buy shares.” That same day Colletti purchased shares of Advanced Microdevices, which he sold the next day. There is no note for the January 4 sale and no telephone record showing that Colletti spoke with RM either on January 3 or 4. On January 8, 2019, Colletti again purchased Dynavax shares. There is no note or telephone record showing that Colletti spoke to RM prior to this trade.

On January 16, 2019, Colletti wrote, “[u]pdated spoke on adding advanced micro & selling some dynavax [sic]. Thinks hes [sic] going to retire in the next few months.” Consistent with this note, Colletti sold Dynavax that day. Colletti’s telephone records do not support, however, that he actually spoke to RM on January 16. On January 18, Colletti again purchased Advanced Microdevices in RM’s account. There is no note or telephone record indicating that Colletti spoke with RM on January 18.

On January 24, 2019, Colletti wrote “[u]pdated on holdings & cash position.” As with his earlier notes, there is no evidence in Colletti’s telephone records that he spoke with RM on the date he made this note. Colletti engaged in several trades from January 24 through February 6, selling Advanced Microdevices and buying and selling Overstock.com, Dynavax, and Twitter stock. For all these trades, there are neither notes nor telephone records showing that Colletti spoke to RM to obtain his authorization on the day of the trade.

II. Procedural History

The Department of Enforcement (“Enforcement”) filed a two-cause complaint against Colletti on February 15, 2023. Under cause one, Enforcement alleged that Colletti violated FINRA Rule 2010 by effecting 73 trades in RM’s account without first obtaining RM’s authorization. Under cause two, Enforcement alleged that Colletti violated FINRA Rules 2111 and 2010 by excessively trading RM’s account. Specifically, Enforcement alleged that, between May 2018 and February 2019, Colletti exercised de facto control over the trading in RM’s account because he placed trades without the customer’s prior authorization and controlled the volume, frequency, and particular securities traded. Enforcement further alleged that Colletti’s trading in the account “was excessive and quantitatively unsuitable for the customer as evidenced by the high turnover rate and cost-to-equity ratio, the frequency of the transactions, and the transaction costs incurred.” Colletti denied the allegations in the complaint.

After a three-day hearing, the Hearing Panel issued a decision on February 28, 2024. The Hearing Panel found that Colletti violated FINRA rules as alleged by Enforcement. The Hearing Panel found that Colletti violated FINRA Rules 2111 and 2010 by executing 73 unauthorized trades in RM’s account and that 52 of these trades were quantitatively unsuitable. For these violations, the Hearing Panel imposed unitary sanctions of an eight-month suspension in all capacities, a \$10,000 fine, an order that Colletti pay restitution to RM in the amount of \$5,417,

and a requirement that Colletti requalify as a general securities representative before again acting in that capacity.

This appeal followed.

III. Discussion

A. Colletti Violated FINRA Rule 2010 by Making 73 Unauthorized Trades in RM's Account

FINRA Rule 2010 provides that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”⁶ For conduct to violate FINRA Rule 2010 it must be business-related and unethical or in bad faith. *See Blair Alexander West*, Exchange Act Release No. 74030, 2015 SEC LEXIS 102, at *19-20 (Jan. 9, 2015), *aff'd*, 641 F. App’x 27 (2d Cir. 2016). “Executing or facilitating transactions for a customer without authorization constitutes ‘a serious breach of the duty to observe high standards of commercial honor and just and equitable principles of trade,’ going to ‘the heart of the trustworthiness of a securities professional.’” *Dep’t of Enf’t v. Burford*, Complaint No. 2019064656601, 2024 FINRA Discip. LEXIS 5, at *9 (FINRA NAC Mar. 14, 2024), *aff’d*, Exchange Act Release No. 103180, 2025 SEC LEXIS 1577 (June 4, 2025) (quoting *Wanda P. Sears*, Exchange Act Release No. 58075, 2008 SEC LEXIS 1521, at *6 (July 1, 2008)).

For a non-discretionary account like RM’s, a registered representative is “responsible for obtaining his customer’s consent prior to purchasing a security for the customer’s account.”⁷ *Sears*, 2008 SEC LEXIS 1521, at *6. Even if the representative and customer discuss a general trading strategy, the registered representative is required to discuss and obtain authorization for individual trades. *See Dep’t of Enf’t v. DiPaola*, Complaint No. 2018057274302, 2023 FINRA Discip. LEXIS 4, at *22-23 (FINRA NAC Mar. 23, 2023), *appeal docketed*, No. 3-21402 (SEC May 1, 2023). NASD Rule 2510(d)(1) and FINRA Rule 3260(d)(1) carve out an exception to this rule that allows a registered representative to exercise discretion as to the price or time of a trade for which the customer has directed the purchase or sale of a definite amount of a specific security.⁸ *See DiPaola*, 2023 FINRA Discip. LEXIS 4, at *23. However, this “time and price

⁶ FINRA Rule 2010 applies to persons associated with a member pursuant to FINRA Rule 0140.

⁷ For an account to be discretionary, thereby allowing a registered representative to trade without prior authorization, the customer must have given prior written authorization to the registered representative and the member firm must have accepted and designated the account as discretionary. *See* FINRA Rule 3260(b). It is undisputed that RM’s ICI account was non-discretionary. Indeed, Colletti testified that ICI did not permit discretionary accounts at all.

⁸ FINRA Rule 3260 replaced NASD Rule 2510 effective May 8, 2019. The relevant portions of FINRA Rule 3260(d) and NASD Rule 2510(d) are identical.

discretion” lasts only “until the end of the business day on which the customer granted such discretion, absent a specific, written contrary indication signed and dated by the customer.” NASD Rule 2510(d)(1), FINRA Rule 3260(d)(1).

The Hearing Panel weighed the credibility of RM’s and Colletti’s testimony and made several credibility findings. First, the Hearing Panel found that when RM’s account was opened, “RM and Colletti likely crossed paths and had some discussion regarding RM’s IRA account.” The Hearing Panel also found, “[o]n the other hand,” that “the evidence regarding authorization of the 73 trades weighs in favor of RM never authorizing the trades.” Regarding the last two trades that were made after RM directed that his ICI account be closed, “the Hearing Panel [found] not credible Colletti’s testimony that the purchase was made in error or that the sale was a trade correction,” and also found not credible that Colletti “did not know if he received any commission related to these trades.” The Hearing Panel found, weighing the totality of the evidence, that “RM was more credible than Colletti on whether any of the 73 trades were authorized.”

Because the Hearing Panel’s credibility determinations are largely based on comparing the parties’ conflicting testimony with other documentary evidence, we review the Hearing Panel’s determination de novo.⁹ See *Wilfredo Felix*, Exchange Act Release No. 101733, 2024 SEC LEXIS 3309, at *14-15 (Nov. 25, 2024), *appeal docketed*, No. 25-1038 (D.C. Cir. Jan. 24, 2025) (finding that the NAC cannot defer to a Hearing Panel’s credibility determinations when testimony is found not credible given, among other things, objective evidence in the record). After a careful de novo review of the record, we agree with the Hearing Panel’s credibility determinations. Significantly, we find that a preponderance of the evidence establishes that RM did not authorize the 73 trades in his account and that the last two trades executed after RM directed the account to be closed were not an error or trade correction as Colletti claims.

First, Colletti’s own testimony does not support that he obtained authorization for the transactions in RM’s accounts. While Colletti testified that he believed he had authority to execute all the trades, he never testified that RM specifically authorized each transaction. Rather, he claimed that he and RM had conversations about taking profits and limiting losses. He also testified that the first 21 trades in the account were part of a “reinvestment program” that RM agreed to when he opened his account. Other than this supposed conversation when the account opened, Colletti never claimed to have had any conversations with RM about these trades.

⁹ We do not view the Hearing Panel’s credibility findings to be based on its first-hand impressions of the witnesses’ testimony or demeanor, for which we would defer to the Hearing Panel’s credibility determinations. See *William Scholander*, Exchange Act Release No. 77492, 2016 SEC LEXIS 1209, at *30 n.45 (Mar. 31, 2016) (explaining that credibility determinations “based on hearing the witness’s testimony and observing demeanor. . . are entitled to considerable deference”).

Colletti also makes certain vague and inconsistent statements suggesting that he sometimes exercised time and price discretion. However, when questioned further he admitted that he did not understand how time and price discretion is defined. At one point, he testified that he believed time and price discretion lasted “a few days to a week usually.” Time and price discretion only lasts until the end of the business day it is given. *See* NASD Rule 2510(d)(1); FINRA Rule 3260(d)(1). Thus, any trades Colletti claims to have executed pursuant to his misunderstanding of time and price discretion are unauthorized. In any event, an exercise of time and price discretion requires authorization from the customer. The evidence does not support, however, that RM authorized any of the trades in his ICI account.

Second, a close examination of Colletti’s notes and telephone records demonstrates that the transactions were not authorized. Colletti made several notes that seem to reference conversations with RM. However, for the period for which the record contains copies of Colletti’s telephone records, not a single note corresponds to a record of a telephone call. Nor is there a single record of a call on a day when Colletti executed a transaction in RM’s account. Indeed, from May 2018 through February 2019, Colletti’s telephone records reflect only seven one-to-two-minute calls to the DSM office number, none of which occurred on days Colletti executed trades in RM’s account or days for which Colletti wrote a note indicating he had spoken to RM.¹⁰ Nor are there any records of telephone calls from Colletti to RM’s personal telephone number.

The content of Colletti’s notes further undermines Colletti’s testimony that he believed the transactions were authorized. For example, in some notes, Colletti claims to have discussed a purchase or sale with RM that had already occurred or occurred in the days after the purported conversation. In other cases, Colletti’s notes reference using cash in the account to purchase a stock when, in fact, Colletti had to sell another position to purchase the stock. In a note about selling Advanced Microdevices, Colletti suggests that RM wanted to take a “small gain” by selling when in fact the sale resulted in a loss.

Considering Colletti’s internally inconsistent testimony and the documentary evidence, we find RM’s denial that he ever authorized the trading in his ICI account credible. Colletti himself characterized the first 21 trades as “reinvestments” that he believed were authorized by a general conversation he had with RM when the account was opened and thus did not require RM’s authorization prior to each trade. With respect to the next 50 trades, Colletti never stated he had authorization prior to every trade and the documentary evidence demonstrates that he did not.

Finally, with respect to the last two trades in Dynavax, which were executed after RM directed that his investments be liquidated and the account closed, we do not find Colletti’s claim

¹⁰ Because Colletti managed five or six DSM accounts, these calls could have been to DSM accountholders other than RM. Indeed, two of these calls were placed on a Friday, a day RM did not work in the DSM office.

that the purchase was an error and the sale a trade correction credible. The trades were marked solicited and the commissions Colletti received were never refunded to RM.

Colletti advances several arguments with respect to the finding that he engaged in unauthorized trading in RM's account. First, he relies heavily on the testimony of DM, DSM's owner and RM's employer. DM testified that he recalled Colletti coming to the office to meet with DSM employees on three occasions. Colletti overstates the importance of this testimony. First, DM did not testify about any specific meetings between Colletti and RM. Moreover, he provided no information about when these visits to the office occurred. Thus, we cannot determine if they occurred during the relevant period or on a day when RM, who only worked in the office three days a week, was present in the office. Most importantly, even if it were true that Colletti met with RM in the DSM office on three occasions, this fact would not render the trades authorized. RM's account was non-discretionary and thus Colletti was required to get RM's authorization before each trade. General conversations about his account or trading strategy do not meet this requirement. *See DiPaola*, 2023 FINRA Discip. LEXIS 4, at *22-23.

Next, Colletti argues that because RM received all his monthly statements and trade confirmations, he ratified the trading in his account. Ratification, however, is not a defense to unauthorized trading. Even if RM's receipt of statements and confirmations could be characterized as ratification, "after-the-fact 'acceptance' of an unauthorized trade does not transform that transaction into an authorized trade." *Sandra K. Simpson*, 55 S.E.C. 766, 792 (2002) (rejecting a claim that customer ratified unauthorized trades because they received statements but did not complain); *see also William J. Murphy*, Exchange Act Release No. 69923, 2013 SEC LEXIS 1933, at *28 (July 2, 2013) (noting that the Commission has repeatedly held that after-the-fact acceptance does not transform an unauthorized trade into an authorized trade and opining that the customer's failure to complain was more likely a consequence of "misplaced trust" rather than approval of the transactions).¹¹

Colletti's remaining arguments are similarly meritless. Colletti's claim that the investments in RM's account were "listed on recognized exchanges" has no bearing on our determination that Colletti engaged in unauthorized trading and does not excuse his misconduct. Nor does the fact that Colletti did not charge RM commissions for the first 21 trades excuse that these trades were unauthorized.

¹¹ The cases Colletti cites in support his claimed ratification defense are inapposite. All three cases Colletti cites are civil actions for damages for losses in securities accounts. This is a disciplinary case brought by FINRA Enforcement for violations of FINRA rules. Nor is Enforcement prevented from bringing this case by the doctrines of estoppel or waiver as Colletti argues. Again, Colletti cites civil actions between customers and financial institutions in support of his argument. Enforcement is not prevented from bringing a disciplinary case based on any alleged actions by RM. *See Howard Alweil*, 51 S.E.C. 14, 16 (1992) (finding that a customer's actions did not bar NASD from acting under the doctrines of waiver or estoppel).

Accordingly, we find that Colletti executed 73 unauthorized trades in RM's account, in violation of FINRA Rule 2010.

B. Colletti Excessively Traded RM's Account

FINRA Rule 2111 provides that a "member or an associated person must have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer."¹² Suitability obligations under FINRA Rule 2111 encompass three parts, including that recommendations violate the suitability rule if "the level of trading recommended by the representative is excessive in light of the customer's investment needs and objectives." *Richard G. Cody*, Exchange Act Release No. 64565, 2011 SEC LEXIS 1862, at *23 (May 27, 2011), *aff'd*, 693 F.3d 251 (1st Cir. 2012); *see also John M. Reynolds*, 50 S.E.C. 805, 806 (1991) (explaining that the suitability rule includes the requirement that the trading in an account be quantitatively suitable).

Quantitative suitability means that the broker has "reasonable grounds to believe that the number of recommended transactions within a particular period is not excessive." *Dep't of Enf't v. Medeck*, Complaint No. E9B2003033701, 2009 FINRA Discip. LEXIS 7, at *31 (FINRA NAC July 30, 2009). Quantitative suitability "focuses not on the underlying characteristics of a particular security but on whether the number of transactions within a given timeframe is suitable in light of the customer's financial circumstances and investment objectives." *Id.* at *32. "Excessive trading . . . occurs when a registered representative controls the trading in an account, and the level of that trading is inconsistent with the customer's objectives and financial situation."¹³ *Beyn*, 2023 SEC LEXIS 980, at *7. While "[n]o single test defines excessive activity, . . . factors such as the turnover rate, the cost-equity ratio, and the use of in-and-out trading in a customer's account may provide a basis for a finding that a[n] . . . associated person has violated the quantitative suitability obligation." FINRA Rule 2111.05(c); *see also Beyn*, 2023 SEC LEXIS 980, at *7 (explaining that the Commission has considered "cost-to-equity ratio, turnover rate, [and the] customer's age, retirement status, and financial condition and objectives" in determining whether trading is excessive).

RM's account was non-discretionary and thus Colletti did not have formal control over the account. A broker for a non-discretionary account may nonetheless exercise de facto control of an account. *Medeck*, 2009 FINRA Discip. LEXIS 7, at *33-34. De facto control may be

¹² A violation of FINRA Rule 2111 is also a violation of FINRA Rule 2010. *See Dep't of Enf't v. Taddonio*, Complaint Nos. 2015044823501, 2015044823502, 2019 FINRA Discip LEXIS 3, at *40 n.24 (FINRA NAC Jan. 29, 2019), *aff'd sub nom, Edward Beyn*, Exchange Act Release No. 97325, 2023 SEC LEXIS 980 (Apr. 19, 2023), *aff'd*, 2025 U.S. App. LEXIS 81 (2d Cir. Jan. 3, 2025).

¹³ Effective June 30, 2020, FINRA amended Rule 2111 to remove the requirement that the registered representative control the account for a finding of quantitative unsuitability. Because the trading here occurred before the rule amendment, we apply the prior control requirement.

established when the customer relies on the representative such that the representative controls the volume and frequency of the trading in the account. *See Taddonio*, 2019 FINRA Discip. LEXIS 3, at *42. Significantly, “unauthorized trading constitutes clear evidence of control for purposes of an excessive trading claim.” *Dep’t of Enf’t v. Ul Haq*, Complaint No. ELI2004026701, 2009 FINRA Discip. LEXIS 3, at *22-23 (FINRA NAC Apr. 6, 2009).

As we found above, (*see supra* Part III.A), the 73 trades Colletti executed in RM’s account were unauthorized. Colletti selected the security that was traded and determined the volume and frequency of the trading in RM’s account. Accordingly, Colletti exercised de facto control over the account.

The record demonstrates that Colletti’s trading in RM’s account was excessive. First, the trading was inconsistent with RM’s investment objectives and investment profile. RM was 62 at the time he opened his account with Colletti and nearing retirement. The account was an IRA and RM listed his risk tolerance as “moderate” and his objectives as income and growth. While the account value never exceeded \$10,000, Colletti’s frequent trading resulted in more than \$5,400 in losses and generated more than \$5,000 in commissions. *See Ralph Calabro*, Exchange Act Release No. 75076, 2015 SEC LEXIS 2175, at *19 (May 29, 2015) (explaining that “relevant factors in determining the existence of excessive trading include the number and frequency of trades; the client’s investment objectives and financial condition, age, and retirement status; and the existence of unauthorized trades”).

Second, during the 10-month period from May 2018 through February 2019, Colletti engaged in numerous in-and-out trades, frequently selling a stock to purchase another stock, and then quickly selling the new stock. Colletti often purchased and sold the same stock multiple times. For example, on November 2, 2018, Colletti purchased shares of Dropbox in RM’s account. A week later he sold the Dropbox shares and used the proceeds to purchase a position in Advanced Microdevices. Five days later, Colletti sold the Advanced Microdevices shares and purchased GE, which he then sold a week later. This series of transactions resulted in a loss in RM’s account of \$1,302 and generated \$831 in commissions. Colletti repeated this pattern of in-and-out trading during the period from May 2018 through February 2019. *See Dep’t of Enf’t v. Newport Coast Sec. Inc.*, Complaint No. 2012030564701, 2018 FINRA Discip. LEXIS 14, at *102 (FINRA NAC May 23, 2018) (explaining that in-and-out trading is a hallmark of excessive trading), *aff’d*, Exchange Act Release No. 88548, 2020 SEC LEXIS 917 (Apr. 3, 2020).

Finally, the turnover rate and cost-to-equity ratio for RM’s account demonstrates that Colletti excessively traded the account.¹⁴ A turnover rate of six or more and a cost-to-equity

¹⁴ Turnover rate refers to the number of times the securities in the account are exchanged for a different portfolio of securities and is calculated by dividing the total purchases in the account by the average account equity. *Calabro*, 2015 SEC LEXIS 2175, at *30-31. An account’s cost-to-equity ratio is the percentage the account would have to appreciate just to break even given the costs of trading and is calculated by dividing the total expenses by the average monthly equity in an account. *Id.*

ratio over 20% are generally considered indicative of excessive trading. *See Beyn*, 2023 SEC LEXIS 980, at *7. The turnover rate and cost-to-equity ratio for RM's account far exceed these thresholds. For the period from May 2018 through February 2019, the turnover rate for RM's account was 10.31, with an annualized rate of 12.37, and the cost-to-equity ratio was 72.14%, with an annualized ratio of 86.57%.¹⁵ Accordingly, on an annual basis, the portfolio of securities in RM's account completely changed more than 12 times, and RM needed an investment return of more than 86% to break even on his trading given the commissions he was paying. Colletti offered no defense for this frequency of trading.

We find that Colletti's trading in RM's account from May 2018 through February 2019 was quantitatively unsuitable and, accordingly, Colletti violated FINRA Rules 2111 and 2010.

IV. Sanctions

In determining appropriate sanctions, we consider FINRA's Sanction Guidelines ("Guidelines"), including the General Principles Applicable to All Sanction Determinations (the "General Principles") and the Principal Considerations in Determining Sanctions (the "Principal Considerations").¹⁶ The Guidelines provide that the "purpose of FINRA's disciplinary process is to protect the investing public, support and improve the overall business standards in the securities industry, and decrease the likelihood of recurrence of misconduct."¹⁷ To achieve this goal, the NAC "should design sanctions that are meaningful and significant enough to prevent and discourage future misconduct by a respondent and deter others from engaging in similar misconduct."¹⁸

For Colletti's unauthorized and excessive trading of RM's account, the Hearing Panel imposed a unitary sanction of an eight-month suspension in all capacities, a \$10,000 fine, an order that he pay RM \$5,417 as restitution for his losses, and an order that Colletti requalify as a

¹⁵ Colletti objects to both the calculation of the turnover rate and the cost-to-equity ratio based on a 10-month period and the annualization of these numbers. Colletti's objections are baseless. In cases of excessive trading, we generally consider these measures based on the period of allegedly violative trading and annualize that number. *See, e.g., Taddonio*, 2019 FINRA Discip. LEXIS 3, at *46-47 (considering annualized turnover rates and cost-to-equity ratios in findings that accounts were excessively traded); *Newport Coast*, 2018 FINRA Discip. LEXIS 14, at *101-08 (same). There is no error in doing so here.

¹⁶ *See FINRA Sanction Guidelines* (2022), <https://www.finra.org/sites/default/files/2024-03/2022-sanction-guidelines.pdf> [hereinafter "*Guidelines*"]. We apply the Guidelines in effect at the time of the Hearing Panel's decision.

¹⁷ *Id.* at 2 (General Principles No. 1).

¹⁸ *Id.*

general securities representative before again acting in the role.¹⁹ For the reasons discussed below, we affirm the Hearing Panel's sanctions.

The Guidelines for excessive trading recommend a fine of \$5,000 to \$50,000 and a suspension in any or all capacities for a period of one month to two years or, when aggravating factors predominate, a suspension of two years or a bar.²⁰ The Guidelines for unauthorized transactions recommend a fine of \$5,000 to \$30,000 and a suspension for a period of one month to two years or, when aggravating factors predominate, a bar.²¹ The principal considerations in determining sanctions for unauthorized trading include in relevant part: (1) whether the respondent reasonably misunderstood his authority or the terms of the customer's orders; (2) the number of customers affected and the magnitude of the customers' losses; (3) the number and dollar value of unauthorized transactions; (4) whether the respondent attempted to conceal the trading or to evade regulatory investigative efforts; and (5) whether the unauthorized transactions were made in furtherance of, or in connection with, another violation.²²

We find that Colletti's unauthorized trades were not based on a reasonable misunderstanding of his authority. While Colletti claims that he believed he was authorized to make every trade and that he did not understand the limits of time-and-price discretion, as a registered representative with more than two decades of experience (including time as a general securities principal), he should have understood that every trade in a non-discretionary account requires the customer's authorization and, as we have found above, RM never provided authorization to make the specific trades in the account. Next, while Colletti's violations only involved a single customer, RM, we find the number and dollar value of the unauthorized trades significant given the size of RM's account. RM's account value never exceeded \$10,000, yet Colletti engaged in 52 quantitatively unsuitable trades over a 10-month period, causing losses of more than \$5,400 and generating commissions of more than \$5,000.

Several other aggravating factors also apply to Colletti's misconduct. The violative trading occurred in an IRA account for a customer in his sixties and nearing retirement. Colletti engaged in more than 70 unauthorized trades and 50 excessive trades that occurred over a period of almost two years.²³ Colletti's violations caused customer losses of more than \$5,400, a large

¹⁹ We agree that because the unauthorized and excessive trading arise out of the same transactions, a unitary sanction is appropriate. *See Dep't of Enf't v. Milberger*, Complaint No. 2015047303901, 2020 FINRA Discip. LEXIS 24, at *19 (FINRA NAC Mar. 27, 2020) (finding a unitary sanction appropriate when violations were based on the same facts and course of conduct).

²⁰ *Guidelines*, at 112.

²¹ *Guidelines*, at 122.

²² *Id.*

²³ *Guidelines*, at 7 (Principal Considerations Nos. 8, 9).

amount given that RM's account value never exceeded \$10,000, and resulted in financial gain to Colletti.²⁴ Finally, while Colletti has acknowledged that RM is entitled to restitution, he has persistently insisted that he did not engage in unauthorized trading in the face of persuasive evidence otherwise. Colletti's failure to take responsibility in this regard is aggravating.²⁵ See *Taddonio*, 2019 FINRA Discip LEXIS 3, at *81 (finding aggravating respondent's failure to take responsibility for excessive trading).

Finally, we find it aggravating that Colletti previously settled claims for failure to supervise and is thus a recidivist. The Guidelines direct us "to deter and prevent future misconduct by imposing progressively escalating sanctions on recidivists." Increased sanctions for recidivists are appropriate "because a recidivist, by definition, already has demonstrated a failure to comply with FINRA's rules or the securities laws." In 2018, Colletti settled a FINRA disciplinary action in which he consented to findings that he failed to reasonably supervise cold callers in his branch office and agreed to sanctions of a \$7,500 fine and three-month suspension in any principal capacity pursuant to the settlement. This disciplinary history is aggravating here.²⁶

Colletti's arguments in favor of mitigation are baseless. First, Colletti argues that he does not have a pattern or history of rule violations or misconduct. But Colletti settled a disciplinary action by consenting to findings and sanctions. In any event, even a complete lack of disciplinary history is not mitigating. See *Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *53 (Jan. 30, 2009) (explaining that a lack of disciplinary history "is not a mitigating factor for purposes of sanctions because an associated person should not be rewarded for acting in accordance with his duties as a securities professional"). Colletti also argues that it is mitigating that he did not conceal information from Enforcement and cooperated in its investigation. But Colletti was obligated to cooperate with FINRA's investigation and his compliance with this obligation and the fact that he did not engage in additional misconduct by

²⁴ *Id.* at 7-8 (Principal Considerations Nos. 11, 16).

²⁵ *Id.* at 7 (Principal Considerations No. 2).

²⁶ Colletti argues that he should not be considered a recidivist because he consented to the findings in the settlement, and he was asked no questions about it at the hearing. Colletti also makes various arguments about the merits of the findings to which he consented. None of Colletti's arguments have merit. See, e.g., *Dep't of Enf't v. Laverty*, Complaint No. 2016050205901, 2020 FINRA Discip. LEXIS 47, at *31 (FINRA NAC Dec. 22, 2020) (considering a settlement in finding that a respondent was a recidivist for purposes of determining sanctions); *Dep't of Enf't v. North Woodward Fin. Corp.*, Complaint No. 2011028502101, 2016 FINRA Discip. LEXIS 35, at *41-42 (FINRA NAC July 19, 2016) (same). Colletti's claims about the facts underlying the settlement are not relevant. He consented to findings and sanctions, and we may consider that disciplinary history in assessing sanctions. Colletti's claim that we cannot consider the settlement because it concerned misconduct that occurred too long ago is also baseless.

concealing information is not mitigating. *See Howard Braff*, Exchange Act Release No. 66467, 2012 SEC LEXIS 620, at *25 (Feb. 24, 2012) (finding that cooperating with an investigation and not concealing anything during it is not mitigating).

Given the applicable aggravating factors and the absence of mitigating factors, we agree that an eight-month suspension and \$10,000 fine are appropriately remedial sanctions for Colletti's violations. This suspension will reduce the risk of harm to investors by impressing on Colletti the seriousness of his misconduct and ensuring that Colletti takes his responsibilities more seriously going forward. The fine we impose upon Colletti also serves as a deterrent, discouraging future misconduct and reinforcing the consequences of violating FINRA rules. Reducing the likelihood of recurrence of this misconduct by Colletti protects investors.

The Guidelines provide that when appropriate to remediate misconduct, we should consider ordering a respondent to pay restitution.²⁷ Restitution is an appropriate remedy "when an identifiable person . . . has suffered a quantifiable loss proximately caused by a respondent's misconduct."²⁸ *See Ul Haq*, 2009 FINRA Discip. LEXIS 3, at *33-34 (ordering restitution for a customer's losses resulting from unauthorized trading). Restitution is an equitable remedy which "seeks either to prevent a respondent from being unjustly enriched, or requires that the respondent return his victim to the position he or she occupied prior to the misconduct." *Dep't of Enf't v. Merhi*, Complaint No. E072004044201, 2007 NASD Discip. LEXIS 9, at *36 (NASD NAC Feb. 16, 2007) (quoting *Charles E. French*, 52 S.E.C. 858, 864 (1996)).

Here, Colletti does not contest that restitution to RM is appropriate, and we find that RM suffered losses in his account that resulted directly from Colletti's unauthorized and excessive trading totaling \$5,417. We agree that it is appropriate for Colletti to pay restitution to RM in this amount.

Finally, the Guidelines direct us to consider, in appropriate cases, requiring a respondent to requalify in any or all capacities.²⁹ An order that a respondent requalify by examination "may be imposed when [we] find that a respondent's actions have demonstrated a lack of knowledge or familiarity with the rules and laws governing the securities industry."³⁰ The Hearing Panel found that Colletti's trading violations resulted from "his significant misunderstanding of securities rules and policies on authorization, such as time and price discretion, and suitability." The Hearing Panel further found that Colletti "fails to appreciate the cumulative costs that excessive trading can have on a customer's account." We agree with these findings and determine that the requalification requirement will require Colletti to demonstrate that he is

²⁷ *See Guidelines*, at 5 (General Principles No. 5).

²⁸ *Id.*

²⁹ *See Guidelines*, at 6 (General Principles No. 8).

³⁰ *Id.*

qualified to serve as a registered representative and properly handle customer accounts when he reassociates with a firm. *See Wilson-Davis & Co.*, Exchange Act Release No. 99248, 2023 SEC LEXIS 3658, at *48 (Dec. 28, 2023) (explaining that “[r]equalification helps ensure that [registered representatives] have a full understanding of [their] responsibilities”). Accordingly, it is appropriate to order Colletti to requalify by examination as a general securities representative before again acting in this capacity.

V. Conclusion

Colletti violated FINRA Rule 2010 by executing unauthorized trades in a customer’s account. Colletti also violated FINRA Rules 2111 and 2010 by engaging in quantitatively unsuitable trading. For these violations, Colletti is suspended in all capacities for eight months, fined \$10,000, ordered to pay \$5,417 in restitution to customer RM, and ordered to requalify by examination as a general securities representative before again serving in that capacity.³¹ We also affirm the Hearing Panel’s order that Colletti pay \$5,902.66 in hearing costs, and we order that he pay appeal costs in the amount of \$1,464.

On Behalf of the National Adjudicatory Council,



Jennifer Piorko Mitchell,
Vice President and Deputy Corporate Secretary

³¹ Colletti shall pay restitution to RM in the amount of \$5,417, plus interest accrued at the rate set in 26 U.S.C. § 6621(a)(2) from February 20, 2019, the date Colletti executed the last trade in RM’s account, until paid in full.