

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RICHARD GOMEZ
(CRD No. 4727721),

Respondent.

Disciplinary Proceeding
No. 2011030293503

Hearing Officer—RSH

HEARING PANEL DECISION

June 10, 2016

Richard Gomez made unsuitable recommendations and sold investments away from his firm. For these violations Gomez is permanently barred from associating in any capacity with any FINRA-member firm. The charge of fraud by making material misrepresentations is dismissed.

Appearances

For the Complainant: Michael Smith, Esq., Eric Brooks, Esq. Thomas Kuczada, Esq.,
Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: *Pro se.*

DECISION

I. Introduction

Respondent Richard Gomez sold nearly half a million dollars of two worthless securities away from his firm. He sold the securities to seven customers by misrepresenting and omitting material facts about both investments.

The first security involved the Praetorian Global Fund, Ltd. ("Praetorian"), a fraudulent private investment fund headed by John Mattera ("Mattera"). Mattera was a former chiropractor (Florida revoked his license in 1995) with a lengthy criminal record (including multiple grand theft convictions for securities-related crimes), a penny-stock bar, and multiple adverse judgments and liens (including almost \$7 million in federal tax liens). In Praetorian's offering documents, which frequently contained obvious errors (*e.g.*, referring to the well-known social-

media website as “Facebook Automotive, Inc.”), Praetorian claimed that it owned hundreds of millions of dollars in pre-initial public offering (“IPO”) stock of “hot” companies such as Facebook, Inc., Groupon Inc., and Zynga, Inc. Gomez was never verified Praetorian’s ownership of the stocks and he encountered numerous red flags that should have alerted him to the fraud, or at least prompted further investigation. Nevertheless, he conducted virtually no independent due diligence on the fund before recommending and selling \$394,000 of its bogus securities to investors.

The second stock, US Coal Corporation (“US Coal”), was a small, private company in Appalachia that purportedly had plans to go public in the “near future.” Gomez was recruited to sell the stock by a “fund manager” who told Gomez he had acquired the shares from retirees who needed cash quickly and could not wait for the IPO. Unknown to Gomez, this “fund manager” actually was one of the founders of the company. Without investigating US Coal, and based on nothing more than assurances and information from the “fund manager” and his cohorts, Gomez recommended the company’s stock to his customers, convincing them to invest a total of \$105,000, while assuring them that the IPO would happen in the “near future.” Rather than filing for an IPO, the company filed for bankruptcy in 2014.

Based on this conduct, FINRA’s Department of Enforcement initiated this disciplinary proceeding against Gomez by filing a three-cause Complaint with the FINRA Office of Hearing Officers on April 8, 2015.

The First Cause of Action alleges that Gomez violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and FINRA Rules 2020 and 2010 by fraudulently making material misrepresentations and omissions in recommending securities. The Second Cause of Action alleges that Gomez violated NASD Rule 2310 and FINRA Rule 2010 by making recommendations of securities without having a reasonable basis for believing that the securities were suitable for his customers. The Third Cause of Action alleges that Gomez violated NASD Rule 3040 and FINRA Rule 2010 by participating in securities transactions for compensation without providing notice to and receiving written permission from, his firm.

Respondent filed an Answer admitting that he made misrepresentations to his clients and sold securities away from his firm but denying that he committed fraud.

The hearing was held in New York City on March 14, 2016.¹

After a thorough review of the record, the Hearing Panel makes the following findings of fact and conclusions of law.

¹ In this decision, “Tr.” refers to the transcript of the hearing; “Ans.” to Respondent’s answer; “CX” to Enforcement’s exhibits; and “RX” to Respondent’s exhibits.

II. Findings of Fact

A. Richard Gomez

Gomez entered the securities industry in 2003 and was registered with numerous FINRA-member firms until October 30, 2015. Throughout the period between June 1, 2011, and November 16, 2011 (the “Relevant Period”), Gomez was registered as a General Securities Representative with Legend Securities, Inc. (“Legend”). Gomez was registered with a FINRA-member firm at the time the Complaint was filed, but is not currently registered.²

B. Praetorian Securities Transactions

1. Gomez Sold \$394,000 of Fraudulent Praetorian Stock Away from Legend

Praetorian purported to offer investors the opportunity to purchase pre-IPO shares of companies such as Facebook, Groupon, and Zynga, by investing in its various “G Power” entities (collectively, the “Praetorian Entities”).³ Each of the Praetorian Entities ostensibly held pre-IPO stock of a single company. None of the Praetorian Entities was on Legend’s approved product list.⁴

Around the time Gomez became registered at Legend, he was recruited by David Howard (“Howard”) and Mattera to solicit investors for Praetorian. Howard held himself out as an employee of Praetorian and Wilshire Capital Partners Group, Ltd.⁵ Mattera held himself out as the “Chairman of the Advisory Board” for The Praetorian Group, among other things.⁶ Although he had never heard of Praetorian or Mattera, Gomez believed that Praetorian was a hedge fund.⁷

In early June 2011, Howard sent Gomez an email attaching documents relating to Praetorian’s Groupon entity, including a copy of the subscription agreement and wire transfer instructions from Praetorian’s purported escrow service, First American Service Transmittals, Inc. (“FAST”).⁸

² Ans. ¶ 12; CX-1, at 3.

³ Ans. ¶ 2.

⁴ Ans. ¶ 67; Tr. 142.

⁵ Ans. ¶ 20.

⁶ Ans. ¶ 18; CX-52; CX-53; CX-56.

⁷ Tr. 76, 220.

⁸ Ans. ¶ 39; CX-61.

Later that month, Howard introduced Gomez to Mattera by telephone. During this telephone conversation, Mattera told Gomez he was Praetorian's "fund manager," and explained how Praetorian was marketing the Praetorian Entities as a means for investors to acquire pre-IPO shares in companies like Facebook, Groupon, and Zynga.⁹

After speaking with Howard and Mattera, and reviewing the Praetorian Entities documents, Gomez agreed to solicit investors for Praetorian.¹⁰ Under the terms of his agreement, Gomez would receive eight percent of the gross amount he raised, while Howard would receive two percent, for a total commission of ten percent. Gomez would receive his commissions from Howard, a highly unusual arrangement.¹¹

Without notifying Legend, Gomez began soliciting investors to purchase the Praetorian Entities stock.¹² Gomez was aware of his obligation to disclose any private securities transactions to Legend,¹³ but was able to conceal his Praetorian solicitations because he did not work at Legend's office and used a personal email account for his Praetorian business.¹⁴ Legend did not know about the solicitations and did not approve them.¹⁵

Between June and November 2011, during the Relevant Period, Gomez sold interests in Praetorian's Groupon and Zynga entities to seven investors, including at least three Legend customers, who paid a total of \$394,000. Gomez received commissions totaling at least \$22,000 on these transactions.¹⁶ Gomez admits that he recommended the applicable Praetorian Entity to each of these investors, and that none of the investors was aware of Praetorian until Gomez's solicitation.¹⁷ Gomez further admits that he represented to each of these investors that the applicable Praetorian Entity owned or had the right to acquire pre-IPO stock in either Groupon or Zynga, and that, by investing with Praetorian, the investor would be purchasing an ownership interest in those companies.¹⁸

⁹ Ans. ¶¶ 53, 55-57.

¹⁰ Ans. ¶ 58.

¹¹ Ans. ¶ 59.

¹² Ans. ¶ 66; Tr. 143.

¹³ Tr. 142.

¹⁴ Tr. 139-40.

¹⁵ Ans. ¶¶ 67-68; Tr. 142.

¹⁶ Ans. ¶ 6.

¹⁷ Ans. ¶¶ 73-74, 103-4, 120-21, 146-47.

¹⁸ Ans. ¶¶ 75, 104, 122, 148.

In reality, Praetorian and the Praetorian Entities were fraudulent and did not own the pre-IPO shares they purported to own.¹⁹ On November 17, 2011, one day after Gomez's last Praetorian sale, the SEC filed an emergency enforcement action charging Mattera, Howard, and several others with securities fraud for their roles in Praetorian.²⁰ Mattera also was charged in a separate criminal action.²¹ The court entered judgments against Mattera and Howard in the SEC's case.²² In the criminal action, Mattera pleaded guilty to conspiracy, securities fraud, wire fraud, and money laundering, and was sentenced to 11 years in prison.²³

2. Gomez Failed to Perform an Independent Investigation of Praetorian Before Recommending Its Securities

Gomez had never participated in a private placement and did not have any experience or specialized training in performing due diligence on private placements.²⁴ Still, he knew he was required to conduct due diligence on an investment before recommending it to investors.²⁵ Nevertheless, Gomez relied almost exclusively on "the professional review and due diligence of the fund manager [Mattera] and the information provided by the companies[sic] public relations personnel."²⁶

Inconsistent and Unreliable Information

Praetorian purported to hold hundreds of millions of dollars of pre-IPO stock in Groupon and Zynga, yet Gomez never corroborated those claims. Indeed, the few times he sought clarification about the Praetorian offerings, he encountered obstacles that should have alerted him that Praetorian was not a legitimate enterprise. Gomez never reviewed any stock certificates showing Praetorian's ownership of shares and did not otherwise independently verify that Praetorian owned any pre-IPO stock.²⁷

Praetorian gave Gomez conflicting, inconsistent, and unreliable responses about how it had acquired so many shares of pre-IPO stock. On June 22, 2011, one day before his first Praetorian

¹⁹ Ans. ¶¶ 150-53.

²⁰ Ans. ¶ 150; CX-79 – CX-81.

²¹ Ans. ¶ 152; CX-83.

²² CX-82.

²³ Ans. ¶ 153; CX-84.

²⁴ Ans. ¶¶ 4, 195, 209; Tr. 36, 66.

²⁵ Tr. 65.

²⁶ CX-1, at 21; Ans. ¶¶ 64, 196.

²⁷ Tr. 97-98, 137.

sale, Gomez realized that the Groupon subscription agreement, which was dated May 10, 2011, conflicted with Groupon's own S-1 registration statement, which was filed with the SEC on June 2, 2011.²⁸ The subscription agreement stated that an investment in Praetorian's Groupon entity entitled an investor to an ownership interest in 10 million shares of Groupon's Series E Preferred stock. According to the S-1, however, Groupon had not issued 10 million shares of Series E Preferred.²⁹ Gomez also noticed that the S-1 did not identify Praetorian or "Access & Affiliates," the private firm through which Praetorian purportedly had acquired its Groupon shares, as shareholders.³⁰

On June 23, Gomez sent an email to Howard (one of the Praetorian promoters) asking for an explanation: "It does not show "Access & affiliates"??? [sic] There aren't even 10,000,000 shares for [S]eries E [P]referred? The clients are reading the S1, & these are the questions that I am getting."³¹

Howard responded by email the same day, essentially telling Gomez that it was not worth his time to answer the question, and Gomez would just have to take his word for it:

If you want verification for all of this, please realize this is the kind of due diligence for institutions. If the buyer is taking a block, like 500k shares, I will jump through hoops. We are audited by kpmg and that should be good enough. The subscription agreement has the price and company detailed. If they didn't have the stock it would be big trouble for not only us, but the second largest accounting firm in the world.³²

Gomez was never able to verify what Howard had told him. He called two of the private equity firms identified as stockholders in Groupon's S-1 and asked about Praetorian's ownership of Groupon shares, but neither firm provided any information.³³ Gomez then called KPMG's office in the British Virgin Islands.³⁴ KPMG would not confirm that it was auditing or otherwise working with Praetorian, nor would it provide any other information.³⁵

²⁸ Ans. ¶¶ 79-80.

²⁹ Ans. ¶ 80.

³⁰ Ans. ¶ 79.

³¹ Ans. ¶ 81; CX-59.

³² Ans. ¶ 82; CX-59.

³³ Ans. ¶ 84.

³⁴ Ans. ¶ 83.

³⁵ Ans. ¶ 83.

Next, Gomez tried to get an explanation from Lisa Yigit, Mattera's assistant. Yigit told Gomez that one of Mattera's business associates, John Hartley, was affiliated with New Enterprise Associates, a private equity firm identified as a shareholder in the S-1, and that Praetorian had acquired its Groupon shares through that firm.³⁶ But when Gomez called New Enterprise Associates, that firm would not provide any information.³⁷

Despite these repeated dead-ends and unanswered questions, Gomez continued recommending and selling Praetorian's securities to unknowing investors. Of the little research Gomez did on Praetorian, virtually all of it was done on the Internet. But the websites Gomez reviewed either were affiliated with Mattera or contained information provided by Mattera:³⁸ one was the "blog" for The Mattera Foundation;³⁹ one was a page containing a biography apparently written by Mattera himself;⁴⁰ one was a press release-distribution website containing a release issued by The Mattera Reserve about Mattera;⁴¹ and one was a social media website that contained a 13-second video of Yigit welcoming attendees to a pre-game breakfast sponsored by The Mattera Foundation for a local college football team.⁴²

Publicly Available Information

Because Gomez failed to conduct a reasonable, independent investigation, he failed to uncover the vast amount of publicly available information relating to Praetorian, Mattera, and Howard.⁴³

Mattera's Multiple Felonies

Mattera's criminal history was well-chronicled in public documents. In March 1998, the South Florida *Sun-Sentinel* reported on Mattera's arrest in connection with an advance-fee loan scam. In a story headlined "Three Charged In Fraud," the *Sun-Sentinel* explained how Mattera had "sent faxes to doctors across the country offering loans to buy clinics and equipment," but after six prospective buyers had wired upfront fees, Mattera failed to make any loans. Mattera was charged with organized fraud, operating as an unlicensed mortgage broker, grand theft, and

³⁶ Ans. ¶ 85.

³⁷ Ans. ¶ 86.

³⁸ CX-4, at 1.

³⁹ CX-53.

⁴⁰ CX-56.

⁴¹ CX-52.

⁴² CX-54; CX-55.

⁴³ CX-39; CX-40; CX-52, at 1; CX-56.

unlawful taking of advance fees for his role in the scheme.⁴⁴ He pleaded guilty to operating as an unlicensed mortgage broker, a third-degree felony.⁴⁵

Three years later, in November 2001, the *Sun-Sentinel* reported that Mattera had been arrested again, this time for stealing money from an investor and taking part in another advance-fee loan scam. According to the story, published under the headline “Investor a Fraud Victim, State Says,” Mattera “was arrested ... after authorities said he stole more than \$90,000 from an investment client.” The article explained that “Mattera defrauded a Bonita Springs man by agreeing to buy 50,000 shares of stock and never paying the man for the shares....” The *Sun-Sentinel* also reported that Mattera had been charged with grand theft, advance fee fraud, and organized fraud for his involvement in an advance-fee scam similar to the one that resulted in his arrest in 1998.⁴⁶ In 2003, Mattera pleaded guilty to five counts of grand theft in these two cases and was ordered to pay restitution of \$170,225 to his victims.⁴⁷

Mattera was arrested yet again in 2003 and charged with grand theft and organized fraud. In that case, authorities alleged that Mattera agreed to sell stock to two individuals, but after receiving payment of more than \$34,000, failed to deliver the securities.⁴⁸ Mattera pleaded guilty to two counts of grand theft and was ordered to pay restitution of \$37,400 to his victims.⁴⁹

Mattera’s SEC Bar

In addition to his criminal record, Mattera also had a regulatory history that was on the SEC’s website. In 2010, Mattera was barred from participating in penny-stock offerings after the SEC charged him and John Arnold (“Arnold,” who later headed Praetorian’s “escrow service,” FAST) with securities fraud. According to the SEC’s complaint and Litigation Release, which were published on the SEC’s website, Arnold disseminated multiple false and misleading press releases about an issuer.⁵⁰ At the same time, Arnold and Mattera were making false statements to the issuer’s transfer agent in order to obtain improperly unrestricted shares of the issuer’s stock, which Mattera then sold into the market.⁵¹ Mattera consented to a judgment that included a permanent injunction against future violations of Exchange Act Section 10(b) and Rule 10b-5, a

⁴⁴ CX-10, at 1.

⁴⁵ Ans. ¶ 23; CX-11.

⁴⁶ Ans. ¶ 25; CX-14, at 1; CX-13.

⁴⁷ Ans. ¶¶ 24-25; CX-15; CX-17; CX-20.

⁴⁸ Ans. ¶ 26; CX-19.

⁴⁹ Ans. ¶ 26; CX-20; CX-21.

⁵⁰ Ans. ¶ 28; CX-24 — CX-26.

⁵¹ CX-24; CX-25.

permanent penny stock bar, and payment of \$140,000 in civil penalties and disgorgement.⁵² The court entered a default judgment against Arnold permanently enjoining him from future violations of Exchange Act Section 10(b) and Rule 10b-5 and barring him from participating in any penny stock offering.⁵³

Mattera's Civil Judgments

In addition to these criminal and regulatory enforcement actions, Gomez failed to uncover the numerous civil judgments that state and federal courts had entered against Mattera.⁵⁴ In 2000, for example, a federal court in Texas entered a default judgment against Mattera individually and "d/b/a Praetorian Corporation" for \$1,197,500. In its order, the court found that Mattera's conduct was "intentional and fraudulent as alleged" in plaintiffs' complaint.⁵⁵ In 2002, a federal court in California entered a default judgment against Mattera for more than \$115,000.⁵⁶ In that case, the plaintiff alleged that Mattera had agreed to buy stock for \$104,000, but after receiving the shares, never delivered the funds.⁵⁷ Information about these and other judgments was available on the Administrative Office of the United States Courts' Public Access to Court Electronic Records ("PACER") website and the Palm Beach County Clerk's website.

Mattera's IRS Tax Liens

As of June 2011, the Internal Revenue Service had recorded at least three unsatisfied federal tax liens against Mattera totaling more than \$7 million.⁵⁸ Copies of the liens were available on the Palm Beach County Clerk's website.⁵⁹

Pending Lawsuits

Gomez also failed to uncover that, at the time Howard was recruiting him for Praetorian, Howard already was facing securities fraud charges for his involvement in a boiler-room scheme unrelated to Praetorian.⁶⁰ In March 2011, the SEC sued Howard and several others in federal

⁵² Ans. ¶ 30; CX-27; CX-28; CX-60.

⁵³ Ans. ¶ 29; CX-85; CX-86.

⁵⁴ Ans. ¶ 38; CX-32 – CX-38.

⁵⁵ CX-12, at 2.

⁵⁶ CX-43, at 1.

⁵⁷ CX-42.

⁵⁸ Ans. ¶ 36; CX-8; CX-22; CX-23.

⁵⁹ Ans. ¶ 37.

⁶⁰ Ans. ¶¶ 32-33.

court in California alleging that they had “engaged in a scheme to defraud almost 200 investors located in approximately 38 states, resulting in investor losses of over \$3 million.” The SEC’s complaint and a Litigation Release about the case were published on the SEC’s website.⁶¹

On June 17, 2011, around the time Gomez was researching Praetorian, a lawsuit was filed in federal court in Florida against Mattera, Arnold, and another one of Arnold’s “escrow services,” First American Reliable Escrow, Inc. (“FARE”).⁶² The plaintiffs alleged that FARE had acted as escrow agent for a private placement and that FARE and Mattera improperly diverted funds from the escrow account.⁶³ On July 18, 2011, Mattera, Arnold (on behalf of himself and FARE), and the plaintiffs filed a Joint Offer of Judgment/Stipulation for Settlement under which Mattera and Arnold agreed to pay the plaintiffs \$340,000 and deliver the securities the plaintiffs had purchased.⁶⁴ Information about the lawsuit was publicly available on PACER.⁶⁵

On July 27, 2011, the Commodities Futures Trading Commission sued Howard alleging that he and several others had fraudulently solicited customers to trade off-exchange foreign currency.⁶⁶ According to the CFTC’s complaint, Howard and his co-defendants falsely claimed significant profits spanning several years and falsely assured investors that their accounts would be managed to minimize the risk of loss.⁶⁷ The CFTC alleged that investors lost a total of \$736,241 through October 2010 as a result of the scheme. The CFTC published a copy of its complaint and a press release about the case on its website.⁶⁸

On September 16, 2011, several Praetorian investors sued Mattera, Arnold, Praetorian, and Praetorian’s Fisker Automotive entity (“Fisker Entity”) in federal court in Florida.⁶⁹ The plaintiffs alleged that Mattera and others associated with Praetorian had made “blatant and fraudulent misrepresentations in soliciting Plaintiffs to invest \$4.525 million to acquire shares in [the Fisker Entity] based on false representations that such interests would provide indirect ownership of Series A Preferred shares” in Fisker Automotive. The plaintiffs further alleged that they “discovered that

⁶¹ Ans. ¶¶ 32, 33; CX-44; CX-45.

⁶² Ans. ¶ 69; CX-29.

⁶³ CX-29, at 2-4.

⁶⁴ Ans. ¶ 118; CX-30.

⁶⁵ Ans. ¶ 71.

⁶⁶ Ans. ¶ 124; CX-46.

⁶⁷ CX-46; CX-47.

⁶⁸ Ans. ¶¶ 124, 125; CX-46; CX-47.

⁶⁹ Ans. ¶ 139.

Mattera, Praetorian and [the Fisker Entity] did not own the Fisker Series A Preferred shares.”⁷⁰ Documents filed in the case were publicly available on PACER.⁷¹

On October 13, 2011, *The Miami Herald* published a story about the lawsuit. The story was headlined “Investors in Sleek Hybrid Sportscar Say They Were Conned,” and described how investors had alleged that “Mattera and his partners employed ‘blatant and fraudulent misrepresentations’ to separate them from their millions.” According to the story, the investors had paid \$4.5 million to purchase preferred shares in Fisker Automotive from Mattera, but their investment “ha[d] bought them nothing but frustration and embarrassment” The money the investors had “shipped to a Fort Lauderdale title company to be held in escrow until the deal was completed, appears gone The shares? They never existed, the suit claims – a[s] even Mattera admitted to *The Miami Herald* this week.” The story further explained that “[f]or Mattera, it’s not the first time he has been accused of business malfeasance.” After recounting Mattera’s criminal history and his “history of civil litigation,” the story noted “[t]he common thread among all of these cases: Mattera used a title company owned by longtime associate Johnny Ray Arnold.”⁷²

Irregularities in Commission Payments to Gomez

The unusual manner in which Gomez received his commissions, and problems he encountered in getting them, also should have raised questions about Praetorian’s legitimacy. Up until July 2011, Howard personally paid Gomez’s commissions on his Praetorian sales, sometimes by writing personal checks on his girlfriend’s account.⁷³ In late July 2011, Gomez was having trouble getting a commission from Howard, and exchanged emails with Howard about the missing payment.⁷⁴

In mid-August, Howard paid Gomez only half of the commission due. Howard told Gomez he was having personal problems and would send the balance the following week.⁷⁵ When Gomez complained to Praetorian, it agreed to begin paying Gomez directly.⁷⁶ After

⁷⁰ CX-71, at 2.

⁷¹ Ans. ¶ 139.

⁷² Ans. ¶ 140; CX-72; CX-73.

⁷³ Ans. ¶ 127.

⁷⁴ Ans. ¶¶ 129, 131-32; CX-48—CX-50.

⁷⁵ Ans. ¶ 133.

⁷⁶ Ans. ¶¶ 135-37; CX-51.

working out his new agreement – and ensuring future payment of his commissions – Gomez went back to soliciting investors for Praetorian.⁷⁷

By not conducting an independent investigation of Praetorian and Mattera, Gomez missed these red flags. He continued recommending Praetorian to his customers right up until the day Mattera was arrested, on November 17, 2011.⁷⁸

C. US Coal Transactions

1. Gomez Sold \$105,000 of U.S. Coal Securities Away from Legend

In addition to his sales of Praetorian securities, Gomez sold at least \$105,000 in US Coal shares away from Legend. US Coal was a private company that, along with its subsidiaries, produced coal in Appalachia.⁷⁹ It was not on Legend's approved-product list.⁸⁰

Gomez was recruited to solicit investors for US Coal by Chris Fulco, Hugo Gomez ("Hugo," no relation to Gomez), and Lance Friedman. Hugo had also introduced Gomez to Howard.⁸¹ At the time, Fulco and Hugo were registered with other FINRA-member firms. Friedman was one of US Coal's founders but held himself out to Gomez as the manager of a private investment fund, Blackstone Capital Advisors ("BCA").⁸²

Friedman, Fulco and/or Hugo asked Gomez to help find buyers for BCA's US Coal shares. They told Gomez that US Coal was planning an IPO in the "near future,"⁸³ and that BCA had acquired US Coal shares from company retirees who needed money and could not wait for the purported IPO. They also told Gomez that Merrill Lynch was the company's second largest shareholder.⁸⁴

After speaking with Fulco, Hugo, and Friedman, Gomez agreed to try to find buyers for BCA's US Coal shares.⁸⁵ The shares would be sold in "units" of 10,000 shares for \$35,000 per

⁷⁷ Ans. ¶ 138.

⁷⁸ Ans. ¶ 153; CX-84.

⁷⁹ Ans. ¶ 154.

⁸⁰ Tr. 273.

⁸¹ Ans. ¶¶ 157, 161.

⁸² Ans. ¶¶ 155, 158.

⁸³ Ans. ¶ 160.

⁸⁴ Tr. 275-276; CX-107, at 3.

⁸⁵ Ans. ¶ 162.

unit (\$3.50/share). Under the terms of his agreement, Gomez would receive a commission payment equal to approximately 13% of the gross transaction price. The commissions would be wired directly to his bank account by BCA.⁸⁶

Without notifying Legend, Gomez began soliciting investors for BCA's US Coal shares in July 2011.⁸⁷ He did not disclose the solicitations to Legend and Legend did not approve them.⁸⁸ Between August 26, 2011, and September 16, 2011, Gomez sold a total of \$105,000 in US Coal shares to three investors, all of whom were Legend customers, for which he received commissions totaling at least \$14,950.⁸⁹

Gomez admits that he recommended US Coal to each of these three investors and that none of them was aware of US Coal until Gomez solicited them. Gomez further admits that he represented to each of those investors that US Coal would do an IPO in the "near future."⁹⁰

The purported US Coal IPO never occurred.⁹¹ In 2014, creditors forced the company and several of its wholly owned subsidiaries into bankruptcy.⁹²

2. Gomez Failed to Perform an Independent Investigation of US Coal Before Recommending Its Securities to Investors

Gomez did little diligence on US Coal before recommending it to investors. He searched the Internet but found little information because US Coal was a small, private company.⁹³ Therefore, his diligence primarily consisted of reviewing documents he received from Hugo in August 2011, including a copy of US Coal's 2010 Audited Financials, dated February 21, 2011; a July 2011 Standard & Poor's "Research Update" assigning a preliminary "B" corporate credit rating; and an investment banking "pitch" to US Coal purportedly prepared by Raymond

⁸⁶ Ans. ¶ 162.

⁸⁷ Ans. ¶ 165.

⁸⁸ Ans. ¶¶ 165-66.

⁸⁹ Ans. ¶¶ 171-72, 177-78, 183-84.

⁹⁰ Ans. ¶¶ 168-70, 174-76, 180-82.

⁹¹ Ans. ¶ 186.

⁹² Ans. ¶ 187.

⁹³ CX-1, at 21.

James.⁹⁴ The Raymond James materials were dated October 8, 2010 (almost a year earlier), and appeared to relate to a possible IPO in June 2011 (two months earlier).⁹⁵

During his research on US Coal, Gomez learned that US Coal's chief executive officer, Robert Gabbard, had resigned in May 2011. Gomez also was unable to confirm that Merrill Lynch was the second largest US Coal shareholder. On August 24, two days before he made his first US Coal sale, Gomez emailed Hugo asking about Gabbard's resignation and Merrill Lynch's purported involvement with the company. Gomez wrote: "How do I get the info with Merrill[L] Lynch being the 2nd largest shareholder, I googled it & don't see it anywhere? Also the ex-CEO Gabbard resigned back in May?"⁹⁶

Hugo responded the same day. Hugo did not address Gomez's inquiry regarding Merrill Lynch, but did address Gabbard's resignation, writing in an email: "Yes [Gabbard resigned] to start he's [*sic*] next mining co. The guy believes uscoal could b bought before they go public that's why he resign there's no more to do for him he's ready for the next one[.]"⁹⁷

At some point between August and December 2011 (Gomez does not remember when), Gomez called US Coal's investor relations department and asked about the purported IPO, but was unable to confirm that US Coal had any current plans to go public.⁹⁸

III. Conclusions of Law

A. Gomez did not violate Exchange Act Section 10(b), Rule 10b-5, or FINRA Rules 2020 and 2010

The Complaint charges that Gomez recklessly made misrepresentations about Praetorian and US Coal in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and in violation of FINRA Rules 2020 and 2010. The Hearing Panel concluded that Gomez lacked the requisite scienter necessary to find a violation of Section 10(b) and so dismisses the First Cause of Action.

Exchange Act Section 10(b) and Rule 10b-5 prohibit fraudulent and deceptive acts and practices in connection with the purchase or sale of a security.⁹⁹ To establish that Gomez violated

⁹⁴ Ans. ¶ 163; CX-100.

⁹⁵ CX-100, at 52, 94.

⁹⁶ CX-107, at 3.

⁹⁷ CX-107, at 3; Tr. 276.

⁹⁸ Tr. 251-52.

⁹⁹ Exchange Act Section 10(b) makes it "unlawful for any person . . . [t]o use or employ, in connection with the purchase or sale of any security . . . , any manipulative or deceptive device or contrivance in contravention of such

Exchange Act Section 10(b) and Rule 10b-5 thereunder, Enforcement must prove by a preponderance of the evidence that Gomez made material misrepresentations in connection with the purchase or sale of a security and that he acted with scienter.¹⁰⁰ “FINRA Rule 2020 is FINRA’s antifraud rule. FINRA Rule 2020 prohibits members from ‘effect[ing] any transaction in, or induc[ing] the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.’”¹⁰¹ In this case, Gomez violated Rule 2020 if, acting with scienter, he induced the purchase or sale of a security “by means of” a material false statement.¹⁰² A violation of the SEC’s or FINRA’s anti-fraud rules also violates FINRA Rule 2010.¹⁰³

The Hearing Panel found that Gomez’s misrepresentations were material; however, Enforcement failed to show that Gomez made the misrepresentations with scienter. “Scienter is defined as ‘a mental state embracing intent to deceive, manipulate, or defraud.’”¹⁰⁴ “Scienter is established if a respondent acted intentionally or recklessly.”¹⁰⁵ Enforcement alleged that Gomez made the misrepresentations recklessly. “Reckless conduct includes ‘a highly unreasonable omission, involving not merely simple, or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers

rules and regulations as the Commission may prescribe.” 15 U.S.C. § 78j(b). Exchange Act Rule 10b-5 makes it unlawful “[t]o employ any device, scheme, or artifice to defraud; to make any untrue statement of material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.” 17 C.F.R. § 240.10b-5.

¹⁰⁰ *Dep’t of Enforcement v. Fillet*, No. 2008011762801, 2013 FINRA Discip. LEXIS 26, at *18 (NAC Oct. 2, 2013), *aff’d in relevant part*, Exchange Act Release No. 75054, 2015 SEC LEXIS 2142 (May 27, 2015) (citing *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1467 (2d Cir. 1996) and *Dep’t of Enforcement v. Gonchar*, No. CAF040058, 2008 FINRA Discip. LEXIS 31, at *27 (NAC Aug. 26, 2008)).

¹⁰¹ *Dep’t of Enforcement v. Ahmed*, No. 2012034211301, 2015 FINRA Discip. LEXIS 45, at *88 (NAC Sept. 25, 2015). See *Fillet*, 2013 FINRA Discip. LEXIS 26, at *38 (explaining that FINRA Rule 2020 “captures a broader range of activity than [Exchange Act] Rule 10b-5(b)”).

¹⁰² *Dep’t of Enforcement v. Akindemowo*, No. 2011029619301, 2015 FINRA Discip. LEXIS 58, at *29 (NAC Dec. 29, 2015), *appeal docketed*, No. 3-17076 (SEC Jan. 29, 2015); *Dep’t of Enforcement v. Davidofsky*, No. 2008015934801, 2013 FINRA Discip. LEXIS 7, at *31 n.31 (NAC Apr. 26, 2013) (“NASD Rule 2120 [now FINRA Rule 2020] requires a showing of scienter, similar to Exchange Act Rule 10b-5.”).

¹⁰³ *Ahmed*, 2015 FINRA Discip. LEXIS 45, at *89 n.83 (“Conduct that violates the Commission’s or FINRA’s rules, including the antifraud rules, is inconsistent with ‘high standards of commercial honor and just and equitable principles of trade’ and violates FINRA Rule 2010.”). “FINRA Rules 2020 and 2010, which generally apply to FINRA ‘members,’ are applicable to associated persons pursuant to FINRA Rule 0140(a).” *Id.*

¹⁰⁴ *Akindemowo*, 2015 FINRA Discip. LEXIS 58, at *33 (quoting *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976)).

¹⁰⁵ *Id.* (citing *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 319 n.3 (2007)). See also *Ahmed*, 2015 FINRA Discip. LEXIS 45, at *77 n.78 (“Scienter also is established through a heightened showing of recklessness.”) (citing *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 319 n.3 (2007)).

that is either known to the defendant or is so obvious that the actor must have been aware of it.”¹⁰⁶

The evidence did not show that Gomez made his misrepresentations recklessly. The Hearing Panel instead found that he acted with gross negligence because of his inexperience and ignorance of the process for conducting reasonable due diligence. Gomez based his statements about Praetorian solely upon what he was told by Mattera and the other promoters who were clearly acting fraudulently. He did not conduct any investigation to confirm Praetorian’s representations. Similarly, Gomez failed to investigate promoters’ claims that a public offering of US Coal was imminent.

Gomez had an independent duty to investigate the investments he was recommending, and should not have relied solely on the representations made by the promoters of Praetorian and US Coal.¹⁰⁷ Especially with respect to Praetorian, the simplest research (*e.g.*, “Googling” Mattera or reviewing the SEC’s website) would have revealed that Praetorian, Mattera, and the other promoters were not what they seemed. The claims about US Coal’s imminent IPO were little more than rumor. It was unreasonable for Gomez to have relied solely on statements made to him by Praetorian and US Coal promoters. He should have conducted a reasonable investigation before making representations to customers about the investments.

But not every failure to investigate constitutes recklessness.¹⁰⁸ The Hearing Panel found that Gomez was negligent, but not reckless, in making misrepresentations to his customers, and that his conduct did not rise to the level of scienter required by the anti-fraud provisions.

Accordingly, because we find that Enforcement failed to prove that Gomez acted with scienter, we dismiss the First Cause of Action containing the federal and FINRA scienter-based fraud charges.

¹⁰⁶ *Fillet*, 2013 FINRA Discip. LEXIS 26, at *35 (quoting *Sundstrand Corp. v. Sun Chem. Corp.*, 553 F.2d 1033, 1045 (7th Cir. 1977) (internal quotation omitted)); *Dep’t of Enforcement v. Reynolds*, No. CAF990018, 2001 NASD Discip. LEXIS 17, at *45 n.28 (NAC June 25, 2001) (citing *Bd. of Cnty. Comm’rs v. Liberty Grp.*, 965 F.2d 879, 883-84 (10th Cir. 1992) (proper standard for a fraud claim based on SEC Rule 10b-5 is intent or recklessness and not gross negligence, although the line between recklessness and gross negligence is a fine one); *Reiger v. Altris Software, Inc.*, No. 98-CV-528 TW (JFS), 1999 U.S. Dist. LEXIS 7949, at *22-23 (S.D. Cal. May 3, 1999) (gross negligence is not sufficient to prove scienter under SEC Rule 10b-5; conduct must have been at least reckless).

¹⁰⁷ *Faber*, 2004 SEC LEXIS 277, at *21 & n.21 (“[Respondent], as a registered representative, had an independent duty to investigate and could not simply rely on the views of his employer or others.”); *SEC v. Platinum Investment Corp.*, No. 02CV6093(JSR), 2006 U.S. Dist. LEXIS 67460, at *10-11 (Sept. 20, 2006).

¹⁰⁸ *Anthony*, 2015 SEC LEXIS 707, at *241-42.

B. Gomez Violated NASD Rule 2310 and FINRA Rule 2010 by Recommending Praetorian and US Coal Without Performing a Reasonable Investigation

The Complaint's Second Cause of Action alleged that Gomez violated NASD Conduct Rule 2310 and FINRA Rule 2010 by recommending Praetorian and US Coal without a reasonable basis to conclude that the investments were suitable for any customer. NASD Rule 2310(a), which was in effect during the relevant time period,¹⁰⁹ governed Gomez's suitability obligations in connection with his recommendations to customers.

NASD Rule 2310(a) provided that "[i]n recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs." One of the requirements of the suitability rule is that a registered person must have a "reasonable and adequate basis" for any recommendation he makes.¹¹⁰ Meeting that standard, in turn, requires conducting a "reasonable investigation" into recommended securities.¹¹¹

A registered person "may not rely blindly upon the issuer for information concerning a company, although the degree of independent investigation which must be made by a securities dealer will vary in each case. Securities issued by smaller companies of recent origin obviously require more thorough investigation."¹¹² When recommending unregistered securities, at a minimum, the registered person should conduct a reasonable investigation of the issuer and its management, its business prospects, its assets held or to be acquired, the claims being made, and the intended use of the proceeds.¹¹³

In this case, Gomez recommended the securities of two little-known companies—Praetorian and US Coal—but did virtually no investigation beforehand, and failed to follow up on numerous red flags presented to him. Most significantly, while the Praetorian Entities claimed to hold hundreds of millions of dollars in pre-IPO stock, Gomez was never independently verified those claims. And when he asked questions, nobody at Praetorian, the issuers (Facebook or Zynga), or the

¹⁰⁹ On October 7, 2011, NASD Conduct Rule 2310 was superseded by FINRA Rule 2111. See FINRA Regulatory Notice 11-02 (Jan. 2011), <https://www.finra.org/sites/default/files/NoticeDocument/p122778.pdf>.

¹¹⁰ *Richard G. Cody*, Exchange Act Release No. 64565, 2011 SEC LEXIS 1862, at *30 (May 27, 2011), *aff'd*, 693 F.3d 251 (1st Cir. 2012).

¹¹¹ *Id.* at *27, 28, 31.

¹¹² *Hanly*, 415 F.2d at 597.

¹¹³ *Regulation D Offerings: Obligation of Broker-Dealers to Conduct Reasonable Investigations in Regulation D Offerings*, FINRA Regulatory Notice 10-22 at 5 (April 2010); see also *Pre-IPO Offerings – These Scammers Are Not Your Friends*, FINRA Investor Alert (Mar. 15, 2011) ("The bottom line is that many pre-IPO scams involve unlicensed individuals selling unregistered securities – that's why it's critical to check out both the promoter and the investment.").

private equity firms through which Praetorian purportedly had acquired its stock, would talk to him. In the end, Gomez based his diligence on Praetorian almost exclusively on what Mattera and Howard told him, or on information gathered from a handful of websites affiliated with Mattera. Gomez admits that he did not even search the SEC's website during his investigation of Praetorian. As a result of Gomez's failure to independently investigate Praetorian, he was unaware of the numerous adverse facts described above.

Gomez's investigation of US Coal was similarly limited. Gomez primarily relied on information provided to him by Friedman, Fulco, and Hugo. When Gomez questioned Hugo about the resignation of US Coal's CEO, he took at face value Hugo's explanation that the CEO had resigned because he believed US Coal might be bought before it went public, and that there was no more for the CEO to do. And when Gomez was unable to confirm what he had been told about Merrill Lynch being the second largest US Coal shareholder and asked Hugo about it, he failed to press when Hugo evaded Gomez's questions. A reasonable broker would have investigated those red flags before recommending the securities to his clients.

The Hearing Panel found that Gomez failed to conduct a reasonable investigation of Praetorian and US Coal and therefore lacked reasonable grounds for recommending the securities to his customers. He therefore violated NASD Rule 2310 and FINRA Rule 2010.¹¹⁴

C. Gomez Violated NASD Rule 3040 and FINRA Rule 2010 by Selling Praetorian and US Coal Securities Away From Legend

NASD Rule 3040 prohibits a registered person from participating in any manner in a private securities transaction for which the person expects to receive compensation unless, prior to participating in the transaction, the person receives written permission from the firm. Gomez admits that, while registered at Legend, he sold Praetorian and US Coal securities away from his firm and does not dispute that these transactions violated NASD Rule 3040 and FINRA Rule 2010.¹¹⁵

As a result of the foregoing, the Hearing Panel found that Gomez violated NASD Rule 3040 and FINRA Rule 2010.¹¹⁶

¹¹⁴ *Cody*, 2011 SEC LEXIS 1862, at *26.

¹¹⁵ *Ans.* ¶¶ 216-225.

¹¹⁶ A violation of NASD Rule 3040 constitutes a violation of FINRA Rule 2010. *The Dratel Group*, 2014 FINRA Discip. LEXIS 6, at *28 n.25.

IV. Sanctions

Because all of the causes of action in this matter stem from the same nucleus of facts, the Hearing Panel imposes a unitary sanction. Based on the violative conduct described above, Gomez is barred from associating in any way with any FINRA-registered firm.

A. The Principal Considerations Support a Bar.

FINRA's Sanction Guidelines ("Guidelines") provide a list of factors that should be considered in conjunction with the imposition of sanctions with respect to all violations.¹¹⁷ Several aggravating factors are present in this case and support the imposition of a bar.

Gomez Has Not Accepted Responsibility. Although Gomez admits that he sold \$499,000 in worthless securities to customers, he feels aggrieved by this disciplinary proceeding and does not believe he deserves *any* sanction, writing in his Answer:

With all that I have written here, *I feel that I have suffered enough through all this* [emphasis added], & I tried to be as helpful as possible. This also is hindering my business as I try to get registered in states to do new business; I am having trouble because of this so called "fraud" accusation. I cooperated as much as I could, I am asking for no suspension, no fine. Place me on a heightened supervisory role in the firm I am working at, that is 100% fine with me. I just wish to move on with my career, that's all.¹¹⁸

At the hearing, Gomez essentially restated this position, and only as an afterthought expressed remorse for the losses his clients suffered. More troubling is the fact that Gomez does not seem to realize that his investigation of Praetorian and US Coal was deficient. He testified, "Regarding Praetorian, [this was] the first time I had dealt with a fund. I did my due diligence. Regarding US Coal, I did due diligence on that company as well."¹¹⁹ He also testified, "I did the due diligence. It was my first time. Can I have done more? Of course, you can always do more of anything. But I felt that it was reasonable."¹²⁰ At another point in his testimony he said, "Could I have done more research? Yes, I can admit that I could've done more research. Did I feel that I did sufficient research? Yes, regarding the funds."¹²¹

Gomez Engaged in Numerous Acts and a Pattern of Misconduct. Gomez participated in two separate schemes and completed multiple sales away from Legend.

¹¹⁷ FINRA Sanction Guidelines at 6-7 (2015), www.finra.org/sanctionguidelines.

¹¹⁸ Ans. ¶ 225.

¹¹⁹ Tr. 380.

¹²⁰ Tr. 312.

¹²¹ Tr. 326.

Gomez Engaged in the Misconduct Over an Extended Period of Time. Gomez participated in transactions away from Legend over a six-month period.

Gomez Attempted to Conceal His Misconduct From Legend. Gomez concealed his misconduct by using his personal email account for his Praetorian and US Coal transactions. He testified that he understood that the purpose of FINRA's rule against selling away was to ensure that a broker's firm could supervise the broker's activities. He also testified that he knew he was selling away and knew he shouldn't be doing that.¹²²

Gomez's Misconduct Resulted Directly in Injury to Investors. Gomez recommended and sold at least \$499,000 in worthless securities in transactions away from his firm.

Gomez's Misconduct Resulted in His Monetary Gain. Gomez received more than \$36,000 in commissions from his Praetorian and US Coal transactions.

B. Gomez is Barred for Making Unsuitable Recommendations

In cases where aggravating factors predominate, the Guidelines state that adjudicators should "strongly consider a bar for an individual respondent."¹²³ In this case, aggravating factors predominate. The Hearing Panel believes that Gomez's extreme carelessness and failure to understand and take responsibility for his misconduct make him a danger to the investing public. For these reasons, the Hearing Panel barred Gomez.

C. Gomez is Barred for Selling Away

For private securities transactions totaling between \$100,000 and \$500,000, the Guidelines recommend a fine from \$5,000 to \$73,000 and a suspension from three to six months, but state that the presence of aggravating factors may raise the recommended sanction.¹²⁴ In this case, there are a number of aggravating factors: Gomez sold a large volume of securities away from his firm and to multiple customers; Gomez sold away over an extended period of time; Gomez received substantial commissions; Gomez's selling away resulted in direct and substantial injury to the investing public; Gomez sold away to at least one Legend customer; Gomez sold Praetorian and US Coal directly to investors; and Gomez concealed his selling away from Legend by using his personal email account. For these reasons, the Hearing Panel bars Gomez.

¹²² Tr. 357.

¹²³ Guidelines at 94.

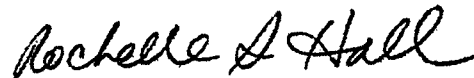
¹²⁴ Guidelines at 14.

V. Order

The First Cause of Action alleging securities fraud is dismissed.

For violating NASD Conduct Rule 2310 and FINRA Rule 2010 by recommending securities without a reasonable basis to conclude that the investments were suitable for any customer, and for violating NASD Rule 3040 and FINRA Rule 2010 by selling securities away from his firm, Gomez is barred from associating with any FINRA-registered firm.

Gomez is also ordered to pay costs in the amount of \$3,498.16, which includes a \$750 administrative fee and the cost of the hearing transcript. The costs shall be payable on a date set by FINRA, but not less than 30 days after this Decision becomes FINRA's final disciplinary action in this matter. If this Decision becomes FINRA's final disciplinary action, Gomez's bar shall be effective upon service of this Decision.¹²⁵



Rochelle S. Hall
Hearing Officer
For the Hearing Panel

Copies to:

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Tom Kuczajda, Esq. (via electronic mail)
Jeffrey Pariser, Esq. (via electronic mail)

¹²⁵ The Hearing Panel has considered and rejects without discussion all other arguments of the parties.