FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. SANDLAPPER SECURITIES, LLC (CRD No. 137906), TREVOR LEE GORDON (CRD No. 2195122), and JACK CHARLES BIXLER (CRD No. 22331), Respondents.	Disciplinary Proceeding No. 2014041860801 Hearing Officer—DW **EXTENDED HEARING PANEL DECISION** November 29, 2018

Sandlapper Securities, through its Chief Executive Officer Trevor Gordon and President Jack Bixler, willfully defrauded investors by charging unreasonable and undisclosed markups on sales of fractional interests in saltwater disposal wells. By improperly interposing an affiliate entity when selling the interests, Gordon and Bixler willfully caused the entity to act as an unregistered dealer. Sandlapper and Gordon also failed to adequately supervise sales of the investments. For their misconduct, Gordon and Bixler are barred from association with any FINRA member and Sandlapper is expelled. Respondents are ordered to pay restitution and hearing costs.

Appearances

For Complainant: William L. Thompson III, Esq., Gregory Firehock, Esq., and R. Michael Vagnucci, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For Respondents Sandlapper Securities, LLC, Trevor Lee Gordon and Jack Charles Bixler: Gilbert W. Boyce, Esq., and Joseph A. Ingrisano, Esq., Kutak Rock, LLP.

I. Introduction

Congress enacted the federal securities laws to protect investors from fraud and overreach in all manner of investments, in "countless and variable schemes devised by those who seek the use of the money of others on the promise of profits."[1] This case involves investments marketed on the promise of profits flowing from wells in the oil country of the Permian Basin of Texas—without the associated risk of drilling a dry hole.

When an operating oil well brings oil to the surface, it also surfaces formation water, mostly composed of saltwater. After separating the valuable oil from this saltwater byproduct, the well operator must dispose of the water in an environmentally responsible way. A saltwater disposal well meets this need by taking unwanted saltwater away from nearby oil well operators and returning it back into the ground. The operator of a disposal well can make money in two ways: (1) by separating any remaining remnants of oil from the saltwater and selling this "skim" oil for a profit, and (2) by charging oil well operators a fee for each barrel of saltwater the disposal well pumps back into the ground.

FINRA member firm Sandlapper Securities, LLC ("Sandlapper" or the "Firm"), acting through its CEO Trevor Gordon, and the Firm's President Jack Bixler (collectively, "Respondents"), sought to create an investment opportunity in this corner of the oil industry by purchasing fractional interests in several saltwater disposal wells from the disposal well operator and then reselling those interests to investors. This disciplinary proceeding arises from the Department of Enforcement's ("Enforcement") claim that certain of these sales to investors were fraudulent. Enforcement's central allegation is that the sales prices charged to investors were substantially higher than market value, as reflected by what Respondents paid for the interests, and amounted to excessive and undisclosed markups. Through these improper markups, Respondents allegedly fraudulently overcharged investors by more than $8 million across the investments now at issue. Respondents disagree, maintaining that the prices investors paid for their disposal well interests were fair, the investments have proven profitable, and no additional disclosure was required. This Extended Hearing Panel held a hearing on the claims and defenses in Washington, D.C.

II. The Complaint

Enforcement's Complaint sets forth the alleged misconduct across multiple claims. Cause one alleges that Gordon, Bixler, and Sandlapper willfully defrauded the Fund by fraudulently interposing another entity between an investment fund and the market and by charging undisclosed, excessive markups. Cause two alleges that in connection with these same sales to the investment fund, Gordon and Bixler breached fiduciary duties of loyalty and care to the fund. The third cause relates to sales of well interests to individual investors, asserting that Gordon and Sandlapper committed securities fraud by charging excessive markups when selling the interests as securities through the Firm between late 2014 and November 2015. The fourth cause alleges

[1] *SEC v. W. J. Howey Co.*, 328 U.S. 293, 299 (1946).

that Gordon committed securities fraud by charging excessive markups when selling the interests as "real estate" to investors between January 2013 and November 2015. Cause five alleges that Gordon and Bixler willfully caused the entity interposed into the sales transaction to operate as an unregistered securities dealer. Finally, cause six alleges that Gordon and Sandlapper failed to establish and implement supervisory procedures adequate to address the conflicts of interests inherent to the sales transactions, and cause seven claims that Gordon and the Firm failed to adequately supervise the private securities transactions.

III. Findings of Fact

A. Respondents

Sandlapper first became a FINRA member firm in 2006.[2] The Firm is a full-service broker dealer and dealer-manager of investment products.[3] Sandlapper currently has approximately 60 registered representatives and 13 branch offices.[4] The Firm's main office is located in Greenville, South Carolina.[5] Trevor Gordon ("Gordon") is the founder and majority owner of Sandlapper.[6] Gordon first entered the securities industry in 1997.[7] He holds bachelors and masters' degrees in business administration.[8] During the period relevant to this action—April 2011 through November 2015—Gordon was Chief Executive Officer and Managing Member of Sandlapper.[9] At various times he also served as the Firm's Chief Compliance Officer.[10] Jack Bixler ("Bixler") served as a principal and President of Sandlapper.[11] Bixler entered the industry in 1970, and associated with Sandlapper in 2006.[12] Both Gordon and Bixler remain associated with the Firm.[13]

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[2] Answer ("Ans.") ¶ 9.

[3] *Id*.

[4] *Id*.

[5] *Id*.

[6] *Id*. ¶ 10.

[7] *Id*.

[8] Hearing Transcript ("Tr.") (Gordon) 82.

[9] Ans. ¶ 10.

[10] Tr. (Gordon) 88.

[11] Ans., at 3.

[12] *Id*.

[13] *Id*. ¶¶ 10, 11.

B. Respondents Enter the Market for Saltwater Disposal Wells

Since Sandlapper's inception, Gordon and Bixler have offered the Firm's customers a number of specialized investment products.[14] Sandlapper's investment vehicles included commercial real estate tenant-in-common offerings, note programs, bond funds, and tax credit syndications.[15]

Through their business touching on the oil and gas industry, Gordon and Bixler, along with two Sandlapper associates,[16] met Randy Jones.[17] Jones was a developer of saltwater disposal wells in the Permian basin of Texas.[18] Disposal well facilities are a crucial part of the oil and gas industry.[19] Oil and gas reserves are typically found in porous rock formations that contain saltwater.[20] The oily fluid surfaced by an oil well consists of up to 75 percent water.[21] After bringing this fluid to the surface, the well operator separates the saltwater byproduct from the oil before selling the oil.[22] State and federal regulations then obligate the well operator to dispose of the remaining saltwater byproduct in a safe manner.[23] Through his business, Randy B. Jones & Associates ("RBJ"), Jones constructed and operated disposal wells that disposed of this saltwater byproduct from nearby oil wells.[24] Disposal wells return saltwater to rock formations below the ground.[25] Jones was trustworthy, skilled, and one of the premier operators in the Texas saltwater disposal well industry.[26]

Jones' expertise was in developing disposal well facilities, and he did not particularly enjoy raising the money necessary for well development.[27] Sandlapper, through Gordon, Bixler, and others, stepped in to fill this need, forming a business relationship with Jones and his

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[14] Tr. (Gordon) 103.

[15] Respondents' Exhibit ("RX") 217, at 8.

[16] Tr. (Gordon) 98-99.

[17] Tr. (Gordon) 164.

[18] Complainant's Exhibit ("CX") 169.

[19] Tr. (Gordon) 127.

[20] Joint Exhibit ("JX") 2, at 2.

[21] JX-9, at 9.

[22] JX-9, at 9.

[23] JX-2, at 2.

[24] CX-169.

[25] CX-169.

[26] Tr. (Gordon) 180-82, 938; Tr. (Bixler) 1451.

[27] CX-169.

company to bring in investors along with the capital needed by RBJ to construct and operate disposal wells.[28]

In the spring of 2011, Gordon and Bixler, with two Sandlapper associates (collectively, the "Tiburon Guys"), formed Tiburon Saltwater Reclamation Fund I, LLC (the "Fund").[29] The Tiburon Guys were the Fund's Investment Committee and owners of the Fund's managing member.[30] They made all investment decisions for the Fund.[31] Sandlapper served as the managing broker-dealer for the distribution of Fund shares, selling the interests through Sandlapper representatives as well as brokers at other firms within the selling group.[32] Between August 2011 and October 2014, approximately 170 investors purchased units in the Fund at a cost of approximately $12.4 million.[33]

Respondents created the Fund to invest in disposal well interests.[34] Through these investments, Fund investors shared in the profits generated by a number of disposal wells.[35] Investors in the disposal well interests received a share of profits in proportion to their ownership interest in the well.[36] Investors played no role in the operation of a disposal well and were completely dependent on the efforts of Jones and his company to construct and develop the well, bring customers to the operation, generate revenues, and operate the business.[37] RBJ entered into a management agreement with fractional interest holders that obliged it to "direct, conduct and have full control of, and responsibility for, all operations" of the disposal wells.[38]

Jones sold interests in his disposal wells on a "turnkey basis," meaning investors paid a set price, based upon anticipated development costs, in exchange for fractional, undivided

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[28] CX-169.

[29] Ans. ¶¶ 15, 19.

[30] Tr. (Gordon) 110.

[31] Tr. (Gordon) 108. The investment committee members were required to "exercise their duties . . . in accordance with their good faith business judgement as to the best interests of the Fund." JX-1, at 101.

[32] Tr. (Gordon) 111-13. In the securities industry, a "selling group" is a group of broker-dealers that assist the dealer serving as primary underwriter for a public distribution by selling the underwriter's new issue securities in exchange for a fee.

[33] CX-3; Tr. (Gordon) 111.

[34] Tr. (Gordon) 98; RX-217, at 8.

[35] Tr. (Gordon) 524 ("Every single investor has made money on every investment that we have ever done.").

[36] Tr. (Gordon) 1233-34.

[37] Tr. (Gordon) 182-84; 2982. Through another entity, TSWR Management, Gordon, Bixler and the Tiburon Guys "managed" the fractional interest assets for the Fund and investors by taking in the revenues received from RBJ and distributing it to investors, and providing monthly and year-end tax reporting. TSWR Management collected a 2 percent fee for this activity. Tr. (Gordon) 531-36.

[38] JX-6.

interests in a disposal well developed and operated by RBJ.[39] If the actual costs of development exceeded estimates, RBJ absorbed the overage.[40] Jones priced fractional interests using "third for a quarter" pricing, a common form of financing in the oil and gas industry, establishing a sales price adequate to cover each third of anticipated development costs in exchange for 25 percent of ownership.[41] So Jones obtained from investors the full cost of development in exchange for 75 percent of the well, and kept the remainder for his efforts.[42] Using this approach, Jones typically priced interests between $45,000 and $55,000 per 1 percent.[43]

At about the same time they created the Fund, Gordon and Bixler (with the other Tiburon Guys) created another entity, TSWR Development, LLC.[44] They formed TSWR Development to acquire disposal well interests and resell them to the Fund and other investors, or hold the interests for investment.[45] Bixler explained that they created TSWR Development to "help" the Fund in its purchases of well interests by enabling the Fund to benefit from TSWR Development's ability to use leverage.[46]

C. TSWR Development Sells Well Interests to the Fund and Individual Investors

Gordon and Bixler directed Fund purchases and offered for sale to individual investors fractional interests in several disposal wells managed and operated by RBJ. As managers of the Fund, Gordon and Bixler jointly decided which disposal well interests the Fund purchased.[47] They also marketed the investments as so-called "direct working interests" to individuals through a network of brokers who sold the interests (at times) via private placement memoranda.[48]

Although at times Gordon and Bixler directed certain investor purchases directly from RBJ, the transactions challenged in this case are Fund and investor purchases from TSWR Development. TSWR Development purchased disposal well interests from RBJ and then resold the interests to the Fund and to individuals at substantially higher prices.

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[39] CX-12, at 4; CX-169, at 4; Tr. (Reineke) 1573-74.

[40] CX-12, at 4; CX-169, at 5; Tr. (Reineke) 1574.

[41] CX-12, at 4; Tr. (Reineke) 1572-73.

[42] CX-12, at 4; Tr. (Reineke) 1572-73.

[43] *See* CX-169, at 4.

[44] Ans. ¶ 33.

[45] JX-1, at 36; Tr. (Gordon) 158-61.

[46] Tr. (Bixler) 1463. The Fund would purportedly benefit from TSWR's use of leverage by purchasing well interests that TSWR Development acquired with borrowed money without the Fund incurring debt. Tr. (Gordon) 158-61.

[47] Tr. (Gordon) 108; Tr. (Bixler) 1454-55.

[48] Tr. (Gordon) 474-75,506-07, 825-26. Gordon also created the economic models and projections used by selling group brokers to market the interests. Tr. (JI) 1833-34; Tr. (JP) 2128-33.

1. Sales to the Fund

The Fund's original private placement memorandum ("PPM") did not disclose to investors that TSWR Development—an affiliate of Fund managers Gordon and Bixler—would resell interests to the Fund at substantially higher prices than it purchased them. Fund disclosures informed investors that the Fund's managers (including Gordon and Bixler) would be compensated only through substantial commissions, fees, and allowances.[49] The Fund generally disclosed that there may be conflicts of interest between the Fund, its managers, and their affiliates, but the PPM speaks only to the possibility that the managers may pursue other opportunities and might not devote their full attention to the Fund.[50] It did not speak to the prospect that the Fund might purchase investments from an affiliate like TSWR Development, or how such investments would be priced.[51] The Fund first disclosed TSWR Development to investors in an amendment to the PPM dated September 10, 2012.[52] The amended PPM explained that the managers recently formed TSWR Development for, among other purposes, selling well interests to the Fund, but assured investors that any transactions between the Fund and TSWR Development would "meet the investment guidelines" of the Fund and "will require an independent appraisal prior to consummating any affiliated transaction."[53]

Between December 2012 and June 2013, TSWR Development sold to the Fund interests in two disposal wells, the Tom and the Clark, in multiple tranches, for a total sum of over $1.6 million. Based on the price TSWR Development paid for the interests, the sales reflected a markup of nearly $1 million (or 139 percent) to the Fund.[54] In each well investment, TSWR Development purchased the interests only days before a series of sales to the Fund.[55] And over each of these sales, no independent appraisal of the well interests was ever conducted.[56]

In early June 2013, four days before TSWR Development sold the last tranche of Clark well interests to the Fund, the Fund sent investors a supplement amending the conflict of interest disclosures in the PPM. The only change made by the supplement was to delete earlier language in the PPM representing that all transactions between the Fund and TSWR Development

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[49] Ans. ¶ 16. The Fund was charged a "management fee" of 2 percent, among other fees. Tr. (Gordon) 535-36.

[50] RX-217, at 35.

[51] RX-217, at 35.

[52] JX-1, at 36.

[53] JX-1, at 36.

[54] CX-1.

[55] CX-4; CX-6.

[56] Tr. (Gordon) 282-83, 407. Gordon testified that despite his best efforts, he was not able to identify anyone able to perform an appraisal of the disposal well interests. We note that Gordon never documented any of his claimed efforts. And we note that Respondents presented as an expert witness at the hearing a certified public accountant trained in business valuation who offered an after-the-fact analysis of the fractional well interests at issue that was "similar to an appraisal or a valuation." Tr. (Johnston) 3266-67, 3573. Respondents never explained why they could not have undertaken an analysis of this sort at the time of the relevant transactions.

required an independent appraisal. Instead, the supplement informed investors that where an interest in a well was being "sold straight out of development, certain assumptions will be made in pricing the holding," though the "final price and assumptions must continue to meet [investment] guidelines. This price will not be made at arm's length."[57] Though this change suggests the Fund managers' recognition that the Fund's prior transactions had not comported with the independent appraisal requirement previously represented to investors, the supplement did not reveal that a number of prior transactions with TSWR Development without an appraisal had already taken place.[58] The supplement was also silent as to how the price of those earlier sales had been determined, or what assumptions the Fund would use in determining an appropriate price in the future.[59]

2. Sales to Individual Investors

Gordon and Bixler also sold fractional interests in RBJ-operated wells to individual investors. They initially offered these direct working interests to investors as real estate, not securities. So the interests were not registered as securities or offered pursuant to any exemption to registration.[60] Gordon and Bixler marketed the interests through a network of brokers to investors looking to liquidate other real estate investments and seeking so-called "1031 exchange" investments.[61] In July 2014, FINRA raised questions about why Respondents were not treating the interests as securities.[62] Gordon and Bixler then began offering the direct working interests as securities through private placement offerings, and offered rescission to any investor who purchased earlier fractional interest investments.[63] At all times, the investment offered to investors was a fractional interest in disposal wells operated by RBJ.

Between January 2013 and November 2015, TSWR Development sold fractional interests in nine disposal wells in forty-nine individual transactions that yielded sales proceeds of almost $12 million.[64] After accounting for its acquisition costs, TSWR Development marked up the price of the interests by more than $8 million before selling to investors.[65] Respondents *also*

[57] JX-4.

[58] JX-4.

[59] JX-4.

[60] Tr. (Gordon) 474.

[61] Section 1031 of the Internal Revenue Code permits owners of investment properties to exchange their property for a like-kind property (by selling the original property and immediately purchasing a replacement property) without triggering capital gains or other tax consequences.

[62] Tr. (Gordon) 505-06.

[63] Tr. (Gordon) 505-06.

[64] CX-2.

[65] CX-1; CX-2.

charged investors substantial commissions and fees in connection with each transaction, totaling approximately 10 percent of each transaction.[66]

3. The Tom Well

Gordon and Bixler started directing purchases of disposal well interests from RBJ with the Tom well in late 2012.[67] They directed the Fund's purchase of 5 percent of the well for $225,000 in October from RBJ.[68] A few months later, Gordon and Bixler directed TSWR Development to buy 20 percent of the Tom well from RBJ for $900,000.[69] Like the Fund, TSWR Development agreed to a purchase price of $45,000 for each 1 percent interest in the well.[70]

Although TSWR Development signed an agreement with RBJ to purchase the interests on December 1, 2012, it had no money to pay for its investment.[71] So it immediately resold nearly half of the investment to the Fund at inflated prices to generate cash to pay RBJ. On December 6, Gordon and Bixler directed the Fund to buy 5.2 percent of the well from TSWR Development, at a cash price of just over $610,000 (or about $117,000 per 1 percent interest).[72] The next day, TSWR Development transferred the Fund's payment to RBJ as the first payment on TSWR Development's purchase.[73]

After that payment, TSWR Development still owed RBJ about $288,000. Gordon and Bixler then entered into loan arrangements with three individuals (who were also Fund investors) to borrow a total of $200,000.[74] Shortly after receiving those funds, TSWR Development paid RBJ another $200,000 in three tranches between December 7 and 14, leaving an outstanding balance of $87,500 due to RBJ.[75]

Then on January 4, 2013, Gordon and Bixler directed the Fund to buy another 0.75 percent of the Tom well from TSWR Development, at a price of $88,004 (still about $117,000

[66] CX-34. The sales commission alone was typically 7 percent. *E.g.*, Tr. (Gordon) 688, 1287; CX-71 (7 percent commission on Clark well); CX-68 (7 percent for Tom).

[67] CX-1.

[68] CX-1.

[69] CX-1.

[70] CX-1.

[71] Tr. (Gordon) 326.

[72] CX-1

[73] Tr. (Gordon) 329-30.

[74] Tr. (Gordon) 332-33.

[75] Tr. (Gordon) 331-32.

per 1 percent interest).[76] That same day, TSWR Development made its final payment of $87,500 to RBJ to complete its Tom well purchase.[77]

At this point, TSWR Development still owned about 14 percent in the Tom well, with its purchase price fully covered by the resales to the Fund and the loans from investors. But it still had to repay $200,000 in loans, which required repayment within 6 months at 25 percent (per annum) interest.[78] So on March 7, 2013, Gordon and Bixler directed the Fund to buy *another* 2.5 percent of the well from TSWR Development, at a price of $293,346 (again about $117,000 per 1 percent interest).[79] That same day, TSWR Development repaid the loans with interest.[80] As a result of these machinations, TSWR Development owned more than 11 percent of the Tom well, with the cost of its interests now entirely borne by the Fund.

These no-cost interests proved lucrative for TSWR Development, as it sold most of its remaining interests to individual investors. On January 23, 2013, it sold 2.15 percent of the well to an investor for $269,937 (or $125,552 per 1 percent interest).[81] On September 5, 2013, it sold just over a 1 percent interest to an investor for $119,231. And on October 1, 2013, TSWR Development sold investor SI a 4.4 percent interest in the Tom well for $499,463 ($113,514 per 1 percent interest).[82] In total, TSWR Development sold off 7.6 percent of its remaining 11 percent Tom interest for nearly $900,000.[83]

The purchaser who took the largest interest in the well was investor SI, a retiree who for years lived off income generated by her inherited commercial rental property.[84] SI had become concerned about the stability of the income from her rental property, so she looked for a new investment.[85] She and her husband discussed alternative investments with a California-based broker who introduced the idea of investing in a saltwater disposal well.[86] When SI sold her rental property, she immediately looked to re-invest the proceeds in a 1031 exchange to avoid adverse tax consequences.[87] The broker forwarded SI income projections from the Tom (and

[76] CX-1

[77] Tr. (Gordon) 343-44.

[78] Tr. (Gordon) 337-38.

[79] CX-1.

[80] Tr. (Gordon) 349-51.

[81] CX-2.

[82] CX-2.

[83] CX-2.

[84] Tr. (JI) 1814-18.

[85] Tr. (JI) 1816-17.

[86] Tr. (JI) 1820-21.

[87] Tr. (JI) 1829-30.

another well) based upon an anticipated investment equal to the amount SI needed to re-invest.[88] The projections indicated that SI would more than double the monthly income that she and her husband needed to live on.[89] Based on these projections, SI decided to invest.[90] The projections, created by Gordon,[91] substantially overstated the revenues that the well ultimately generated.[92] As time went on, the monthly income generated by the well proved substantially less than the income SI previously relied on, requiring her and her husband to mortgage their home, liquidate assets and dramatically curtail their lifestyle to survive.[93]

4. The Clark Well

Gordon and Bixler's sales of interests in the Clark well beginning in March 2013 followed a similar pattern. At the same time they directed the Fund's purchase of 13 percent of the well for $585,000, they directed TSWR Development to buy 12 percent of the Clark well from RBJ for $540,000.[94] Both purchase amounts reflect a $45,000 price per each 1 percent interest of the well.[95]

Once again, TSWR Development had no money to pay for its investment.[96] So it obtained a $350,000 bridge loan (repayable in 180 days at 25 percent per annum interest) to make its first payment on the Clark interests.[97] A few days later, on April 5, 2013, Gordon and Bixler directed the Fund to buy another 4 percent interest in the Clark well from TSWR Development, this time at a price of $200,000 (or $50,000 per 1 percent interest).[98] That same day, TSWR Development made its final payment of $190,000 to RBJ to complete its Clark well purchase.[99]

At this point, TSWR Development owned about 8 percent of the Clark, with its purchase price fully covered by the resale of interests to the Fund and bridge loans. Then on June 5, 2013, Gordon and Bixler directed the Fund to buy another 2.5 percent of the well from TSWR

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[88] Tr. (JI) 1830-32; RX-147.

[89] Tr. (JI) 1831-33; RX-147.

[90] Tr. (JI) 1833-34.

[91] Tr. (Gordon) 815-16.

[92] *See* CX-12 at 15.

[93] Tr. (JI) 1872-73, 1954-56.

[94] CX-1.

[95] CX-1.

[96] Tr. (Gordon) 389, 394.

[97] Tr. (Gordon) 397-98.

[98] CX-1.

[99] Tr. (Gordon) 399-401.

Development, this time at a price of $416,297 (or about $166,000 per 1 percent interest).[100] TSWR Development later repaid the loans with interest, approximately $393,750.[101] TSWR Development still owned more than 5 percent of the well, with the cost of its interests now entirely borne by the Fund.

These no-cost interests once again proved lucrative for TSWR Development, as it sold almost all of its remaining well interests to individual investors. On September 13, 2013, it sold 0.5 percent of the well to an investor for $107,000 (or $214,000 per 1 percent interest).[102] On October 1, 2013, it sold SI a 3.5 percent interest in the Clark well (in addition to her Tom interest) for $639,521 (or $182,720 per 1 percent interest).[103] TSWR Development sold another 4 percent of its interests to two other investors in January and February 2014, for a total sum of $500,000.[104]

5. The Merket Well

Gordon and Bixler continued TSWR Development's highly profitable business of selling interests in RBJ-managed disposal wells. In about March 2014, TSWR Development looked to purchase a 32 percent interest in the Merket well.[105] But after TSWR Development agreed to purchase the Merket interests, RBJ withdrew from that deal and sought other financing because TSWR never paid the purchase price.[106] Later, TSWR Development negotiated a purchase of a 4 percent interest from RBJ.[107] TSWR Development approached RBJ *after* entering into an agreement to sell the 4 percent interest to an individual investor. The May 23, 2014 agreement with the investor was to purchase a 4 percent interest in the Merket well for $360,000.[108] Yet TSWR Development did not acquire this interest from RBJ until several days later, when it paid RBJ $160,000 on June 5, 2014.[109] So TSWR Development had a locked-in $200,000 profit at the time it acquired the interests.[110]

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[100] CX-1.

[101] Tr. (Gordon) 401-05.

[102] CX-2.

[103] CX-2.

[104] CX-2.

[105] Tr. (Gordon) 729-36.

[106] Tr. (Gordon) 729-31, 739-40, 773.

[107] Tr. (Gordon) 741-42.

[108] Tr. (Gordon) 743-44; JX-102.

[109] Tr. (Gordon) 753-54.

[110] Tr. (Gordon) 757-58.

6. Other Wells

Gordon and Bixler sold investors additional interests in RBJ-managed disposal wells through TSWR Development. After purchasing a 40 percent interest in the Moreland well for $2,250,000 in July 2013, TSWR Development resold more than a 35 percent interest in the well to 21 different individual investors between January 2014 and May 2015 for a total of $5,476,770.[111] TSWR Development purchased a 29 percent interest in the Haney well, reselling a 7.5 percent interest to four investors for $1,098,844.[112] It purchased a 10 percent interest in the Hughes well for $550,000, reselling just over a 6 percent interest to three investors for $875,004.[113] It purchased a 5 percent interest in the Hughes #2 well for $285,000, reselling a 2 percent interest to one investor for $250,000.[114] It purchased a 10 percent interest in the 137 well for $550,000, reselling just over a 7 percent interest to seven investors for $984,460.[115] It finally purchased a 15 percent interest in the Rojo well for $1,150,000, and resold a less-than-5 percent interest to four investors for $630,425.[116] Across all of its sales, TSWR consistently entered into agreements to purchase well interests from RBJ, but then *did not pay* for the interests until after reselling the interests to investors to obtain the cash from investors, sometimes months later.[117] From its sales to the Fund and individual investors across all of the wells at issue, TSWR Development reaped profits of more than $8 million.[118]

D. The Markups of Well Interests Were Undisclosed

Neither Gordon, Bixler, nor anyone else on behalf of Sandlapper or TSWR Development disclosed to investors the basis or extent of the price markups being charged to the Fund or individual investors.[119] Both Gordon and Bixler explained their nondisclosure by testifying that they regarded the transactions as real estate deals and not sales of securities, and they consequently did not believe that disclosure of their cost basis or the extent of cost markups was necessary.[120]

Yet there was no evidence that Gordon, Bixler, or anyone else at Sandlapper undertook any substantial consideration or analysis of whether the interests were securities under the law

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[111] CX-2.

[112] CX-2.

[113] CX-2.

[114] CX-2.

[115] CX-2.

[116] CX-2.

[117] Tr. (Gordon) 874-79, 885-94, 1083-89, 3075-76.

[118] CX-1; CX-2.

[119] Tr. (Gordon) 427-28, 1031, 1352; Tr. (Bixler) 1499-1500.

[120] *See* Tr. (Gordon) 475-76; Tr. (Bixler) 1499-1500.

before operating under the contrary assumption.[121] And Gordon acknowledged that even after the interests *were* sold as securities through Sandlapper beginning in late 2014, the Firm did not give consideration or undertake any analysis of whether the markups were excessive as part of the Firm's due diligence process.[122]

In the absence of such evidence, we find that Gordon and Bixler's claimed belief that the interests were real estate and not securities was not the basis for their lack of disclosure or consideration of the reasonableness of the markups. Rather, the preponderance of the evidence, including Gordon and Bixler's demeanor and credibility at the hearing, established that Gordon and Bixler acted out of a desire to conceal the extent of their own profits.[123] When asked directly whether he believed he had an obligation to deal fairly with his clients in pricing the interests, Gordon stated his view that "you could put whatever price you want."[124]

E. The Markups of Well Interests Were Unreasonable

The disposal well fractional interests represented shares of particular disposal well businesses, each operated by RBJ. So for each well, RBJ was the exclusive source of investment interests.[125] There was no known resale market for the interests.[126] Because RBJ's "model" was to earn profits based on its carried interest in the wells,[127] it charged a fixed rate for the fractional interests that ranged between $40,000 and $70,000 per 1 percent interest in each well.[128]

The prices RBJ charged were substantially lower than the resale prices of TSWR Development (e.g., RBJ sold the Tom well at $45,000 per 1 percent interest while TSWR Development resold interests at $117,000 per 1 percent). Yet, Respondents claimed at the hearing that the price markup on TSWR Development's resales of well interests to the Fund and

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[121] Tr. (Gordon) 478-85. We note that in Notice to Members 05-18, FINRA told its members that when tenants-in-common ("TIC") interests in real property are offered and sold together with other arrangements, such as contracts concerning leasing, management and operation of the property, they "generally would constitute investment contracts and thus securities under the federal securities laws." *See also* RX-177 (describing 2009 SEC No-Action Letter that "clarified the SEC's position that TICs sold with either a master lease or management agreement are securities."). Gordon knew that the disposal well fractional interests here were TICs. CX-147 at 73-74.

[122] Tr. (Gordon) 493-94.

[123] *See, e.g.*, Tr. (Gordon) 641 (acknowledging he acted "in the best interests" of TSWR Development even when those interests were in conflict with the Fund); Tr. (Bixler) 1499-1500 (agreeing with Gordon that the prices TSWR Development paid for its interests was "none of [investors'] business"); CX-65 (describing how Gordon, Bixler, and others could change assumptions underlying price determinations on sales to the Fund and investors to "make the deal more attractive" for themselves).

[124] Tr. (Gordon) 1042-43.

[125] Tr. (Gordon) 168.

[126] Tr. (Gordon) 1037-42.

[127] Tr. (Gordon) 540-41.

[128] CX-169; CX-2. For the majority of purchases, the prices ranged between $45,000 and $55,000 per 1 percent interest.

other investors was reasonable.[129] They proffered the expert testimony of Joshua Johnston ("Johnston"), a CPA with a background in forensic accounting and business valuation.[130] Mr. Johnston opined that the markup of the interests purchased by TSWR Development from RBJ and resold to the Fund and other investors was appropriate, as these developmental well interests were distinct from operating well interests Respondents later resold.[131] That is, the interests purchased by TSWR Development included additional risk—the "development interest . . . carried with it the risks of developing the property—"whereas an operating interest being resold through the entity "was an interest in the well after it had started operation."[132]

According to Mr. Johnston, development interests are subject to a number of potential development costs, including cost overruns, delays and project failure.[133] After construction is completed and the well starts operations that generate income and cash flow, development risk no longer exists.[134] Mr. Johnston asserted that because the pre-construction developmental interests have no operations or cash flows, the interests should be valued based on the replacement cost of the interests purchased.[135] This is how RBJ originally valued the interests, determining the total price based upon the so-called Authorization for Expenditures ("AFE") that documented the cost associated with all of the outlays necessary to build the well.[136] The price for each fractional unit was simply one one-hundredth of the total AFE.[137] On the other hand, Mr. Johnston asserted that operating interests in an ongoing revenue-generating enterprise are more appropriately valued based on the business's revenue stream.[138]

Although Mr. Johnston's distinction between developmental and operating interests has some superficial appeal, we are not persuaded that the interests purchased by TSWR Development were materially different from the interests it resold to the Fund and other investors. First, the central piece of evidence Mr. Johnston relies on for his developmental/operating interest distinction is the contractual language of the purchase agreements memorializing sales and resales of the interests.[139] We regard the legal implications of the contractual language of these agreements to be beyond the ken of a CPA like Mr. Johnston. But more significantly, the contractual language Mr. Johnston points to in the

[129] Tr. (Johnston) 3199.

[130] RX-180.

[131] RX-180.

[132] Tr. (Johnston) 3137.

[133] RX-180, at 8.

[134] RX-180, at 9.

[135] Tr. (Johnston) 3273; RX-180.

[136] Tr. (Johnston) 3273-78; RX-180.

[137] Tr. (Hanlon) 2572-73.

[138] Tr. (Johnston) 3273.

[139] RX-180.

agreements—all drafted by Sandlapper representatives[140]—is frequently inconsistent in describing the risks associated with development and does not clearly distinguish between so-called "developmental" and "operational" interests.[141]

And beyond his bald assertion that developmental risk existed, Mr. Johnston offered no significant analysis or evidence regarding the magnitude of this additional risk.[142] By contrast, Enforcement's expert, Gary Reineke ("Reineke"), testified that developmental risk was minimal.[143] He explained that in the oil and gas industry, the most substantial risk associated with constructing a well is drilling the hole beneath the earth.[144] But the disposal wells at issue frequently used holes already drilled in connection with oil wells that are no longer producing. He affirmed the obvious inference that there is little hole-drilling risk when the hole has already been drilled.[145] Mr. Reineke testified that in fact, there were no cost overruns associated with the vast majority of the wells at issue.[146] Indeed, Mr. Johnston was similarly unaware of any documentation of cost overruns associated with any of the wells at issue.[147]

Moreover, even in the one instance where "development risk" did materialize, the risk was not borne by TSWR Development. In connection with the Moreland well, cost overruns associated with drilling the well were in fact passed on to investors, the purported "operating" interest holders, not the "development" interest holder, TSWR Development.[148] We find it incredible that TSWR Development bore significant "risks" that justified markups of between 67 and 376 percent of the acquisition costs of the interests.[149] On balance, we find that the evidence established that the interests TSWR Development purchased were, in material respects, identical to the interests it resold to the Fund and other purchasers.

The evidence also established that Gordon and Bixler lacked any reasonable basis for their markups. The income-derived valuations employed by Respondents to price the interests sold to investors were not good faith estimates of value. Gordon testified that he determined the price of fractional interests resold by TSWR Development by conducting an analysis of the cash

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[140] Tr. (Johnston) 3331.

[141] *E.g.*, Tr. (Johnston) 3334-35, 3345-46, 3349-52, 3454-68.

[142] For instance, Mr. Johnston generally suggests that there is "a lot of risk associated" with developmental interests because those interests "bear the risk of any cost overruns that happened during that time frame." Tr. (Johnston) 3435. Yet his analysis completely overlooks the fact that in several wells, including the Tom and the Clark, TSWR Development acquired its interests *after* development was complete. Tr. (Johnston) 3431-32.

[143] Tr. (Reineke) 1563-68; CX-12.

[144] Tr. (Reineke) 1563-65; CX-12.

[145] Tr. (Reineke) 1563-65; CX-12.

[146] Tr. (Reineke) 1595; CX-12.

[147] Tr. (Johnston) 3391-93.

[148] Tr. (Reineke) 1693-95; CX-12.

[149] *See* CX-2.

flows of an operating well.[150] He made projections of how much water a particular well would receive over a twelve-month period based upon the permitted capacity of the well. Based upon how much he expected the well to earn by returning water to the ground, and how much revenue he expected the skim oil to generate, Gordon projected revenues for the well.[151] He then offset the projected revenue with projected operational expenses, including royalties and maintenance costs, and calculated a projected income for the well.[152] Then he applied a multiple of that income to imply a value of the well operation.[153] Gordon applied a multiple of 3.5 times earnings, which he believed to be less than the multiples that other disposal wells sold for.[154]

But Gordon's calculations consistently inflated the water likely to be received—and thus the potential income generated—by the disposal wells. For example, Gordon calculated the resale value of Tom well on the assumption that it would take over 75 percent of its permitted capacity of 15,000 barrels of water, or 11,250 barrels,[155] beginning in January 2013.[156] Yet, as of March 2013, when TSWR Development resold interests to the Fund, the well had taken *no* water.[157] Gordon's calculations regarding the Haney well assumed that the well would receive 12,500 barrels of water per month.[158] But the well had been operational for several months at the time TSWR Development acquired its interests in January 2015, and during that time the well received nowhere near that volume of water.[159]

Even in cases where Gordon had available to him actual production data for a well, he disregarded actual data and continued to apply overly optimistic projections that he described as "random guesses."[160] At one point, Gordon dismissed his erroneous assumptions as an "oversight" that should have been "clean[ed] up."[161] And Gordon admitted that the inflated prices that he assigned to the various well interests remained fixed for all time.[162] If the well did not take in as much water (and generated less income) than Gordon expected, he *never* accounted

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[150] Tr. (Gordon) 620-24.

[151] Tr. (Gordon) 205-06.

[152] Tr. (Gordon) 206-07.

[153] Tr. (Gordon) 206-07.

[154] Tr. (Gordon) 206-07.

[155] The amount of water taken in by each well translated directly to how much revenue it generated, whether in terms of skim oil recovered or per-barrel disposal fees.

[156] Tr. (Gordon) 539; CX-30.

[157] Tr. (Gordon) 555-58, 563-64, 665-67; CX-12 at 2.

[158] Tr. (Gordon) 518-22.

[159] Tr. (Gordon) 520 (". . . the Haney was a slow starter"); CX-12.

[160] Tr. (Gordon) 667-68.

[161] Tr. (Gordon) 671.

[162] Tr. (Gordon) 672-73.

for this actual performance in determining a sales price for the interests.[163] Across each of the wells at issue, Gordon's inflated valuations formed the basis of the price of the interests despite Gordon's optimistic assumptions that bore little discernable relationship with the actual performance of the disposal wells.[164] Investors relied upon these projections to make their investment decisions.[165]

In sum, we find that the markups applied by Respondents were unreasonable. The relevant market price for the interests during the relevant period was the price charged by RBJ, and Respondents' markups to the interests were unexplained by any legitimate business justification, even taking into account TSWR Development's entitlement to a reasonable profit on the resale transactions.

F. Gordon, Bixler, and Sandlapper Failed to Adequately Supervise the Sales

Sandlapper lacked adequate procedures to insulate itself from conflicts of interest in connection with sales of the disposal well interests.[166] Gordon was the designated supervisor for sales during the relevant period and, among other supervisory duties, was responsible for supervising sales of private placements by affiliates.[167] Additionally, Gordon and Bixler were members of the Firm's Investment Committee, which was responsible for "reviewing and accepting" the Firm's participation in private placements, direct participation programs and underwritings.[168] So the same individuals who stood to profit from the disposal well sales were responsible for overseeing the transactions. And the Firm did nothing to militate this obvious conflict.

The Firm lacked written procedures to resolve conflicts of interest by members of the Investment Committee.[169] While the Firm had a process for conducting due diligence on private offerings by affiliates, Gordon and other Sandlapper representatives' conflicts tainted this process.[170] As Gordon admitted, Firm personnel responsible for conducting due diligence on

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[163] Tr. (Gordon) 737-38.

[164] CX-31. The absence of any reliable determination of the actual earnings of the relevant wells renders unhelpful Mr. Johnston's multiple of earnings comparison found in his comparable transaction analysis. RX-180, at 18-19. Additionally, the comparable companies Mr. Johnston identified did not appear to be particularly comparable. *See* Tr. (Johnston) 3536-38, 3563-67.

[165] Tr. (JI) 1833-34; Tr. (JP) 2132-33.

[166] *See* Tr. (Gordon) 1163-64 (Gordon admitting that he was not aware of any conflict of interest provisions in WSPs that addressed Sandlapper's relationship with either TSWR Development or Fund Management); CX-102, at 50-51 (Sandlapper WSPs' sole conflict of interest provision).

[167] CX-103, at 29.

[168] CX-102, at 53, 56.

[169] CX-102, at 50-51; Tr. (Gordon) 1163.

[170] Tr. (Gordon) 641, 1165-66.

private offerings were not provided information regarding the markups charged by TSWR Development.[171]

Also, Gordon's determination to initially treat the direct working interests marketed to individual investors as real estate, and not securities, caused Sandlapper to fail to supervise its representatives' transactions or impose any of the protections afforded by the securities laws or FINRA rules.[172] The Firm exercised no oversight beyond requiring registered representatives to submit "outside business activity" forms regarding well interest sales activities.[173] The forms only vaguely described the representative's efforts in soliciting the investments.[174] As a result, the Firm failed to ensure, among other things, that representatives only sold interests to accredited investors, for whom the investments were suitable, and that TSWR Development charged reasonable prices.[175] The supervisory breakdowns also caused Sandlapper representatives to sell the interests away from the Firm, in violation of Firm procedures.[176]

IV. Discussion

A. Respondents' Objections

Respondents object to certain of the evidence admitted during the hearing. Their most substantial objection is to the admission of a memorandum ("Memorandum") memorializing an interview between Enforcement staff and Jones, the developer and operator of the disposal wells, who did not agree to voluntarily appear and give testimony.[177] They maintain that the Memorandum is unreliable and should be disregarded or given minimal weight. But hearsay evidence can be admissible in FINRA disciplinary proceedings.[178] In determining whether to rely on hearsay evidence, we must consider its probative value, reliability, and fairness of use.[179] In that regard, we evaluate possible bias of the declarant; the type of hearsay involved; whether the statements are signed and sworn rather than anonymous, oral or unsworn; whether the statements are contradicted by direct testimony; whether the declarant is available to testify; and

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[171] Tr. (Gordon) 452-57, 462-70, 812-13; JX-7.

[172] Tr. (Gordon) 491, 812-13.

[173] Tr. (Gordon) 455-58, 806-807, 810-11, 1141-44, 3056-58.

[174] CX-110; CX-112; CX-113.

[175] Tr. (Gordon) 713-17.

[176] Tr. (Gordon) 713-17.

[177] Respondents' Post-Hearing Brief at 9-11.

[178] *See Dep't of Enforcement v. Scottsdale Capital Advisors*, No. 2014041724601, 2018 FINRA Discip. LEXIS 416, at *230 (NAC July 2, 2018) ("[H]earsay evidence is admissible in FINRA disciplinary proceedings and can provide the basis for findings of violation, regardless of whether the declarants testify."), *appeal docketed*, No. 3-18612 (SEC July 23, 2018).

[179] *Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *46-47 (Jan. 30, 2009) ("In determining whether to rely on hearsay evidence, 'it is necessary to evaluate its probative value and reliability, and the fairness of its use"').

whether the hearsay is corroborated.[180] We found no hint of possible bias on Jones' part, or any suggestion that the statements contained in the Memorandum were unreliable. Respondents point to certain information contained in notes of the interview not reflected in the Memorandum, but we do not find those statements of particular consequence and on balance, find that the Memorandum faithfully recounts the conversation memorialized in the notes. Although the statements reflected were not sworn to by Jones, Jones appeared willing to provide detailed and candid information to Enforcement and we perceive no motivation to fabricate on his part. And at the hearing Respondents had the opportunity to cross-examine the Enforcement investigator's recollection of Jones' statements recounted in the Memorandum with contemporaneous notes of the conversation. We find no reason to discount the evidence and overrule Respondents' objection.

B. Jurisdiction

FINRA has jurisdiction over Respondents' sales of disposal well interests. Respondents disagree, contending that through this proceeding Enforcement seeks to "gain jurisdiction over a non-member firm's activities to support its unprecedented theory that the purchase and sales of real property at a gain constitute an excessive 'mark-up.'"[181] But Sandlapper remains a FINRA member and Gordon and Bixler are still associated with the Firm. FINRA may therefore exercise jurisdiction over their business-related activities, even if conducted through a non-member firm like TSWR Development.[182] And while, as explained below, we conclude that the interests sold by Respondents are securities, jurisdiction over Respondents does not turn on that question.[183] "It is well established that FINRA's disciplinary authority [under FINRA Rule 2010] is broad enough to encompass business-related conduct that is inconsistent with just and equitable

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[180] *Dep't of Enforcement v. North*, No. 2012030527503, 2017 FINRA Discip. LEXIS 28, at *13 n.11 (NAC Aug. 3, 2017), *appeal docketed*, No. 3-18150 (SEC Sep. 7, 2017).

[181] Respondents' Pre-Hearing Brief at 1-2; Respondents' Post-Hearing Brief at 28 ("FINRA has no jurisdiction to enforce its rules on a non-member.").

[182] *DWS Sec. Corp.*, 51 S.E.C. 814, 822 (1993) ("Applicants suggest that their conduct lies outside [FINRA's] jurisdiction, arguing that [FINRA] has no authority to oversee their activities as entrepreneurs, which they view as separate from their actions as broker-dealer professionals. This argument is without merit."); *John C. Gebura*, 46 S.E.C. 1121, 1123-24 (1977) ("We and the NASD not infrequently encounter situations where a securities salesman is selling securities in transactions which involve some venture of his own … To exclude such transactions from the regulatory jurisdiction of … the NASD would create a serious gap in investor protection.").

[183] *See, e.g.*, *Dep't. of Enforcement v. Grivas*, No. 2012032997201, 2015 FINRA Discip. LEXIS 16, at *22 (NAC July 16, 2015) ("FINRA's authority to pursue discipline for violations of FINRA Rule 2010 is sufficiently wide to encompass any unethical, business-related conduct, regardless of whether it involves a security."); *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996) (registered representative violated just and equitable principles of trade by misappropriating funds belonging to a political club for which he served as treasurer); *Leonard John Ialeggio*, 52 S.E.C. 1085, 1089 (1996) ("We consistently have held that misconduct not related directly to the securities industry nonetheless may violate [just and equitable principles of trade]."), *aff'd*, No. 98-70854, 1999 U.S. App. LEXIS 10362, at *4-5 (9th Cir. May 20, 1999).

principles of trade even if that activity does not involve a security."[184] Respondents' jurisdictional challenge is without merit.

C. Respondents are Liable as Charged for Securities Fraud and Breach of Fiduciary Duty to the Fund

1. Legal Standard

In the securities industry, FINRA Rule 2010 requires member firms to adhere to "just and equitable principles of trade," which among other things requires members to provide fair pricing for retail securities transactions. In the context of this principle, prices set by a firm for sales of securities "carry … an implied representation" that they "are reasonably related to the prices charged in an open and competitive market."[185] Enforcement charges that Gordon, Bixler, and Sandlapper breached this mandate and committed securities fraud by charging unreasonable markups to investors in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act")[186] and Exchange Act Rule 10b-5 thereunder,[187] as well as FINRA Rules 2020[188] and 2010.

"Section 10(b) prohibits individuals from using or employing, in connection with the purchase or sale of any security, any manipulative or deceptive device or contrivance."[189] SEC Rule 10b-5 effectuates the statutory provision by prohibiting: (1) any device, scheme or artifice to defraud, (2) any untrue statement of a material fact or omission 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 (3) any act, practice, or course of business that would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.[190] To establish a violation, Enforcement must prove by a preponderance of the evidence that each Respondent employed a manipulative or fraudulent device, or misrepresented or omitted material facts with scienter and in connection with the purchase or sale of a security.[191]

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[184] *Blair Alexander West*, Exchange Act Release No. 74030, 2015 SEC LEXIS 102, at *26 (Jan. 9, 2015) (quotation omitted).

[185] *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1469 (2d Cir. 1996).

[186] 15 U.S.C. § 78j(b).

[187] 17 C.F.R. § 240.10b-5.

[188] FINRA Rule 2020 proscribes fraud in language similar to Section 10(b), stating: "No member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance."

[189] *Dep't of Enforcement v. Escarcega*, No. 2012034936005, 2017 FINRA Discip. LEXIS 32, at *28 (NAC July 20, 2017).

[190] *Id.*

[191] *Marcus Lane*, Exchange Act Release No. 74269, 2015 SEC LEXIS 558, at *44 (Feb. 13, 2015).

2. The Fractional Interests Are Securities

As an initial matter, we find that the relevant transactions involved purchases or sales of securities. The securities laws were designed to "regulate investments, in whatever form they are made and by whatever name they are called."[192] As such, we construe a "security" to include "virtually any instrument that might be sold as an investment."[193] Both the Securities Act and the Exchange Act include investment contracts within the definition of a security.[194] In *SEC v. W. J. Howey Company*, the Supreme Court defined an investment contract as "a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party."[195]

The investment arrangement here fits comfortably within the definition of an investment contract. Investors purchased a fractional interest in a disposal well, with each proportionate interest entitling the investor to a proportionate share in the profits of a disposal well business. The success of the enterprise was entirely dependent on the efforts of RBJ to construct the well, obtain customers, and manage the ongoing business. Investors had an entirely passive role in the enterprise and "expect[ed] profits solely from the efforts of the promoter or a third party."[196]

Indeed, the structure of the investment here bears substantial similarity to the arrangement explored by the Supreme Court in *Howey*. There, investors entered into a land sales contract along with a service contract with the owner of a citrus grove.[197] Investors were promised that the operator and part-owner of the groves would manage the business, and would remit to investors their share of the business's profits.[198] The investors typically lacked the knowledge, skills, and equipment needed to care for and cultivate the citrus trees grown on the grove, or contribute any meaningful role in the business.[199] The investors were not endeavoring to invest in real estate, or actually participate in the operation of the business—they were attracted by the prospect of generating a return on their investment through profits generated by the ongoing enterprise. As the Supreme Court explained, "all the elements of a profit-seeking business venture are present here," as "[t]he investors provide the capital and share in the earnings and profits; the promoters manage, control and operate the enterprise."[200] It followed

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[192] *Reeves v. Ernst & Young*, 494 U.S. 56, 61 (1990).

[193] *Id.*

[194] *See* Section 2(a)(1) of the Securities Act; Section 3(a)(10) of the Exchange Act.

[195] 328 U.S. 293, 298-99. In *Howey*, the Court held that in order to find that an investment contract exists, there must be (1) an investment of money; (2) in a common enterprise; and (3) an expectation of profits derived solely from the efforts of a third party. 328 U.S. at 298-99.

[196] *Howey*, 328 U.S. at 298-99.

[197] *Id.* at 295-96.

[198] *Id.*

[199] *Id.* at 296.

[200] *Id.* at 300.

that the arrangements "involve investment contracts, regardless of the legal terminology in which such contracts are clothed."[201] So too here. Investors in the well interests sought to profit by realizing a return on their investment through the earnings of a disposal well business, not to manage land or operate a well. Respondents' claim that the fractional well interests were merely real estate, not securities, is without merit.[202]

3. Charging Undisclosed Excessive Markups Was a Deceptive Practice

As set forth in our factual findings above, we find the markups charged by Respondents in connection with the securities sales unreasonable and excessive. Courts have long held that charging customers excessive markups or markdowns without proper disclosure constitutes a deceptive practice, in light of a broker-dealer's implicit representation when it hangs out its shingle that it will treat the customer fairly and honestly, and charge only prices that bear a reasonable relationship to the prevailing market.[203] FINRA has established that firms should take into consideration a number of relevant factors to meet their obligation to provide customers fair prices. Factors appropriately considered include (1) the type of security involved; (2) the availability of the security in the market; (3) the price of the security; (4) the amount of money involved in a transaction; (5) disclosure; (6) the pattern of markups or markdowns; and (7) the nature of the member's business.[204] Though there is no bright-line rule, industry guidance provides that a firm should not charge markups greater than 5 percent of the prevailing market price for securities sold to customers, emphasizing that even markups under 5 percent may be excessive.[205]

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[201] *Id.*

[202] *See SEC v. C.M. Joiner Leasing Corp.*, 320 U.S. 344, 352-53 (1943) (finding that oil and gas leases were investment contracts, and thus securities, despite the fact that they conveyed as interests in real estate under Texas law).

[203] *See, e.g., Banca Cremi, S.A. v. Alex. Brown & Sons, Inc.*, 132 F.3d 1017, 1034 (4th Cir. 1997). *See also Andrew Gonchar*, Exchange Act Release No. 60506, 2009 SEC LEXIS 2797, at *24 n.18 (Aug. 14, 2009) ("[W]e and the Second Circuit have consistently held that, '[u]nder § 10(b) of the Exchange Act, a seller has a duty to disclose the details of a markup if the markup is 'excessive.'"); *Ettinger v. Merrill Lynch, Pierce, Fenner & Smith*, 835 F.2d 1031, 1033 (3d Cir. 1987) ("The SEC has established through its enforcement actions the principle that charging undisclosed excessive commissions constitutes fraud."); *SEC v. Zwick*, 2007 U.S. Dist. LEXIS 19045, at *21 (S.D.N.Y. Mar. 16, 2007) ("The Court of Appeals for the Second Circuit has long recognized that broker-dealers must disclose excessive markups to their customers."); *Alstead, Dempsey & Co.*, Exchange Act Release No. 20825, 1984 SEC LEXIS 1847, at *2 (Apr. 5, 1984) (noting that "[a]s early as 1939, this Commission [the SEC] held that a dealer violates antifraud provisions when he charges retail customers prices that are not reasonably related to the prevailing market price at the time the customers make their purchases"); *Charles Hughes & Co. v. SEC*, 139 F.2d 434, 436 (2d Cir. 1943); *In re Duker & Duker*, 6 S.E.C. 386 (1939).

[204] *Banca Cremi*, 132 F.3d at 1033.

[205] NASD Notice to Members ("NTM") 92-16 (Apr. 1, 1992); IM-2440. IM-2440 notes that a "5% Policy," adopted in 1943, remains in place after numerous reviews. Both NTM 92-16 and IM-2440-1 state that the 5 percent policy is a guideline, that even markups of less than 5 percent may be deemed unreasonable or unfair, and that the percentage of a markup is only one of a number of relevant factors that must be considered.

Because markups exceeding 5 percent are presumed excessive, a firm that charges more than 5 percent above the prevailing market price must "be fully prepared to justify its reasons."[206] Higher markups are suspect, and potentially fraudulent. The SEC takes the view that "generally, markups of more than 10 percent are fraudulent, even in the sale of low priced securities."[207]

Indeed, Respondents do not dispute that as a legal matter markups that significantly exceed market prices may be fraudulent.[208] But they suggest that the prices that they charged investors here *were* market prices, notwithstanding their substantial premium to the prices that TSWR Development paid for the interests.[209]

Enforcement bears the burden of establishing the prevailing market price of the securities at the time of the sales.[210] "The prevailing market price is the price at which dealers trade with one another."[211] Generally, in the absence of countervailing facts the best evidence of prevailing market price is the dealer's contemporaneous cost, unless a dealer is simultaneously making a market in a security.[212] "The general rule reflects the fact that prices a dealer has actually paid for a security in transactions occurring at the same time as retail sales are normally a highly reliable indicator of the prevailing market price."[213]

Here, Enforcement points to prices charged by RBJ for the interests as evidence of the prevailing market price.[214] Respondents say these purchases cannot establish market price because RBJ's sales to TSWR Development were not always contemporaneous with later resales, sometimes taking place months later and thus not probative of market price at the time of those subsequent resales.[215] Respondents correctly point out that contemporaneous cost may be relevant to market price, but only because "prices paid for a security by a dealer in actual transactions closely related in time to the dealer's sales are normally a highly reliable indicator of the prevailing market price." [216] Where acquisition of well interests is not contemporaneous, we

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[206] NTM 92-16.

[207] *James E. Ryan*, Exchange Act Release No. 18617, 1982 SEC LEXIS 1960, at *9 (Apr. 5, 1982).

[208] *See* Respondents' Pre-Hearing Brief at 3-4.

[209] *See* Ans. ¶ 41; Respondents' Post-Hearing Brief at 16-18.

[210] *Donald T. Sheldon*, 51 S.E.C. 59, 77 (1992).

[211] *Orkin v. SEC*, 31 F.3d 1056, 1063 (11th Cir. 1994).

[212] *Id.* (citing *F.B. Horner & Assoc's. v. SEC*, 994 F.2d 61, 63 (2d Cir. 1993)); *Barnett v. United States*, 319 F.2d 340, 344 (8th Cir. 1963) (contemporaneous cost may establish prevailing market price).

[213] *Orkin*, 31 F.3d at 1063.

[214] CX-2; *see* Enforcement's Post-Hearing Brief at 27.

[215] Respondents' Post-Hearing Brief at 28-30.

[216] *P'ship Exch. Sec. Co.*, 51 S.E.C. 1198, 1203-04 (1994).

may "not assume that historical cost was equivalent to contemporaneous cost in measuring the market for these securities."[217]

But our conclusions rest on more than assumptions. By and large, the resales here *were* contemporaneous with initial purchases.[218] The evidence demonstrated that as a matter of practice TSWR Development did not actually pay for its well interests (and thus consummate its purchases) until long *after* signing purchase agreements when it generated cash by reselling the interests to investors.[219] These resales were essentially riskless principal transactions at the expense of investors.[220] In riskless principal transactions, "fairness ordinarily requires the firm to base its markup on a price that does not exceed its cost."[221]

And the SEC has never said that a historical purchase price cannot be the market price of a security.[222] This is especially true here, where the evidence demonstrated the interests were illiquid, and the prices charged by RBJ did not meaningfully fluctuate over time.[223] The only source of interests other than Respondents was RBJ, who throughout the relevant period consistently sold the interests at a fixed price, generally between $45,000 and $55,000 per unit depending on the well.[224] And once offered and sold by RBJ, there was no secondary market for interests in a particular well other than through TSWR Development.[225] Where, as here, a single dealer "controls or dominates the market, the best evidence of the security's prevailing market price is the price the controlling or dominating dealer actually paid."[226]

Respondents argue that our focus on their historical cost fails to take into account other isolated purchases and sales of well interests at variance with prices offered by RBJ.[227] But these

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[217] *Id*.

[218] *See* CX-1; CX-2. TSWR Development made two sales of interests in the Tom well to the Fund on or before completing payment to RBJ. TSWR Development similarly sold an interest in the Merket well prior to obtaining the interest.

[219] *See* the discussion *supra*, pages 8 to 12.

[220] *See Dep't of Enforcement v. J. Alexander Sec., Inc.*, No. CAF010021, 2004 NASD Discip. LEXIS 16, at *39 (NAC Aug. 16, 2004) ("In a riskless principal transaction, the dealer, after receiving a customer order for a security, purchases the security from another firm for its own account, and then contemporaneously sells that security to the customer.").

[221] *Kevin B. Waide*, 50 S.E.C. 932, 934 (1992).

[222] *See P'ship Exch. Sec. Co.*, 51 S.E.C. at 1203-04 (observing that "historical cost might be a proper basis for markups").

[223] *See* CX-1; CX-2; CX-4 through CX-8.

[224] *See* CX-1; CX-2; CX-169, at 4-5.

[225] Tr. (Gordon) 368-69.

[226] *First Jersey Sec.*, 101 F.3d at 1469; *see Marini v. Adamo*, 995 F. Supp. 2d 155, 188-89 (E.D.N.Y. 2014) (purchase price appropriately used to determine market price of rare coins resold months after purchase).

[227] Respondents' Post-Hearing Brief at 31.

isolated transactions do not evidence any meaningful "market" for the interests and are less probative of the market than the substantial volume of interests purchased by TSWR Development from RBJ in arm's-length transactions, at relatively consistent prices, throughout the relevant period.[228] In fact, Respondents stipulate in their Answer that there was no meaningful market for the well interests. The "well interests were only available from TSWR Development, not RBJ. Thus, at the time of each sale from TSWR Development, TSWR Development was … *the only known available source* for [disposal] well interest acquired."[229] Respondents' admission that TSWR Development effectively dominated and controlled the market for the interests is conclusive.[230]

Where, as here, a market is not competitive and dominated by a single dealer, it may be that "the actual cost to the dominant and controlling market maker based on prices it paid to other broker/dealers …is the best indicator of the prevailing market price."[231] In light of TSWR Development's control of the market in these interests, we find the best available evidence of market price is the price Gordon and Bixler (acting through TSWR Development) were willing to pay RBJ for the interests.[232] Given the market price of the interests, and taking into account each of the relevant factors, we find no justification for unreasonable markups ranging from 67 percent to 376 percent above market. We find that these massive markups are not explained by any distinction between "development" and "operating" interests, Gordon's baseless cash flow calculations, or anything else. The undisclosed and excessive markups here were a deceptive practice. [233]

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[228] Tr. (Gordon) 368-69. Indeed, there was some evidence that as Respondents' relationship with Jones deteriorated, the prices RBJ was otherwise willing to sell the interests was actually *lower* than the costs charged to TSWR Development. Tr. (Gordon) 2927-28, 3048-49.

[229] Ans., at 27-28. *See also, e.g.*, Tr. (Gordon) 368-69 (investors could not purchase interests directly from RBJ because it "did not want to work with the general public.").

[230] *Dep't of Enforcement v. Taboada*, No. 2012034719701, 2016 FINRA Discip. LEXIS 7, at *10 n.39 (OHO Mar. 16, 2016), *aff'd*, 2017 FINRA Discip. LEXIS 29 (NAC July 24, 2017) ("As a matter of law, [respondent's] admission in his Answer is conclusive."); *see also, e.g.*, *SEC v. Battoo*, 158 F. Supp. 3d 676, 689 (N.D. Ill. 2016) (an admission made in an Answer "constituted a binding judicial admission"); *Gibbs v. CIGNA Corp.*, 440 F.3d 571, 578 (2d Cir. 2006) ("Facts admitted in an answer, as in any pleading, are judicial admissions that bind the defendant throughout this litigation."); *Keller v. U.S.*, 58 F.3d 1194, 1199 n.8 (7th Cir. 1995) ("formal concessions in the pleadings . . . are binding upon the party making them … [and] may not be controverted at trial or on appeal.").

[231] *Steven P. Sanders*, 53 S.E.C. 889, 894 (1998) (*quoting* NASD Notice to Members 92-16).

[232] *See Orkin*, 31 F.3d at 1064 ("[I]f a dealer dominates and controls the inter-dealer market for a security, the best evidence of prevailing market price is the price that the dominating and controlling dealer is willing to pay other dealers.").

[233] And where, as here, the deception occurs with respect to the price to be paid for a security, the "in connection with" requirement is also satisfied. *See, e.g., Orlando Joseph Jett*, 57 S.E.C. 350, 392-95 (2004) ("[w]hen fraudulent practices and the purchase or sale of securities are not independent events but instead coincide, they are sufficiently related to give rise to liability for securities fraud.") (quotations omitted).

4. Failure to Disclose the Excessive Markups Was Material

There is no question that Respondents' failure to disclose the deceptive markups was material. Materiality is established where there is a substantial likelihood that a reasonable investor would have considered deceptive conduct or an omission of fact important in making an investment decision and the deception "would have been viewed by the reasonable investor as having significantly altered the 'total mix' of information made available."[234] By this standard, massive markups that frequently doubled or tripled the price of the well interests were certainly material.[235]

Respondents disagree, contending that because there was no proof that any investor ever questioned or sought documentation or records from Respondents that would reveal the acquisition cost, or market price, of the interests, this must mean that the price TSWR Development paid for its assets was not important to investors.[236] But investors were not required to interrogate or audit the files of their broker in order to expect to be treated fairly.[237] "Under any circumstances, it would be important to investors in making their investment decision that their broker was interposing his own accounts between them and the market and causing them to pay higher prices than they would otherwise pay."[238]

5. Respondents Acted with Scienter

Finally, we find that each Respondent acted with scienter. Scienter is "a mental state embracing intent to deceive, manipulate, or defraud,"[239] and includes intentional or reckless

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[234] *SEC v. Morgan Keegan & Co.*, 678 F.3d 1233, 1245-47 (11th Cir. 2012) (citing *Basic Inc. v. Levinson*, 485 U.S. 224 at 231-32 (1988)).

[235] *E.g.*, *Halsey, Stuart & Co.*, 30 S.E.C. 106, 112 (1949) ("It is of utmost materiality to a buyer…to know that he may not assume that the prices he pays were reached in a free market; and the manipulator cannot make sales not accompanied by disclosure of his activities without committing fraud.").

[236] Respondents' Post-Hearing Brief at 26-27.

[237] *Charles Hughes & Co*, 139 F.2d at 437 ("When nothing was said about market price, the natural implication in the untutored minds of the purchasers was that the price asked was close to the market."); *Dist. Bus. Conduct Comm. v. U.S. Sec. Clearing Corp*., No. C3A920038, 1993 NASD Discip. LEXIS 297, at *30 (NBCC Sept. 14, 1993) (claim of customer satisfaction is irrelevant where "[t]he claimed absence of customer complaints is most likely due to the fact that the … customers did not realize that they were being overcharged"). Respondents rely on *Banca Cremi*, 132 F.3d at 1036-37, for the proposition that an investor's failure to inquire as to the market price means the price was immaterial. Respondents' Post-Hearing Brief at 32. But in that private action, the decision turned on the lack of evidence of reliance, not materiality. Reliance is not an element of a fraud claim in this forum. The *Banca Cremi* court acknowledged the SEC's view that "[b]ecause a reasonable investor in making his investment decision would consider it important that he was being charged an excessive markup, the Commission has long held that such a markup is material as a matter of law." *Banca Cremi*, 132 F.3d at 1035.

[238] *Anthony A. Grey*, Exchange Act Release No. 75839, 2015 SEC LEXIS 3630, at *41 (Sept. 3, 2015); *cf. Flannery v. SEC*, 810 F.3d 1, 8-12 n.3 (1st Cir. 2015) (rejecting finding of materiality for fund disclosures reporting "typical" exposure to ABS securities that "did not purport to show the actual exposures to each sector at any given time.").

[239] *Dep't of Enforcement v. Meyers Assoc.*, No. 2013035533701, 2017 FINRA Discip. LEXIS 47, at *27 (NAC Dec. 22, 2017) (citing *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976)).

conduct.[240] Conduct is reckless if it represents such "an extreme departure from the standards of ordinary care" that a Respondent "must have been aware of … a danger of misleading buyers or sellers."[241] So "in a non-disclosure situation, any required element of scienter is satisfied where … the defendant had actual knowledge of the material information,"[242] or when the omission "presents a danger of misleading investors and is either known to the respondent or 'is so obvious that the actor must have been aware of it.'"[243] On the other hand, conduct that involves "merely simple, or even inexcusable negligence"[244] or even "gross negligence," does not establish scienter.[245]

We find that Gordon and Bixler, and thus Sandlapper, were at a minimum reckless as to whether they were deceiving investors. They knowingly interposed TSWR Development between investors and the well interests for no legitimate reason,[246] knew that the prices they charged customers included mark-ups from the prices of the interests, and consequently knew that such prices bore no relation to the actual market price of the securities.[247]

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[240] *Ottimo*, 2017 FINRA Discip. LEXIS 10, at *17 (citing *Alvin W. Gebhart, Jr.*, Exchange Act Release No. 58951, 2008 SEC LEXIS 3142, at *26 (Nov. 14, 2008), *aff'd*, 595 F.3d 1034 (9th Cir. 2009)); *Dep't of Enforcement v. Ahmed*, No. 2012034211301, 2015 FINRA Discip. LEXIS 45, at *77 n.78 (NAC Sept. 25, 2015) (citing *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 319 n.3 (2007)), *aff'd*, Exchange Act Release No. 81759, 2017 SEC LEXIS 3078 (Sept. 28, 2017).

[241] *Dep't of Enforcement v. Fillet*, No. 2008011762801, 2013 FINRA Discip. LEXIS 26, at *34-35 (NAC Oct. 2, 2013), *aff'd, in relevant part*, Exchange Act Release No. 75054, 2015 SEC LEXIS 2142 (May 27, 2015).

[242] *Ottimo*, 2017 FINRA Discip. LEXIS 10, at *17 (quoting *GSC Partners CDO Fund v. Washington*, 368 F.3d 228, 239 (3d Cir. 2003)); *Fillet*, 2013 FINRA Discip. LEXIS 26, at *34-35 (scienter encompasses intent and recklessness or, if fraud is based on an omission, actual knowledge of the information).

[243] *Ottimo*, 2017 FINRA Discip. LEXIS 10, at *18-19 (quoting *GSC Partners CDO Fund*, 368 F.3d at 239).

[244] *Dep't of Enforcement v. Luo*, No. 2011026346206, 2017 FINRA Discip. LEXIS 4, at *25 (NAC Jan. 13, 2017) (quoting *Sundstrand Corp. v. Sun Chem. Corp.*, 553 F.2d 1033, 1045 (7th Cir. 1977)).

[245] *Dep't of Enforcement v. Reynolds*, No. CAF990018, 2001 NASD Discip. LEXIS 17, at *45 n.28 (NAC June 25, 2001) (finding that the proper standard is intent or recklessness and not gross negligence, although the line between recklessness and gross negligence is a fine one) (citing *Bd. of Cnty. Comm'rs v. Liberty Grp.*, 965 F.2d 879, 883-84 (10th Cir. 1992)); *see also 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; conduct must have been at least reckless); *cf. Dist. Bus. Conduct Committee v. Kunz*, No. C3A960029, 1999 NASD Discip. LEXIS 20, at *45 n.21 (NAC July 7, 1999) (finding that "respondents' conduct—albeit negligent and inconsistent with high standards of commercial honor and just and equitable principles of trade—did not rise to the level of recklessness"), *aff'd*, 55 S.E.C. 551 (2002), *aff'd*, 64 F. App'x 659 (10th Cir. 2003).

[246] Gordon and Bixler's claim that TSWR Development benefitted the Fund by enabling it to use leverage, as the Fund could not borrow, is not at all persuasive. TSWR Development routinely used sales of well interests to the Fund, as opposed to borrowed funds, to obtain the cash it used to purchase the interests. TSWR Development offered no apparent benefit to other investors who could have simply purchased their interests directly from RBJ.

[247] *Cf. Gonchar*, 2009 SEC LEXIS 2797, at *36 ("[P]ersons engaged in the securities business cannot be unaware … that interpositioning is bound to result in increased prices or costs.").

Respondents obtained no appraisals, no evidence of contemporaneous resales, no evidence of an active market, nor any other reasonably reliable indication of value, and had no substantial or legitimate basis to assess a market price of the well interests at any variance with the price TSWR Development paid for the interests. There is no evidence that Gordon or Bixler performed any kind of investigation to determine the prevailing market price for those interests, notwithstanding their promise to obtain appraisals before selling the interests to the Fund. Respondents claim these failures were innocent, and that they are unfairly charged "with fraud because they were unable to obtain appraisals."[248] But whether their failure to obtain appraisals was innocent or not, the fact that Respondents told investors that they would seek appraisals in the first place evidences their own subjective awareness that they were supposed to price the interests at market prices that were objectively fair. Their failure to make substantial efforts to do so demonstrated a reckless indifference to the prevailing market price.[249]

Respondents' only "analysis" related to price was Gordon's inflated calculations of value that Respondents used to justify their exorbitant prices.[250] But Gordon's reliance on overstated assumptions that bore little discernable relationship with the actual performance of the disposal wells was improper and only serves to reinforce the conclusion that Respondents acted with scienter.[251]

Also bolstering this culpable inference is that on top of the massive markups they charged to their customers, they also collected commissions and fees on the transactions. We agree with the SEC that where brokers "charged their customers commissions on these transactions in addition to marking the securities up to unfair prices," their actions reflect "not merely an insensitivity to the obligation of fair pricing, but an intent … to gouge their customers."[252]

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[248] Respondents' Post-Hearing Brief at 23.

[249] *Lake Sec., Inc*., 51 S.E.C. 19, 23 (1992) (finding that a lack of investigation to determine the prevailing market price demonstrates scienter).

[250] It is true that Gordon, and not Bixler, created the inflated prices, more frequently interacted with the selling brokers, and generally ran the operation. But it is undisputed that Bixler was also aware of and participated in the relevant transactions, including approving each of the purchases of fraudulently inflated interests by the Fund and the inflated sales prices charged by TSWR Development to individual investors, and profited from the scheme.

[251] *Compare Gateway Stock and Bond, Inc*., Exchange Act Release No. 8003, 1966 SEC LEXIS 194, at *5 (Dec. 8, 1966) (dealer may not rely upon its own ask quotation in calculating mark-ups, as dealer's subjective assessment "can be a self-serving figure, and to allow its use as a base for computing mark-ups on retail sales to customers would be to countenance a boot-strap operation which would give a dealer unrestricted latitude in setting its inside ask price and therefore retail prices, and nullify [FINRA's] fair pricing policy as a protection to investors"); *Dep't of Enforcement v. Grey*, No. 2009016034101, 2014 FINRA Discip. LEXIS 31, at *28 (NAC Oct. 3, 2014) ("Determining prices based on one's own subjective judgment, however, does not support [Respondent's] claim that [prices determined by bond yield curve analysis] was the better measure of price."), *aff'd*, 2015 SEC LEXIS 3630.

[252] *Bison Sec., Inc*., Exchange Act Release No. 32034, 1993 SEC LEXIS 725, at *13 (Mar. 23, 1993) (commissions in addition to excessive markups establish at least recklessness).

Respondents' claim that the interests are real estate, not securities, does not negate their intent. As an initial matter, scienter requires a showing of intent to deceive, not intent to sell a security. [253] Respondents never explain how their claimed mistake as to whether the interests were securities might negate their wrongful intent. And more significantly, Respondents acted at all times with fiduciary obligations to the Fund and accordingly had a clear obligation to act for the benefit of the Fund whether the investments being recommended were securities or not. And even after Respondents sold direct working interests as securities to investors through Sandlapper, they still charged exorbitant markups without regard to market price.

The SEC has "held generally that undisclosed markups of more than ten percent over the prevailing market price are so egregiously excessive that the markups themselves are evidence of scienter."[254] Where, as here, "a dealer knows the circumstances indicating the prevailing market price for the securities, knows the retail price that it is charging the customer, and knows or recklessly disregards the fact that its markup is excessive, but nonetheless charges the customer the retail price, the scienter requirement is satisfied."[255]

6. Conclusions

Enforcement's Complaint parses the fraudulent conduct into four distinct theories of liability. Cause one alleges that Gordon, Bixler, and Sandlapper willfully defrauded the Fund by fraudulently interposing TSWR Development between the Fund and RBJ and by charging undisclosed, excessive markups. The preponderance of the evidence supports this theory. As explained above, the undisclosed, excessive markups were a deceptive device and a material omission in the context of the Fund's purchases of well interests.[256] And in the absence of any legitimate purpose for interposing TSWR Development between the Fund and the disposal well interests, the interposition acted as a fraudulent device.[257] Moreover, the misconduct was willful.[258] Gordon, Bixler and Sandlapper are each liable for fraud under the first cause, as Gordon and Bixler—members of the Fund's Investment Committee—directed the purchases of the fraudulently marked up interests to the Sandlapper-offered Fund through TSWR

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[253] *SEC v. Feng*, No. 15-cv-09420, 2017 U.S. Dist. LEXIS 103592, at *24 n.30 (C.D. Cal. June 29, 2017) (quoting *SEC v. Alliance Leasing Corp.*, 28 F. App'x 648, 652 (9th Cir. 2002) ("[W]hether or not [Defendants] believed that the investment program was a security is not material to scienter.")).

[254] *Marcus Lane*, 2015 SEC LEXIS 558, at *46.

[255] *Grey*, 2015 SEC LEXIS 3630, at *42.

[256] *See Charles Hughes & Co.*, 139 F.2d at 437 ("[T]he failure to reveal the mark-up pocketed by the firm was both an omission to state a material fact and a fraudulent device.").

[257] *Gonchar*, 2009 SEC LEXIS 2797, at *24.

[258] Willfulness in this context means intentionally committing the act that constitutes the violation. *See Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000). Gordon and Bixler, acting through Sandlapper, intentionally charged excessive mark-ups to the Fund without disclosure. Their willful violations of Section 10(b) of the Exchange Act give rise to statutory disqualification. *See* 15 U.S.C. § 78c3(a)(39)(F) and 15 U.S.C. § 78o(b)(4)(D).

Development. Through their misconduct, each Respondent willfully violated Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, as well as FINRA Rules 2020 and 2010.

Cause two alleges that Gordon and Bixler breached fiduciary duties of loyalty and care to the Fund in connection with Fund purchases of the disposal well interests, in violation of FINRA Rule 2010. By this theory, Gordon and Bixler violated fiduciary duties by causing TSWR Development to usurp opportunities to purchase lower-priced well interests that should have been reserved for the Fund, and by causing the Fund to purchase those interests at marked up prices. Gordon and Bixler admit that they owed fiduciary duties to the Fund, so they were "obligated to exercise good faith and integrity in handling [the Fund's] affairs."[259] For the reasons that we find their conduct fraudulent in cause one,[260] we find that the evidence also established Gordon and Bixler's liability for breaching their fiduciary duties, in violation of FINRA Rule 2010.

In the third cause, Gordon and Sandlapper allegedly defrauded retail customers between late 2014 and November 2015 when Gordon sold well interests as securities through TSWR Development while charging excessive markups. Sandlapper brokers sold the interests to customers of the Firm without disclosing the markups. As we find that Gordon, and Sandlapper through Gordon, willfully engaged in deceptive practices and made material omissions in connection with these securities sales with scienter, we necessarily find that the conduct also willfully violated Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, as well as FINRA Rules 2020 and 2010.

The fourth cause finally alleges that Gordon defrauded retail customers between January 2013 and November 2015 by selling well interests through a network of representatives at Sandlapper and elsewhere, marketed as "real estate," through TSWR Development while charging undisclosed excessive markups. As we find that the interests were securities, and that Gordon willfully engaged in deceptive practices and made material omissions in connection with selling the interests with scienter, Gordon's conduct again willfully violated Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, as well as FINRA Rules 2020 and 2010.

D. Gordon and Bixler Caused TSWR Development to Act as an Unregistered Dealer

Cause five of the Complaint alleges that Gordon and Bixler willfully caused TSWR Development to operate as an unregistered securities dealer, in violation of Section 15(a) of the Exchange Act and FINRA Rule 2010.

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[259] *Dep't of Enforcement v. Fretz*, No. 2010024889501, 2015 FINRA Discip. LEXIS 54, at *73-74 (NAC Dec. 17, 2015) (breach of fiduciary duties owed to fund violates FINRA Rule 2010).

[260] *See id.* at *39 (noting that the same misconduct may amount to fraudulent misrepresentations as well as breach of fiduciary duties).

Under the Securities Act, a "dealer" is defined as anyone "who engages either for all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person."[261] Thus, "[a] dealer is one who buys and sells securities for his own account, through a broker or otherwise," and thereby "ha[s] a 'certain regularity of participation in securities transactions at key points in the chain of distribution.'"[262] Under Section 15(a) of the Securities Exchange Act, dealers are required to register with the Securities and Exchange Commission and become members of FINRA.

As Gordon and Bixler were aware, TSWR Development regularly bought working interests as a principal from RBJ and sold the interests to investors, including the Fund. This purchase and sale activity was the primary reason TSWR Development existed as a business entity and qualified TSWR Development as a dealer of securities. Nonetheless, Gordon and Bixler failed to register TSWR Development as a dealer with the SEC or as a FINRA member. By causing TSWR Development to act as an unregistered dealer, Gordon and Bixler willfully violated Section 15(a) of the Exchange Act and FINRA Rule 2010.

E. Gordon and Sandlapper Failed to Establish and Maintain a Reasonable Supervisory System

Causes six and seven of the Complaint allege failures to supervise by Gordon and Sandlapper. Cause six alleges that Gordon and Sandlapper violated NASD Rule 3010[263] and FINRA Rules 3110(b) and 2010 by failing to establish, maintain, and implement supervisory procedures adequate to address the conflicts of interests created by the participation of Sandlapper and its registered representatives or their affiliates, like TSWR Development, in securities offerings. Cause seven alleges that Gordon and Sandlapper violated the supervision rule by failing to exercise the supervision expected of the Firm in private securities transactions, or enforce the Firm's own prohibitions against selling away, by treating securities sales of disposal well interests as sales of "real estate."

NASD Rule 3010 and FINRA Rule 3110 each require member firms to establish and maintain a system to supervise the activities of each associated person that is "reasonably designed to achieve compliance with applicable securities laws and regulations" and FINRA Rules. "Under [these Rules], a supervisor is responsible for 'reasonable supervision,' a standard that 'is determined based on the particular circumstances of each case.'"[264]

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[261] 15 U.S.C. § 77b(a)(12).

[262] *SEC v. Nat'l Executive Planners, Ltd.*, 503 F. Supp. 1066, 1073 (M.D.N.C. 1980), *aff'd*, 545 F.2d 754 (1st Cir. 1976) (quoting *Mass. Fin. Servs., Inc. v. Sec. Investor Prot. Corp.*, 411 F. Supp. 411, 415 (D. Mass. 1976)).

[263] Effective December 1, 2014, FINRA Rule 3110 superseded NASD Rule 3010.

[264] *Dep't of Enforcement v. Midas Sec., LLC*, No. 2005000075703, 2011 FINRA Discip. LEXIS 62, at *22 (NAC Mar. 3, 2011) (citations omitted), *aff'd*, Exchange Act Release No. 66200, 2012 SEC Lexis 199 (Jan. 20, 2012).

1. Failure to Implement Procedures to Address Conflicts of Interest

During the relevant period, Sandlapper and Gordon failed to establish, maintain, and enforce a reasonable supervisory system and written supervisory procedures to address the conflicts of interest created by the participation of Sandlapper and its registered representatives in disposal well offerings. Despite the obvious conflicts created by Gordon's personal financial interest in the transactions, the Firm failed to adopt or implement a supervisory system to address the conflicts. Sandlapper uncritically relied on its Investment Committee, which included Gordon and Bixler, to review and accept the Firm's participation in private placements but lacked written procedures to resolve conflicts by members of the Investment Committee. As a result, the Firm lacked supervisory procedures reasonably tailored to its business involving serving as broker-dealer and dealer-manager on private placements and private offerings by affiliates like TSWR Development.

We find that Gordon and Sandlapper failed to maintain and enforce a supervisory system and written supervisory procedures to address conflicts of interest created by Sandlapper's and Gordon's participation in the offerings, in violation of NASD Rule 3010 and FINRA Rules 3110 and 2010.[265]

2. Failure to Supervise Purported Real Estate Sales

The Firm lacked written procedures to resolve Gordon and Bixler's conflicts of interest in connection with the transactions. Gordon and Sandlapper also failed to supervise sales of well interests sold away from the Firm as "real estate." Gordon and Sandlapper knowingly permitted the Firm's registered representatives to sell well interests marketed as "real estate" to retail investors, and to receive selling compensation for those transactions, without supervision. The Firm exercised no oversight beyond requiring registered representatives to submit "outside business activity" forms regarding well interest sales activities. The forms only vaguely described the representative's efforts in soliciting the investments. Consequently, the Firm failed to exercise appropriate supervision over the transactions, foregoing any consideration of the reasonableness of the markups in the private securities transactions. By failing to treat the securities transactions as such, Gordon and Sandlapper did not enforce the Firm's own prohibitions against selling away.

Accordingly, we find that by failing to exercise reasonable supervision over the sales activities of the Firm's registered representatives in connection with the purported "real estate" interests, Gordon and Sandlapper violated NASD Rule 3010 and FINRA Rules 3110 and 2010.

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[265] *Cf. Dep't of Enforcement v. Fox Fin'l Mgmt. Corp.*, No. 2012030724101, 2015 FINRA Discip. LEXIS 8, at *23, 29-33 (OHO Mar. 9, 2015) (finding failure to supervise for failing to address conflicts of interest created by outside business activities), *aff'd*, 2017 FINRA Discip. LEXIS 3 (NAC Jan. 6, 2017).

V. Sanctions

A. Fraud and Breach of Fiduciary Duty

We found that each Respondent willfully violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5, in that (1) Gordon, Bixler, and Sandlapper willfully defrauded the Fund by fraudulently interposing TSWR Development into well purchase transactions and by charging undisclosed, excessive markups as alleged in cause one; (2) Gordon and Sandlapper defrauded retail customers by selling well interests as securities through TSWR Development while charging excessive markups as alleged in cause three; and (3) Gordon defrauded retail customers by selling well interests through a network of representatives while marketing the investments as "real estate," fraudulently interposing TSWR Development into the transactions and charging undisclosed excessive markups as alleged in cause four.

In addition, we found that as charged in cause two Gordon and Bixler breached fiduciary duties of loyalty and care to the Fund in connection with Fund purchases of the disposal well interests, in violation of FINRA Rule 2010.

In determining the appropriate sanction, we consider the FINRA Sanction Guidelines ("Guidelines") for fraud, misrepresentations, or material omissions of fact.[266] For cases such as this involving intentional or reckless conduct, the Guidelines recommend a fine of $10,000 to $146,000, strong consideration of a bar for individual wrongdoers, and strong consideration of an expulsion of the firm in cases in which aggravating factors exist. We find numerous aggravating factors here.

Respondents engaged in a massive fraudulent scheme. They repeatedly gouged customers, including a vulnerable retired couple who entrusted Respondents with their life savings. They exploited the illiquidity of the disposal well market by brazenly inflating the value of those interests to the detriment of their customers in order to line their own pockets. Respondents engaged in a pattern of deceit that spanned nearly four years and involved sales of more than $11 million involving dozens of investors.[267] We do not find the conduct was aberrant. To the contrary, we find that this was a central part of the Firm's business model.[268]

We find Respondents' misconduct aggravating in a number of respects. The scheme was (at least) reckless, and involved a wide-ranging pattern of misconduct orchestrated to deceive investors and cause them substantial financial injury.[269] This investor harm inured to Respondents' direct benefit, as Gordon, Bixler, and Sandlapper enriched themselves at the

[266] FINRA Sanction Guidelines at 89 (2018), http://www.finra.org/industry/sanction-guidelines.pdf.

[267] Guidelines at 7 (Principal Consideration, Nos. 8, 9).

[268] Guidelines at 8 (Principal Consideration, No. 16).

[269] Guidelines at 7, 8 (Principal Consideration, Nos. 10, 11, 13).

expense of their investors.[270] Respondents have never accepted responsibility for their misconduct nor made substantial attempts to remedy the misconduct.[271] We also find that Respondents attempted to conceal information and frustrate the investigation into this matter[272] by (1) improperly redacting investor and bank statement information in documents provided to Enforcement,[273] (2) endeavoring to cause a witness to execute a false affidavit,[274] and (3) entering into a settlement agreement with one investor requiring confidentiality in a manner calculated to prevent Enforcement's access to the investor's evidence.[275]

Respondents' arguments regarding the presence of mitigating factors are without merit. They are wrong that their lack of prior disciplinary history is mitigating.[276] And we reject their contention that they gave extensive cooperation to regulators during the investigation or voluntarily employed "corrective measures" or "self-remediation."[277] There are no mitigating factors.

1. Bars and Expulsion

Conduct that violates the antifraud provisions of the federal securities laws is "especially serious and subject to the severest of sanctions under the securities laws."[278] In cases of intentional fraud, misrepresentations, or material omissions of fact, the Guidelines require the Panel to "[s]trongly consider barring an individual," and "[w]here aggravating factors predominate, strongly consider expelling the firm." Moreover, where Respondents' misconduct "demonstrate[s] a serious misunderstanding of [their] fiduciary obligations they subjected themselves to," the misconduct "pose[s] a danger to the investing public" and merits substantial sanctions for the protection of investors.[279]

Because of the predominance of aggravating factors here, and Respondents lack of remorse or appreciation of the wrongfulness of their conduct, we find that only adequately remedial sanction for their fraudulent conduct is a bar for Gordon and Bixler, and expulsion for Sandlapper in connection with excessive markups charged to the Fund as charged in cause one.

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[270] Guidelines at 8 (Principal Consideration, No. 16).

[271] Guidelines at 7 (Principal Consideration, Nos. 2, 4).

[272] Guidelines at 8 (Principal Consideration, No. 12).

[273] Tr. (Gordon) 579-82, 655-57, 749-50, 829-30; Tr. (Hanlon) 2365-67, 2384-85, 2424-25, 2480-81, 2605-06.

[274] CX-167; Tr. (Hanlon) 2539-40, 2728-30, 2766-67.

[275] CX-165; Tr. (Gordon) 1119-31.

[276] *Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *27 (Dec. 22, 2008) ("We have held that a lack of disciplinary history is insufficient to mitigate sanctions.").

[277] *See* Respondents' Pre-Hearing Brief, at 21.

[278] *Dep't of Enforcement v. Scholander*, No. 2009019108901, 2014 FINRA Discip. LEXIS 33, at *36 (NAC Dec. 29, 2014), *aff'd*, Exchange Act Release No. 77492, 2016 SEC LEXIS 1209 (Mar. 31, 2016).

[279] *Dep't of Enforcement v. Fretz*, 2015 FINRA Discip. LEXIS 54, at *79.

Gordon and Bixler are also barred in connection with cause two for their breach of fiduciary duty to the Fund.

Additionally, in connection with the fraudulent interposition of TSWR Development and excessive markups charged to investors when selling interests as securities through the Firm as set forth in cause three, Gordon is barred and Sandlapper is expelled. Gordon is also barred for his fraudulent interpositioning and excessive markups when selling well interests as "real estate," as described in cause four.

2. Restitution

We also find it appropriate under the Sanction Guidelines to order Respondents to make restitution to purchasers who paid fraudulent and excessive markups. The Guidelines authorize restitution "when an identifiable person … has suffered a quantifiable loss proximately caused by a respondent's misconduct."[280] Here, the Fund as well as dozens of individual customers paid more than the prevailing market price for the disposal well interests as a result of Gordon and Bixler's fraudulent, unfair and excessive markups sold (at times) through Sandlapper. We find that Respondents should make restitution for all amounts they charged above a reasonable markup in connection with each of the sales at issue.[281]

a. Cause one

Under the first cause, Gordon, Bixler and Sandlapper must make restitution to Fund investors for excessive markups charged to the Fund. Exhibit CX-1 identifies the unfair and excessive markup charged to the Fund in each of the transactions at issue. The total markup to the Fund was $935,055.[282] We allow for a 5 percent markup over contemporaneous cost,[283] reducing the total markup amount by $33,637, yielding an unfair and excessive markup of $901,418, as reflected in Appendix A.

The restitution amount owed to the Fund is to be paid to each investor of the Fund as reflected in Appendix B.[284] Respondents are ordered jointly and severally to pay restitution to

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[280] Guidelines at 4.

[281] Guidelines at 91. Although the excessive markups here arise under claims of fraud, and not violations of the fair pricing requirements of FINRA Rule 2121, we nevertheless find instructive the guidance relating to violations of Rule 2121 directing us to impose restitution on the "gross amount of the excessive markups."

[282] CX-1.

[283] See *Dep't of Enforcement v. Lane*, No. 20070082049, 2013 FINRA Discip. LEXIS 34, at *89 (NAC Dec. 26, 2013), *aff'd*, 2015 SEC LEXIS 558 (calculating disgorgement on illicit markups by "[a]llowing for a 5 percent mark-up over [Respondent's] contemporaneous cost in each transaction with the customers—which still might be excessive.").

[284] The total markup to the Fund was $935,055. Because we allowed for a 5 percent markup over contemporaneous cost and reduced the total excess markup amount to $901,418 ($935,005-$33,637), we reduced the restitution amount to each individual Fund investor by a proportionate percentage ($901,418 divided by $935,005 times the total markup sought for each investor).

their injured customers in the total amount of $901,418 plus interest[285] at the rate set forth in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), from the date of the last sale to the Fund until the date that restitution is paid. Respondents shall be given credit for, and reduce their restitution amount by, restitution amounts that they prove were already paid to injured customers, as determined by Enforcement. Should any customer decline the restitution provided by this Decision, Respondents are ordered to pay the amount of any foregone restitution as a fine, without interest.[286]

b. Cause two

Gordon and Bixler are liable under the second cause for breach of their fiduciary duties to the Fund. Because these breaches resulted in the excessive markups to the Fund, any restitution owed by Gordon and Bixler is duplicative of the restitution already ordered under cause one. We would have found Gordon and Bixler liable, jointly and severally, for restitution totaling $901,418, plus interest. However, in light of the restitution order in connection with the first cause, we do not impose restitution for cause two.

c. Cause three

Gordon and Sandlapper must make restitution to the individuals who paid excessive markups when purchasing fractional well interests as securities through the Firm as alleged in cause three. These transactions, identified in Appendix C to this decision, resulted in a total markup to purchasers of $2,512,814.[287] After again allowing for a 5 percent markup over contemporaneous cost, the total markup amount is reduced by $83,150, yielding an unfair and excessive markup of $2,429,664. Gordon and Sandlapper are liable, jointly and severally, for restitution and are ordered to pay restitution to these injured investors in the total amount of $2,429,664 plus interest at the rate set forth in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), from the date of the sales transaction until the date that restitution is paid. Gordon and Sandlapper shall be given credit for, and reduce their restitution amount by, restitution amounts that they prove were already paid to injured investors, as determined by Enforcement. Should any investor decline the restitution provided by this Decision, Gordon and Sandlapper are ordered to pay the amount of any foregone restitution as a fine, without interest.

d. Cause four

Gordon must make restitution to the individuals who paid excessive markups when purchasing fractional well interests as "real estate" and sold away from the Firm as alleged in

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[285] Prejudgment interest appropriately deters violations and reflects the time value of money. *Dep't of Enforcement v. Davidofsky*, No. 2008015934801, 2013 FINRA Discip. LEXIS 7, at *42 (NAC Apr. 26, 2013).

[286] We provide for this possibility in light of the federal income tax implications associated with certain of the exchange transactions at issue here, and the potential that these implications may dissuade customers from altering the parameters of the relevant transactions.

[287] CX-2.

cause four. These transactions, identified in Appendix D to this decision, resulted in a total markup to purchasers of $4,822,802.[288] After allowing for a 5 percent markup over contemporaneous cost, the total markup amount is reduced by $140,602, yielding an unfair and excessive markup of $4,682,201. Gordon is ordered to pay restitution to these injured investors in the total amount of $4,682,201 plus interest at the rate set forth in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), from the date of the sales transaction until the date that restitution is paid. Gordon shall be given credit for, and reduce his restitution amount by, restitution amounts that he proves were already paid to injured investors, as determined by Enforcement. Should any investor decline the restitution provided by this Decision, Gordon is ordered to pay the amount of any foregone restitution as a fine, without interest.

B. Unregistered Dealer

The Sanction Guidelines do not specifically address this misconduct. The Guidelines do address an analogous violation, Section 5 of the Securities Act, which prohibits the sale of an unregistered security, absent an exemption. For violations of Section 5, the Guidelines recommend monetary sanctions up to $73,000 and up to a bar for individuals, where aggravating factors predominate, as here.

In determining an appropriate sanction for this violation, we note the critical importance broker-dealer registration plays in the protection of the investing public. The registration requirement of Section 15(a) of the Exchange Act is:

> the keystone of the entire system of broker-dealer regulation.… A broker that has registered with the Commission is bound to abide by numerous regulations designed to protect prospective purchasers of securities, including standards of professional conduct, financial responsibility requirements, recordkeeping requirements, and supervisory obligations over broker-dealer employees…. The interlocking requirements of registration and supervision act to ensure that "securities are [only] sold by a sales man [who] understands and appreciates both the nature of the securities he sells and his responsibilities to the investor to whom he sells.[289]

Gordon and Bixler circumvented this regulatory framework by using TSWR Development as an unregistered dealer, exposing the investing public to unreasonable risk. Gordon and Bixler caused TSWR Development to engage in a high volume of significant activity as a dealer of securities, resulting in widespread customer harm over an extended period. The duration of misconduct, the number of transactions involved, the gross value and the character of the transactions, all warrant substantial sanctions.[290] Upon consideration of these

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[288] CX-2. The investors identified by initials only in Appendices B, C and D are identified in Appendix E. Appendix E is provided to the parties only.

[289] *Roth v. SEC*, 22 F.3d 1108, 1109 (D.C. Cir. 1994) (citations omitted).

[290] *See* Guidelines at 7-8 (Principal Consideration, Nos. 8, 13, 17, 18).

factors and the absence of any mitigating factors, we find that any sanction short of a bar would not sufficiently protect the investing public. Accordingly, for this violation we also impose a bar against Gordon and Bixler.

C. Failure to Supervise

"Assuring proper supervision is a critical component of broker-dealer operations."[291] Throughout the relevant period, Sandlapper and Gordon, as the CEO and Managing Member of Sandlapper, failed to establish and enforce reasonable supervisory systems and procedures to address the conflicts of interest created by the participation of Sandlapper and its registered representatives in offerings by or through affiliates of the Firm or its management. For failure to supervise, the Guidelines suggest a monetary sanction of $5,000 to $73,000. Principal Considerations include whether supervisors ignored "red flags" and the nature, extent, size and character of the underlying misconduct. For systemic supervisory failures, the Guidelines suggest monetary sanctions of up to $73,000 for individuals and $292,000 for firms. In cases "where aggravating factors predominate," the Guidelines suggest suspension or a bar for individuals and expulsion for a Firm. Principal Considerations include (1) whether the deficiencies allowed the violations to occur; (2) the number and type of customers affected; (3) the number and dollar value of the transactions at issue; and (4) the nature, extent, and complexity of the unsupervised activities.

We find that the supervisory failures here were egregious. Neither Gordon nor the Firm recognized, much less made any effort to address, the significant conflicts of interest inherent to transactions where the principals of the Firm are selling substantial volumes of inventory through an affiliated entity to customers at grossly inflated prices. These failures were compounded by treating most of the working interests sold as real estate. As a result, Gordon and Sandlapper caused Firm representatives to engage in private securities transactions without appropriate supervision. Because of the Firm's supervisory deficiencies, Respondents' fraudulent markups were ignored, resulting in widespread customer harm over an extended period. As the supervisory failures facilitated fraudulent conduct, they permitted "violative conduct to occur or to escape detection."[292] And given the substantial volume of the transactions, the "number and dollar value of the transactions not adequately supervised as a result of the deficiencies" is aggravating.[293]

We find that the underlying misconduct in this case was egregious. In light of the many aggravating factors in this case that resulted in the effective absence of supervision over a substantial volume of transactions, and the dearth of any mitigating factors, for Respondents' supervision violations, we also expel Sandlapper and bar Gordon for this violation. We would

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[291] *Richard F. Kresge*, Exchange Act Release No. 55988, 2007 SEC LEXIS 1407, at *27 (June 29, 2007).

[292] Guidelines at 105, Principal Consideration 1.

[293] Guidelines at 105, Principal Consideration 5.

also fine Sandlapper and Gordon $73,000 jointly and severally, but in light of the bar, expulsion, and restitution order, we do not impose this additional sanction.

VI. Order

We find that Respondents Sandlapper Securities, LLC, Trevor Gordon, and Jack Bixler committed securities fraud and other violations and impose remedial sanctions. For their violations, we impose the following sanctions:

Under cause one, we find that Gordon, Bixler, and Sandlapper willfully defrauded the Fund by fraudulently interposing TSWR Development into well purchase transactions and by charging undisclosed, excessive markups, in willful violation of Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, and FINRA Rules 2010 and 2020. We bar Gordon and Bixler and expel Sandlapper from FINRA membership for this violation. In addition to the bar and expulsion, we find each Respondent jointly and severally liable for restitution and order Respondents to pay restitution totaling $901,418, plus interest.

Under cause two, Gordon and Bixler breached fiduciary duties of loyalty and care to the Fund in connection with Fund purchases of the disposal well interests, in violation of FINRA Rule 2010. We bar Gordon and Bixler for this violation. In addition to the bar, we would have found Gordon and Bixler jointly and severally liable for restitution totaling $901,418, plus interest; however, in light of the restitution order in connection with the first cause, we do not impose restitution for cause two.

Under cause three, Gordon and Sandlapper defrauded retail customers by selling well interests as securities through TSWR Development while charging excessive markups, in willful violation of Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5 thereunder, as well as FINRA Rules 2020 and 2010. We bar Gordon and expel Sandlapper from FINRA membership for this violation. In addition to the bar and expulsion, we order Gordon and Sandlapper to jointly and severally liable for restitution and order Gordon and Sandlapper to pay restitution totaling $2,429,664, plus interest.

Under cause four, Gordon defrauded retail customers by selling well interests through a network of representatives while marketing the investments as “real estate,” fraudulently interposing TSWR Development into the transactions and charging undisclosed excessive markups in willful violation of Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5 thereunder, as well as FINRA Rules 2020 and 2010. We bar Gordon for this violation. In addition to the bar, we order Gordon to pay restitution totaling $4,682,201, plus interest.

Under cause five, we find that Gordon and Bixler caused TSWR Development to act as an unregistered dealer, in willful violation of Section 15(a) of the Exchange Act and FINRA Rule 2010. We bar Gordon and Bixler for this violation.

Under causes six and seven, we find that Gordon and Sandlapper failed to maintain and enforce an adequate supervisory system and written supervisory procedures and to exercise

proper supervision over affiliate sales of securities, in violation of NASD Rule 3010 and FINRA Rules 3110 and 2010. We bar Gordon and expel Sandlapper for this violation. We would also fine Gordon and Sandlapper $73,000 jointly and severally for these supervisory violations, but in light of the bar, expulsion, and restitution order, we do not impose this additional sanction.

The bars and expulsion shall become effective immediately if this decision becomes FINRA's final disciplinary action. Restitution shall be paid as outlined in this decision, plus interest at the rate set forth in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), from the date of the customer sale until the date that restitution is paid. Respondents are ordered to provide Enforcement with proof of payment of restitution. If Respondents are unable to locate a customer, the Firm must provide Enforcement with proof that it has made a bona fide attempt to locate the customer. Any restitution Respondents are unable to pay to a customer must be paid to FINRA (without interest) as a fine. We also order Respondents, jointly and severally, to pay costs of $27,453.29, which includes $26,703.29, the cost of the hearing transcript, and a $750 administrative fee. The restitution, any fine and costs shall be payable on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action. [294]

David Williams
Hearing Officer
For the Extended Hearing Panel

Copies to:

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Trevor Gordon (via overnight courier and first-class mail)
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Lara Thyagarajan, Esq. (via email)

[294] The Extended Hearing Panel considered and rejected without discussion all other arguments by the parties.

Appendix A

Total Investments by Tiburon Saltwater Reclamation Fund I, LLC

Transaction Date	Well Name	Investment Amount	Cost	Total Markup	Permissible 5% Markup	Excess Markup/ Restitution Amount
12/6/2012	Tom	$610,159	$234,000	$376,159	$11,700	$364,459
1/4/2013	Tom	$88,004	$33,750	$54,254	$1,688	$52,566
3/7/2013	Tom	$293,346	$112,500	$180,846	$5,625	$175,221
4/5/2013	Clark	$200,000	$180,000	$20,000	$9,000	$11,000
6/5/2013	Clark	$416,297	$112,500	$303,797	$5,625	$298,172
	TOTALS	**$1,607,805**	**$672,750**	**$935,055**	**$33,637**	**$901,418**

Appendix B

Investors in Fund I

Transaction Date	Investor Number	Initials	Investment Amount	Markup Restitution Sought	Excess Markup/ Restitution Amount
8/9/2011	001	DM	$30,000	$2,262	$2,180
8/9/2011	002	JMC	$50,000	$3,770	$3,634
8/9/2011	003	TJC	$40,000	$3,016	$2,907
8/9/2011	004	PBLF	$25,000	$1,885	$1,817
8/9/2011	005	LRW	$25,000	$1,885	$1,817
8/9/2011	006	SEM	$50,000	$3,770	$3,634
8/9/2011	007	STMA	$25,000	$1,885	$1,817
8/9/2011	007	STMA	$20,000	$1,508	$1,454
8/9/2011	008	DJC	$50,000	$3,770	$3,634
9/2/2011	009	FFS	$25,000	$1,885	$1,817
9/30/2011	010	JCR	$10,000	$754	$727
11/4/2011	011	THFA	$50,000	$3,770	$3,634
11/4/2011	012	PFT	$75,000	$5,655	$5,451
11/11/2011	013	JH	$25,000	$1,885	$1,817
11/11/2011	014	PTH	$25,000	$1,885	$1,817
12/5/2011	015	BBS	$73,000	$5,504	$5,306
12/9/2011	016	NSP	$50,000	$3,770	$3,634
12/22/2011	017	JEST	$25,000	$1,885	$1,817
12/22/2011	018	WEBT	$25,000	$1,885	$1,817
1/11/2012	019	CSJ	$30,000	$2,262	$2,180
2/3/2012	020	RLC	$25,000	$1,885	$1,817
2/3/2012	021	GJJJ	$25,000	$1,885	$1,817
2/10/2012	023	JFJP	$50,000	$3,770	$3,634
2/17/2012	024	HGNB	$50,000	$3,770	$3,634
2/17/2012	025	WJM	$25,000	$1,885	$1,817
2/17/2012	026	WEB	$25,000	$1,885	$1,817
2/17/2012	027	KBS	$50,000	$3,770	$3,634
2/27/2012	028	LCB	$50,000	$3,770	$3,634
2/27/2012	029	EFKM	$25,000	$1,885	$1,817
3/2/2012	031	AJBT	$25,000	$1,885	$1,817
3/2/2012	032	CHPS	$25,000	$1,885	$1,817
3/9/2012	033	SLMB	$40,000	$3,016	$2,907
3/9/2012	034	GRLT	$25,000	$1,885	$1,817
3/9/2012	035	EFMT	$25,000	$1,885	$1,817
3/16/2012	036	TEAB	$38,000	$2,865	$2,762

Transaction Date	Investor Number	Initials	Investment Amount	Markup Restitution Sought	Excess Markup/ Restitution Amount
3/23/2012	038	NMH	$25,000	$1,885	$1,817
3/23/2012	039	TFRT	$25,000	$1,885	$1,817
4/19/2012	024	HGNB	$50,000	$3,770	$3,634
4/19/2012	037	TEM	$40,000	$3,016	$2,907
4/19/2012	043	JLP	$500,000	$37,697	$36,341
4/27/2012	011	THFA	$100,000	$7,539	$7,268
4/27/2012	040	DDBT	$50,000	$3,770	$3,634
4/27/2012	041	JJF	$25,000	$1,885	$1,817
4/27/2012	042	RJH	$50,000	$3,770	$3,634
4/27/2012	045	DTS	$100,000	$7,539	$7,268
4/27/2012	047	GKM	$25,000	$1,885	$1,817
4/27/2012	048	LCW	$25,000	$1,885	$1,817
4/27/2012	049	BFT	$50,000	$3,770	$3,634
4/27/2012	051	PLHW	$20,000	$1,508	$1,454
5/4/2012	032	CHPS	$25,000	$1,885	$1,817
5/4/2012	036	TEAB	$22,000	$1,659	$1,599
5/4/2012	037	TEM	$10,000	$754	$727
5/4/2012	050	YETR	$100,000	$7,539	$7,268
5/4/2012	052	SFA	$30,000	$2,262	$2,180
5/4/2012	053	PFNJ	$100,000	$7,539	$7,268
5/11/2012	054	SHI	$5,435	$410	$395
5/18/2012	055	PST	$125,000	$9,424	$9,085
5/18/2012	056	BTC	$300,000	$22,618	$21,805
5/25/2012	034	GRLT	$25,000	$1,885	$1,817
5/25/2012	057	ALPI	$150,000	$11,309	$10,902
5/25/2012	058	CHJ	$50,000	$3,770	$3,634
6/1/2012	059	RKW	$120,000	$9,047	$8,722
6/8/2012	048	LCW	$25,000	$1,885	$1,817
6/8/2012	056	BTC	$80,000	$6,032	$5,815
6/8/2012	060	DELU	$20,000	$1,508	$1,454
6/8/2012	061	FLIN	$500,000	$37,697	$36,341
6/15/2012	015	BBS	$45,000	$3,393	$3,271
6/15/2012	040	DDBT	$25,000	$1,885	$1,817
6/22/2012	005	LRW	$8,000	$603	$581
6/22/2012	051	PLHW	$20,000	$1,508	$1,454
6/22/2012	063	JBMI	$26,882	$2,027	$1,954
6/22/2012	064	RIBO	$50,000	$3,770	$3,634
6/22/2012	066	RCL	$15,000	$1,131	$1,090
6/29/2012	033	SLMBJ	$20,000	$1,508	$1,454

Transaction Date	Investor Number	Initials	Investment Amount	Markup Restitution Sought	Excess Markup/ Restitution Amount
6/29/2012	037	TEM	$20,000	$1,508	$1,454
6/29/2012	065	JUWE	$46,000	$3,468	$3,343
6/29/2012	067	RBJB	$50,000	$3,770	$3,634
7/6/2012	049	BFT	$20,000	$1,508	$1,454
7/6/2012	058	CHJ	$50,000	$3,770	$3,634
7/6/2012	068	EBR	$50,000	$3,770	$3,634
7/6/2012	069	CPLP	$50,000	$3,770	$3,634
7/6/2012	070	GRJZ	$25,000	$1,885	$1,817
7/13/2012	036	TEAB	$15,000	$1,131	$1,090
7/13/2012	071	DJVV	$75,000	$5,655	$5,451
7/13/2012	072	RUPA	$25,000	$1,885	$1,817
7/13/2012	073	VAP	$25,000	$1,885	$1,817
7/20/2012	014	PTH	$25,000	$1,885	$1,817
7/20/2012	023	JFJP	$10,000	$754	$727
7/20/2012	074	DVBF	$25,000	$1,885	$1,817
7/20/2012	075	DATR	$10,000	$754	$727
7/20/2012	076	FMFT	$80,645	$6,080	$5,861
7/27/2012	013	JH	$35,000	$2,639	$2,544
7/27/2012	077	SMM	$200,000	$15,079	$14,536
7/27/2012	078	LBH	$500,000	$37,697	$36,341
8/3/2012	054	SHI	$5,435	$410	$395
8/17/2012	004	PBLF	$25,000	$1,885	$1,817
8/17/2012	079	KASA	$100,000	$7,539	$7,268
8/17/2012	080	AMSC	$10,870	$820	$790
8/17/2012	081	SGI	$15,000	$1,131	$1,090
8/24/2012	041	JJF	$25,000	$1,885	$1,817
8/24/2012	043	JLP	$300,000	$22,618	$21,805
8/24/2012	051	PLHW	$20,000	$1,508	$1,454
8/24/2012	082	DOKE	$70,000	$5,278	$5,088
8/24/2012	084	PAM	$30,000	$2,262	$2,180
8/24/2012	085	MES	$25,000	$1,885	$1,817
8/24/2012	086	JKU	$28,090	$2,118	$2,042
8/31/2012	070	GJZI	$5,000	$377	$363
8/31/2012	083	JOOC	$50,000	$3,770	$3,634
8/31/2012	088	PYB	$25,000	$1,885	$1,817
8/31/2012	089	CODO	$30,000	$2,262	$2,180
8/31/2012	090	BDI	$80,000	$6,032	$5,815
8/31/2012	091	RED	$100,000	$7,539	$7,268
8/31/2012	092	PDT	$30,000	$2,262	$2,180

Appendix B (cont'd)

Transaction Date	Investor Number	Initials	Investment Amount	Markup Restitution Sought	Excess Markup/ Restitution Amount
8/31/2012	093	MYT	$100,000	$7,539	$7,268
8/31/2012	094	WODT	$100,000	$7,539	$7,268
8/31/2012	095	HDB	$25,000	$1,885	$1,817
8/31/2012	096	GDP	$25,000	$1,885	$1,817
8/31/2012	097	RCG	$200,000	$15,079	$14,536
8/31/2012	098	WIMO	$30,000	$2,262	$2,180
8/31/2012	099	WDFL	$50,000	$3,770	$3,634
9/5/2012	100	SAT	$36,595	$2,759	$2,660
9/5/2012	101	GBT	$38,188	$2,879	$2,776
9/5/2012	102	ESB	$22,000	$1,659	$1,599
9/7/2012	103	AMSA	$50,000	$3,770	$3,634
9/7/2012	104	TTFT	$25,000	$1,885	$1,817
9/14/2012	043	JLP	$300,000	$22,618	$21,805
9/14/2012	105	GTW	$50,000	$3,770	$3,634
9/14/2012	106	DFT	$50,000	$3,770	$3,634
9/14/2012	108	JWM	$40,000	$3,016	$2,907
9/21/2012	110	CMN	$25,000	$1,885	$1,817
9/21/2012	111	TMFT	$25,000	$1,885	$1,817
10/1/2012	109	MKJ	$25,543	$1,926	$1,857
10/5/2012	047	GKM	$50,000	$3,770	$3,634
10/5/2012	112	ANMU	$50,000	$3,770	$3,634
10/12/2012	077	SMM	$25,000	$1,885	$1,817
10/18/2012	017	JESTI	$25,000	$1,885	$1,817
10/18/2012	113	JGL	$15,000	$1,131	$1,090
10/18/2012	114	PKFR	$15,000	$1,131	$1,090
10/19/2012	115	GFF	$25,000	$1,885	$1,817
10/19/2012	116	JAPA	$200,000	$15,079	$14,536
10/26/2012	117	MFT	$50,000	$3,770	$3,634
11/2/2012	118	JOHI	$50,000	$3,770	$3,634
11/2/2012	119	HHRT	$25,000	$1,885	$1,817
11/9/2012	120	TKF	$200,000	$15,079	$14,536
11/9/2012	121	SEW	$105,000	$7,916	$7,632
11/21/2012	122	VIMU	$50,000	$3,770	$3,634
11/30/2012	077	SMM	$25,000	$1,885	$1,817
12/14/2012	123	MEMO	$50,000	$3,770	$3,634
12/14/2012	124	MTLM	$40,000	$3,016	$2,907
12/26/2012	125	TMIF	$50,000	$3,770	$3,634
12/31/2012	077	SMM	$50,000	$3,770	$3,634
1/11/2013	126	JRZ	$40,000	$3,016	$2,907

Appendix B (cont'd)

Transaction Date	Investor Number	Initials	Investment Amount	Markup Restitution Sought	Excess Markup/ Restitution Amount
1/18/2013	077	SMM	$40,000	$3,016	$2,907
2/8/2013	127	JCW	$25,000	$1,885	$1,817
2/8/2013	128	DLG	$23,000	$1,734	$1,672
2/15/2013	088	PYB	$25,000	$1,885	$1,817
2/15/2013	089	CODO	$20,000	$1,508	$1,454
2/15/2013	090	BDI	$20,000	$1,508	$1,454
2/15/2013	091	RED	$40,000	$3,016	$2,907
2/15/2013	092	PDT	$10,000	$754	$727
2/15/2013	093	MYT	$25,000	$1,885	$1,817
2/15/2013	094	WODT	$25,000	$1,885	$1,817
2/15/2013	095	HDB	$5,000	$377	$363
2/15/2013	096	GDP	$5,000	$377	$363
2/15/2013	098	WIMO	$5,000	$377	$363
2/15/2013	099	WDFL	$25,000	$1,885	$1,817
2/15/2013	129	AJS	$25,000	$1,885	$1,817
2/15/2013	130	LDE	$25,000	$1,885	$1,817
3/1/2013	036	TEAB	$10,000	$754	$727
3/1/2013	117	MFT	$50,000	$3,770	$3,634
3/1/2013	131	RRK	$95,000	$7,162	$6,905
3/1/2013	132	DCE	$25,000	$1,885	$1,817
3/8/2013	133	WMKI	$25,000	$1,885	$1,817
3/8/2013	134	MTCT	$59,000	$4,448	$4,288
3/8/2013	135	MTTT	$55,000	$4,147	$3,998
3/15/2013	136	JCM	$40,800	$3,076	$2,965
3/15/2013	137	TJB	$500,000	$37,697	$36,341
3/28/2013	001	DM	$50,000	$3,770	$3,634
3/28/2013	002	JMC	$75,000	$5,655	$5,451
4/5/2013	138	DEN	$25,000	$1,885	$1,817
4/12/2013	027	KBS	$5,000	$377	$363
4/12/2013	053	PFNJ	$50,000	$3,770	$3,634
4/12/2013	102	TEAB	$25,000	$1,885	$1,817
4/12/2013	139	JER	$25,000	$1,885	$1,817
4/12/2013	140	KKS	$200,000	$15,079	$14,536
4/12/2013	141	JEP	$35,000	$2,639	$2,544
4/12/2013	142	PKF	$30,000	$2,262	$2,180
4/19/2013	134	MTCT	$5,000	$377	$363
4/19/2013	143	MEDO	$35,000	$2,639	$2,544
4/26/2013	144	KBSI	$5,500	$415	$400
4/30/2013	124	MTLM	$60,000	$4,524	$4,361

Appendix B (cont'd)

Transaction Date	Investor Number	Initials	Investment Amount	Markup Restitution Sought	Excess Markup/ Restitution Amount
4/30/2013	145	NMIND	$50,000	$3,770	$3,634
4/30/2013	146	BEJT	$25,000	$1,885	$1,817
5/10/2013	147	CRS	$25,000	$1,885	$1,817
5/10/2013	148	KJWS	$25,000	$1,885	$1,817
6/7/2013	146	BEJT	$25,000	$1,885	$1,817
6/18/2013	088	PYB	$25,000	$1,885	$1,817
6/18/2013	089	CODO	$40,000	$3,016	$2,907
6/18/2013	090	BDI	$25,000	$1,885	$1,817
6/18/2013	091	RED	$10,000	$754	$727
6/18/2013	092	PDT	$10,000	$754	$727
6/18/2013	093	MYT	$25,000	$1,885	$1,817
6/18/2013	094	WODT	$25,000	$1,885	$1,817
6/18/2013	095	HDB	$5,000	$377	$363
6/18/2013	096	GDP	$5,000	$377	$363
6/18/2013	099	WDFL	$25,000	$1,885	$1,817
6/18/2013	130	LDE	$15,000	$1,131	$1,090
6/28/2013	150	WIBO	$15,000	$1,131	$1,090
6/28/2013	151	TGJM	$50,000	$3,770	$3,634
6/28/2013	152	GRH	$71,000	$5,353	$5,160
6/28/2013	153	TJHT	$33,000	$2,488	$2,399
6/28/2013	154	TGHT	$33,000	$2,488	$2,399
6/28/2013	155	RICU	$50,000	$3,770	$3,634
6/28/2013	156	KMW	$50,000	$3,770	$3,634
7/12/2013	149	GWS	$36,711	$2,768	$2,668
7/26/2013	157	PHLT	$25,000	$1,885	$1,817
8/23/2013	158	RJBI	$50,000	$3,770	$3,634
8/23/2013	159	KTH	$25,000	$1,885	$1,817
8/30/2013	036	TEAB	$13,500	$1,018	$981
8/30/2013	041	JJF	$50,000	$3,770	$3,634
8/30/2013	132	DCE	$10,000	$754	$727
8/30/2013	160	SJI	$25,000	$1,885	$1,817
9/6/2013	033	SLMBJ	$10,000	$754	$727
9/6/2013	161	JDC	$30,000	$2,262	$2,180
9/13/2013	106	DFT	$50,000	$3,770	$3,634
9/13/2013	162	LLM	$15,000	$1,131	$1,090
9/27/2013	163	MDRT	$15,000	$1,131	$1,090
9/27/2013	164	WMK	$25,000	$1,885	$1,817
9/27/2013	165	EDHE	$25,000	$1,885	$1,817
9/27/2013	166	JCE	$50,000	$3,770	$3,634

Appendix B (cont'd)

Transaction Date	Investor Number	Initials	Investment Amount	Markup Restitution Sought	Excess Markup/ Restitution Amount
10/4/2013	089	CODO	$10,000	$754	$727
10/4/2013	130	LDE	$15,000	$1,131	$1,090
10/25/2013	167	GIBA	$30,000	$2,262	$2,180
11/1/2013	124	LGM	$40,000	$3,016	$2,907
11/1/2013	145	NIMI	$10,000	$754	$727
11/1/2013	168	DCL	$25,000	$1,885	$1,817
11/8/2013	158	RJB	$25,000	$1,885	$1,817
11/8/2013	169	VICO	$25,000	$1,885	$1,817
11/8/2013	170	DLF	$100,000	$7,539	$7,268
11/22/2013	171	SGP	$50,000	$3,770	$3,634
11/22/2013	172	JUWT	$50,000	$3,770	$3,634
12/20/2013	063	JOMO	$50,000	$3,770	$3,634
3/6/2014	111.1	TTTF	$12,479	$941	$907
4/1/2014	056	BTC	$50,000	$3,770	$3,634
6/30/2014	111.2	TFTT	$12,479	$941	$907
7/1/2014	056	BTC	$20,000	$1,508	$1,454
10/1/2014	087.1	CAHI	$12,500	$942	$909
10/1/2014	087.2	TTEH	$12,500	$942	$909
10/1/2014	087.3	TTLH	$12,500	$942	$909
10/1/2014	119	HHRT	$12,500	$942	$909
		TOTALS	**$12,402,151**	**$935,055**	**$901,418**

Appendix B (cont'd)

Appendix C

Securities Customers

Transaction Date	Well Name	Customer Initials	Investment Amount	Cost	Markup Restitution Sought	Permissible 5% Markup	Excess Markup/ Restitution Amount
2/27/2015	Moreland	SWDW3	$128,750	$55,022	$73,728	$2,751	$70,977
5/11/2015	Moreland	FFMT	$33,333	$13,040	$20,293	$652	$19,641
5/19/2015	Moreland	MYA	$33,333	$13,040	$20,293	$652	$19,641
4/23/2015	Moreland	AJAC	$110,675	$43,467	$67,208	$2,173	$65,035
5/28/2015	Moreland	RLB	$30,999	$13,040	$17,959	$652	$17,307
8/1/2014	Haney	DKM	$273,840	$82,350	$191,490	$4,118	$187,373
8/19/2014	Haney	OLP	$422,995	$126,900	$296,095	$6,345	$289,750
8/19/2014	Haney	SWDW2	$327,009	$98,100	$228,909	$4,905	$224,004
7/16/2015	Haney	JJP	$75,000	$30,150	$44,850	$1,508	$43,343
8/19/2014	Hughes	SWDW2	$327,009	$119,900	$207,109	$5,995	$201,114
8/19/2014	Hughes	OLP	$422,995	$155,100	$267,895	$7,755	$260,140
12/23/2014	Hughes	BDBI	$125,000	$55,000	$70,000	$2,750	$67,250
12/23/2014	Hughes #2	BDBI	$250,000	$130,000	$120,000	$6,500	$113,500
2/27/2015	137	SWDW3	$257,500	$110,000	$147,500	$5,500	$142,000
5/22/2015	137	TAW	$140,449	$55,000	$85,449	$2,750	$82,699
5/19/2015	137	TTB	$140,449	$55,000	$85,449	$2,750	$82,699
5/19/2015	137	MYA	$140,449	$55,000	$85,449	$2,750	$82,699
7/16/2015	137	JJP	$75,000	$29,150	$45,850	$1,458	$44,393
8/10/2015	137	COHO	$130,613	$55,000	$75,613	$2,750	$72,863
11/1/2015	137	IOT	$100,000	$39,050	$60,950	$1,953	$58,998
2/27/2015	Rojo	SWDW3	$128,750	$70,000	$58,750	$3,500	$55,250
8/10/2015	Rojo	COHO	$130,613	$70,000	$60,613	$3,500	$57,113
9/18/2015	Rojo	TLLC	$140,449	$70,000	$70,449	$3,500	$66,949
9/25/2015	Rojo	COHO	$130,613	$70,000	$60,613	$3,500	$57,113
11/22/2015	Rojo	IOT	$100,000	$49,700	$50,300	$2,485	$47,815
		TOTALS	**$4,175,823**	**$1,663,009**	**$2,512,814**	**$83,150**	**$2,429,664**

Appendix D

Real Estate Customers

Transaction Date	Well Name	Customer Initials	Investment Amount	Cost	Markup Restitution Sought	Permissible 5% Markup	Excess Markup/ Restitution Amount
1/23/2013	Tom	BLLC	$269,937	$96,750	$173,187	$4,838	$168,350
9/5/2013	Tom	BFT	$119,231	$47,250	$71,981	$2,363	$69,619
10/1/2013	Tom	SI	$499,463	$198,000	$301,463	$9,900	$291,563
9/13/2013	Clark	BELLC	$107,000	$22,500	$84,500	$1,125	$83,375
10/1/2013	Clark	SI	$639,521	$157,500	$482,021	$7,875	$474,146
1/30/2014	Clark	ACFI	$250,000	$150,000	$100,000	$7,500	$92,500
2/12/2014	Clark	SRFI	$250,000	$150,000	$100,000	$7,500	$92,500
5/23/2014	Merket	SRFI	$360,000	$160,000	$200,000	$8,000	$192,000
1/7/2014	Moreland	PFT	$255,030	$86,935	$168,095	$4,347	$163,748
1/7/2014	Moreland	MFT	$325,000	$111,144	$213,856	$5,557	$208,299
1/23/2014	Moreland	BTC	$150,000	$51,170	$98,830	$2,559	$96,272
2/14/2014	Moreland	JOKA	$499,850	$183,223	$316,627	$9,161	$307,466
2/14/2014	Moreland	JILO	$499,850	$183,223	$316,627	$9,161	$307,466
2/17/2014	Moreland	GPFT	$300,000	$94,088	$205,912	$4,704	$201,208
2/26/2014	Moreland	SRFI	$300,000	$110,044	$189,956	$5,502	$184,454
3/6/2014	Moreland	HFT	$350,000	$116,647	$233,353	$5,832	$227,521
3/5/2014	Moreland	GGRT	$125,000	$42,367	$82,633	$2,118	$80,515
3/5/2014	Moreland	LGRT	$125,000	$42,367	$82,633	$2,118	$80,515
3/5/2014	Moreland	GMLLC	$250,000	$85,284	$164,716	$4,264	$160,452
4/23/2014	Moreland	LGG	$375,000	$137,555	$237,445	$6,878	$230,567
7/8/2014	Moreland	JRBT	$225,000	$82,533	$142,467	$4,127	$138,340
7/8/2014	Moreland	HII	$800,000	$293,267	$506,733	$14,663	$492,070
7/8/2014	Moreland	TSWD	$505,000	$185,424	$319,576	$9,271	$310,305
7/8/2014	Moreland	AEDW	$54,950	$24,759	$30,191	$1,238	$28,953
		TOTALS	**$7,634,832**	**$2,812,030**	**$4,822,802**	**$140,602**	**$4,682,201**