

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RICKY ALAN MANTEI
(CRD No. 1098981),

Respondent.

Disciplinary Proceeding
No. 2015045257501

Hearing Officer—DRS

**EXTENDED HEARING PANEL
DECISION**

February 18, 2021

Respondent violated his firm’s prearranged trading prohibition and circumvented its cross trade procedures by directing prearranged trading with intermediaries in order to facilitate and disguise cross trades. For this misconduct, Respondent is suspended for 30 business days from associating with any FINRA member firm in any capacity and fined \$15,000.

Appearances

For the Complainant: Andrew C. Boldt, Esq., and Douglas Ramsey, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Anthony Paduano, Esq., and Katherine B. Harrison, Esq., Paduano & Weintraub LLP

DECISION

I. Introduction

This case is about a registered representative who allegedly violated his firm’s prearranged trading prohibition and circumvented its cross trade procedures by directing prearranged trading with intermediaries in order to facilitate and disguise cross trades. The Department of Enforcement filed a Complaint alleging that, while associated with former FINRA member firm J.P. Turner & Co. (“Firm”), Respondent Ricky Alan Mantei sold two customers’ positions in structured certificates of deposit (“SCDs”) and a third customer’s position in a municipal bond. According to the Complaint, Mantei did not sell these instruments directly from one customer to another in compliance with the Firm’s cross trade procedures. Nor did he sell the instruments out to the market in bona fide transactions. Instead, he allegedly

engineered a plan to sell the customers' financial instruments to other Firm customers without it appearing that he had engaged in cross trades.

The Complaint alleges that, under the plan, Mantei arranged for external third parties to buy each selling customer's investment with the understanding that Mantei would have the Firm repurchase it a short time later. After Mantei caused the Firm to repurchase the investments, he then allegedly sold them to other Firm customers. According to the Complaint, each set of transactions was, in substance, a cross trade between Firm customers. The Complaint asserts that this alleged conduct violated the Firm's prohibition on prearranged trading and bypassed its cross trade procedures. For the trades involving SCDs, Enforcement alleges that Mantei's conduct was inconsistent with high standards of commercial honor and just and equitable principles of trade. Regarding the municipal bond trades, it alleges that Mantei willfully breached his duty of fair dealing and engaged in a deceptive, dishonest, and unfair practice.

Mantei filed an Answer denying Enforcement's allegations, asserting affirmative defenses, and requesting a hearing. A five-day hearing was held before an Extended Hearing Panel. As discussed below, we find that Enforcement proved the violations charged and the Panel majority imposes appropriately remedial sanctions. The Hearing Officer dissents as to the sanctions.

II. Findings of Fact¹

A. Respondent's Background and Role at the Firm

Mantei entered the securities industry in 1982 and has been registered with FINRA through six FINRA member firms since 1983.² From March 2010 until May 2015, he was registered with FINRA through the Firm as a General Securities Representative, General Securities Principal, and an Investment Company and Variable Contracts Products Representative.³ Mantei voluntarily resigned from the Firm on May 18, 2015, and is currently registered with FINRA through another member firm.⁴

While associated with the Firm, Mantei owned, managed, and operated a branch office in Lexington, South Carolina,⁵ as well as five other offices.⁶ From 2014 through 2015, the

¹ While most of the factual findings are contained in this section, we make additional findings of fact in other sections as necessary to address certain issues.

² Answer and Affirmative Defenses ("Ans.") ¶ 2; Revised Joint Stipulations ("Stip.") ¶ 1.

³ Ans. ¶¶ 3–4; Stip. ¶ 2.

⁴ Ans. ¶ 4; Stip. ¶ 3.

⁵ Ans. ¶ 5; Hearing Transcript ("Tr.") 282, 431–32, 704, 1061; Joint Exhibit ("JX-") 2, at 4.

⁶ Tr. 882.

Lexington branch office, where Mantei was located,⁷ employed about 50 persons,⁸ including 10 to 18 registered representatives.⁹ One of those brokers was designated the registered representative of record for the vast majority of customer accounts in the Lexington branch,¹⁰ and Mantei was her supervisor.¹¹ According to the Firm's Chief Compliance Officer, Edward Woll,¹² the accounts in the Lexington office were generally considered Mantei's accounts.¹³ Mantei's responsibilities included, among other things, (1) reviewing and approving transactions at the Lexington office,¹⁴ (2) recommending transactions to clients,¹⁵ and (3) sending those orders for execution to traders at the Firm's trading desk for fixed-income products and SCDs.¹⁶

Mantei's business started including SCDs around 2008.¹⁷ SCDs are instruments that represent bank deposit obligations.¹⁸ They generally pay a fixed interest rate for a specified period.¹⁹ Afterward, they pay periodic interest on a deposit amount determined by a formula set by the issuer and may be correlated to an equity index or an interest rate benchmark, such as the London Inter-Bank Offered Rate, also set by the bank.²⁰ SCDs are not traded on an exchange and SCD transactions might not be publicly reported.²¹ The secondary market for SCDs can be less liquid than for other products; bid and offer spreads can be larger than for other products; and it can be harder to obtain pricing information about them.²²

⁷ Tr. 282, 795.

⁸ Tr. 882.

⁹ Tr. 1109.

¹⁰ Tr. 424, 1108.

¹¹ Tr. 704.

¹² Woll was associated with the Firm from July 2011 through March 2016 and worked in its Atlanta headquarters. During the relevant period, Woll was Chief Compliance Officer and reported to the Chief Operating Officer. Tr. 696, 1153–54.

¹³ Tr. 1061–62.

¹⁴ Tr. 431–32.

¹⁵ Stip. ¶ 4.

¹⁶ Stip. ¶ 4.

¹⁷ Tr. 419.

¹⁸ Stip. ¶ 5.

¹⁹ This was true for the SCDs in this case. Stip. ¶ 5.

²⁰ Stip. ¶ 5; Tr. 371; Complainant's Exhibit ("CX-") 42.

²¹ Ans. ¶ 11; Tr. 337–38, 821.

²² Stip. ¶ 6. Thin trading on the secondary market made it hard for the Firm's traders to find pricing information for SCDs. Tr. 337–38.

B. The Process for Executing Fixed Income Trades

The Firm's fixed income trading desk, also known as the "bond desk,"²³ was in Atlanta.²⁴ During the relevant period, Sam Palermo was one of the Firm's two primary fixed income traders.²⁵ Palermo, whose title was "Fixed Income Trader/VP Investment,"²⁶ would contact other firms to see if they were interested in purchasing particular issues at certain prices.²⁷ He was the bond desk's regular contact person for the Lexington branch²⁸ and Mantei usually contacted him for assistance with trades executed through that desk.²⁹

To place an order, including orders for SCDs, the Lexington office would submit an order ticket and instructions to the bond desk.³⁰ The Firm's written supervisory procedures ("WSPs") required that any instructions relating to a trade accompany the order ticket.³¹ Since at least September 2014, the bond desk used one order ticket for fixed income products, including bonds and SCDs. That ticket was called the "bond ticket."³² After receiving an order, Palermo assisted Mantei by locating a counterparty for an SCD transaction and negotiating the terms of the transaction with the counterparty per Mantei's instructions.³³

C. Mantei Directed Prearranged Trades with Intermediaries to Facilitate Trades Between Customers

The alleged improper trading pertains to three sets of trades. Two sets involved SCDs: a Wells Fargo SCD with CUSIP 949748R66 ("Wells Fargo R66 SCD") and a Citibank SCD with CUSIP 172986FN6 ("Citibank FN6 SCD"). The third set involved a Fresno municipal bond with

²³ Tr. 429–30, 751–52; JX-22.

²⁴ Tr. 282–83.

²⁵ Tr. 280–81, 725.

²⁶ JX-6, at 1.

²⁷ Tr. 786.

²⁸ Tr. 1113–14, 1128.

²⁹ Tr. 287–88, 383–84, 406–07, 594–96, 599–600.

³⁰ Tr. 382–84, 429–30, 1025–26, 1109–10; JX-5; JX-9; JX-10; JX-11; JX-12; JX-13; JX-14; JX-15; JX-16; JX-17; JX-26, at 13–14. *See generally* Tr. 284 (if Mantei spoke to a customer and the customer authorized a trade, Mantei would call the trade desk and put in the trade).

³¹ Tr. 758, 1133; CX-26, at 48–49 (WSPs §14.14, dated July 31, 2014) and CX-27, at 50 (WSPs § 14.14, dated January 26, 2015. The cover page of these WSPs is dated January 26, 2015, but the page containing section 14.14 is dated February 11, 2015) ("Order Records" policy requiring that any instructions must be recorded with the order). *See also* 17 C.F.R. § 240.17a-3(a)(6)(A) ("[t]he term *instruction* must include instructions between partners and employees of a member, broker or dealer"); CX-31; CX-35; CX-36; Respondent's Exhibit ("RX-_") 3; RX-4 (order tickets for cross trades marked "CROSS").

³² Tr. 429–30, 751–52; JX-22.

³³ Tr. 594–96, 718–19, 786–87, 1025–26; CX-4; CX-11; CX-15.

CUSIP 358184HE2 (“Fresno HE2 Bond”).³⁴ As detailed below, the relevant trading in each set followed the same general pattern: a customer from the Lexington office sold a financial instrument to the Firm, which, in turn, sold it to another broker-dealer. Later, that broker-dealer sold it back to the Firm at a price slightly above what it had paid for the position. This increased price contained a service fee to compensate the broker-dealer for temporarily holding the position.³⁵ In each instance, Mantei hoped to sell the repurchased positions to other Firm customers.³⁶ Mantei helped locate each of the customers who ultimately bought the financial products in the three sets of trades.³⁷

Much of the key evidence consists of undisputed trading records and recorded conversations in which Mantei and Palermo discussed their plans for selling and repurchasing the Wells Fargo R66 and Citibank FN6 SCDs and the Fresno HE2 Bond.³⁸ The disputes of fact largely consist of the inferences to be drawn from the mostly undisputed facts.

We turn now to the three sets of trades at issue.

1. The Wells Fargo R66 SCD Transactions

a. Mantei Creates a Plan to Sell, Repurchase, and Resell, the Wells Fargo R66 SCD

In or about 2010, a customer in one of Mantei’s branch offices invested \$96,000 in a Wells Fargo R66 SCD.³⁹ Several years after purchasing the instrument, the customer received a statement showing that its price had dropped into the mid-70s.⁴⁰ This development alarmed the customer and his daughter. And, in the fall of 2014, the daughter and possibly the customer

³⁴ CX-1, at 1–3.

³⁵ CX-41, at 27–28 (Mantei On-the-Record Testimony Transcript dated July 2, 2016 (“OTR Tr.”) 177–78).

³⁶ Tr. 645–46.

³⁷ Tr. 638.

³⁸ The Firm recorded the bond desk’s telephone conversations. At the hearing, Enforcement introduced and played selected audio recordings of conversations Palermo had on the recorded line with Mantei and with a trader at another FINRA member firm, Firm A. Enforcement also introduced transcriptions of those recordings. The audio recordings are cited as “CX-__A.” Each transcription bears the same exhibit number as the audio recording, minus the “A” suffix. Because the parties disputed the accuracy of portions of the transcriptions, the Hearing Officer permitted the parties to submit proposed corrections to the transcriptions after the hearing. *See* Order Governing Post-Hr’g Briefing and Addressing Certain Exhibits 2. And they did so. *See* Enf’t Post-Hr’g Br. Ex. A; Resp’t Resp. to Enf’t’s App.; App. to Resp’t Post-Hr’g Br. Corrections to Transcripts Offered by Enf’t. We view the audio recordings as the best evidence of the conversations. We used the transcriptions and proposed transcript corrections as tools to assist us in determining what was said on the recordings. In those instances where we conclude that certain quoted portions of the transcriptions do not accurately reflect an audio recording, the corrected language appears in curly brackets.

³⁹ Tr. 518, 576, 705. Another broker opened the account; Mantei did not know the customer. Tr. 576.

⁴⁰ Tr. 576.

brought their concerns to the attention of Mantei and Woll.⁴¹ According to Mantei, there was no reason for the price drop. He viewed it as an error and tried to get the Firm's head of operations to "fix" it.⁴² Meanwhile, Mantei tried unsuccessfully to persuade the customer's daughter to hold the instrument and not sell it.⁴³

For his part, Woll recalled that when he spoke to the customer's daughter on the phone, she was angry⁴⁴ and told him she wanted her father to get back all the money he invested.⁴⁵ She also threatened to file a formal complaint.⁴⁶ Ultimately, Woll and the customer's daughter agreed to an approach that would address her concerns. "I believe she wanted to transfer her father's account out, and she expected it to be worth \$96,000. I think we agreed that we would sell the bond for what we could get for it," Woll testified. "She would give us credit for all the interest he had earned, and whatever amount of money was remaining in his account. And the expectation would be that he would be made whole, to the extent of \$96,000."⁴⁷

But selling the SCD created a potential problem. Mantei needed to sell the SCD at 90 to make the customer whole,⁴⁸ and thus wanted to sell the SCD at around that price.⁴⁹ Mantei recalled, however, that when Palermo tried to sell it on the secondary market, he could not get pricing interest above the low to mid-80s.⁵⁰ According to Woll, if the customer were paid an above-market price to resolve the grievance, it might have to be reported to FINRA as a settlement on Form U4, the Uniform Application for Securities Industry Registration or Transfer, and Mantei wanted to avoid that, if possible.⁵¹

Mantei's inability to obtain the desired price in the secondary market was not the only obstacle he faced in selling the SCD: Woll would not approve a cross trade to another Firm customer. At that time, the market was "offering in the 80s," Woll recalled.⁵² Woll testified that a cross trade was unacceptable to him in this situation because it would prevent the market from determining the value of the SCD. "The market for some of these instruments is rather thin and I

⁴¹ Tr. 520–21, 577, 674–75, 702–05, 712, 981; JX-8, at 2–3.

⁴² Tr. 518, 520.

⁴³ Tr. 519, 577, 584.

⁴⁴ Tr. 708.

⁴⁵ Tr. 704–05.

⁴⁶ Tr. 705–06. Woll remembered that the customer's daughter claimed she had trading authority over the account and an agreement with Mantei's branch that it would not place trades without her permission. Woll, however, was not sure he ever saw paperwork substantiating her claim. Tr. 712–13; JX-8, at 3.

⁴⁷ Tr. 982–83.

⁴⁸ Tr. 1051–52.

⁴⁹ Tr. 432–33, 456.

⁵⁰ Tr. 456, 1016. Mantei testified that he felt helpless because he could not get higher bids. Tr. 576–77.

⁵¹ Tr. 1051–52.

⁵² Tr. 716.

understand that it's hard to get a good price sometimes, but," he added, "I didn't feel I could let him sell it to one of his clients for appreciably more than what we had already established that the market was willing to pay for it."⁵³ So, according to Woll, he was "adamant" that the sale of the customer's SCD could not be part of a cross trade and that it "had to be sold into the marketplace . . . or at least the marketplace had to determine the price." Otherwise, it "would have the appearance, or worse, that we were trying to avoid a complaint by some sort of sleight of hand."⁵⁴ Mantei reluctantly acquiesced, according to Woll.⁵⁵ Mantei understood his "marching orders" from Woll were to "seek the highest price you can find on this . . . so that's what I was going to do and that's what I did."⁵⁶

What Mantei did, however, was sidestep Woll's instruction not to sell the customer's SCD in a cross trade. As detailed below, Mantei asked Palermo to (1) find another firm that would agree to buy the Wells Fargo R66 SCD at the price Mantei sought and (2), at the same time, offer to repurchase the SCD at a slightly higher price to compensate that firm for temporarily holding the position. Palermo followed Mantei's directives and located a trader at Firm A, a FINRA member firm, who agreed to this arrangement. Next, Mantei directed Palermo to repurchase the SCD at a slightly higher price than Firm A had paid for it. After Palermo repurchased the instrument, Mantei sold it to another Firm customer.

b. Mantei Directs the Sale of the Wells Fargo R66 SCD

On the morning of September 25, 2014, Mantei telephoned Palermo to discuss finding a buyer for the Wells Fargo R66 SCD. Mantei told Palermo that his goal was "to make" the customer's grievance "go away. But a lot of it," he recognized, "has to do with the price we got for this client."⁵⁷ Continuing, Mantei explained, "[T]he closer I can get towards 90, the more likely this gal is going to just take this money and walk away and be done with this, and we won't have to [REDACTED] with this anymore. And I don't have to kick no damn money into the pot." Making his point more directly, Mantei said he was "trying to keep it from having to be a reportable U4 entry item If we can keep this thing down, then we shouldn't have to."⁵⁸

⁵³ Tr. 717.

⁵⁴ Tr. 723. *See also* Tr. 433, 716–17; CX-3A; CX-3, at 2 (Mantei telling Palermo during a September 25, 2014 telephone call that he had discussed with the Firm's Compliance Department the possibility of selling the SCD internally at the Firm and was told that a cross trade would "look bad"). Woll and Mantei's testimonies are inconsistent and inconclusive as to whether Mantei told Woll he had a customer lined up to buy the instrument. According to Woll, Mantei told him that he had a client who would like to buy the SCD for a price somewhere around 90. Tr. 715–16. Mantei, however, denied telling Woll that he wanted to do a cross trade, but conceded he might have considered doing such a trade had Woll not prohibited it. Tr. 635–37.

⁵⁵ Tr. 1058–59, 634–35.

⁵⁶ Tr. 651–52.

⁵⁷ CX-3A; CX-3, at 1.

⁵⁸ CX-3A; CX-3, at 1–2. Woll confirmed Mantei's explanation.

The challenge, as Mantei asked rhetorically, was that “there’s no market in this thing, right?” He therefore asked Palermo if he had “any friends out there” who could buy the Wells Fargo R66 SCD at around his “magic number” of 89.⁵⁹ If so, Mantei said, he would buy it back a week later at 90.⁶⁰ Restating his request, Mantei asked,

Can I get you to help me find some-damn-body out there . . . that can help get me a high price, 89-90, something like that on this damn paper? And I will buy the [REDACTED] back. You can tell them, “Hey, you put it back up on the {BondDesk} next week, Rick’ll buy it from you.” Because I will. And I’ll buy it back for more than they paid for it.⁶¹

Mantei also explained to Palermo why he needed to use this maneuver rather than just sell the SCD directly from the customer to another Firm customer—Woll had forbidden him from selling the SCD through a cross trade because it would “look bad if FINRA digs into it” at the next audit. “They come in here and they see the complaint, they see what we did, they see a cross, they see all that. They go, ‘You guys were just priming the market to try to take care of the problem’ . . . which is true,” Mantei admitted.⁶²

Summing up, Mantei told Palermo he needed a price of around 89 “on just the outright sell” and “can’t cross because Ed [Woll] says it looks bad. And,” he continued, “if we get that and this lady accepts, which it looks like she will, then this thing goes away and nobody’s U4 gets marked.”⁶³

Upon hearing the plan, Palermo suggested that he (Palermo) not reveal their discussion to the Firm’s Compliance Department (“Compliance”) because he did not want to draw attention to it. Instead, Palermo recommended that Mantei should later just say that Palermo found someone to buy the instrument at 89. Mantei agreed with this approach.⁶⁴ After that telephone call, Palermo began searching for a buyer in accordance with Mantei’s instructions. Early in the afternoon of September 25, Palermo called a trader at Firm A. Shortly into the call, he placed the trader on hold to take Mantei’s call.⁶⁵ Palermo reported to Mantei that he had “already been turned down a couple places” and that other potential counterparties had expressed concerns

⁵⁹ CX-3A; CX-3, at 1, 4.

⁶⁰ CX-3A; CX-3, at 2, 4.

⁶¹ CX-3A; CX-3, at 2. The trading platform “BondDesk” was erroneously transcribed as “the bond desk.”

⁶² CX-3A; CX-3, at 2.

⁶³ CX-3A; CX-3, at 3.

⁶⁴ CX-3A; CX-3, at 4.

⁶⁵ CX-4A; CX-4, at 1. The recorded call on CX-5A occurred while the recorded call on CX-4A was placed on hold.

about whether the proposed transaction constituted “painting the tape.”⁶⁶ But, Palermo reassured Mantei, he had pushed back with those firms.

Palermo then returned to the call with the Firm A trader and offered to sell him the Wells Fargo R66 SCD and buy it back the next week at a higher price.⁶⁷ Palermo told the trader that he was asking for a favor⁶⁸ and then made the following request:

[M]y buyer . . . needed a mark away from us. Our {Compliance—he was gone—} was willing to cross it at 89, which seems to be out of the market, some people think. * * * I’m certainly not interested in getting anybody in trouble, but that’s why I was trying to call you earlier. * * * I wanted to buy it back, but I would have to sell it to you at a price and then buy it back on Wednesday of next week. * * * I wanted to put it out to you and let you know. If I buy it at 89, I’m willing to buy it back even for, worth your while, you know, to cover any cost, and whatever you think is best. You know, and, or at least put it back out. Even if you told me, hey, I’ll take it in at 89, you buy it back at 90 and you’re okay with that, I’ll call the rep and see if he’s okay with it.

The Firm A trader then agreed to perform the accommodation, telling Palermo, “Uh, whatever you need.”⁶⁹

A few minutes later, Palermo informed Mantei that he had likely found a counterparty willing to do the trade Mantei requested. “I can get favors,” Palermo told Mantei. “There’s a very good chance I’m going to get a print away from the street from us on this, on that. I think I can do it. He says, whatever you need.”⁷⁰ Mantei then reminded Palermo of the terms of the arrangement: “Well, if {he’ll} just buy that ██████ 96 and then put it back up on {BondDesk} Monday at 90, I’ll buy the ██████ from him. He’ll pick up a point. We’re all happy.”⁷¹ Mantei explained to Palermo that this would be a riskless trade for the counterparty because Mantei would buy back the position: “If {he’ll} give me 89 for it, I’ll buy it from him at 90 next week sometime,” Mantei said. “He’s doing me a favor.”⁷²

⁶⁶ CX-5A; CX-5, at 1. “Painting the tape” is a manipulative practice described by the Securities and Exchange Commission as “[p]lacing successive buy orders in small amounts at increasing prices.” *John R. Glushko*, Exchange Act Release No. 57435, 2008 SEC LEXIS 490, at *3 (Mar. 5, 2008); cf. *SEC v. Fiore*, 416 F. Supp. 3d 306, 316 n.4 (S.D.N.Y. 2019) (describing “painting the tape” as “creating an appearance of trading activity without an actual change in beneficial ownership”).

⁶⁷ CX-4A; CX-4, at 2.

⁶⁸ CX-4A; CX-4, at 1.

⁶⁹ CX-4A; CX-4, at 2–3.

⁷⁰ CX-6A; CX-6, at 1.

⁷¹ CX-6A; CX-6, at 1.

⁷² CX-6A; CX-6, at 2.

Palermo pressed forward to implement the arrangement. But an hour and a half later, he expressed qualms about what he was doing. He told Mantei that, while he was close to achieving the “scenario” Mantei requested on the Wells Fargo R66 SCD, he worried about getting a potential counterparty “in trouble with the [painting] the tape scenario.”⁷³ Mantei, however, was adamant: “Trade on that [REDACTED] piece of paper!” And when Palermo raised the specter of regulatory scrutiny, Mantei was undeterred: “[REDACTED] them! I’m buying the paper . . . I want the paper. This guy wants to sell the paper.” With that, Palermo assured Mantei that he would do the trade.⁷⁴

Two hours later, Mantei and Palermo discussed the status of Palermo’s efforts to find a counterparty. Palermo represented that he would “button it up” the next day, though the prospective counterparty “seemed a little reluctant.” After more discussion, Mantei suggested that Palermo could “change the price a tad to make it look realistic, you know, 89.01 or 88.91 or something.” But Palermo assured him that was unnecessary because they were “standard trades.” “We’ll make it look good,” Palermo said.⁷⁵

Early the next morning, September 26, Palermo called Mantei and again raised the issue of what to tell Compliance about their arrangement. He asked Mantei whether Compliance needed to approve the upcoming transaction “or is this something just you and I are talking about?” Mantei responded that all he (Mantei) needed to do was tell Woll that “we’re good for finding the buyer, no crossing that will pay us eighty-nine cents on the dollar for those bonds. That’s all I need to be able to tell him . . . As long as he doesn’t see a cross going on.” This explanation satisfied Palermo, who responded, “Understood, we’re good.” Then he added, “Bottom line is I got somebody that will help us with this one and when they come back to the market we’re going to buy it on another platform so it’s anonymous and everything’s clean.”⁷⁶ But the trade was still not executed.

A few days later, on the afternoon of October 1, 2014, Palermo called the Firm A trader to confirm their arrangement for the Firm to sell and repurchase the Wells Fargo R66 SCD. Referencing “that favor I asked of you about a week ago,” Palermo asked, “Can you still help me out with that one and I’m going to buy it back.” The Firm A trader responded, “Yeah.”⁷⁷ Reminding the trader of the details of their arrangement, Palermo told him, “I’m going to buy it back from you, you just name the price, but I’d like to sell a 96 face to you at 90 cents on the dollar. * * * I’ll buy this back if you’re okay with that?” The other trader agreed, which prompted Palermo to add, “We’ll just put some time between it, make it look good, and then,

⁷³ CX-7A; CX-7, at 1–2.

⁷⁴ CX-7A; CX-7, at 2.

⁷⁵ CX-8A; CX-8, at 1.

⁷⁶ CX-9A; CX-9, at 1.

⁷⁷ CX-11A; CX-11, at 2.

um, I won't forget the favor.”⁷⁸ Palermo and the Firm A trader then agreed to go forward with the trade of 96,000 face amount at 90.⁷⁹

Later that day, Mantei and Palermo informed Woll that they had found a buyer at the price they needed. But they did not tell him about the arrangement they had worked out with Firm A.⁸⁰ Accordingly, relying on Mantei and Palermo, Woll signed and submitted an order ticket for Mantei to effect the sale of the customer's Wells Fargo R66 SCD.⁸¹ The SCD was then sold to Firm A at a price of 90.⁸² Mantei claims that he did not have an ultimate customer in mind to buy the Wells Fargo R66 SCD until long after the customer sold it.⁸³

c. Mantei Directs the Repurchase of Wells Fargo R66 SCD and Resells It to Firm Customers

After the sale, Palermo treated the position as though it were still part of Mantei's internal inventory at the Firm.⁸⁴ Palermo did so for two reasons: Mantei wanted to repurchase the position, and Palermo was confident he could repurchase it because the “market was only showing like 77,” so he doubted that the counterparty had sold it.⁸⁵

A week later, on the morning of October 8, 2014, Mantei and Palermo discussed their approach for repurchasing the Wells Fargo R66 SCD. Mantei said he was “just wondering from a smart standpoint does it make sense to bring them all in or just 30?” Palermo was receptive to the idea of splitting up the repurchases. “Well, maybe I'll do it that way,” he said. “I'll just say, hey, I'm going to have them all done by the end of the month but let me bring in 30 at a time or

⁷⁸ CX-11A; CX-11, at 2–3.

⁷⁹ CX-11A; CX-11, at 4.

⁸⁰ Tr. 653, 718–19, 722, 727.

⁸¹ Tr. 720, 896, 1059–60; JX-5. Woll testified that he believed this was the best available price and that the instrument was being sold into the open market through an arm's length transaction. According to Woll, he reached these conclusions because the ticket reflected “best available” and he had been clear that it must not be crossed with another customer. Tr. 720. Woll said that, in retrospect, had he known before signing the ticket that Mantei either directly or indirectly had offered to sell the Wells Fargo R66 SCD and buy it back at the same or higher price, he would not have signed the ticket. Tr. 722–23.

⁸² CX-1. According to Palermo, Mantei originally wanted to sell the Wells Fargo R66 SCD at 89, but Palermo sold it at 90. CX-14, at 4.

⁸³ Tr. 640–41. As Mantei put it, he usually had an idea which customers might want to buy an instrument, and while he did not have a customer in mind for any of the three sets of trades, “[Y]ou know you have enough in the reservoir to fill that trade.” And it often came down to this: “The first guy who answers the phone that gives me an affirmative, he gets it.” Tr. 641–42.

⁸⁴ Mantei's internal inventory at the Firm consisted of positions in Firm accounts that Mantei had the authority to control through the bond desk, subject to certain limits. He could then sell that inventory to customers. According to Woll, Mantei was allowed to direct transactions from the street into the Firm's inventory account; Mantei could instruct a bond trader to buy shares up to a certain limit if Mantei believed he had customers who would buy them, but the inventory account had to be flat by the end of the month. Tr. 1047–49.

⁸⁵ CX-14A; CX-14, at 3.

something.” And Mantei agreed. Palermo then asked what price they should pay the counterparty, noting that he “probably should pay him something . . . for doing that favor.” This prompted Mantei to suggest “about 90.5,” and again Palermo agreed.⁸⁶ Mantei’s branch then submitted an order ticket to repurchase the 30,000 face amount Wells Fargo R66 SCD.⁸⁷

Shortly after noon on October 8, Palermo called the Firm A trader to discuss repurchasing the position. Palermo told the trader that he (Palermo) was “going to start bringing some back.” And the Firm A trader replied, “Yeah, whenever you’re ready.” Palermo then said he would start with “a 30 piece now” but planned to eventually “take them all,” and the Firm A trader again said, “Yeah.” They then agreed that when repurchasing the position, Palermo would add a quarter to the 90 price the trader had paid.⁸⁸ Expressing his appreciation, Palermo told the trader, “I owe you,” and the Firm A trader responded, “No problem.”⁸⁹ That day, the Firm repurchased 30,000 of the position at 90.25⁹⁰ and immediately sold it to another Firm customer at 90.50.⁹¹ This left 66,000 of the position to be repurchased.⁹²

Two days later, on October 10, before repurchasing the remaining 66,000 face amount, Mantei called Palermo in the morning and informed him, “[W]e’re still long 66” of the Wells Fargo R66 SCD. Palermo confirmed that he had done exactly what Mantei “suggested”—which he called “brilliant”—and reassured Mantei that he (Palermo) could still “go back and get the other 66 if we need to.” Mantei welcomed this news. “I just need to know that,” he replied. “That’s good.” Palermo then said that the trading arrangement was “another angle that [he could] use” and suggested that he (Palermo) “ought to start doing that” in connection with another financial instrument. Mantei liked the idea. “Right. Right,” he responded.⁹³ On October 14, the Firm repurchased the remaining 66,000 from Firm A at 90.25 and immediately sold it to another Firm customer at 92.34.⁹⁴

2. The Fresno HE2 Bond Transactions

On December 26, 2014, Mantei bought a 30,000 face amount Fresno HE2 Bond from a customer and sold the position that day to a broker-dealer. He repurchased the position three

⁸⁶ CX-13A; CX-13, at 3.

⁸⁷ JX-9.

⁸⁸ CX-15A; CX-15, at 1.

⁸⁹ CX-15A; CX-15, at 2.

⁹⁰ CX-1, at 1.

⁹¹ CX-1, at 1; JX-9.

⁹² CX-15A; CX-15, at 2.

⁹³ CX-16A; CX-16, at 8.

⁹⁴ CX-1; JX-10.

days later, on December 29, and resold it that day in three 10,000 face amount transactions to three Firm customers.⁹⁵ The key events began on December 23, 2014.

In a telephone call between Mantei and Palermo on Tuesday morning, December 23, 2014, Mantei told Palermo that he (Mantei) needed to cross a Fresno HE2 Bond at “a level where [he] can fill it today and then buy it back maybe Friday.” Mantei said he would send Palermo a ticket to sell the bond at 97.11. He directed Palermo not to “go selling it in the street,” and repeated that he would buy it back on Friday.⁹⁶

They spoke again about ten minutes later when Mantei called Palermo. Moments into the call, Palermo told Mantei that he needed to talk with him “about that cross.” Palermo informed Mantei that he could “only take commissions on a cross, you know, one sided.” Mantei responded that he was aware of that limitation. Mantei then turned the conversation to the particulars of his plan to sell and repurchase the Fresno HE2 Bond. “I was gonna get you to just sell them somewhere like you’ve done in the past,” Mantei said. “[G]ive them a quarter or a half or whatever the hell they want, and then we’ll just buy it back. How about that?” Palermo pointed out, “[Y]ou told me not to sell it to the street. That’s what you just told me.” Mantei clarified his intentions: “But not to the [REDACTED] street,” he said. “[B]ut if you’ve got somebody that’ll do us a favor, that’s what I’m trying to get you to do.” Palermo replied that he would “work that trade.”⁹⁷

Three days later, on the morning of Friday, December 26, 2014, Mantei called Palermo because the trade for the 30,000 face amount Fresno HE2 Bond had not yet occurred. Mantei asked if Palermo had found someone who would buy the bond at 97.11 so that they could repurchase it on Monday. Palermo explained that he had not yet been able to locate a counterparty, but added, “I know what we’re trying to do.” This did not placate Mantei. “[H]ey, look, you’ve had 48 hours to do something. You ain’t done [REDACTED]!” he said.⁹⁸ “Now, you going to get somebody to do this with?” And Palermo responded, “I’m going to do it, I’m going to make a phone call right now.”⁹⁹

Later that day, the Firm bought the 30,000 face amount Fresno HE2 Bond from a customer at 94.61 and, following Mantei’s instructions, the Firm’s bond desk sold it to Firm B, a FINRA member firm, at 97.11 through an order ticket submitted from Mantei’s branch office.¹⁰⁰

⁹⁵ CX-1, at 2.

⁹⁶ CX-17A; CX-17, at 1.

⁹⁷ CX-18A; CX-18, at 1.

⁹⁸ CX-19A; CX-19, at 1.

⁹⁹ CX-19A; CX-19, at 2.

¹⁰⁰ CX-1, at 2; JX-11.

Mantei said that when the customer sold the Fresno HE2 Bond to the Firm, he did not have a specific customer in mind to buy it.¹⁰¹

The next Monday, December 29, 2014, Mantei called Palermo to discuss repurchasing the position. Referencing the “30 Fresnos” he sold on Friday, Mantei asked if there was “any problem with me buying them back now today at par.” Palermo said that would not be a problem: “I just got to go get them.” Mantei then told Palermo that he wanted to buy back the 30 and would send Palermo three tickets of ten each. Palermo informed him that the selling counterparty would be adding .25 to the 97.11 price he paid; so the repurchase price would be 97.36. Mantei agreed that would be fine, and Palermo said he would “go get them.” As for the mechanics of the repurchase, Mantei told Palermo, “I got two tickets for 10 each and I’ll send you the third for 10 today.”¹⁰² Later that day, the Firm repurchased the 30,000 face position from Firm B at a price of 97.36 and immediately sold it in three trades of 10,000 face to three Firm customers at 99.96.¹⁰³ According to Enforcement, the total markup/markdown paid by the selling customer and the ultimate purchasers was 5.1%, which exceeded the 2.6% limit set in the Firm’s cross trade procedure.¹⁰⁴

None of the order tickets or other trade records for the Fresno HE2 Bond transactions reflected Mantei’s instructions to Palermo about the prearranged trade or disclosed a cross trade.¹⁰⁵ To the contrary, the word “CROSS” was scribbled out on the sell ticket used to execute the sale by the customer.¹⁰⁶

3. The Citibank FN6 SCD Transactions

Over a two-day period, February 25 and 26, 2015, Mantei engaged in the sale, repurchase, and resale of a 40,000 face amount Citibank FN6 SCD.¹⁰⁷ On the afternoon of February 25, 2015, Mantei telephoned Palermo and, without referring to a specific financial instrument, asked, “[C]an we sell these, {take them back, sell them} on the credit side? Can you

¹⁰¹ Tr. 641.

¹⁰² CX-20A; CX-20, at 1.

¹⁰³ CX-1, at 2; JX-12; JX-13; JX-14.

¹⁰⁴ Enf’t Post-Hr’g Br. 14; CX-1, at 2; JX-18, at 5; JX-19, at 3. Mantei did not dispute these percentages.

¹⁰⁵ See CX-1, at 2; JX-18, at 5; JX-19, at 3.

¹⁰⁶ JX-11.

¹⁰⁷ Two weeks before these transactions, on February 9, 2015, Mantei and Palermo discussed what appeared to be another planned set of prearranged transactions in what Mantei called “Fresnos.” During their conversation, Mantei wondered whether “some clown out there’ll” buy the instrument at a specified price “and just hold them in his inventory.” Palermo responded that that was what he was “going to try to do.” Mantei then instructed Palermo to just “[g]ive them a [REDACTED] quarter and then we’ll turn around and buy them back tomorrow.” CX-37A; CX-37, at 1. The next day, Mantei pressed Palermo to execute the trades and jokingly asked whether he needed to change his name to John Doe and just “go to the other side and . . . hold the [REDACTED] for a day and sell them back” to Palermo. This caused Palermo to laugh. But he immediately cautioned Mantei, “You need to be quiet on the damn phone.” CX-38A; CX-38, at 1.

get somebody to hold these 50 [sic] in inventory, just buy them for me tomorrow?” Mantei explained, “[W]e need to sell today but we’ll turn around and buy tomorrow,” and asked if Palermo could “do that.” Palermo responded, “Yeah I just got to have somebody to take them” He told Mantei he would call “the ones who do it for me” and instructed Mantei to send him the ticket.¹⁰⁸

About 15 minutes later, Mantei called and asked Palermo, “You want me to send you that ticket on the 40, Citibank, that {FN6}.” Palermo responded, “Yeah, let me massage that. I just tried to get someone to take it and I’ll take care of you.” During the telephone call, Mantei confirmed that Palermo did not want “cross” written on the order ticket.¹⁰⁹ Palermo explained his reason: “We’re not crossing it.” Mantei replied that he understood; he was “taking that off” and would send Palermo the ticket “now.”¹¹⁰

They spoke again an hour later. Palermo told Mantei that while setting up “this favor” on the Citibank FN6 SCD for Mantei, he learned that the counterparty had another “50 on the other side.” Palermo asked if Mantei could use them, “[C]ause then I can bring back 90.” But Mantei declined the additional purchase. “[N]obody wants them,” he said.¹¹¹ A few minutes later, the Firm bought the 40,000 face amount Citibank FN6 SCD at 90.45 from a customer¹¹² and immediately sold the position to Firm C at 93.¹¹³ Mantei testified that when the customer sold the Citibank FN6 SCD, he did not have a particular customer in mind to buy it.¹¹⁴

The next morning, February 26, 2015, Mantei telephoned Palermo and asked if he could “drop” an order ticket “for those Foxtrots.” Palermo confirmed that Mantei could send him the ticket and reminded him, “[W]e got to pay a little bit” to complete the repurchase, noting that he would buy back the position at 93.25. Mantei confirmed that the position would then be sold to a customer at 95.50 and told Palermo he would send him [REDACTED].

[REDACTED] face amount (in two transactions) from Firm C, a FINRA member firm, at 93.15 (not 93.25) and sold the position that day to a Firm customer at 95.50.¹¹⁶ According to Enforcement, the total markup/markdown paid by the selling customer and ultimate purchaser was 4.9%, which exceeded the 2.6% limit in the Firm’s cross

¹⁰⁸ CX-22A; CX-22, at 1.

¹⁰⁹ CX-23A; CX-23, at 1.

¹¹⁰ CX-23A; CX-23, at 1. The sale order ticket reflects that certain handwriting was scratched out. JX-15.

¹¹¹ CX-24A; CX-24, at 1.

¹¹² JX-15; CX-1, at 3.

¹¹³ CX-1, at 3.

¹¹⁴ Tr. 642.

¹¹⁵ “Foxtrots” referred to the “F” at the end of the CUSIP, i.e., FN6. CX-25A; CX-25, at 3.

¹¹⁶ JX-16; CX-1, at 3.

trade procedure.¹¹⁷ None of the order tickets or other trade records for these transactions reflected Mantei's instructions to Palermo about the prearranged trade or disclosed a cross trade.¹¹⁸

D. Mantei Violated the Firm's Prohibition Against Prearranged Trading

Enforcement alleges that Mantei's conduct violated the Firm's policy prohibiting prearranged trading. The policy in the Firm's WSPs defined prearranged trading as "[a]n offer to sell coupled with an offer to buy back at the same or a higher price, or the reverse"¹¹⁹ This prohibition applied to Mantei and his offices¹²⁰ and was an important policy at the Firm, according to Woll. He explained that its purpose was "[t]o ensure that clients get legitimate prices" and that the Firm did not "use deceptive practices to sell and buy back and trade securities."¹²¹ The policy encompassed transactions in SCDs.¹²²

Mantei denies violating the prearranged trading policy.¹²³ He makes two primary arguments. First, Mantei contends that the prohibition against prearranged trading seeks to minimize the risk of market manipulation, as well as customer and market harm,¹²⁴ and Enforcement did not establish an intent to manipulate the market or cause customer or market harm.¹²⁵ We reject this argument because Mantei misinterprets the requirements necessary to establish a violation of the policy. The Firm's prearranged trading policy was a prophylactic measure that completely banned certain conduct. It did not address intent to manipulate or harm to the market or customers, or state that these must be present to violate the policy. Nor does it follow that these purported requirements are implicit. By analogy, the SEC has imposed blanket

¹¹⁷ Enf't Post-Hr'g Br. 17; CX-1, at 2; JX-18, at 5; JX-19. Mantei did not dispute these percentages.

¹¹⁸ See CX-1, at 2; JX-18, at 5; JX-19. The next day, February 27, 2015, the Firm bought an additional 10,000 face amount Citibank FN6 SCD from Firm C, which it sold that day to a customer. JX-17; CX-1, at 3.

¹¹⁹ CX-26, at 74, § 14.43.4 (Both the cover page of the WSPs and the page containing section 14.43.4 are dated July 31, 2014); CX-27, at 74, § 14.43.4. (The cover page of these WSPs is dated January 26, 2015, but the page containing section 14.43.4 is dated February 11, 2015.) The prearranged trading policy included an exception for "[o]ptions or written agreements such as repurchase agreements." It is undisputed that this exception is inapplicable here.

¹²⁰ Tr. 729–31.

¹²¹ Tr. 731.

¹²² Tr. 743. Woll did not draft section 14.43.4, and the Firm did not issue interpretations of it while Woll worked there. Tr. 1055–56. Woll never spoke with Mantei about this section. Tr. 1057.

¹²³ Resp't Post-Hr'g Br. 14–15.

¹²⁴ Resp't Post-Hr'g Br. 14.

¹²⁵ Resp't Post-Hr'g Br. 14, 33. While admitting it was "very likely" he "may have" made an offer to sell coupled with an offer to buy back at the same or a higher price, or the reverse, Mantei asserts that "[t]he intent is everything," and he had none. Tr. 912.

prohibitions designed to prevent manipulations without requiring a showing of intent.¹²⁶ Thus, we find no basis for engrafting these additional elements into the Firm’s unambiguous prohibition.

Second, Mantei disputes that he violated the policy because he claims he did not engage in prearranged trading. According to Mantei, Palermo was simply trying to get a decent price. As Mantei explained, the way he did that was to let the street trader know that an instrument was “good paper” and, “[i]f nothing else, Rick will buy the darn thing back from you if you can’t sell one of these things.” But, Mantei pointed out, the street traders have “the right to do whatever in the world they want.”¹²⁷ And once an instrument is sold to them, “you have no clue where it’s going to wind up, where it’s going to go.”¹²⁸ Stated a bit differently in other testimony, Mantei said that when the customers sold their instruments and the Firm trader sold the instruments out to the street, he hoped to buy them back and sell them to another Firm customer.¹²⁹ He did not view the trades as prearranged because the street purchasers did not have to sell the positions back to him. Instead, he testified, they could sell the instrument to someone else if they chose to do so.¹³⁰ Likewise, according to Mantei, he did not feel obligated to repurchase the positions if the price dropped.¹³¹

By contrast, Mantei explained, “A prearranged trade would be something in writing, first, that would be saying, sir, I’ll sell you this 96 at 89. I will buy it back within a week at 91.”¹³² He represented that if he were to do a prearranged trade he would want it in writing for his own protection. It would assure him that he would be able to buy back the instrument.¹³³

¹²⁶ For example, in *Department of Market Regulation v. Imbruce*, No. 2008012137601, 2012 FINRA Discip. LEXIS 41 (NAC Mar. 7, 2012), the respondent argued that, because he did not intend to manipulate or depress an issuer’s offering price, he did not violate Securities Exchange Act of 1934 Rule 105. That rule imposed an absolute prohibition forbidding any person that effected restricted period short sales from purchasing the offered securities. The National Adjudicatory Council (“NAC”) rejected the respondent’s argument, observing that “[u]pon implementing this blanket ban, the Commission explained that Exchange Act Rule 105 is prophylactic, provides a bright line demarcation of proscribed conduct, and applies irrespective of a short seller’s intent.” *Imbruce*, 2012 FINRA Discip. LEXIS 41, at *22. *Cf. United States v. O’Hagan*, 521 U.S. 642, 753 (1997) (holding that, under Exchange Act Section 14(e), “the Commission may prohibit acts, not themselves fraudulent under the common law or § 10(b), if the prohibition is reasonably designed to prevent . . . acts and practices [that] are fraudulent”) (citation omitted).

¹²⁷ Tr. 654–57.

¹²⁸ Tr. 656.

¹²⁹ Tr. 645.

¹³⁰ Tr. 645–46, 649–51, 904–05, 912.

¹³¹ Tr. 651.

¹³² Tr. 657.

¹³³ Tr. 668–69.

Mantei offered many other reasons why his conduct did not constitute prearranged trading in violation of the Firm's policy: (1) he did not speak to the counterparties;¹³⁴ (2) he was not a trader and did not execute the trades at issue;¹³⁵ (3) he did not supervise the fixed income desk and had no ability to take risk for the Firm;¹³⁶ (4) Enforcement failed to provide evidence of any understanding, agreement, or offer between the Firm and the counterparties to the Citibank or Fresno transactions;¹³⁷ (5) the Firm was not obligated to repurchase any of the Wells Fargo R66 SCD position—rather, Firm A negotiated the price when it sold the position back to the Firm;¹³⁸ and (6) Firm A had market risk and could have sold the Wells Fargo R66 SCD at any time.¹³⁹

These arguments miss the mark. The evidence showed that in connection with the three sets of trades, Mantei instructed Palermo to couple an offer to sell customer positions with an offer to buy them back at a higher price and Palermo followed those instructions.¹⁴⁰ The prearranged trading policy unambiguously prohibited these offers. It is beside the point that Mantei did not speak to the counterparties, was not a trader, and did not supervise the fixed income desk.

Whether Mantei violated the Firm's policy also does not hinge on the existence of an enforceable agreement with a counterparty. The policy prohibited certain types of offers—not agreements. And the audio recordings show that Mantei, through Palermo, made prohibited offers, as we find above. Moreover, by their nature, prearranged trading understandings are unlikely to be in the form of a legally enforceable written contract with clearly specified terms. Instead, such agreements are characteristically articulated orally—and indirectly.¹⁴¹ And it is not unusual in prearranged trading for a counterparty to be legally free to sell the instrument

¹³⁴ Resp't Post-Hr'g Br. 15; Stip. ¶ 7; Tr. 489, 503.

¹³⁵ Resp't Post-Hr'g Br. 34.

¹³⁶ Resp't Post-Hr'g Br. 15, 35.

¹³⁷ Resp't Post-Hr'g Br. 15.

¹³⁸ Resp't Post-Hr'g Br. 15; CX-15A; CX-15, at 1.

¹³⁹ Resp't Post-Hr'g Br. 16; Tr. 802–03.

¹⁴⁰ Palermo and Mantei were not as explicit in their discussions concerning the prearranged trading in the Citibank FN6 SCD. Even so, when viewed in the context of their earlier conversations regarding the other two sets of trades, and their conversations on February 9 and 10, 2015, regarding “Fresnos” (*see* n.107 above), their meaning is unmistakable.

¹⁴¹ *Cf. Warren G. Trepp*, Initial Decision Release No. 115, 1997 SEC LEXIS 1682, at *53, 55 (Aug. 18, 1997) (“By its very nature a parking agreement for an illegal purpose is not in the form of a legally enforceable written contract with clearly specified terms. * * * As is characteristic of a parking agreement these terms were articulated orally in an indirect manner . . .”). “Parking is the sale of securities subject to an agreement or understanding that the securities will be repurchased by the seller at a later time and at a price which leaves the economic risk on the seller.” *Dale E. Barlage*, Exchange Act Release No. 38061, 1996 SEC LEXIS 3441, at *4 n.2 (Dec. 19, 1996); *accord David E. Lynch*, Exchange Act Release No. 46439, 2002 SEC LEXIS 3416, at *7 n.14 (Aug. 30, 2002). The Firm's WSPs also prohibited parking, which it defined as “a trade or series of trades . . . effected for a person or entity and held in another person's or entity's account to disguise the investment activities of the original person or entity.” CX-26, at 75, WSPs § 14.43.10.

elsewhere. It is therefore irrelevant if Enforcement failed to prove that a legally enforceable agreement existed.¹⁴²

Finally, contrary to Mantei's claim, the trades at issue did not expose the counterparties to market risk. Mantei's expert, James G. Reilly,¹⁴³ conceded that if parties adhere to an agreement to sell and repurchase at a higher price, the economic costs and benefits of holding the instrument remain with the seller.¹⁴⁴ This aptly characterizes the situation presented here.¹⁴⁵ Mantei, through Palermo, offered to buy back the instruments at a price slightly above what the counterparties had paid for them. Thus, even if the counterparties were free to sell the positions to other purchasers, they had the option to sell them back to Mantei and avoid a loss. Indeed, Mantei conceded during his investigative testimony that he was still assuming market risk during the period when the intermediaries temporarily held the positions.¹⁴⁶ And, when Mantei and Palermo discussed the proposed sale of the Wells Fargo R66 to Firm A, Mantei described it as riskless to the counterparty.¹⁴⁷ In short, the prearrangements, which the parties honored, left the risk of loss with the Firm after the sales to the intermediary firms.

We therefore find that the trading with the intermediaries was prearranged and that Mantei violated the Firm's policy prohibiting prearranged trading.

¹⁴² Cf. *Trepp*, 1997 SEC LEXIS 1682, at *55 (finding that it was not inconsistent with a parking arrangement that a counterparty was legally free to sell the bonds).

¹⁴³ Reilly is a Senior Advisor-Capital Markets Regulatory Expert with Capital Forensics. According to his expert report, he "provides expert testimony in complex litigation and arbitration matters, as well as focused consulting assignments on areas such as surveillance, best execution and investment banking." RX-40, at 8. Reilly's report represents that he has "more than 30 years of regulatory compliance and executive management experience in financial services . . ." RX-40, at 2.

¹⁴⁴ Tr. 1306-07, 1310-11.

¹⁴⁵ See *Yoshikawa v. SEC*, 192 F.3d 1209, 1214-15 (9th Cir. 1999) (finding that trades connected through a prearrangement to sell and repurchase at a higher price would accomplish their purpose through a "sham transaction in which nominal title is transferred to the purported buyer while the economic incidents of ownership are left with the purported seller"); *Trepp*, 1997 SEC LEXIS 1682, at *53-56 (finding agreement for sale and repurchase at roughly the same price showed that transactions lacked market risk and were sham transactions, notwithstanding that the counterparty was legally free to sell the bonds to someone else and violate the prearrangement); *Thomas Gonnella*, Initial Decision Release No. 706, 2014 SEC LEXIS 4301, at *71 (Nov. 13, 2014) ("While Gleacher obtained actual legal ownership of the bonds, Barclays—through Gonnella—retained beneficial ownership by virtue of Gonnella's arrangement with King. Barclays retained control and the ability to repurchase and thus beneficial ownership."), *aff'd*, Exchange Act Release No. 78532, 2016 SEC LEXIS 2786 (Aug. 10, 2016), *aff'd*, 954 F.3d 536 (2d Cir. 2020).

¹⁴⁶ CX-41, at 27-28 (OTR Tr. 177-78). We credit Mantei's OTR testimony over his contrary hearing testimony. His OTR testimony was closer in time to the events at issue. And because he gave the OTR testimony before Enforcement filed this disciplinary action, Mantei was less likely to have appreciated how it could impact defenses he might later assert.

¹⁴⁷ CX-6A; CX-6, at 1.

E. Mantei Evaded the Firm's Cross Trade Procedures

Enforcement alleges that Mantei's prearranged trading not only violated the Firm's prearranged trading prohibition, but also evaded its cross trade procedures. During 2014 and 2015, the Firm did not have a blanket prohibition against cross trades.¹⁴⁸ But on or about April 10, 2014, in a compliance alert titled "Bond Cross Trades," the Firm announced procedures governing bond cross trades.¹⁴⁹ Those procedures, which Woll drafted,¹⁵⁰ stated that a cross trade occurred "when an office sells a bond for one of its clients and purchases the bond for another of its clients. These trades," the alert continued, "are executed internally by the firm and never reach the market."¹⁵¹

The cross trade procedures included the following requirements and limitations:

- The branch office was "required to document the benefit of the cross-trade to the buyer and to the seller, submit the explanation with the order ticket and retain a copy in the Branch records." The explanation needed to address why a cross trade was "best" for both customers, and the representative had to attest "that the seller was given the right to have the bond sold into the market rather than internally."
- The trading desk was required to "mark the value of the bond to the market by reviewing current trading of the same or similar bonds and include evidence of the evaluation with the trade ticket."
- The markup/markdown would be split between the buyer and seller and the "maximum . . . allowed on the entire transaction" could not exceed the "maximum of a single trade."¹⁵²

The alert explained the reason for the procedures:

Even for cross-trades in which the liquidation is unsolicited, the firm has the difficult duty of setting a fair price at which to execute the trades since the firm has an obligation to get the most for the selling client and pay the least for the purchasing client. Meanwhile, the firm stands to earn a fee for acting as intermediary. The fact that there are conflicting interests to be considered raises the

¹⁴⁸ Tr. 1129–30, 1172.

¹⁴⁹ The alert informed representatives and supervisors that it "serve[d] as an addendum to the firm's Written Supervisory Procedures and may be integrated into those procedures at a later date." JX-19, at 3.

¹⁵⁰ Tr. 798.

¹⁵¹ JX-19, at 1, 3.

¹⁵² JX-19, at 3.

bar when it comes to establishing procedures for cross-trades and for documenting our compliance with those procedures.¹⁵³

The procedures' stated objectives were to "provide additional structure and transparency to [the Firm's] execution of cross-trades";¹⁵⁴ "minimize the potential for conflicts of interest";¹⁵⁵ and ensure both customers involved in the cross trade received an objectively fair price based on market transactions in the same or similar products.¹⁵⁶

Under the procedures, the Firm computed the maximum markup/markdown on a cross trade according to the Firm's Fixed Income Commission Guidelines.¹⁵⁷ Those commission guidelines applied to SCDs because, as noted above, the Firm considered SCDs to be fixed income products.¹⁵⁸ SCDs fell under the corporate high yield category and were subject to the guidelines' 2.6% maximum markup or markdown—1.3% on each side.¹⁵⁹

Mantei asserts that the bond cross trade procedures did not apply to the trades at issue for two reasons. First, none of the transactions involved cross trades.¹⁶⁰ And second, by its explicit terms, the procedures applied only to bonds.¹⁶¹ Under the procedures, a cross trade consists of a sale and purchase between customers that is executed internally by the Firm and never reaches the market.¹⁶² According to Mantei, none of the trades here meet this definition because (1) the FINRA investigator testified that "all reached the market";¹⁶³ (2) Woll¹⁶⁴ and Reilly¹⁶⁵ agreed

¹⁵³ JX-19, at 1.

¹⁵⁴ JX-19, at 2.

¹⁵⁵ JX-19, at 1, 3.

¹⁵⁶ Tr. 765–68, 1173; JX-19, at 3.

¹⁵⁷ Tr. 471–72, 745–46, 748–49; CX-30A; CX-30, at 2; JX-18, at 5; JX-19, at 3.

¹⁵⁸ Tr. 745–46.

¹⁵⁹ Tr. 472, 747–49.

¹⁶⁰ See Ans. ¶ 60 (Eighth Affirmative Defense) ("The claims are barred, in whole or in part, because the transactions at issue were not cross trades."). The Hearing Panel ruled before the hearing that this was not truly an affirmative defense on which Mantei had the burden of proof. Rather, it was more in the nature of a negative defense or general denial. See discussion below at p. 24 n.179.

¹⁶¹ Resp't Post-Hr'g Br. 13.

¹⁶² JX-19, at 3.

¹⁶³ Tr. 365.

¹⁶⁴ Tr. 799–800. Woll testified that he presumed that a cross trade is done simultaneously and did not consider the trades at issue here cross trades because they all went out to the market. Tr. 762, 793, 799. Even so, referencing the Wells Fargo R66 SCD trades, he said they did not comply with the Firm's policies. Tr. 743.

¹⁶⁵ Tr. 1285; RX-40, at 3, 5. Reilly reached this conclusion because "[a] cross trade has to be . . . executed between two different customers within a same broker/dealer at the same price at the same time. And clearly, from the record, that didn't occur with any of these transactions." Tr. 1285. In short, according to Reilly, "The transactions at issue all went out into the marketplace, to other market participants . . . and were NOT, as a consequence, cross trades." RX-40, at 4.

that none of the trades were cross trades; and (3) no evidence showed that Mantei had a particular customer lined up to purchase any of the instruments when they were sold to the counterparties.¹⁶⁶

Mantei's claim that the customer sales and purchases were not cross trades because intermediate trades went out to the market elevates form over substance and ignores the economic realities of the transactions. As we find above, the trades with the intermediaries were part of a prearranged plan in which the risk of loss remained with the Firm. In other words, they did not go out to the market in bona fide transactions. Rather, they were sham transactions interposed between customer sales and purchases. We therefore ignore those transactions and view the customer trades as having been executed internally by the Firm. In substance, these customer trades were cross trades.

Mantei also argues that the procedures did not apply to the SCD transactions because, by their explicit terms, the procedures were limited to bonds, and the Firm did not use the word "bond" to cover all fixed income products.¹⁶⁷ Mantei claims the evidence showed that the Firm did not lump all fixed income products together. For example, he notes that there were different disclosures required on the bond ticket for SCDs and bonds,¹⁶⁸ and the Firm's WSPs differentiated between fixed income products such as Corporate Fixed Income, Municipal Securities, and SCDs.¹⁶⁹ Finally, Mantei references testimony that the Firm never advised its registered representatives, including Mantei, that the cross trade procedures applied to other fixed income products, including SCDs.¹⁷⁰

We are not persuaded by these arguments. Although the bond cross trade procedures failed to state that they covered SCDs and not just bonds, we find that they did apply to SCDs. No single piece of evidence was conclusive on this point; we reach this determination based on the totality of the evidence. According to Woll, who drafted the procedures, they applied to the whole mix of fixed-income products, including SCDs.¹⁷¹ He explained that if the procedures were read literally to apply only to bonds, then it would have been necessary to issue a specific procedure for each type of fixed income product, and he did not do that. "We just used the word 'bond' to cover them all," Woll said.¹⁷²

This broad interpretation of "bond" matched Woll's use of the word in various contexts. According to Woll, he commonly referred to CDs as bonds and applied the word generically to

¹⁶⁶ Resp't Post-Hr'g Br. 13; Tr. 640-43.

¹⁶⁷ Resp't Post-Hr'g Br. 13.

¹⁶⁸ JX-20.

¹⁶⁹ CX-26, at 8 (Municipal Securities), 10 (Government Securities), 12 (SCDs), 17 (Corporate Fixed Income); CX-27 (same).

¹⁷⁰ Resp't Post-Hr'g Br. 13; Tr. 1057.

¹⁷¹ Tr. 759-60.

¹⁷² Tr. 760.

the whole range of fixed income products.¹⁷³ He also testified that it made sense for the cross trade procedures to cover SCDs because they have all the critical elements of other bond trades: they are traded over the counter; they pay some interest; and they are a long-term investment.¹⁷⁴ Finally, Woll testified that no one ever expressed doubt or confusion to him about whether the procedures applied to SCDs.¹⁷⁵

Other evidence also suggests that the word was used and understood at the Firm to include SCDs. As Woll pointed out, the Firm “had a bond desk. We didn’t have a bond desk, muni desk, Treasury desk, corporate desk. It’s just the bond desk.”¹⁷⁶ SCD orders were sent to that desk on a bond ticket distributed by the person who was the head of bond and insurance products, head of the bond department, and supervisor of the bond desk.¹⁷⁷

* * *

We find that the customer sales and purchases at issue were, in substance, cross trades subject to the cross trade procedures. Mantei evaded those procedures through prearranged trading with intermediaries. Woll considered this approach improper:

A cross trade that has transparency happens simultaneously. You buy from one client and you sell to the other. And you declare it as a cross trade and you set a fair price. To do a prearranged trade would be to take away that transparency, and if it was, for the same objective, which is to take it from one client and ultimately put it in the account of another, to prearrange the trade and not declare it as a cross trade would not be an acceptable way to sell the securities out of one account into the other.¹⁷⁸

We agree. Accordingly, we find that Mantei’s prearranged trading in connection with the three sets of trades improperly circumvented the Firm’s cross trade procedures.

¹⁷³ Tr. 709. For example, in a September 23, 2014 email to a registered representative and the Firm’s general counsel, and copying Mantei, Woll referred to the Wells Fargo R66 SCD as a “bond.” Tr. 672, 798, 1185; JX-8, at 3.

¹⁷⁴ Tr. 1057–58.

¹⁷⁵ Tr. 761. While Woll conceded that he never specifically told Mantei or the staff at the Firm that the cross trade procedures applied to SCDs, he added that he never excluded them either. Tr. 1057.

¹⁷⁶ Tr. 760–61.

¹⁷⁷ Tr. 429–30, 937, 940, 971, 1068, 1153; JX-22. The cover email distributing the order ticket referred to it as the bond ticket. JX-22, at 1. The ticket included boxes to be checked for the following products: CD, Corp., Mun., Treasury, CMO, and Structured Product. JX-22, at 3.

¹⁷⁸ Tr. 764–65.

III. Mantei's Defenses

Mantei asserted a number of defenses, including 12 affirmative defenses.¹⁷⁹ We rejected several of his defenses above. The others are also meritless.

A. Failure to State a Claim

Mantei asserts that “[t]he Complaint fails to state a claim, in whole or in part, upon which relief can be granted and fails to state facts that support the claims.”¹⁸⁰ A “failure to state a claim” defense challenges the legal sufficiency of Enforcement’s Complaint. We find that the allegations in the Complaint, if true, state valid claims. Moreover, as discussed below in the Conclusions of Law section, we conclude that Enforcement established those violations. This defense therefore fails.

B. Laches

Mantei requests that we dismiss the Complaint on the basis of laches.¹⁸¹ The laches doctrine “bars, in equity, claims that are not timely pursued.”¹⁸² To prevail on this defense, a respondent “must demonstrate a lack of diligence by [FINRA,] and that he has been prejudiced.”¹⁸³ “[L]aches is much more than time. It is time plus prejudicial harm, and the harm is not merely that one loses what he otherwise would have kept, but that delay has subjected him to a disadvantage in asserting and establishing his claimed right or defense.”¹⁸⁴ In determining whether Enforcement lacked diligence, we recognize that “[t]here is no fixed period of time that must elapse for a suit to be barred by the doctrine of laches.”¹⁸⁵

¹⁷⁹ Before the hearing, the Hearing Panel granted summary disposition for Enforcement on the second (as to waiver and estoppel), third, and tenth through twelfth affirmative defenses. *See* Order on Mot. for Summ. Disp. of Aff. Defs. At the hearing, Mantei withdrew the sixth affirmative defense. Tr. 478, 565, 1078–79. Therefore, the first, second (as to laches), fourth, fifth, and seventh through ninth affirmative defenses remain. Of these, the Hearing Panel also ruled that the fourth, seventh, and eighth affirmative defenses do not presume the truth of the Complaint’s allegations. Instead, they restate Mantei’s general denials of the Complaint’s allegations. Accordingly, they are really negative defenses on which Mantei does not bear the burden of proof. *See* Order on Mot. for Summ. Disp. of Aff. Defs. 7–8.

¹⁸⁰ Ans. ¶ 53 (First Affirmative Defense).

¹⁸¹ Ans. ¶ 54 (Second Affirmative Defense); Resp’t Post-Hr’g Br. 4, 36.

¹⁸² *Talon Real Estate Holding Corp.*, Exchange Act Release No. 87614, 2019 SEC LEXIS 4796, at *22 (Nov. 25, 2019).

¹⁸³ *Dep’t of Enforcement v. Mehringer*, No. 2014041868001, 2020 FINRA Discip. LEXIS 27, at *33 (NAC June 15, 2020) (quoting *Robert Tretiak*, Exchange Act Release No. 47534, 2003 SEC LEXIS 653, at *34 (Mar. 19, 2003)).

¹⁸⁴ *Leopard Marine & Trading, Ltd. v. Easy Street Ltd.*, 896 F.3d 174, 195 (2d Cir. 2018).

¹⁸⁵ Order on Enf’t Mot. for Summ. Disp. of Aff. Defs. 5 (quoting *Leopard Marine*, 896 F.3d at 194).

1. Enforcement Did Not Unduly Delay Filing the Complaint

Mantei argues that Enforcement was not diligent in handling this matter. He points to the passage of time between certain events and the date Enforcement filed the Complaint, August 1, 2019. Mantei claims that, in its totality, “[t]his delay was inherently unfair to [him] and on its own requires dismissal.”¹⁸⁶ Enforcement maintains that it did not unduly delay filing the Complaint and makes two primary arguments to support this position. First, Enforcement argues that the key time periods between certain events and the filing of the Complaint—which roughly correlated to those referenced by Mantei—were not inherently unfair.¹⁸⁷ Second, according to Enforcement, the time it took to file the Complaint was justified given the totality of the circumstances.

In addressing the issue of delay, we observe that Mantei’s laches argument conflates the defense of laches with the fundamental fairness defense—a similar, but separate, defense he did not assert. Establishing a fundamental fairness defense requires a respondent to show that undue delay in filing a Complaint rendered the proceeding fundamentally unfair.¹⁸⁸ To support his laches argument, Mantei relies on fundamental fairness—not laches—cases; they are therefore not directly applicable. That said, we find it helpful to consider the time periods identified by the parties, even though they derived in large part from fundamental fairness cases.

To be sure, the time periods that elapsed before Enforcement filed the Complaint, as Mantei identifies them, are long:

- four to five years after the time frame of the investigation (2014–2015);¹⁸⁹
- four and a half years after Mantei’s last act of alleged misconduct (the February 26, 2015 trade of the Citibank FN6 SCD);¹⁹⁰

¹⁸⁶ Resp’t Post-Hr’g Br. 4.

¹⁸⁷ Enf’t Post-Hr’g Br. 28.

¹⁸⁸ See *Jeffrey Ainley Hayden*, Exchange Act Release No. 42772, 2000 SEC LEXIS 946, at *5 (May 11, 2000); *Dep’t of Enforcement v. Morgan Stanley DW Inc.*, No. CAF000045, 2002 NASD Discip. LEXIS 11, at *13–15 (NAC July 29, 2002) (citing *Hayden*). “In assessing the effect of a delay on the fairness of a disciplinary proceeding, there are ‘not establish[ed] bright line rules about the impact of the length of a delay.’” Instead, “[t]he fairness of a proceeding is based on the ‘entirety of the record,’ and whether respondent has shown that his ‘ability to mount an adequate defense was harmed by any delay in the filing of a complaint against him.’” *Mehringer*, 2020 FINRA Discip. LEXIS 27, at *32 (quoting *Mark H. Love*, Exchange Act Release No. 49248, 2004 SEC LEXIS 318, at *16 (Feb. 13, 2004)).

¹⁸⁹ Resp’t Post-Hr’g Br. 38; Tr. 280.

¹⁹⁰ Resp’t Post-Hr’g Br. 4, 6, 38; Compl. ¶ 18(c).

- more than four years after Enforcement became aware of the facts upon which the claims at issue are based (April 17, 2015);¹⁹¹
- more than three years after it took Mantei’s investigative testimony (July 2016);¹⁹²
- three years after the end of the investigation (September 1, 2016);¹⁹³ and
- eight months after the Wells Notice was issued (December 3, 2018).¹⁹⁴

But these time periods alone do not compel a finding that Enforcement was not diligent. We view them in the context of the complexities involved in the investigation that led to the filing of the Complaint:

- Enforcement initiated the investigation promptly after receiving an April 17, 2015 letter from the Firm to FINRA reporting a net capital deficiency.¹⁹⁵
- The matters relating to Mantei were not referenced in the self-report letter sent by the Firm, and only later became part of the investigation.¹⁹⁶
- The matters under investigation were complex and not limited to Mantei.¹⁹⁷
- FINRA started receiving documents based on the Firm’s internal investigation two or three months after the investigation began.¹⁹⁸
- After reviewing those materials, which were substantial, FINRA obtained more materials and took more testimony.¹⁹⁹

¹⁹¹ Resp’t Post-Hr’g Br. 38. Enforcement denies that the April 17, 2015 self-report letter notified it of the facts relating to Mantei. *See* p. 26. But otherwise, Enforcement substantially agrees with Mantei’s time calculations. Enf’t Post-Hr’g Br. 28.

¹⁹² Resp’t Post-Hr’g Br. 4, 38; Tr. 340–42.

¹⁹³ Resp’t Post-Hr’g Br. 4, 6; Tr. 280.

¹⁹⁴ Tr. 349; JX-25.

¹⁹⁵ CX-40; Tr. 62–64, 314. This, by itself, is significant. In *Mehring*, 2020 FINRA Discip. LEXIS 27, at *33 n.32, the NAC rejected a delay argument because Enforcement began its investigation “as soon as it learned” of the respondent’s purported misconduct.

¹⁹⁶ Tr. 63–64, 314–15, 408–09.

¹⁹⁷ Tr. 63–64, 314–15, 408–09.

¹⁹⁸ Tr. 314.

¹⁹⁹ Tr. 65–67, 312–13, 362; *see, e.g.*, RX-1.

- Mantei’s counsel engaged in numerous discussions with FINRA staff and made a Wells submission on Mantei’s behalf.²⁰⁰

Under the totality of the circumstances, we do not find that Enforcement engaged in unreasonable delay. Mantei’s laches defense fails for this reason alone.

2. Mantei Failed to Show Prejudice Based on Undue Delay

The laches defense also fails because Mantei did not establish prejudice due to any alleged delay by Enforcement. Mantei needed to show that he could not “present a full and fair defense on the merits due to the loss of records, the death of a witness, or the unreliability of memories of long past events.”²⁰¹ In proving this required element of the defense, “[c]onclusory statements that there are missing witnesses, that witnesses’ memories have lessened, and that there is missing documentary evidence, are not sufficient.”²⁰²

Mantei argues that since the investigation began, Palermo and the Firm A trader are no longer subject to FINRA jurisdiction and this prejudiced him.²⁰³ It is undisputed that neither person was subject to FINRA’s jurisdiction as of the hearing. Even so, Mantei did not demonstrate how their testimony would have helped his defense or that their absence hampered that defense.²⁰⁴ Nor is it self-evident that their testimony would have materially altered our findings, given the centrality of the undisputed recorded conversations and trading records.²⁰⁵ Mantei’s argument is further undercut by his own lack of diligence. He failed to seek an order directing Enforcement to issue a request requiring Palermo and the Firm A trader to provide information before the hearing²⁰⁶ while they were still subject to FINRA jurisdiction.²⁰⁷ Nor

²⁰⁰ JX-26, at 2, 6 (noting “numerous conversations with the Staff” and “various conversations since Mr. Mantei’s OTR”).

²⁰¹ *Serdarevic v. Advanced Med. Optics, Inc.*, 532 F.3d 1352, 1360 (Fed. Cir. 2008); *see also Hearing Components, Inc. v. Shure Inc.*, 600 F.3d 1357, 1376 (Fed. Cir. 2010) (“[E]videntiary prejudice must consist of some separate disadvantage resulting from the delay . . . that prevents a party from proving a separate claim or defense.”).

²⁰² *Meyers v. Asics Corp.*, 974 F.2d 1304, 1308 (Fed. Cir. 1992); *accord Dana-Farber Cancer Inst., Inc. v. Ono Pharm. Co.*, 379 F. Supp. 3d 53, 101 (D. Mass. 2019).

²⁰³ Resp’t Post-Hr’g Br. 7; Tr. 350–51.

²⁰⁴ *Meyers*, 974 F.2d at 1308 (rejecting defendant’s prejudice claim based on the alleged loss of key witnesses and documentary evidence that failed to state “exactly what particular prejudice it suffered from the absence of these witnesses or evidence”).

²⁰⁵ *Cf. Love*, 2004 SEC LEXIS 318, at *16 (rejecting argument that prejudice resulted from the death of a former customer before the complaint was filed and from another customer not being contacted due to old age because NASD’s decision was based on undisputed facts and therefore the customers’ testimony “ultimately was not material”).

²⁰⁶ FINRA Rule 9252 permits a respondent to seek an order requiring that FINRA issue a request compelling the production of documents or testimony from persons subject to FINRA’s jurisdiction.

²⁰⁷ *See* Resp’t Post-Hr’g Br. 24 n.6 (conceding that “[a]lthough [the Firm A trader] and Palermo are no longer subject to FINRA jurisdiction . . . each remained subject to a Rule 8210 demand for testimony at the time that the hearing was initially scheduled to commence in March 2020”).

does the record reflect that Mantei ever requested them to appear voluntarily at the hearing and testify.

Next, Mantei maintains that all fact witnesses testified that, due to the passage of time, they could not recall information “both significant and otherwise” or they incorrectly recalled facts.²⁰⁸ This argument is unpersuasive. The recollections of the key percipient witnesses (Mantei and Woll) on important matters were not unduly diminished by time.²⁰⁹ And, for the most part, the testimony from the other fact witnesses and the FINRA investigator is not material to our determinations. Moreover, our findings are largely supported by documentary evidence, audio recordings, and uncontested facts,²¹⁰ and Mantei failed to show how any allegedly forgotten information was important to his defense.²¹¹

Finally, Mantei argues that Enforcement’s alleged delay undermined his “ability to gather and review documents” and resulted in prejudice. Mantei notes that the Firm is now out of business and that complete recordings of his conversations “are long gone.”²¹² Mantei’s claims of prejudice in this regard, however, are vague and speculative. As discussed above, he failed to identify any documents, including Firm documents and other audio recordings, that would have aided his defense. Further, while Mantei’s attempt to obtain certain Firm documents before the

²⁰⁸ Resp’t Post-Hr’g Br. 7–9, citing Tr. 281–82, 288–89, 295–97, 303–06, 322, 361, 379 (Hegeman); 978, 982, 1003, 1053 (Woll); 627, 674–75, 891–93 (Mantei); 1170 (the Firm’s Chief Operating Officer); and 1121–22, 1145 (the branch manager for Mantei’s main branch (Lexington) and several offices that were not Offices of Supervisory Jurisdiction). Michael Hegeman is a FINRA Principal Investigator who worked on the investigation that led to this proceeding. Tr. 59–60, 62.

²⁰⁹ That said, Woll was unable to recall certain non-material information. For example, he could not recall the exact year he graduated college. Tr. 688. “[D]idn’t research it. Didn’t know it was going to be an issue,” he said. Tr. 967. Nor did he remember—in connection with the Wells Fargo R66 SCD—where he was when he signed the customer sell order ticket or who prepared it (Tr. 992, 994–95); whether he spoke to the customer or just his daughter about the grievance concerning the account (Tr. 703); or how or when Mantei became involved in that matter (Tr. 703–04). Collectively, these and other failures of recollection diminished Woll’s overall credibility. By contrast, although Mantei’s answers were at times meandering and evasive, *see, e.g.*, Tr. 451–52, 583–85, 596–99, 605–09, 614–17, 627–30, 647–49, 662–64, 864, we generally found his recollection of events credible. Nevertheless, as discussed above, we disagree with Mantei’s interpretation of his conduct—notably, whether it amounted to prearranged trading forbidden by Firm policy or improperly circumvented the cross trade procedures.

²¹⁰ *Dep’t of Enforcement v. Rooney*, No. 2009019042402, 2015 FINRA Discip. LEXIS 19, at *93–95 (NAC July 23, 2015) (rejecting claim of evidentiary prejudice because “much of the findings” were supported by documentary evidence and uncontested facts); *cf. United States v. Weintraub*, 613 F.2d 612, 619 (6th Cir. 1979) (rejecting laches defense in case supported by evidence not “greatly affected by the lapse of time”). As Enforcement correctly observed in its closing argument, “The calls were the best and the most credible evidence in the case. The calls don’t forget. They don’t remember things differently. They are what they are.” Tr. 1380.

²¹¹ *United States EEOC v. Lakemont Homes*, 718 F. Supp. 2d 1251, 1256 (D. Nev. 2010) (“Defendants do not provide . . . any argument or evidence elucidating in what respects the forgotten information referred to in the deposition is necessary or important to their defense.”).

²¹² Resp’t Post-Hr’g Br. 9, 39.

hearing proved unsuccessful, it was not because of any purported delay by Enforcement.²¹³ Thus, Mantei failed to show prejudice by any purported delay, and this is fatal to his laches defense.

C. Parol and Documentary Evidence

Mantei asserts that Enforcement's claims are barred in whole or in part by the parol evidence rule²¹⁴ and documentary evidence.²¹⁵ According to Mantei, "[b]oth of these defenses are based on the fact that the Bond Cross Trade Policy is unambiguous on its face and [Enforcement] cannot resort to extrinsic evidence to 'explain' it."²¹⁶

"The parol evidence rule bars extrinsic evidence of a prior or contemporaneous oral agreement when offered to contradict, vary, add to, or subtract from the clear and unambiguous terms of a valid, integrated written instrument."²¹⁷ In ruling on Enforcement's summary disposition motion before the hearing, the Hearing Panel stated that it did not believe generally that it was "required to limit [its] consideration of the application of the [F]irm's procedures to the four corners of [the] written procedures documents themselves. After all," the Panel explained, "this is not a breach of contract case and the parol evidence rule generally applies only to the parties to a contract. So, the non-party Complainant would appear to be beyond the scope of the rule."²¹⁸

Nevertheless, the Hearing Panel recognized that "the rule is (at least in part) a limitation on evidence to be presented at the hearing," and therefore, "[d]epending on how the evidence proceeds at the hearing, Mantei may have an argument that representatives of his former Firm should be precluded from contradicting the Firm's unequivocal written policies and procedures."²¹⁹

At the hearing, however, Mantei did not make this argument. He did not object to evidence interpreting the cross trade procedures, and both sides introduced evidence on that

²¹³ Mantei filed a motion under FINRA Rule 9252(b) to compel Enforcement to issue a FINRA Rule 8210 request requiring production of certain emails sent or received by the Firm. A Hearing Officer previously assigned to this disciplinary proceeding denied the motion because it failed to meet the requirements of FINRA Rule 9252(b). It failed to show that the information Mantei sought was relevant, material, and noncumulative; it failed to show that Mantei had engaged in a good-faith attempt to obtain the emails through other means; and the request was unreasonable and excessive. *See* Order Den'g Resp't Rule 9252 Mot.

²¹⁴ Ans. ¶ 57 (Fifth Affirmative Defense).

²¹⁵ Ans. ¶ 56 (Fourth Affirmative Defense). The Hearing Panel ruled that this defense is, in substance, a denial and not an affirmative defense on which Mantei bears the burden of proof. *See* p. 24 n.179 above.

²¹⁶ Resp't Post-Hr'g Br. 40.

²¹⁷ *Congress Fin. Corp. v. John Morrell & Co.*, 790 F. Supp. 459, 468 (S.D.N.Y. 1992).

²¹⁸ Order on Mot. for Summ. Disp. of Aff. Defs. 7; *cf. United States v. Kreimer*, 609 F.2d 126, 132-33 (5th Cir. 1980) ("The [parol] evidence rule that, in contract cases, prevents the parties to a written contract from offering evidence that the contract was something different does not apply in criminal cases. The government is not a party to the contract.").

²¹⁹ Order on Mot. for Summ. Disp. of Aff. Defs. 7.

issue. In fact, the term “parol evidence” was not mentioned by the parties during the hearing. Accordingly, we find that Mantei waived his parol evidence defense.²²⁰

Waiver aside, we also find that based on the evidence presented at the hearing, the parol evidence rule did not preclude evidence from Firm personnel interpreting the cross trade procedures. The parol evidence rule “applies only where there is a fully integrated written agreement.”²²¹ An agreement is integrated when “it [is] intended by the parties as a final, complete and exclusive statement of their agreement with respect to the terms included in the agreement.”²²² Mantei had to follow the cross trade procedures based on his registered representative agreement (“RRA”) with the Firm. The RRA provided that Mantei was expected to comply with all “internal rules, policies, requests, directives, memoranda and the like, including but not limited to those set forth in the Firm’s compliance manual”²²³ The cross trade procedures, however, unlike the RRA, were not, themselves, a written agreement, let alone an integrated one. Hence, the parol evidence rule is inapplicable and did not preclude the examination of extrinsic evidence when interpreting those procedures.

Finally, as discussed above, we interpret the procedures as applying to the customer trades and find that Mantei evaded them. Thus, the parol evidence and documentary evidence defenses fail.

D. Lack of Subject Matter Jurisdiction

Mantei asserts that “[t]he claims are barred, in whole or in part, because FINRA lacks subject matter jurisdiction over the transactions at issue.”²²⁴ The basis for this assertion is that, according to Mantei, FINRA’s regulatory authority under FINRA Rule 2010 is limited to its members’ business activities involving banking and securities, and the SCD “transactions at issue here involve neither.”²²⁵ This argument fails. “It is well established that FINRA’s disciplinary authority under [FINRA Rule 2010] is broad enough to encompass business-related

²²⁰ Cf. *Brooklyn Capital & Sec. Trading, Inc.*, Exchange Act Release No. 38454, 1997 SEC LEXIS 701, at *23 n.34 (Mar. 31, 1997) (“[W]e are not required to consider objections that were not raised at a time when the matter complained of could have been remedied.”); *Dep’t of Enforcement v. U.S. Rica Fin., Inc.*, No. C01000003, 2003 NASD Discip. LEXIS 24, at *25 n.9 (NAC Sept. 9, 2003) (determining that failing to raise an argument before the Hearing Panel constitutes waiver).

²²¹ *Dep’t of Enforcement v. Harari*, No. 2011025899601, 2015 FINRA Discip. LEXIS 2, at *18 n.7 (NAC Mar. 9, 2015).

²²² *Alling v. Universal Mfg. Corp.*, 5 Cal App. 4th 1412, 1434 (1992).

²²³ JX-1, at 2 § 3(b). The terms of the RRA are not in dispute. Nor does Mantei dispute that the RRA required him to follow the cross trade procedures.

²²⁴ Ans. ¶ 61 (Ninth Affirmative Defense).

²²⁵ Resp’t Post-Hr’g Br. 42–43.

conduct that is inconsistent with just and equitable principles of trade even if that activity does not involve a security.”²²⁶

E. Blame-Shifting

Much of Mantei’s defense consisted of trying to avoid responsibility by shifting it to others. For example, he blamed the customer for wanting to sell the Wells Fargo R66 SCD.²²⁷ He blamed the market for making it difficult “to take care of clients.”²²⁸ And he accused FINRA and the SEC for not fixing the issues that made SCDs difficult to price.²²⁹ But mostly, Mantei blamed, in varying degrees, Woll, Palermo, and Firm executives for not giving him guidance or feedback about the trading at issue or otherwise trying to stop it.²³⁰ Typical of his blame-shifting attempts was the following testimony about the Wells Fargo R66 SCD transactions: “I can understand [Woll] saying I think it’s a prearranged trade. But at the time when all of this was going on, why did nobody at [the Firm]—not Sam, not my CEO, not my compliance officer, not my chief counsel, nobody, our supervisor up there, nobody [said anything].” Continuing, Mantei claimed, “They were all aware. They all knew what was going on—why didn’t all of them say, ‘This may smell like a prearranged trade.’ Why did nobody?”²³¹

In a similar vein, Mantei tried to distance himself from the misconduct. He asserted that (1) Palermo was the one who made the trading arrangements with the intermediary broker-dealers, not him; (2) he never told Palermo to make an offer to sell coupled with an offer to buy back at the same or a higher price or the reverse; (3) Palermo must have misunderstood his instructions;²³² (4) he had no idea what Palermo said to the traders at other firms in connection with the trades;²³³ and (5) at no time during his conversations with Palermo about the three sets of trades did he identify an ultimate customer to buy the instruments.²³⁴ As to the Wells Fargo R66 SCD trades,

²²⁶ *Kimberly Springsteen-Abbott*, Exchange Act Release No. 88156, 2020 SEC LEXIS 2684, at *31 (Feb. 7, 2020), *petition for review filed*, No. 20-1092 (D.C. Cir. Mar. 27, 2020); *see also Dep’t of Enforcement v. Timberlake*, No. C07010099, 2004 NASD Discip. LEXIS 11, at *15–16 (NAC Aug. 6, 2004) (finding that “[a]lthough the investments at issue were CDs, [the predecessor to FINRA Rule 2010] applies to all business conduct irrespective of whether that conduct involves a security”) (citing *DWS Sec. Corp.*, Exchange Act Release No. 33193, 1993 SEC LEXIS 3137, at *19 (Nov. 12, 1993)). In rejecting this defense, we make no finding as to whether SCDs are, or could ever be, securities. *Cf. Timberlake*, 2004 NASD Discip. LEXIS 11, at *15–16 & n.2 “[W]e do not mean to imply that a CD may never be a security”).

²²⁷ Tr. 627–32.

²²⁸ Tr. 454 (referencing Mantei’s OTR testimony).

²²⁹ Tr. 508–09, 524–26.

²³⁰ Tr. 651–53, 890–91, 894–95, 898–900, 902–03.

²³¹ Tr. 904–05.

²³² Tr. 908–14.

²³³ Tr. 906.

²³⁴ Tr. 915.

Mantei testified he was no longer involved once Woll got involved. “My only role at this point was to see somehow or the other if I was able to get a price to make the whole thing work,” he said.²³⁵

Along with blaming others and distancing himself from the trading, Mantei even portrayed himself as a victim. “I feel let down, because I feel like we did what we were supposed to do and that’s help a client,” he said. “I feel like at the end of the day, everybody is playing Sergeant Schultz, everybody is I trust it, I trust it, I trust it, I trust it, I thought, and nobody verified. And if not, then who? Who is in charge? Who should have checked this out?”²³⁶

Mantei’s blame-shifting arguments are of no avail. The evidence proved that Mantei engineered and closely directed a prearranged trading scheme; he is therefore responsible for that conduct. A respondent cannot shift responsibility for compliance to his firm or FINRA.²³⁷ The evidence also failed to show that anyone at the Firm, other than Palermo, knew about or participated in the scheme.²³⁸

IV. Conclusions of Law

A. Mantei Violated FINRA Rule 2010 in Connection with the Wells Fargo R66 and Citibank FN6 SCD Transactions

As we found above, Mantei circumvented the Firm’s cross trade procedures and contravened its prearranged trading prohibition in connection with the Wells Fargo R66 and Citibank FN6 SCD trades. The Complaint alleged that this conduct violated FINRA Rule 2010,²³⁹ which requires member firms, in the conduct of their business, to “observe high standards of commercial honor and just and equitable principles of trade.” The Rule also applies to associated persons.²⁴⁰ The purpose and scope of FINRA Rule 2010, as well as the elements of a violation, are well established. The Rule “imposes ethical standards on all its members and associated persons. It proscribes ‘a wide variety of conduct that operates as an injustice to

²³⁵ Tr. 894–95.

²³⁶ Tr. 902–03.

²³⁷ See, e.g., *Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *15 (Dec. 22, 2008) (holding that a registered representative “cannot shift his responsibility to comply with NASD rules to his firm”); *Hans N. Beerbaum*, Exchange Act Release No. 55731, 2007 SEC LEXIS 971, at *19 n.22 (May 9, 2007) (finding that “associated persons cannot shift their burden of compliance to NASD”) (citation omitted).

²³⁸ While Palermo’s conduct is troubling, it does not, however, exculpate Mantei or minimize his culpability.

²³⁹ Compl. ¶¶ 1, 47–48.

²⁴⁰ FINRA Rule 2010 applies to associated persons through FINRA Rule 0140(a), which provides that the rules “shall apply to all members and persons associated with a member” and that “[p]ersons associated with a member shall have the same duties and obligations as a member under the Rules.”

investors or other participants in the marketplace”²⁴¹ and “encompasses business-related conduct that is inconsistent with just and equitable principles of trade.”²⁴²

FINRA Rule 2010’s intentionally broad scope is calculated to remediate “methods of doing business which, while technically outside the area of definite illegality, are nevertheless unfair both to customer and to decent competitor, and are seriously damaging to the mechanism of the free and open market.”²⁴³ “Whether misconduct is within Rule 2010’s scope is ultimately a question of whether the conduct raises concerns that the associated person will not ‘comply with the regulatory requirements of the securities business’ and will not ‘fulfill his or her fiduciary duties in handling other people’s money.’”²⁴⁴

Because Mantei’s alleged FINRA Rule 2010 violation is not based on the violation of another FINRA rule, we must determine whether he acted unethically or in bad faith.²⁴⁵ Unethical conduct is that which does not conform to moral norms or standards of professional conduct, “while bad faith means ‘dishonesty of belief or purpose.’”²⁴⁶ A showing of harm is not required.²⁴⁷

²⁴¹ *Dep’t of Enforcement v. Sandlapper*, No. 2014041860801, 2020 FINRA Discip. LEXIS 30, at *29 (NAC June 23, 2020) (quoting *Thomas W. Heath III*, Exchange Act Release No. 59223, 2009 SEC LEXIS 14, at *15 (Jan. 9, 2009), *aff’d*, 586 F.3d 122 (2d Cir. 2009)).

²⁴² *Springsteen-Abbott*, 2020 SEC LEXIS 2684, at *31.

²⁴³ *Heath*, 586 F.3d at 132; *see also Robert Marcus Lane*, Exchange Act Release No. 74269, 2015 SEC LEXIS 558, at *21 n.20 (Feb. 13, 2015) (“[T]his general ethical standard . . . is broader and provides more flexibility than prescriptive regulations and legal requirements. [The rule] protects investors and the securities industry from dishonest practices that are unfair to investors or hinder the functioning of a free and open market, even though those practices may not be illegal or violate a specific rule or regulation.”).

²⁴⁴ *Sandlapper*, 2020 FINRA Discip. LEXIS 30, at *29 (citation omitted) (quoting *Stephen Grivas*, Exchange Act Release No. 77470, 2016 SEC LEXIS 1173, at *17 (Mar. 29, 2016)).

²⁴⁵ *Springsteen-Abbott*, 2020 SEC LEXIS 2684, at *28; *Dep’t of Enforcement v. White*, No. 2015045254501, 2019 FINRA Discip. LEXIS 30, at *41 (NAC July 26, 2019) (citing *Blair Alexander West*, Exchange Act Release No. 74030, 2015 SEC LEXIS 102, at *20 (Jan. 9, 2015), *aff’d*, 641 F. App’x 27 (2d Cir. 2016)).

²⁴⁶ *Springsteen-Abbott*, 2020 SEC LEXIS 2684, at *28; *accord Simpson v. Bear, Stearns & Co.*, No. C07950030, 1997 NASD Discip. LEXIS 13, at *27 n.9 (NBCC Jan. 29, 1997) (“Term ‘bad faith’ is not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity”) (quoting Black’s Law Dictionary).

²⁴⁷ *Springsteen-Abbott*, 2020 SEC LEXIS 2684, at *29.

“A respondent’s violation of his Firm’s policies and procedures is not automatically a violation of the ethical conduct Rule.”²⁴⁸ Still, the SEC²⁴⁹ and FINRA²⁵⁰ have looked to internal firm compliance policies to help determine whether a respondent’s conduct violated just and equitable principles of trade and have found violations. Significantly, they have recognized that prearranged trading arrangements are a deceptive device, scheme, or artifice to defraud, including when used to avoid firm policy.²⁵¹

We conclude that Mantei’s conduct was unethical. It did not conform to moral norms or standards of professional conduct; it impeded the Firm’s supervision of his trading activities; and it deprived customers of the benefits of the cross trade procedures put in place for their (and the Firm’s) protection. Mantei’s conduct also reflects directly on his ability to abide by his Firm’s policies. Finally, his misconduct casts doubt on his ability to comply with regulatory requirements necessary for the proper functioning of the securities industry and the protection of the public.

Mantei’s wrongdoing in connection with the Wells Fargo R66 SCD transactions was especially troublesome. After Woll explicitly told him not to do a cross trade, he nevertheless inserted prearranged trades with a broker-dealer intermediary to facilitate a sale from the customer to another Firm customer. This conduct was not only unethical, but reflected a dishonesty of belief or purpose.

²⁴⁸ *Dep’t of Enforcement v. Maheshwari*, No. 2017055608101, 2019 FINRA Discip. LEXIS 60, at *19 (OHO Dec. 19, 2019) (citation omitted), *aff’d*, 2020 FINRA Discip. LEXIS 46 (NAC Dec. 17, 2020).

²⁴⁹ *Heath*, 2009 SEC LEXIS 14, at *18 & n.21 (“[W]e have looked to internal firm compliance policies to inform our determination of whether applicants’ conduct, like [respondent’s], violated the professional standards of ethics covered by the J&E Rule.”); *Thomas P. Garrity*, Exchange Act Release No. 25115, 1987 SEC LEXIS 3215, at *9 (Nov. 12, 1987) (finding that failure to adhere to limits on trading of options under the firm’s compliance policy violated the J&E Rule).

²⁵⁰ *Dep’t of Enforcement v. Skiba*, No. E8A2004072203, 2010 FINRA Discip. LEXIS 6, at *13–14 (NAC Apr. 23, 2010) (finding that respondent’s “failure to structure . . . transactions as variable annuity replacements and to submit proper documentation to the Firm and customers as required by the Firm constitute unethical conduct”); *Dep’t of Enforcement v. Davenport*, No. C05010017, 2003 NASD Discip. LEXIS 4, at *8–10 (NAC May 7, 2003) (finding that respondent violated predecessor to FINRA Rule 2010 by “misrepresenting to his firm that he had not borrowed from customers in violation of the firm’s policy”); *Dep’t of Enforcement v. Tucker*, No. 2009016764901, 2013 FINRA Discip. LEXIS 19, at *7 (OHO Jan. 11, 2013) (“[T]he failure to follow firm procedures, particularly those designed to protect customers, [is] not consistent with the high standards of commercial honor and just and equitable principles of trade required by FINRA Rule 2010.”), *aff’d in relevant part*, 2013 FINRA Discip. LEXIS 45 (NAC Dec. 31, 2013).

²⁵¹ *Thomas C. Gonnella*, Exchange Act Release No. 78532, 2016 SEC LEXIS 2786, at *21–22 (Aug. 10, 2016) (holding that broker violated antifraud provisions of Exchange Act when he engaged in a prearranged trading scheme and sold and quickly repurchased aged bonds to avoid firm’s aged-inventory policy), *petition for review denied*, 954 F.3d 536 (2d Cir. 2020); *Dep’t of Enforcement v. Doherty*, No. 2015047005801, 2020 FINRA Discip. LEXIS 29, at *13–14 (NAC June 15, 2020) (“A prearranged trading scheme to evade a firm’s aged-inventory policy constitutes a deceptive device, scheme, or artifice to defraud.”).

Accordingly, we conclude that Mantei's conduct violated FINRA Rule 2010 in connection with the trading in the Wells Fargo R66 and Citibank FN6 SCDs.²⁵²

B. Mantei Violated MSRB Rule G-17 in Connection with the Fresno HE2 Bond Trades

As with the Wells Fargo R66 and the Citibank FN6 SCD transactions, we find that Mantei circumvented the Firm's cross trade procedures and contravened its prearranged trading prohibition in connection with the Fresno HE2 Bond trades. The Complaint alleged that this conduct violated Municipal Securities Rulemaking Board ("MSRB") Rule G-17.²⁵³ MSRB Rule G-17 provides that "[i]n the conduct of its municipal securities or municipal advisory activities, each broker, dealer, and municipal securities dealer shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practices." The Rule also applies to their associated persons.²⁵⁴ MSRB Rule G-17, the MSRB corollary to FINRA Rule 2010,²⁵⁵ "encompasses both an antifraud prohibition and a duty to deal fairly."²⁵⁶ "According to MSRB's interpretive guidance, the rule 'establishes a general duty of a dealer to deal fairly with all persons . . . even in the absence of fraud.'"²⁵⁷ A violation of Rule G-17 "requires a showing of at least negligence to establish a violation."²⁵⁸ For the reasons stated above in connection with the Wells Fargo R66 and the Citibank FN6 SCD transactions, we conclude that Mantei's conduct in connection with

²⁵² Even if the trades were not subject to the cross trade procedures, Mantei's conduct was unethical and a violation of FINRA Rule 2010 because he used sham, prearranged trades to facilitate trades between customers in violation of the Firm's prearranged trading prohibition.

²⁵³ Compl. ¶¶ 1, 51–52.

²⁵⁴ "Unless the context otherwise requires or a rule of the [MSRB] otherwise specifically provides, the terms 'broker,' 'dealer,' 'municipal securities broker,' [or] 'municipal securities dealer' . . . shall refer to and include their respective associated persons. Unless otherwise specified, persons whose functions are solely clerical or ministerial shall not be considered associated persons for purposes of the Board's rules." MSRB Rule D-11.

²⁵⁵ *Dep't of Enforcement v. Grey*, No. 2009016034101, 2014 FINRA Discip. LEXIS 31, at *11 n.11 (NAC Oct. 3, 2014), *aff'd*, Exchange Act Release No. 75839, 2015 SEC LEXIS 3630 (Sept. 3, 2015); *but see Dep't of Enforcement v. Sisung*, No. C05030036, 2006 NASD Discip. LEXIS 16, at *51 n.40 (NAC Aug. 28, 2006) (finding that MSRB Rule G-17 is not a true analog because while a violation of an SEC or NASD rule or regulation is inconsistent with just and equitable principles of trade and constitutes a violation of the predecessor to FINRA Rule 2010, this does not apply to MSRB G-17, which is an antifraud prohibition requiring a showing of at least negligence to establish a violation), *aff'd in part*, Exchange Act Release No. 56741, 2007 SEC LEXIS 2562 (Nov. 5, 2007).

²⁵⁶ *Dep't of Mkt. Regulation v. Naby*, No. 2012032080301, 2017 FINRA Discip. LEXIS 27, at *20 (NAC July 24, 2017).

²⁵⁷ *Id.* at *21 (citation omitted).

²⁵⁸ *Id.* (citing *Dolphin and Bradbury, Inc.*, Exchange Act Release No. 54143, 2006 SEC LEXIS 1592, at *49 (July 13, 2006)).

the Fresno HE2 Bond trades constituted a deceptive, dishonest, or unfair practice and that he engaged in this conduct at least recklessly.²⁵⁹ As a result, he violated MSRB Rule G-17.²⁶⁰

C. Mantei Is Statutorily Disqualified

“Under Section 3(a)(39) of the Exchange Act, a person who willfully violates MSRB rules is subject to a statutory disqualification from the securities industry.”²⁶¹ “A willful violation under the federal securities laws means ‘that the person charged with the duty knows what he is doing.’”²⁶² “Such a finding does not require that the respondent ‘also be aware that he is violating one of the Rules or Acts’; it simply requires the voluntary commission of the acts themselves.”²⁶³ Mantei knowingly and voluntarily committed the acts that constitute the violation. He therefore acted willfully and is subject to a statutory disqualification.²⁶⁴

V. Sanctions

A. Overview

In considering the appropriate sanctions to impose on Mantei, we begin our sanctions analysis with FINRA’s Sanction Guidelines (“Guidelines”)²⁶⁵ as a benchmark.²⁶⁶ The Guidelines contain (1) General Principles Applicable to All Sanction Determinations (“General Principles”) “that should be considered in connection with the imposition of sanctions in all cases”; (2) a list of Principal Considerations in Determining Sanctions (“Principal Considerations”) that “enumerates generic factors for consideration in all cases”; and (3) guidelines applicable to

²⁵⁹ See discussion of Mantei’s intent at p. 37.

²⁶⁰ See *Dist. Bus. Conduct Comm. v. Lankenau*, No. CB940009, 1995 NASD Discip. LEXIS 40, at *32–34 (NBCC Nov. 8, 1995) (concluding that fictitious trading in circumvention of supervisory procedures violated MSRB Rule G-17).

²⁶¹ *Thaddeus J. North*, Exchange Act Release No. 84500, 2018 SEC LEXIS 3001, at *22 & n.25 (Oct. 29, 2018) (citing 15 U.S.C. § 78c(a)(39), 15 U.S.C. § 78o(b)(4)(D)), *petition for review denied*, 2020 U.S. App. LEXIS 33607 (D.C. Cir. Oct. 23, 2020); FINRA By-Laws, Article III, Section 4 (providing that a person is subject to statutory disqualification if the person is disqualified pursuant to Exchange Act Section 3(a)(39)).

²⁶² *Dep’t of Enforcement v. Smith*, No. 2015043646501, 2020 FINRA Discip. LEXIS 43, at *55 (NAC Sept. 18, 2020) (quoting *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *41 (Nov. 9, 2012) (quoting *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000))), *appeal docketed*, No. 3-2017 (SEC Oct. 19, 2020).

²⁶³ *North*, 2018 SEC LEXIS 3001, at *22.

²⁶⁴ *Doherty*, 2020 FINRA Discip. LEXIS 29, at *15 n.13 (finding that respondent acted willfully and therefore was subject to a statutory disqualification because he “knowingly and intentionally executed prearranged trades—with no economic purpose and no change to beneficial ownership—to help a [a trader] avoid [his firm’s] aged-inventory policy”); see also *Naby*, 2017 FINRA Discip. LEXIS 27, at *26 & n.21 (finding that respondent willfully violated MSRB G-17 because her actions were voluntary).

²⁶⁵ FINRA Sanction Guidelines (Oct. 2020), <http://www.finra.org/sanctionguidelines>.

²⁶⁶ See, e.g., *Allen Holeman*, Exchange Act Release No. 86523, 2019 SEC LEXIS 1903, at *43 (July 31, 2019) (finding that a sanctions analysis should begin with the Guidelines as a benchmark), *petition for review denied*, 2021 U.S. App. LEXIS 208 (D.C. Cir. Jan. 5, 2021).

specific violations (“Specific Considerations”) that “identify potential principal considerations that are specific to the described violation.”²⁶⁷

The General Principles explain that “sanctions should be designed to protect the investing public by deterring misconduct and upholding high standards of business conduct.” Adjudicators are therefore instructed to “design sanctions that are meaningful and significant enough to prevent and discourage future misconduct by a respondent and deter others from engaging in similar misconduct.” Sanctions should also “reflect the seriousness of the misconduct at issue”²⁶⁸ and be “tailored to address the misconduct involved in each particular case.”²⁶⁹

The Panel majority considers the sanctions it is imposing appropriate, proportionally measured to address Mantei’s misconduct, and designed to protect and further the interests of the investing public, the industry, and the regulatory system.

B. Discussion

There are no specific Guidelines addressing Mantei’s violations. We therefore sought to identify Guidelines for analogous violations.²⁷⁰ Finding none,²⁷¹ we turned to the overarching General Principles and Principal Considerations in the Guidelines applicable to all cases. Applying these considerations and principles, as well as those espoused in decisions by the SEC and FINRA, we find that aggravating factors are present.

First, Mantei’s misconduct was intentional or, at minimum, reckless.²⁷² By the time of his misconduct, he had over 30 years of industry experience, was a registered representative and general securities principal, branch officer manager, and a self-described “expert in fixed-income products.”²⁷³ As a result, he must have known, or was reckless in not knowing, that the

²⁶⁷ Guidelines at 1 (Overview).

²⁶⁸ *Id.* at 2 (General Principle No. 1).

²⁶⁹ *Id.* at 3 (General Principle No. 3).

²⁷⁰ Guidelines at 1 (“For violations that are not addressed specifically, Adjudicators are encouraged to look to the guidelines for analogous violations.”); *see also Wedbush Sec., Inc.*, Exchange Act Release No. 78568, 2016 SEC LEXIS 2794, at *44 (Aug. 12, 2016) (agreeing with FINRA’s use of analogous Guidelines when misconduct at issue is not specifically addressed in Guidelines), *aff’d*, 719 F. App’x 724 (9th Cir. 2018).

²⁷¹ While prearranged trading has been found to constitute fraudulent conduct in certain cases, *see* p. 34 n.251, above, we decline to apply the fraud guideline. The Complaint did not charge Mantei with fraud, misrepresentations, or material omissions. Nor did we apply the pricing guideline. Enforcement proved that in two sets of trades, customers paid markups/markdowns exceeding the Firm’s guidelines. But the Complaint did not charge Mantei with violating FINRA or MSRB rules by virtue of those markups/markdowns. Finally, we did not consider the guideline for recordkeeping violations because Mantei was not charged with that violation, either.

²⁷² Guidelines at 8 (Principal Consideration No. 13) (“Whether the respondent’s misconduct was the result of an intentional act, recklessness or negligence.”).

²⁷³ *See* Ans. 4; *see also Philippe N. Keyes*, Exchange Act Release No. 54723, 2006 SEC LEXIS 2631, at *21 (Nov. 8, 2006) (considering representative’s 15 years of securities industry experience to determine that it was implausible for him to be unaware of FINRA’s prohibition on selling away).

prearranged trading arrangements he devised were improper and violated Firm policy. Additionally, he and Palermo agreed not to tell Woll about the prearranged trading arrangements and made sure that the order tickets did not contain the term “cross trade.” Mantei’s efforts to conceal the true nature of the trading demonstrated consciousness of guilt.²⁷⁴

Second, the misconduct occurred in the context of three sets of transactions over a five-month period. This evidenced a pattern of wrongdoing.²⁷⁵

Third, the misconduct created the potential for Mantei to receive monetary gain.²⁷⁶ Mantei admitted to Palermo that in connection with the Wells Fargo R66 SCD trades, he was trying to avoid contributing to a financial settlement with the customer that would trigger a reportable event to FINRA. Through his wrongdoing, the SCD was sold at a price that enabled Mantei to avoid making that contribution.²⁷⁷ Also, the trades on the Citibank FN6 SCD and Fresno HE2 Bond transactions generated markups/markdowns that exceeded Firm guidelines.²⁷⁸

Fourth, Mantei concealed his misconduct from the Firm, misled and deceived the Firm, and lulled a customer into inactivity.²⁷⁹ As reflected in their recorded conversations, Mantei and Palermo agreed not to tell the Firm about the prearranged trading plan,²⁸⁰ planned to misleadingly say only that “we’re good for finding a buyer, no crossing”;²⁸¹ and discussed making the trades look “realistic.”²⁸² Mantei’s deception included splitting up repurchases and

²⁷⁴ *Evelyn Litwok*, Initial Decision Release No. 994, 2016 SEC LEXIS 1229, at *19 (Apr. 4, 2016) (“By taking affirmative steps to conceal her theft, [respondent] demonstrated consciousness of guilt”) (citing *United States v. Rybicki*, 287 F.3d 257, 264 (2d Cir. 2002) (“[E]fforts to avoid detection . . . are indicative of consciousness of guilt . . .”), *aff’d on reh’g in banc*, 354 F.3d 124 (2d Cir. 2003)).

²⁷⁵ Guidelines at 7 (Principal Consideration No. 8) (“Whether the respondent engaged in numerous acts and/or a pattern of misconduct.”). Mantei argues that three distinct sets of transactions over a five-month period does not constitute a pattern of misconduct. Resp’t Post-Hr’g Br. 47. We disagree. His acts of misconduct were similar, and we find the number of incidents, coupled with the length of time over which they occurred, constitute a pattern. *Cf. Dep’t of Enforcement v. Dunbar*, No. C07050050, 2008 FINRA Discip. LEXIS 18, at *35 (NAC May 20, 2008) (finding that preparing three false account summaries over a seven-month period established a pattern of misconduct over an extended period of time).

²⁷⁶ Guidelines at 8 (Principal Consideration No. 16) (“Whether the respondent’s misconduct resulted in the potential for the respondent’s monetary or other gain.”).

²⁷⁷ Enforcement argues that part of the gain Mantei sought to obtain was avoiding a reportable event on a Form U4. Enf’t Post-Hr’g Br. 31. We do not consider this a “gain” for the purposes of determining sanctions. While Principal Consideration No. 16 does not define the word, other references to “gain” in the Guidelines suggest that it means financial gain. *See* Guidelines at 4, 5 & n.5, 10.

²⁷⁸ The record, however, does not reflect Mantei’s payout on these markups/markdowns, so the amount of his financial benefit, or potential monetary gain, is unclear.

²⁷⁹ Guidelines at 7 (Principal Consideration No. 10) (“Whether the respondent attempted to conceal his . . . misconduct or to lull into inactivity, mislead, deceive or intimidate a customer, regulatory authorities or, in the case of an individual respondent, the member firm with which he or she is/was associated.”).

²⁸⁰ *See, e.g.*, CX-9A; CX-9, at 1.

²⁸¹ CX-9A; CX-9, at 1; *see also* Tr. 727.

²⁸² CX-8A; CX-8, at 1.

failing to mark trade tickets to reflect cross trades or prearranged trading arrangements, which helped disguise the true nature of the trading.²⁸³ These concealments left Woll with the misimpression that the trades with the broker-dealer intermediaries were bona fide arm's length transactions and not part of an arrangement to facilitate trades between Firm customers. The misconduct also resulted in inaccurate Firm records because the records contained no instructions revealing the prearrangements.²⁸⁴ Additionally, in connection with the Wells Fargo R66 SCD trades, Mantei's wrongdoing lulled the selling customer into not filing a written complaint.

Fifth, Mantei's misconduct violated a Firm policy and evaded Firm procedures.²⁸⁵

Finally, Mantei lacked remorse and refused to accept responsibility for, or even acknowledge, his misconduct; instead, he blamed others.²⁸⁶ By failing to recognize that he engaged in wrongful conduct, Mantei demonstrated a propensity for future wrongdoing.²⁸⁷

Balanced against these aggravating circumstances, we examined the record for any mitigation and found none. While Mantei did not specifically claim that mitigative factors are present, he made the following arguments, which we considered as mitigation and rejected: (1) there was no evidence of customer or market harm;²⁸⁸ (2) he did not receive guidance from the Firm or his supervisors; (3) he asserted that he was just trying to take care of his clients;²⁸⁹

²⁸³ See *Doherty*, 2020 FINRA Discip. LEXIS 29, at *20 (finding that attempting to conceal prearranged trading by splitting the ticket on the return leg of prearranged trades was aggravating).

²⁸⁴ *Dep't of Enforcement v. Perles*, No. CAF980005, 1999 NASD Discip. LEXIS 41, at *45 (OHO Aug. 18, 1999) (unidentified wash trading and matched orders caused inaccurate trade records), *aff'd*, 2000 NASD Discip. LEXIS 9 (NAC Aug. 16, 2000), *aff'd in relevant part*, Exchange Act Release No. 45691, 2002 SEC LEXIS 3395 (Apr. 4, 2002).

²⁸⁵ *White*, 2019 FINRA Discip. LEXIS 30, at *51 n.25 (finding it aggravating that respondent engaged in the misconduct when his firm had an express policy prohibiting employees from engaging in that conduct and noting that while violating firm policy is not a Principal Consideration, "[t]he list of Principal Considerations . . . is illustrative, not exhaustive").

²⁸⁶ Guidelines at 7 (Principal Consideration No. 2) ("Whether an individual . . . respondent accepted responsibility for and acknowledged the misconduct to his . . . employer . . . or a regulator prior to detection and intervention by the firm (in the case of an individual) or a regulator."); see, e.g., *Dep't of Enforcement v. Reeves*, No. 2011030192201, 2014 FINRA Discip. LEXIS 41, at *24 (NAC Oct. 8, 2014) (finding it "decidedly aggravating that [respondent] continues to refuse to take responsibility for his misconduct, [and] blames" others, including "FINRA for his current disciplinary troubles"), *aff'd*, Exchange Act Release No. 76376, 2015 SEC LEXIS 4568 (Nov. 5, 2015).

²⁸⁷ *Dep't of Enforcement v. Ottimo*, No. 2009017440201r, 2020 FINRA Discip. LEXIS 34, at *14 (NAC Mar. 27, 2020) (finding that respondent's "refusal to accept accountability for his conduct demonstrates a misunderstanding of, or lack of regard for, his responsibilities as a securities professional, which strongly indicates a propensity for future wrongdoing") (citation omitted), *appeal docketed*, No. 3-17930r (SEC Apr. 27, 2020).

²⁸⁸ Resp't Post-Hr'g Br. 14. Enforcement's investigator testified that he did not identify any specific injury to the market or to customers based on Mantei's actions. Tr. 377-78. Reilly likewise concluded that there was no evidence of customer or market harm. Tr. 1270, 1271, 1278, 1280, 1336; RX-40, at 5. Enforcement did not prove otherwise.

²⁸⁹ Tr. 490.

and (4) he claimed he was a victim. These arguments fail. Lack of harm is not mitigating;²⁹⁰ nor is a lack of supervision, instruction, or specific warnings from a supervisor;²⁹¹ trying to care for your customers;²⁹² or characterizing yourself as a victim.²⁹³

* * *

In light of the numerous aggravating circumstances and the absence of mitigation, and keeping in mind that sanctions must serve a remedial purpose, the Panel majority finds that Mantei should be (1) suspended for 30 business days from associating with any FINRA member firm in any capacity and fined \$10,000 for violating FINRA Rule 2010, by violating the Firm’s prearranged trading prohibition and circumventing its cross trade procedures in connection with the Wells Fargo R66 and Citibank FN6 SCD trades; and (2) suspended for 30 business days from associating with any FINRA member firm in any capacity and fined \$5,000 for willfully violating MSRB Rule G-17, by violating the Firm’s prearranged trading prohibition and circumventing its cross trade procedures in connection with the Fresno HE2 Bond trades. Because the violations are of a similar nature and result from the same underlying conduct, the suspensions shall run concurrently.²⁹⁴ The Hearing Officer dissents regarding these sanctions.²⁹⁵

²⁹⁰ See, e.g., *KCD Fin. Inc.*, Exchange Act Release No. 80340, 2017 SEC LEXIS 986, at *48 (Mar. 29, 2017). Even if Enforcement’s failure to prove harm were relevant, we find that it is outweighed by the seriousness of Mantei’s misconduct.

²⁹¹ *Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *73–74 (Jan. 30, 2009) (rejecting as not mitigating respondent’s attempt to blame his violations on a lack of supervision because a “respondent cannot shift his or her responsibility for compliance with an applicable requirement to a supervisor or to [FINRA]”), *petition for review denied*, 416 F. App’x 142 (3d Cir. 2010); *Dep’t of Enforcement v. Seol*, No. 2014039839101, 2019 FINRA Discip. LEXIS 9, at *52 (NAC Mar. 5, 2019) (finding that the absence of a direct instruction or specific warnings from the firm or a regulator is not mitigating).

²⁹² *Janet Gurley Katz*, Exchange Act Release No. 61449, 2010 SEC LEXIS 994, at *90–91 (Feb. 1, 2010) (finding that respondent’s assertion that she was a nice person who took care of her clients was not mitigating), *aff’d*, 647 F.3d 1156 (D.C. Cir. 2011).

²⁹³ The NAC has rejected as not mitigating respondents’ victimization claims. See *Dep’t of Enforcement v. Gomez*, No. 2011030293503, 2018 FINRA Discip. LEXIS 10, at *64–65 (NAC Mar. 28, 2018); *Dep’t of Enforcement v. Ortiz*, No. 2014041319201, 2017 FINRA Discip. LEXIS 5, at *37 (NAC Jan. 4, 2017).

²⁹⁴ See *Dep’t of Enforcement v. Siegel*, No. C05020055, 2007 NASD Discip. LEXIS 20, at *53 (NAC May 11, 2007) (“[C]oncurrent suspensions might be appropriate to remedy multiple violations of a similar nature where such violations result from the same underlying conduct.”), *aff’d*, Exchange Act Release No. 583737, 2008 SEC LEXIS 2459 (Oct. 6, 2008), *aff’d in relevant part*, 592 F.3d 147 (D.C. Cir. 2010).

²⁹⁵ In light of the numerous aggravating circumstances and absence of mitigation, the Hearing Officer concludes that the suspensions imposed by the Panel majority are not sufficiently remedial. In addition to the fines imposed by the Panel majority, the Hearing Officer would have imposed an all-capacities suspension of three months for the FINRA Rule 2010 violation and an all-capacities suspension of three months for the MSRB Rule G-17 violation, with the suspensions running concurrently.

VI. Order

Respondent Ricky Alan Mantei is (1) suspended for 30 business days from associating with any FINRA member firm in any capacity and fined \$10,000 for violating FINRA Rule 2010; and (2) suspended for 30 business days from associating with any FINRA member firm in any capacity, fined \$5,000, and statutorily disqualified for willfully violating MSRB Rule G-17. The suspensions shall run concurrently.

Mantei also is ordered to pay the costs of the hearing in the amount of \$11,895, which includes a \$750 administrative fee and \$11,145 for the cost of the transcript.

If this decision becomes FINRA's final disciplinary action, the suspensions shall become effective with the opening of business on Monday, April 19, 2021, and end at the close of business on Tuesday, June 1, 2021. The fines and assessed costs shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.²⁹⁶


David R. Sonnenberg
Hearing Officer
For the Extended Hearing Panel

Copies to:

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²⁹⁶ The Extended Hearing Panel has considered and rejects without discussion all other arguments of the parties.