FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

Department of Enforcement, Complainant, v. Christopher Booth Kennedy CRD No. 4498061, Respondent.	Disciplinary Proceeding No. 2021072389001 Hearing Officer-MC **ORDER ACCEPTING OFFER OF SETTLEMENT** Date: November 17, 2023

INTRODUCTION

Disciplinary Proceeding No. 2021072389001 was filed on September 22, 2023, by the Department of Enforcement of the Financial Industry Regulatory Authority (FINRA or Complainant). Respondent Christopher Booth Kennedy submitted an Offer of Settlement (Offer) to Complainant dated November 14, 2023. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (NAC), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by the NAC.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of

Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA.

BACKGROUND

Kennedy was first registered with FINRA in March 2002 through his association with a FINRA member firm. After being discharged from that firm in August 2007, he was registered with FINRA as a General Securities Representative through another member firm from December 2007 to February 2008, through a former member firm from January 2009 to August 2017, through Western from August 2017 to July 2019, and through another member firm from July 2019 to December 2019. Kennedy was last registered with FINRA through Western as a General Securities Representative beginning December 2019. Western filed a Form U5 notice to terminate Kennedy's registration on September 27, 2021, disclosing that Kennedy had been discharged. Although Kennedy is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after September 27, 2021, which was the effective date of termination of Kennedy's registration with Western, and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member and with providing false information in response to FINRA requests for information and false on-the-record testimony to FINRA during the two-year period after the date on which he ceased to be registered or associated with a FINRA member.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

SUMMARY

Between July 2020 and July 2021, Respondent Christopher Kennedy churned and excessively traded four accounts of six customers (Customers 1–6) as a registered representative of FINRA member Western International Securities.

Kennedy used his control over these accounts to direct an excessive series of transactions in each account that generated commissions for his own benefit at the customers' expense.

In all, between July 2020 and July 2021, Kennedy directed over 5,300 trades representing net trading of more than $350 million in the four accounts of Customers 1–6. Each month, Kennedy made an average of 102 trades per account representing net trading of more than $6.9 million per account or approximately 13 times the average account value.

Kennedy's trading for Customers 1–6 resulted in annualized cost-to-equity ratios ranging from 27% to 39% for an average cost-to-equity ratio of more than 31% across all their accounts. In addition, Kennedy's trading resulted in annualized turnover rates ranging from 31 to 58, for an average turnover rate of more than 47 across all their accounts, even excluding options purchases.

As the result of Kennedy's excessive trading, Customers 1–6 collectively lost over $2.3 million in value from their accounts and paid more than $715,000 in total trading costs and margin interest, including over $595,000 in commissions.

Moreover, in March 2021, Kennedy began making fake account statements to hide the results of his trading from Customers 1 and 2, the husband and wife co-trustees of a family trust account. Over the next six months, Kennedy prepared and sent six fake account statements to Customers 1 and 2 from his personal email. Kennedy supplemented these fake account statements by making a series of other false statements to Customers 1 and 2 inflating their account value.

For example, in August 2021 Kennedy sent a fake account statement for July 2021 to Customers 1 and 2 purporting to show an ending balance of $5.2 million and a gain in value of over $3 million since July 2020. In fact, as of July 2021, under Kennedy's control the account had lost nearly all of its value and only approximately $160,000 in value remained in the account.

During FINRA's investigation of his trading, Kennedy repeatedly lied to FINRA staff in response to the staff's requests for information and testimony pursuant to FINRA Rule 8210. In particular, Kennedy falsely denied preparing any fake account statements for Customers 1 and 2 and falsely claimed that his personal email had been hacked and that an imposter had sent all but one of the fake account statements.

By churning the accounts of Customers 1–6, Kennedy willfully violated Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder and violated FINRA Rules 2020 and 2010; by excessively trading their accounts, he willfully violated Regulation Best Interest (Regulation BI) and violated FINRA Rule 2010; by falsifying account statements and making false representations to his customers, he violated FINRA Rule 2010; and by providing false written responses and false testimony in response to FINRA's Rule 8210 requests, he violated FINRA Rules 8210 and 2010.

FACTS

<u>Overview of Kennedy's Day-Trading Strategy, Control of Accounts, and Use of Discretion</u>

By July 2020, Kennedy was recommending, or using discretion to implement, and thereby implicitly recommending, a leveraged day-trading strategy to customers. Kennedy claimed to rely on technical analysis to speculate on intra-day price movement. He purported to use technical indicators such as "Gann levels" and relative strength indicators to determine if and when to enter and exit long or short positions throughout a trading day. He also used specialized trading software to calculate, visualize, and evaluate these technical indicators in order to make his trading decisions.

Kennedy's recommended day-trading strategy and his use of discretion to implement it in the accounts of Customers 1–6 constituted a series of recommended transactions for which he did not have a reasonable basis to believe was not excessive and was in their best interest, in light of the associated substantial commissions and the customers' investment profiles. Customers 1–6 were ordinary retail investors whose investment goals were not served by trading and speculation. They lacked the risk tolerance for day-trading. They were not prepared to lose all of the funds in the accounts in which Kennedy day-traded or to suffer extraordinary losses beyond their initial investment from Kennedy's use of leverage.

Customers 1–6 did not sufficiently understand and lacked the time, tools, and level of investing experience necessary to independently evaluate Kennedy's aggressive day-trading strategy, investment decisions, or recommendations. Instead, Customers 1–6 placed a significant degree of trust and confidence in Kennedy. Kennedy relied on that trust and traded in the accounts of Customers 1–6 without consulting them for preapproval of particular trades. If they were consulted about particular trades, Customers 1–6 routinely accepted Kennedy's recommendations.

Kennedy implemented his day-trading strategy for Customers 1–6 by using discretion in their non-discretionary brokerage accounts at Western. Although these customers were trusting

Kennedy to use some discretion in their accounts, Kennedy did not formally convert their accounts to discretionary accounts or memorialize his discretionary authority in writing.

On some trading days, Kennedy used discretion in the brokerage accounts of Customers 1–6 by making trades on their behalf without consulting them first.

On the remaining trading days, when Kennedy communicated with Customers 1–6 prior to trading, Kennedy used discretion in their accounts by advising them only about his general strategy, if he advised them about the day's potential trading at all, and then making specific investment decisions on their behalf later.

On the days when Kennedy communicated with Customers 1–6 prior to trading, he sometimes advised them that he intended to day-trade for their accounts that day up to an amount that was not supposed to exceed their FINRA Rule 4210 day-trading buying power.[1] Kennedy sometimes identified for customers the companies whose securities he was targeting for day-trading if and when their technical indicators signaled to him an imminent price movement in a particular direction. Generally, Kennedy targeted multiple securities on trading days. Kennedy did not, however, specifically recommend or seek preapproval for the purchase or sale of a definite amount of any particular security when advising customers about his general strategy or the securities he was targeting for day-trading.

In this way, Kennedy made investment decisions on behalf of Customers 1–6 and controlled the volume and frequency of the trading in their accounts. In particular, Kennedy controlled what securities to target, whether or not to buy or sell his targeted securities or some other securities, the amount of each security to buy or sell, the date and time to enter and/or exit

[1] Under FINRA Rule 4210(f)(8)(B)(iii), the term "day–trading buying power" means the equity in a customer's account at the close of business of the previous day, less any applicable maintenance margin requirement, multiplied by four for equity securities. For non–equity securities, the Rule provides that "day–trading buying power" may be computed using the applicable special maintenance margin requirements.

the trades, and the prices at which to enter and/or exit the trades. With respect to options, Kennedy also ultimately controlled the option series he used to take a long or short position.

Each trading day, Kennedy implemented his day-trading strategy for multiple customers using the Western average-price trading account for his branch. He first calculated the customers' combined day-trading buying power and then sought to trade the securities of some or all of his targeted companies up to that combined amount in the average-price account.

Initially, Kennedy targeted equity securities using margin for leverage. Over time, Kennedy increasingly used options for leverage instead. In particular, Kennedy increasingly used options for his targeted companies that were close to expiration. All else remaining the same, options that are close to expiration will lose value at an increasing rate. If they cannot be sold or exercised prior to expiration, they will expire worthless.

Kennedy monitored the securities of his targeted companies for the technical indicators he speculated would signal when to enter or exit a long or short position. When Kennedy decided to enter one or more positions, he made a large opening transaction or multiple smaller opening transactions in the branch average-price trading account until each position or positions reached his intended size, trying not to exceed the total day-trading buying power of the participating customers. When Kennedy decided to exit one or more positions, he made closing transactions in same manner in the average-price trading account, trying not to exceed the total quantities of each security that he had traded for customers.

Kennedy referred to these positions as "block trades" and he allocated his block trades from the branch average-price trading account at their average price to the customers he chose to include in his strategy that day. Generally, Kennedy's stated intention was to allocate his block trades to those customers roughly in proportion to their day-trading buying power.

Kennedy did not consistently record which customers he was including in the strategy that day or how the trades were supposed to be allocated before executing trades. As a result, Kennedy could allocate trades post-execution.

When Kennedy did not record the trade allocation prior to trading, or when Kennedy could not trade an amount Kennedy determined was cost-effective to allocate among all participating customers *pro rata*, Kennedy used his discretion to determine what customers he would include in the block trades and how the block trades would be allocated among those customers.

Kennedy traded in this way for Customers 1–6 from July 2020 through July 2021. From May 2021 until the last week in July 2021, however, Kennedy was restricted from making trades in the average-price trading account directly. During this period, Kennedy either traded in individual customer accounts or sent his block trade orders to the firm's trading desk or to others at the firm for entry and execution.

<u>Summary of Kennedy's Trading in the Accounts of Customers 1–6</u>

Customers 1 and 2

Customers 1 and 2 reside in southern California. They were 33 and 36 years old, respectively in July 2020. They are married and have two young children. Customer 1 works as a real estate broker and Customer 2 works in insurance.

Customers 1 and 2 opened a brokerage account at Western as trustees of a trust for the benefit of themselves and their children in 2018. At the time, they had limited knowledge about investing. Their primary investment objective for the account was income and growth/income and their risk tolerance was moderate. During the relevant period, they considered Kennedy a friend and socialized with him.

At the beginning of July 2020, Customer 1 and 2's family trust account at Western was worth $781,978.85.

From July 2020 to July 2021, Kennedy directed 1,779 trades in Customer 1 and 2's account that he marked solicited.

Kennedy frequently communicated with Customers 1 and 2. But Kennedy rarely, if ever, sought preapproval for specific recommendations before trading in their account. Instead, he used discretion to implement his strategy in their account and implicitly recommended the resulting transactions. If Kennedy did consult with Customers 1 and 2 about specific recommendations prior to trading, it was a formality because they could not have independently evaluated them and would routinely follow any recommendations that Kennedy made.

Kennedy's trading for Customers 1 and 2 that he marked solicited represented over $195 million of net trading (the sum of the absolute values of the net purchase and sale amounts), which accounted for more than 88% of the total net trading in the account and over 93% of the total trades.

Kennedy's trading for Customers 1 and 2 that he marked solicited and use of margin caused them to incur $275,093.47 in total costs, including $243,580.45 in commissions and $17,504.72 in margin interest. The overall cost-to-equity ratio for the trading that Kennedy marked solicited was 27% and the overall turnover rate, excluding options trades, was 58.

Kennedy directed a pattern of in-and-out trading (held trades open for 30 days or less) for over 88% ($172 million) of the total net trading for Customers 1 and 2 that he marked solicited ($195 million). Kennedy day-traded (bought and sold the same quantity of the same security on the same day) for more than 54% ($107 million) of that total net trading. On average, Kennedy held each position that he marked solicited open less than 3 days.

Kennedy directed more than $77 million of net trading in options for Customers 1 and 2 that he marked solicited, spending over $39 million to purchase opening positions.

Kennedy bought options expiring in 30 days or less for over 97% ($38.3 million) of the total amount he spent to purchase opening options positions for Customers 1 and 2 in trades that he marked solicited ($39.1 million). Kennedy bought options expiring in 7 days or less for more than 61% ($24.2 million) of that purchase amount. The average time until expiration for the options Kennedy bought for Customers 1 and 2 in trades that he marked solicited was less than 8 days.

Kennedy spent more than $1 million to purchase options that expired worthless in trades for Customers 1 and 2 that he marked solicited, resulting in a total loss.

Kennedy's trading for Customers 1 and 2 involved the use of margin. Under Kennedy's control, their account maintained an average month-end margin balance of $384,042.33, which was 41% of the account's average month-end value.

By the end of July 2021, Kennedy had caused Customers 1 and 2 to realize net trading losses of $968,301.82 (on a first-in-first-out basis) from the trades that he had marked as solicited alone. In addition, the account had a margin debit balance of $100,515.61. In all, under Kennedy's control the value of Customer 1 and 2's account had decreased from $781,978.85 to $162,452.83 (after including $60,745.16 from trades pending settlement), despite net deposits of $951,515.96, for a total decrease in value of $1,571,041.98.

Customer 3

Customer 3 was 74 years old in July 2020. He resides in southern California, where he owns and operates a small family heating and air conditioning (HVAC) business. Customer 3 had been a customer of Kennedy's for approximately nineteen years. At the time, Customer 3 considered Kennedy a friend.

At the beginning of July 2020, Customer 3's account at Western was worth $715,856.77. Customer 3 sought consistent 4-6% returns without being aggressive, and hoped he might use the account in the future to purchase another residential property. His investment knowledge was "good" but not extensive, his primary investment objective was recorded as capital appreciation, and his risk tolerance was moderate.

From July 2020 to July 2021, Kennedy directed 1,288 transactions in Customer 3's account that he marked solicited.

Kennedy communicated with Customer 3 before trading in his account only infrequently. Kennedy rarely if ever sought preapproval for specific recommendations. Instead, Kennedy used discretion to implement his strategy in the account and implicitly recommended the resulting transactions. If Kennedy consulted with Customer 3 about specific recommendations before trading, it was a formality because Customer 3 could not have independently evaluated them and would routinely follow any recommendations Kennedy made.

Kennedy's trading for Customer 3 that he marked solicited represented over $80 million in net trading, which was more than 96% of the total net trading in the account and over 95% of the trades.

Kennedy's trading for Customer 3 that he marked solicited and use of margin resulted in $190,974.70 in total costs, including $139,592.47 in commissions and $42,310.54 in margin interest. The overall cost-to-equity ratio for the trading that Kennedy marked solicited was 31% and the overall turnover rate, excluding options trades, was 42.

Kennedy directed a pattern of in-and-out trading for over 91% ($73.3 million) of the total net trading for Customer 3 that he marked solicited ($80.4 million). Kennedy day-traded for more than 55% ($44.4 million) of that total net trading. The average holding period for trades that Kennedy that marked solicited was less than 4 days.

Kennedy directed more than $30 million of net trading in options for Customer 3 that he marked solicited, spending over $15 million to purchase opening positions.

Kennedy bought options expiring in 30 days or less for over 96% ($14.7 million) of the total amount he spent to purchase opening options positions for Customer 3 in trades that he marked solicited ($15.3 million). Kennedy bought options expiring in 7 days or less for more than 55% ($8.5 million) of that total purchase amount. The average time until expiration for the options Kennedy bought for Customer 3 in trades that he marked solicited was less than 10 days.

Kennedy purchased over $435,000 of options that expired worthless in trades for Customer 3 that Kennedy marked solicited, resulting in a total loss.

Kennedy's trading for Customer 3 involved the use of margin. Under Kennedy's control, the account maintained an average month-end margin balance of $767,763.97, which was 138% of the account's average month end value.

By the end of July 2021, Kennedy had caused Customer 3 to realize net trading losses of $202,863.63 from the trades he had marked solicited alone. In addition, the account had a margin debit balance of $895,011.51. In all, under Kennedy's control the value of Customer 3's account had decreased from $715,856.77 to $238,120.79, despite net deposits of $2,800, for a total decrease in value of $480,535.98.

Customers 4-5

Customers 4 and 5 are the husband and wife co-trustees of a family trust account. In July 2020, they were 45 and 41 years old, respectively. They have three children and reside in southern California. Customer 4 is an electrical engineer in the telecommunications field and Customer 5 is a college professor. Customers 4 and 5 had opened an account with Kennedy by April 2013 because members of their family had previously had accounts with Kennedy's father.

At the beginning of July 2020, Customers 4 and 5's account at Western was worth $315,975.50. Their investment knowledge was "good" but not extensive. Their primary investment objectives for the account were capital appreciation and income and their risk tolerance was moderate aggressive.

From July 2020 to July 2021, Kennedy directed 1,038 transactions Customer 4 and 5's account that he marked solicited.

Kennedy almost never communicated with Customers 4 and 5 or sought preapproval for specific recommendations before directing transactions in their account. Instead, Kennedy used discretion to implement his strategy in their account and implicitly recommended the resulting transactions. If Kennedy consulted with Customers 4 and 5 about specific recommendations before trading, it was a formality because they could not have independently evaluated them and would have routinely followed them.

Kennedy's trading for Customers 4 and 5 that he marked solicited represented over $38 million in net trading, which accounted for 95% of the total net trading in the account and over 96% of the total trades.

Kennedy's trading for Customers 4 and 5 that he marked solicited and use of margin caused them to incur $112,170.17 in total costs, including $93,886.38 in commissions and

$11,324.34 in margin interest. The overall cost-to-equity ratio for the trading that Kennedy marked solicited was 39% and the overall turnover rate, excluding options trades, was 37.

Kennedy directed a pattern of in-and-out trading for over 89% ($34.6 million) of the total net trading for Customers 4 and 5 that he marked solicited ($38.6 million). Kennedy day-traded for more than 46% ($18 million) of that total net trading. On average, Kennedy held each position that he marked solicited open less than 6 days.

Kennedy directed more than $17.5 million of net trading in options for Customers 4 and 5 that he marked solicited, spending $8.8 million to purchase opening positions.

Kennedy bought options expiring in 30 days or less for over 97% ($8.6 million) of the total amount he spent to purchase opening options positions for Customers 4 and 5 in trades that he marked solicited ($8.8 million). Kennedy bought options expiring in 7 days or less for more than 57% ($5 million) of that total purchase amount. The average time until expiration for the options Kennedy bought for Customers 4 and 5 in trades that he marked solicited was less than 9 days.

Kennedy purchased more than $260,000 in options that expired worthless in trades for Customers 4 and 5 that he marked solicited, resulting in a total loss.

Kennedy's trading for Customers 4 and 5 involved the use of margin. Under Kennedy's control, their account maintained an average month-end margin balance of $222,235.05, which was 80% of the account's average month-end value.

By the end of July 2021, Kennedy had caused Customers 4 and 5 to realize net trading losses of $342,380.01 from the trades that he had marked as solicited alone. In addition, the account had a margin debit balance of $9,226.56. In all, under Kennedy's control the value of Customer 4 and 5's account had decreased from $346,297.55 to $269,039.56 (after including

$250,545.33 from trades pending settlement), despite net deposits of $15,600.00, for a total decrease in value of $92,857.99.

Customer 6

Customer 6 resides in southern California. She was 66 years old in July 2020. She works in the real estate industry. She had established a brokerage account as the trustee of a generation-skipping trust in approximately 2002, and since then it had been handled by Kennedy's father before Kennedy took it over in 2012 after his father passed away.

At the beginning of July 2020, Customer 6's account, which was by now at Western, was worth $315,975.50. Her investment knowledge was "good" but not extensive. Her investment objective for the account was capital appreciation and her risk tolerance was moderate. Customer 6 also wanted a portion of the account to remain readily available for an emergency.

From July 2020 to July 2021, Kennedy directed 1,224 trades in Customer 6's account that he marked solicited.

Kennedy almost never communicated with Customer 6 or sought preapproval for specific recommendations before directing transactions in her account. Instead, Kennedy used discretion to implement his strategy in her account and implicitly recommended the resulting transactions. If Kennedy consulted with Customer 6 about specific recommendations before trading, it was a formality because she could not have independently evaluated them and would have routinely followed them.

Kennedy's trading for Customers 6 that he marked solicited represented over $44 million in net trading, which accounted for more than 94% of the total net trading in the account and over 96% of the total trades.

Kennedy's trading for Customer 6 that he marked solicited and use of margin caused her to incur $137,520.99 in total costs, including $118,870.09 in commissions and $10,393.17 in margin interest. The overall cost-to-equity ratio for the trading that Kennedy marked solicited was 38% and the overall turnover rate, excluding options trades, was 31.

Kennedy directed a pattern of in-and-out trading for over 90% ($40.4 million) of the total net trading for Customer 6 that he marked solicited ($44.7 million). Kennedy day-traded for more than 46% ($20.9 million) of that total net trading. On average, Kennedy held each position that he marked solicited open less than 4 days.

Kennedy's directed more than $23 million of net trading in options for Customer 6 that he marked solicited, spending over $11 million to purchase opening positions.

Kennedy bought options expiring in 30 days or less for over 97% ($11.6 million) of the amount he spent to purchase opening options positions for Customer 6 in trades that he marked solicited ($23.3 million). Kennedy bought options expiring in 7 days or less for more than 59% ($6.9 million) of that total purchase amount. The average time until expiration for the options Kennedy bought for Customer 6 in trades that he marked solicited was less than 8 days.

Kennedy spent more than $400,000 to purchase options that expired worthless in trades for Customer 6 that he marked solicited, resulting in a total loss.

Kennedy's trading for Customer 6 involved the use of margin. Under Kennedy's control, her account maintained an average month-end margin balance of $253,283.89, which was 77% of the account's average month-end value.

By the end of July 2021, Kennedy had caused Customer 6 to realize net trading losses of $201,708.73 from the trades that he had marked as solicited alone. In addition, the account had a margin debit balance of $418,357.04. In all, under Kennedy's control the value of Customer 6's account had decreased from $315,975.50 to $99,914.80, for a total decrease in value of $216,060.70.

<u>Kennedy's Falsification of Accounts Statements and False Statements to Customers</u>

By July 2020, Customers 1 and 2 had elected to receive their account statements, trade confirmations, certain letters, prospectuses, financial reports, and other account-related documents via electronic delivery. In order to view these documents, Customers 1 and 2 had to first login to an online client portal. Instead of using the portal, however, Customers 1 and 2 relied on Kennedy for information about their account.

In January 2021, Kennedy prepared a revised client agreement for Customers 1 and 2 to sign. The revised agreement changed their stated level of investment knowledge to "Good," their investment objectives to trading and speculation, and their risk profile to aggressive. During this time, when Kennedy requested that Customers 1 and 2 sign and return documents related to their account, it was their practice to do so, trusting Kennedy that it was necessary and appropriate. Accordingly, and without having a complete and accurate understanding of what was occurring in their account, Customers 1 and 2 signed and returned the revised client agreement to Kennedy.

By February 2021, Customers 1 and 2 had lost access to the online client portal. As a result, they could not view their account statements or trade confirmations. They asked Kennedy to reset their online portal password and provide them with a new one.

Kennedy obtained a new online portal password for Customers 1 and 2 in February 2021. But instead of providing it to them, Kennedy told them that he still "need[ed] to set it up."

In March 2021, Customers 1 and 2 again asked Kennedy for help accessing the online portal. Instead of providing the new password, Kennedy told Customers 1 and 2 that technical issues with the account portal website were preventing access to their accounts.

For the next six months, Kennedy repeatedly lied to Customers 1 and 2 about the activity in their account while they could not access the client portal. In particular, Kennedy prepared and sent Customers 1 and 2 six fake account statements misrepresenting the transactions in their account and overstating the actual performance of his day-trading strategy.

Without having a complete and accurate understanding of what was occurring in their account during this period, Customers 1 and 2 continued to allow Kennedy discretion to trade for their account and continued to accept Kennedy's recommendations, through July 2021.

Specifically, in March 2021, Kennedy prepared a fake February 2021 account statement that misrepresented the value of Customer 1 and 2's account as $2,446,318.47.

In fact, the true value of Customer 1 and 2's account as shown on the genuine February 2021 account statement was $955,587.23.

The fake February 2021 account statement also misrepresented the assets and securities transactions in the account. In fact, the actual assets and securities transactions in the account for February 2021 were reflected on the genuine February 2021 account statement.

On March 25, 2021, Kennedy sent the fake February 2021 account statement to Customer 2 using Kennedy's personal email.

Also on March 25, 2021, Kennedy texted a screen shot of the fake February 2021 account statement to Customers 1 and 2 showing the false month end value. Kennedy then texted that the current value of the account had increased to "[$]3.2" million. In fact, the true value of the account that day was less than $850,000.

Kennedy prepared a fake March 2021 account statement that misrepresented the value of Customer 1 and 2's account at $2,784,791.88. In fact, the true account value as shown on the genuine March 2021 account statement was $673,384.15.

The fake March 2021 account statement also misrepresented the assets and securities transactions in the account. In fact, the actual assets and securities transactions in the account for March 2021 were reflected on the genuine March 2021 account statement.

On April 25, 2021, Kennedy sent the fake March 2021 account statement to Customer 2 using Kennedy's personal email.

In May 2021, Kennedy prepared a fake April 2021 account statement that mispresented the value of Customer 1 and 2's account as $2,960,749.66.

In fact, the true account value as shown on the genuine April 2021 account statement was $647,506.83.

The fake April 2021 account statement also misrepresented the assets and securities transactions in the account. In fact, the actual assets and securities transactions in the account for April 2021 were reflected on the genuine April 2021 account statement.

On May 13, 2021, Kennedy sent the fake April 2021 account statement to Customer 2 using Kennedy's personal email.

Also on May 13, 2021, Kennedy sent a text to Customers 1 and 2, stating that the current value of the account was $3,466,276. That statement was false. In fact, the true value of the account that day was less than $1 million.

In July 2021, Kennedy prepared a fake May 2021 account statement that misrepresented the value of Customer 1 and 2's account as $3,381,087.28. In fact, the true account value as shown on the genuine May 2021 account statement was $1,060,720.46.

On July 26, 2021, Kennedy sent the fake May 2021 account statement to Customer 2 using Kennedy's personal email.

Kennedy's fake May 2021 account statement also misrepresented the assets and securities transactions in the account. In fact, the actual assets and securities transactions in the account for May 2021 were reflected on the genuine May 2021 account statement.

In July 2021, Kennedy prepared a fake June 2021 account statement that misrepresented the value of Customer 1 and 2's account as $5,658,339.12. In fact, the true account value as shown on the genuine June 2021 account statement was $603,316.26.

Kennedy's fake June 2021 account statement also misrepresented the assets and securities transactions in the account. In fact, the actual assets and securities transactions in the account for June 2021 were reflected on the genuine June 2021 account statement.

On July 28, 2021, Kennedy sent the fake June 2021 account statement to Customer 2 using Kennedy's personal email.

In August 2021, Kennedy prepared a fake July 2021 account statement that misrepresented the value of Customer 1 and 2's account as $5,264,365.47.

In fact, the true account value as shown on the genuine July 2021 account statement was $101,707.67 (plus $60,745.16 from trades pending settlement).

Kennedy's fake July 2021 account statement also misrepresented the assets and securities transactions in the account. In fact, the actual assets and securities transactions in the account for July 2021 were reflected on the genuine July 2021 account statement.

On August 20, 2021, Kennedy sent the fake July 2021 account statement to Customers 1 and 2 using Kennedy's personal email.

Also on August 20, 2021, Customer 1 texted Kennedy: "Do you know what our account value is?" Kennedy responded that the account value was "[$]6.324" million. That representation was false. In fact, the true value of the account that day was less than $200,000.

On September 2, 2021, Customer 1 contacted Western directly about their account, which led to his discovery that Kennedy had been providing Customers 1 and 2 with false account statements and false account information.

Kennedy's False Responses to FINRA Rule 8210 Requests and False Testimony

On September 24, 2021, in connection with FINRA's investigation of the misconduct charged in this matter, FINRA staff requested, pursuant to Rule 8210, that Kennedy provide a signed written statement detailing the facts relating to his termination from Western. The same day, FINRA staff also requested, again pursuant to Rule 8210, that Kennedy appear for on-the-record testimony in connection with the investigation. FINRA staff issued additional follow-up requests pursuant to Rule 8210 to secure the information and testimony previously requested.

On October 26, 2021, Kennedy responded in writing to FINRA's Rule 8210 request for a written statement detailing the facts relating to his termination. Although Kennedy admitted sending an inaccurate July 2021 account statement to Customer 1 from his personal email, he falsely denied preparing it, claiming that it had been generated by a back office operations system. In addition, Kennedy falsely denied sending any other account statements to Customers 1 or 2 using his personal email.

On December 3, 2021, during sworn testimony requested pursuant to FINRA Rule 8210, Kennedy made similar false statements. Specifically, Kennedy falsely testified that he did not prepare or send the fake account statements for February 2021, March 2021, April 2021, May 2021, and June 2021 to Customers 1 or 2. Kennedy again denied preparing the fake July 2021 account statement. Instead, Kennedy falsely testified that he had downloaded the July 2021 statement from an online clearing firm system and sent it to Customers 1 and 2 without modification.

In fact, Kennedy had prepared and sent the fake February 2021, March 2021, April 2021, May 2021, and June 2021 account statements to Customers 1 and 2. And in fact, Kennedy had modified the July 2021 statement after downloading it and before sending it to Customers 1 and 2.

FIRST CAUSE OF ACTION

Churning – Securities Fraud
(Willful Violations of Section 10(b) of the Exchange Act and
Exchange Act Rule 10b-5; Violations of FINRA Rules 2020 and 2010)

Section 10(b) of the Exchange Act prohibits the use of any manipulative or deceptive device or contrivance in connection with the purchase or sale of a security.

17 C.F.R. § 240.10b-5 (Exchange Act Rule 10b-5), promulgated under Section 10(b) of the Exchange Act, provides that: it shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange, to employ any device, scheme, or artifice to defraud, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

FINRA Rule 2020 provides that no member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance.

FINRA Rule 2010 provides that a member firm, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

FINRA Rule 0140 provides that persons associated with a member shall have the same duties and obligations as a member under the Rules.

A violation of Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, or FINRA Rule 2020 is also a violation of FINRA Rule 2010.

Churning is fraudulent conduct that occurs when: (a) a broker controls or exercises de facto control over his customer's account; (b) the trading in the account is excessive in light of the customer's investment objectives; and (c) the broker acts with scienter, i.e., with intent to defraud or with reckless disregard of the customer's interests.

Churning is a manipulative or deceptive device or contrivance that violates Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, FINRA Rule 2020, and FINRA Rule 2010. Churning operates as a fraud or deceit upon the customer.

Between July 2020 and July 2021, Kennedy either controlled or exercised de facto control over the accounts of Customers 1–6. To that end, Kennedy treated their accounts as discretionary accounts. He traded in their accounts without first seeking preapproval for specific investment decisions or after having advised them at most only about his general strategy. To the extent Kennedy made specific recommendations, they were a formality because Customers 1–6 were unable to independently evaluate them and routinely followed them.

Kennedy's trading for Customers 1–6 was accomplished by the use or means of interstate commerce and involved transactions in securities listed on national securities exchanges.

Kennedy's trading for Customers 1–6 was excessive in light of those customers' investment objectives. To that end, Kennedy directed frequent in-and-out trading and day-trading in their accounts contrary to their goals, in excess of their risk tolerances, and resulting in cost-to-equity ratios ranging from 27% to 39% and overall turnover rates from 31 to 58 even excluding options purchases.

In carrying out his excessive trading, Kennedy acted with intent to defraud or at a minimum with reckless disregard of the interests of Customers 1–6.

Accordingly, Kennedy churned the accounts of Customers 1–6.

As a result of the foregoing conduct, Kennedy willfully violated Section 10(b) of the Exchange Act, and Exchange Act Rule 10b-5, and violated FINRA Rules 2020 and 2010.

SECOND CAUSE OF ACTION
Excessive Trading
(Willful Violations of Exchange Act Rule 15*l*-1 Regulation Best Interest;
Violation of FINRA Rule 2010)

Since June 30, 2020, broker-dealers and their associated persons have been required to comply with Regulation BI under the Exchange Act. Regulation BI's General Obligation, set forth at Exchange Act Rule 15*l*-1(a)(1), requires a broker, dealer, or a natural person who is an associated person of a broker or dealer, when making a recommendation of any securities transaction or investment strategy involving securities (including account recommendations) to a retail customer, to act in the best interest of the retail customer at the time the recommendation is made, without placing the financial or other interest of the broker, dealer, or associated person making the recommendation ahead of the interest of the retail customer.

Regulation BI defines a retail customer as a natural person, or the legal representative of such natural person, who receives a recommendation of any securities transaction or investment strategy involving securities from a broker, dealer, or a natural person who is an associated person of a broker or dealer; and uses the recommendation primarily for personal, family, or household purposes.

A registered representative who conducts a transaction on behalf of a customer without that customer's explicit authorization implicitly recommends the transaction for that customer.

Regulation BI's Care Obligation, set forth in part at Exchange Act Rule 15*l*-1(a)(2)(ii), requires broker-dealers and their associated persons to exercise reasonable diligence, care, and skill to, among other things, have a reasonable basis to believe that a series of recommended transactions, even if in the retail customer's best interest when viewed in isolation, is not excessive and is in the retail customer's best interest when taken together in light of the retail customer's investment profile and does not place the financial or other interest of the broker, dealer, or such natural person making the series of recommendations ahead of the interest of the retail customer. The Care Obligation applies to a series of recommended transactions regardless of whether the broker-dealer or associated person exercises control over the customer's account. Failure to comply with the Care Obligation constitutes a violation of Regulation BI's General Obligation.

Violations of Exchange Act Rule 15*l*-1 are also violations of FINRA Rule 2010.

Between July 2020 and July 2021, as alleged herein, Kennedy explicitly recommended or used discretion to make, and thereby implicitly recommended, a series of 1,779 securities transactions to Customers 1–2; a series of 1,288 securities transactions to Customer 3; a series of 1,038 securities transactions to Customers 4–5; and a series of 1,224 securities transactions to Customer 6.

Customers 1–6 are retail customers—natural persons, or non-professional legal representatives of natural persons, who used Kennedy's recommendations primarily for personal, family, or household purposes.

Kennedy failed to act in the best interest of Customers 1–6 at the time his recommendations were made. He recommended series of securities transactions to Customers 1–6 that were excessive and not in their best interest and that placed his financial or other interests ahead of their interests. In addition, he failed to exercise reasonable diligence, care, and skill to have a reasonable basis to believe that the series of securities transactions he recommended to Customers 1–6 were not excessive; were in their best interest taken in light of their investment profile and the potential risks, rewards, and costs associated with the recommendations; and did not place his financial or other interests ahead of their interests.

As a result of the foregoing conduct, Kennedy willfully violated Exchange Act Rule 15*l*-1(a)(1) and violated FINRA Rule 2010.

THIRD CAUSE OF ACTION
False Account Statements/Information
(Violations of FINRA Rule 2010)

Intentionally providing false account statements and false account information to customers is a violation of FINRA Rule 2010.

Kennedy intentionally provided false account statements and false account information to Customers 1 and 2 that concealed material facts about the true performance of his trading for their account.

Therefore, Kennedy violated FINRA Rule 2010.

FOURTH CAUSE OF ACTION
False Information and Testimony
(FINRA Rules 8210 and 2010)

FINRA Rule 8210(a)(1) provides that FINRA staff may "require a member, person associated with a member, or person subject to FINRA's jurisdiction to provide information orally, in writing, or electronically . . . and to testify at a location specified by FINRA staff, . . . with respect to any matter involved in [a FINRA] investigation [or] examination."

Providing false or misleading information to FINRA in response to a request for information issued pursuant to FINRA Rule 8210 is a violation of FINRA Rule 8210.

Providing false or misleading testimony to FINRA in response to a request for testimony issued pursuant to FINRA Rule 8210 is a violation of FINRA Rule 8210.

A violation of FINRA Rule 8210 is also a violation of FINRA Rule 2010.

Kennedy provided false or misleading information to a request for information issued pursuant to FINRA Rule 8210. As alleged above, Kennedy falsely denied preparing the fake July 2021 account statement that he sent to Customers 1 and 2 and falsely denied preparing or sending any other fake account statements to Customers 1 and 2.

Kennedy provided false or misleading testimony in response to a request for testimony issued pursuant to Rule 8210. As alleged above, Kennedy falsely testified that he did not prepare the fake July 2021 account statement he sent to Customers 1 and 2. He also falsely testified that he did not prepare or send any of the five prior fake account statements to Customers 1 and 2.

Therefore, Kennedy violated FINRA Rules 8210 and 2010.

Based on the foregoing, Respondent willfully violated Section 10(b) of the Securities Exchange Act of 1934, and Rules 10b-5 and 15*l*-1(a)(1) thereunder; and violated FINRA Rules 8210, 2020, and 2010.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be barred from associating with any FINRA member in any capacity.

The sanctions imposed herein shall be effective on a date set by FINRA staff. A bar or expulsion shall become effective upon approval or acceptance of this Order.

SO ORDERED.

FINRA

Signed on behalf of the
Director of ODA, by delegated authority

Andrew Boldt
Senior Counsel
FINRA Department of Enforcement
55 West Monroe Street, Suite 2600
Chicago, Illinois 60603-5052
312-899-4334
Andrew.Boldt@FINRA.org