

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

GLENN ROBERT KING
(CRD No. 2191091),

Respondent.

Disciplinary Proceeding
No. 2015044444801

Hearing Officer – CC

DEFAULT DECISION

June 9, 2016

Respondent fraudulently misrepresented and omitted material facts during securities sales to seven customers, engaged in unsuitable and excessive short-term trading of long-term investment products in the accounts of four customers, and exercised discretion in the accounts of four customers without written consent and firm approval. For these violations, the Hearing Officer bars Respondent from associating with any member firm in any capacity.

Appearances

For Complainant: Michael J. Newman, Esq., and Christopher Kelly, Esq., FINRA's Department of Enforcement.

No appearance by or on behalf of Respondent Glenn Robert King.

DECISION

I. Introduction

On November 13, 2015, FINRA's Department of Enforcement ("Enforcement") filed a Complaint in this matter with FINRA's Office of Hearing Officers ("OHO"). The Complaint alleges in cause one that Glenn Robert King ("King") engaged in misconduct while associated with Royal Alliance Associates, Inc. ("Royal Alliance") during the period of April 2008 through March 2011. Cause one alleges that King misrepresented to seven Royal Alliance customers that he would purchase safe, no-risk bonds with their investment funds and that he would not charge fees or commissions in their accounts. Instead, King purchased unit investment trusts ("UITs") in the customers' accounts and omitted material facts from the information that he provided to them. Cause one alleges that King's fraudulent misrepresentations and omissions of material facts in sales presentations to seven Royal Alliance customers violated Section 10(b) of the

Securities Exchange Act of 1934 (“Exchange Act”), Rule 10b-5 thereunder, FINRA Rules 2020 and 2010, and NASD Rules 2120 and 2110.¹

Causes two, three, and four allege that King engaged in misconduct while associated with Buckman, Buckman & Reid (“BBR”) during the period of January 2013 through December 2014. Causes two and three allege that King engaged in short-term trading of long-term investment products in the accounts of four BBR customers. Causes two and three allege that King’s trading was quantitatively and qualitatively unsuitable, in violation of FINRA Rules 2111 and 2010. Cause four of the Complaint alleges that King exercised discretion in the accounts of the same four BBR customers without written consent and firm approval, in violation of NASD Rule 2510(b) and FINRA Rule 2010.

Enforcement served King with the Complaint in accordance with FINRA’s Code of Procedure, and King failed to file an answer that complies with the requirements of FINRA Rule 9215. OHO also served King with notice of a March 8, 2016 pre-hearing status conference, and King failed to participate. Accordingly, on April 13, 2016, Enforcement filed a Motion for Entry of Default Decision (“Default Motion”), together with the Declaration of Michael J. Newman, Esq. (“Newman Decl.”) in support of the Default Motion and six exhibits.²

As stated in detail below, the Hearing Officer finds King in default, grants Enforcement’s Default Motion, and deems the allegations of the Complaint admitted, pursuant to FINRA Rules 9215(f), 9241(f) and 9269(a).

II. Findings of Fact and Conclusions of Law

A. King’s Background

King became registered in the securities industry in 1992.³ He was associated with Royal Alliance and registered as a general securities representative from January 2005 through June 2011.⁴ King was associated with BBR and registered as a general securities representative from January 2012 through June 2015.⁵ King voluntarily terminated his association with BBR on June 19, 2015.⁶ King remains unregistered and has not re-associated with a FINRA member firm.⁷

¹ NASD’s and FINRA’s Rules are available at www.finra.org/rules.

² In this decision, Enforcement’s exhibits are referenced as CX-1 through CX-6.

³ Newman Decl. ¶ 4; CX-1.

⁴ CX-1. King voluntarily resigned from Royal Alliance on June 1, 2011. *Id.* At the time, Royal Alliance was conducting an internal review of King’s alleged misrepresentations to customers regarding UITs. *Id.*

⁵ CX-1.

⁶ *Id.*

⁷ *Id.*

B. FINRA's Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding pursuant to Article V, Section 4(a) of FINRA's By-Laws because (1) Enforcement filed the Complaint with OHO on November 13, 2015, which is within two years of BBR's termination of King's association with the firm on June 19, 2015; and (2) the Complaint alleges that King engaged in misconduct during the period when he was associated with member firms Royal Alliance and BBR.⁸

C. Origin of the Investigation

Enforcement commenced a cause investigation of King after several Royal Alliance customers filed written complaints against King based on his UIT sales.⁹ The customers complained to Royal Alliance that King misrepresented UITs as bonds or Certificates of Deposit ("CDs") and falsely assured them that they would not lose their investment principal.¹⁰ When King joined BBR, Enforcement expanded its investigation to review King's UIT sales and other long-term investments at BBR.¹¹ Enforcement's investigation led to the filing of the Complaint in this matter.

D. King's Default

When Enforcement filed the Complaint in November 2015, King's residential address as reflected in the Central Registration Depository ("CRD") was an address in Marlboro, New Jersey ("CRD Address").¹² On November 13, 2015, Enforcement served King with the First Notice of Complaint and Complaint by certified mail at King's CRD Address.¹³ Enforcement also sent a copy to King's CRD Address by first-class mail.¹⁴ The United States Postal Service ("USPS") made three unsuccessful attempts to deliver the certified mailing and ultimately returned it marked with the notation "Return to Sender, Unable to Forward."¹⁵ The USPS did not return the first class mailing.¹⁶ King's Answer to the First Notice of Complaint was due on or before December 11, 2015, and King did not file an Answer or otherwise respond to the Complaint by that date.¹⁷

⁸ See Article V, Sec. 4, FINRA By-Laws; Newman Decl. ¶ 6.

⁹ Newman Decl. ¶ 7.

¹⁰ *Id.*

¹¹ Newman Decl. ¶ 8.

¹² Newman Decl. ¶ 9; CX-1.

¹³ Newman Decl. ¶ 9; CX-1; CX-2.

¹⁴ Newman Decl. ¶ 9.

¹⁵ Newman Decl. ¶ 11; CX-3.

¹⁶ Newman Decl. ¶ 11.

¹⁷ Newman Decl. ¶ 12; CX-2.

On December 15, 2015, Enforcement served King at the CRD Address with the Second Notice of Complaint, First Notice of Complaint, and the Complaint by certified mail.¹⁸ Enforcement also sent the same materials to King's CRD Address by first-class mail.¹⁹ The USPS made three unsuccessful attempts to deliver the certified mailing and ultimately returned it to Enforcement as unclaimed.²⁰ The USPS did not return the first-class mailing.²¹ King's Answer to the Second Notice of Complaint was due on or before January 4, 2016.²²

On or about January 4, 2016, King submitted a one-paragraph, hand-written facsimile to Enforcement.²³ The facsimile is uncaptioned, but includes the case number included on the Complaint.²⁴ King did not file the facsimile with OHO. Enforcement forwarded the facsimile to OHO on January 4, 2016. King's facsimile did not conform to the requirements of FINRA Rule 9215 for the form, content, and service of an answer in a FINRA disciplinary proceeding.²⁵ The Complaint contains 138 paragraphs, and King's one-paragraph facsimile did not respond to each of the allegations in the Complaint.²⁶ His facsimile stated:

I gave answers to these clients listed here in person. All clients actions were done with permission and in (person most times). This letter does not mention any market conditions that was (sic) cause for rebalancing in these markets and conditions. Numbers do not reflect all the income they earned by buying income products, mutual funds, UITs, preferred stocks.²⁷

On January 5, 2016, the Hearing Officer issued an Order directing Respondent to file an answer that comports with the requirements of Rule 9215 on or before January 26, 2016.²⁸ The January 5, 2016 Order stated that Respondent's answer shall contain numbered paragraphs corresponding to each of the 138 numbered paragraphs in the Complaint, be typewritten or printed, and be plainly legible. The Order stated that Respondent could be deemed in default if he failed to file an answer that complied with the requirements of FINRA Rule 9215.

¹⁸ Newman Decl. ¶ 13; CX-4.

¹⁹ Newman Decl. ¶ 13.

²⁰ Newman Decl. ¶ 15; CX-5.

²¹ Newman Decl. ¶ 15.

²² CX-4.

²³ Newman Decl. ¶ 16; CX-6.

²⁴ *Id.*

²⁵ FINRA Rule 9215 states that an answer must specifically admit, deny, or state that the Respondent does not have and is unable to obtain sufficient information to admit or deny each allegation in the Complaint. The rule also requires the Answer to include all affirmative defenses.

²⁶ CX-2; CX-6.

²⁷ CX-6.

²⁸ Newman Decl. ¶ 17.

On January 11, 2016, Enforcement received a two-page uncaptioned document from King via facsimile.²⁹ On January 13, 2016, Enforcement forwarded the document to OHO because King did not file it with OHO. King's facsimile, although type-written, did not conform to the requirements of FINRA Rule 9215 in that it failed to include numbered paragraphs corresponding to each of the 138 numbered paragraphs in the Complaint and did not admit, deny, or state that the Respondent does not have and is unable to obtain sufficient information to admit or deny, each allegation in the Complaint.

On January 14, 2016, the Hearing Officer issued another Order directing Respondent to file a rule-compliant Answer, advising Respondent of the requirements of Rule 9215, and stating that he must revise his submission and file it directly with OHO on or before January 26, 2016.³⁰ The January 14, 2016 Order also advised Respondent that he could be deemed to be in default and the allegations of the Complaint would be considered admitted if he failed to comply.

The Respondent did not file an answer conforming to the requirements of Rule 9215 or any response with OHO by January 26, 2016.³¹ Accordingly, on February 2, 2016, the Hearing Officer issued an Order Governing Motion for Entry of Default Decision, directing Enforcement to serve on King and file with OHO a motion for entry of a default decision on or before March 2, 2016.³²

On February 12, 2016, OHO received a hand-written letter from King, stating that he does not understand how to respond to FINRA's Complaint. King attached to the letter the two-page type-written document that he had submitted to Enforcement. King's February 12, 2016 letter did not conform to the requirements of Rule 9215 and therefore was not accepted as an answer to the Complaint. In light of King's efforts to communicate with OHO, however, on February 17, 2016, the Hearing Officer issued an Order staying her previous Order Governing Motion for Entry of Default Decision and scheduling a status conference for March 8, 2016. The Hearing Officer's February 17, 2016 Order advised the parties that any party who failed to participate in the status conference (which she conducted by telephone) could be deemed to be in default. OHO served King with a copy of the Order at his CRD Address by overnight courier and first-class mail. The Hearing Officer and Enforcement participated in the March 8, 2016 status conference, but Respondent did not.³³ To date, Respondent also has not filed a rule-compliant answer to the Complaint.³⁴

FINRA Rule 9134 provides for service of a complaint on a natural person by certified mail to the person's residential address as indicated in the CRD. The Hearing Officer finds that

²⁹ Newman Decl. ¶ 18.

³⁰ Newman Decl. ¶ 19.

³¹ Newman Decl. ¶ 20.

³² Newman Decl. ¶ 21.

³³ Newman Decl. ¶ 22.

³⁴ Newman Decl. ¶ 22.

Enforcement properly served King with first and second notices of the Complaint and that, although he sent two documents by facsimile to Enforcement, he failed to file a rule-compliant answer with OHO. Additionally, King failed to comply with the Hearing Officer's Order that he participate in the March 8, 2016 status conference. Pursuant to FINRA Rules 9215(f), 9241(f) and 9269(a), the Hearing Officer finds King to be in default and deems admitted all allegations of the Complaint.

E. King Fraudulently Misrepresented and Omitted Material Information as Alleged in Cause One

Cause one alleges that, during the period from April 2008 through March 2011, King sold UITs to seven elderly and retired Royal Alliance customers by misrepresenting to them that he was offering safe, high-yield, tax-free bonds and CDs and omitting material information about the products that he actually sold to the customers, in violation of Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, FINRA Rules 2020 and 2010, and NASD Rules 2120 and 2110.

Section 10(b) of the Exchange Act and Rule 10b-5 thereunder make it unlawful for any person to use or employ, in connection with the purchase or sale of a security, any manipulative or deceptive device. Rule 10b-5 has three subsections. Subsection (a) prohibits directly or indirectly employing any device, scheme, or artifice to defraud. Subsection (b) prohibits directly or indirectly making an untrue statement of material fact or omitting a material fact necessary to make a statement not misleading. Subsection (c) prohibits directly or indirectly engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon a person. Liability under the three sections requires a showing of scienter.³⁵ Furthermore, registered representatives have a duty to provide a customer with honest and complete information when making an investment recommendation.³⁶

FINRA's antifraud rule, Rule 2020, and NASD Rule 2120 prohibit FINRA members and associated persons from effecting any securities transaction, or inducing the purchase or sale of a security, by means of any manipulative, deceptive, or other fraudulent device or contrivance.³⁷ FINRA Rule 2010 and NASD Rule 2110 require adherence to high standards of commercial honor and just and equitable principles of trade. Conduct that violates the rules of the Securities and Exchange Commission ("Commission") or FINRA, including the antifraud rules, is inconsistent with high standards of commercial honor and just and equitable principles of trade.³⁸

³⁵ *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 194 (1976).

³⁶ *See De Kwiatkowski v. Bear, Stearns & Co.*, 306 F.3d 1293, 1302 (2d Cir. 2002).

³⁷ *See Dep't of Enforcement v. Kesner*, No. 2005001729501, 2010 FINRA Discip. LEXIS 2, at *19 & n.23 (NAC Feb. 26, 2010) (holding that FINRA's anti-fraud rule is similar to Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5). Effective December 15, 2008, FINRA Rule 2020 replaced NASD Rule 2120. Thus, NASD Rule 2120 applies to King's misconduct prior to December 15, 2008, and FINRA Rule 2020 applies to King's misconduct on and subsequent to December 15, 2008.

³⁸ *See Everest Sec., Inc.*, 52 S.E.C. 958, 959 (1996), *aff'd*, 116 F.3d 1235 (8th Cir. 1997). FINRA Rules 2020 and 2010 generally apply to FINRA members and are applicable to associated persons pursuant to FINRA Rule 0140.

The Hearing Officer finds that King violated Section 10(b) of the Exchange Act, Rule 10b-5, FINRA Rules 2010 and 2020, and NASD Rules 2110 and 2120 by making (1) material misrepresentations and omitting material information, (2) in connection with the purchase or sale of a security, and (3) acting with scienter.³⁹

A UIT is one of three basic types of investment company securities.⁴⁰ A UIT typically issues redeemable securities (or “units”), like a mutual fund.⁴¹ Between April 2008 and March 2011, King sold approximately 44 UITs to seven Royal Alliance customers.⁴² King falsely represented to some of the customers that they were investing in bonds that paid a fixed rate of return and that their investments were safe, no-risk investments guaranteed to return principal with interest upon maturity.⁴³ Instead, King purchased UITs, not bonds, in these customers’ accounts.⁴⁴ Many of the UITs that King purchased held stocks or options in their underlying portfolios and all of the UITs were not guaranteed, risk-free investments as King had represented.⁴⁵ Rather, the UITs were subject to market risk.⁴⁶

King also omitted from his sales pitches to seven Royal Alliance customers many of the features and risks of UITs. He failed to inform them that UITs: (1) invest in a fixed portfolio of securities that are held until a pre-established termination date and are not actively traded; (2) may be illiquid through the termination date; and (3) are subject to market risk and loss of principal.⁴⁷ Additionally, King failed to disclose to the Royal Alliance customers the sales

³⁹ See *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1467 (2d Cir. 1996), *cert. denied*, 522 U.S. 812 (1997). In addition, violations of Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5 must involve the use of any means or instrumentalities of transportation or communication in interstate commerce, or the mails, or any facility of any national securities exchange. See *SEC v. Hasho*, 784 F. Supp. 1059, 1105 (S.D.N.Y. 1992). In this case, King used telephone and email to knowingly and willfully make numerous false statements to customers and omit material information in connection with his sales of UITs to the customers. Complaint ¶ 111. King therefore used the means or instrumentalities of transportation or communication in interstate commerce, or the mails. See *U.S. v. Barlow*, 568 F.3d 215, 220 (5th Cir. 2009) (holding that “it is beyond debate that the Internet and email are facilities or means of interstate commerce”); *Dep’t of Enforcement v. Becerril*, No. 2009018944001, 2012 FINRA Discip. LEXIS 4, at *17 (OHO Feb. 23, 2012) (finding that the use of interstate commerce is established by communication, among other ways, through email).

⁴⁰ See U.S. Securities and Exchange Commission, Investor Education/Fast Answers, *available at* <http://www.sec.gov/answers/uit.htm>.

⁴¹ *Id.*

⁴² Complaint ¶ 12. At the time of King’s sales, the Royal Alliance customers were retired and ranged in age from 69 to 85 years. *Id.*

⁴³ Complaint ¶¶ 16, 20, 21, 25-27, 32, 33, 38, 39, 43, 44, 47, 52, 53, 56, 112, 113.

⁴⁴ Complaint ¶¶ 15, 21, 26, 33, 39, 44, 114.

⁴⁵ Complaint ¶¶ 114, 115.

⁴⁶ Complaint ¶ 115.

⁴⁷ Complaint ¶ 116.

charges and costs associated with the UITs that they purchased or affirmatively misrepresented to them that he would not charge commissions.⁴⁸

“A fact is material if there is a substantial likelihood that a reasonable investor would have considered the fact important in making an investment decision, and disclosure of the omitted fact would have significantly altered the total mix of information available.”⁴⁹ In other words, a misstated or omitted fact is material if a reasonable investor would have viewed the fact as having altered the “total mix” of information.⁵⁰ King falsely described the UITs as bonds, misrepresented the safety of the UITs as investments, misrepresented the customers’ investment costs, and failed to disclose illiquidity, underlying investments, and market risks. The Hearing Officer finds that King’s misrepresentations and omissions relate to material facts.⁵¹

The Hearing Officer also finds that King acted with scienter. Scienter is the “intent to deceive, manipulate or defraud.”⁵² Scienter may be established by a showing that the respondent acted recklessly.⁵³ Proof of scienter may be “a matter of inference from circumstantial evidence.”⁵⁴ In the case of a material omission, scienter is satisfied if the Respondent possessed actual knowledge of the material information.⁵⁵ King recommended bonds to his customers, but instead purchased UITs that possessed features that he failed to disclose.⁵⁶ He also failed to disclose to the customers the sales charges and costs associated with their UIT purchases and, in

⁴⁸ Complaint ¶¶ 14, 32, 117.

⁴⁹ *Donner Corp. Int'l*, Exchange Act Release No. 55313, 2007 SEC LEXIS 334, at *30 (Feb. 20, 2007). See also *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988).

⁵⁰ See *In re Time Warner, Inc. Securities Litigation*, 9 F.3d 259, 267-268 (2d Cir. 1993), cert. denied, 511 U.S. 1017 (1994); *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976). The “reasonable investor” standard is an objective one. *Id.* at 445; *Robert Tretiak*, 56 S.E.C. 209, 222 (2003).

⁵¹ See *Dep’t of Enforcement v. Gebhart*, No. C02020057, 2005 NASD Discip. LEXIS 40, at *40-41 (NAC May 24, 2005) (“[m]isrepresentations and omissions concerning the financial condition of the issuer and the risks associated with an investment” are material), *aff’d*, 58 S.E.C. 1133, *rev’d in part, aff’d in part, and remanded*, 255 Fed. Appx. 254 (9th Cir. Nov. 21, 2007), *aff’d on reh’g*, Exchange Act Release No. 58951, 2008 SEC LEXIS 3142 (Nov. 14, 2008); *Dep’t of Enforcement v. Apgar*, No. C9B020046, 2004 NASD Discip. LEXIS 9, *13-14 (NAC May 18, 2004) (finding information regarding expected rates of return and potential profit material); *Dep’t of Enforcement v. Faber*, No. CAF010009, 2003 NASD Discip. LEXIS 3, at *21-22 (NAC May 7, 2003) (finding that pitching an investment as potentially money-making while failing to discuss the safety of the investment is a material omission).

⁵² *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976).

⁵³ See *DWS Securities Corp.*, 51 S.E.C. 814, 820 (1993) (finding that Respondent who engaged in “conduct at odds with the description of the proposed use of proceeds in the PPMs,” made no effort to amend the offering documents and, continued to make misleading oral representations concerning investment returns acted with scienter); *SEC v. Falstaff Brewing Corp.*, 629 F.2d 62, 77 (D.C. Cir. 1980), cert. denied, 449 U.S. 1012 (1980) (holding that “knowledge means awareness of the underlying facts, not the labels that the law places on those facts”).

⁵⁴ *Herman & MacLean v. Huddleston*, 459 U.S. 375, 390 n.30 (1983). See also *Lawrence H. Ripp*, 46 S.E.C. 771, 773 (1977) (“Since it is impossible to probe into the depths of a man’s mind, a finding of fraudulent intent, absent an admission, must be based on inferences drawn from the evidence.”).

⁵⁵ *Dep’t of Mkt. Regulation v. Burch*, No. 2005000324301, 2011 FINRA Discip. LEXIS 16, at *33 (NAC July 28, 2011).

⁵⁶ Complaint ¶¶ 112-116.

some instances, affirmatively misrepresented to them that they would pay no commissions or fees.⁵⁷ King's conduct demonstrates that he acted intentionally. This conclusion is buttressed by King's failure to provide the Royal Alliance customers with prospectuses for the UIT units they purchased, thereby further concealing his misrepresentations and omissions. King's receipt of \$38,000 in commissions from these sales also supports a finding of intentional misconduct.⁵⁸

The Hearing Officer finds that King violated Section 10(b) of the Exchange Act, Rule 10b-5 thereunder, FINRA Rules 2020 and 2010, and NASD Rules 2120 and 2110, as alleged in cause one.

F. King Sold Customers Qualitatively and Quantitatively Unsuitable Investments as Alleged in Causes Two and Three

Causes two and three allege that, during the period of January 2013 through December 2014, King engaged in excessive and unsuitable short-term trading of long-term investments, such as UITs and closed-end funds ("CEFs"), in the accounts of four BBR customers, in violation of FINRA Rules 2111 and 2010.

FINRA Rule 2111 states that an associated person who exercises actual or de facto control over a customer account must have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile. Rule 2111 further states that an associated person who recommends to a customer that he purchase or sell a security must have a reasonable basis to believe that the recommendation is suitable for the customer.

A registered representative has three areas of suitability obligations to his customers.⁵⁹ First, the registered representative must have a reasonable basis to believe that the recommendation could be suitable for some investors.⁶⁰ Second, the registered representative must have reasonable grounds to believe that the recommendation is suitable for the specific customer at issue.⁶¹ Finally, the registered representative must have reasonable grounds to believe that the number of recommended transactions within a particular period is not excessive.⁶² The Hearing Officer finds that King's trading in four BBR customer accounts was both qualitatively and quantitatively unsuitable under all three prongs of the analysis.

⁵⁷ Complaint ¶ 117.

⁵⁸ Complaint ¶¶ 1, 12, 118.

⁵⁹ *Dep't of Enforcement v. Medeck*, No. E9B2003033701, 2009 FINRA Discip. LEXIS 7, at *31 (July 30, 2009).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

1. Qualitatively Unsuitable Trading

FINRA Rule 2111 requires an associated person to have “a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least some investors.” It further requires that the associated person have an understanding of the risks associated with the transaction that he is recommending. During the period when King was associated with BBR, he pursued a short-term trading strategy in the accounts of four BBR customers by repeatedly selling UITs and CEFs less than one year after purchasing them and, in some cases, one month after purchasing them, and using the proceeds to buy other UITs and CEFs.⁶³ King’s pattern of trading long-term investments, such as UITs and CEFs, is analogous to unsuitable mutual fund switching in that it involved the continual trading of investments that were designed to be held for longer periods. The Securities and Exchange Commission (“Commission”) has held that the short-term trading or switching of mutual fund shares is unsuitable for this reason.⁶⁴ Indeed, the Commission has stated that a pattern of mutual fund switching establishes a presumption of unsuitability, which then shifts the burden to the respondent to demonstrate the unusual circumstances that justified it.⁶⁵

The UITs and CEFs that King recommended and purchased in his customers’ accounts were long-term investments that imposed sales charges as high as 4.5 percent and annual expenses between one and two percent.⁶⁶ Most of King’s CEF purchases in these customer accounts were in IPOs.⁶⁷ CEFs frequently trade at a discount to net asset value immediately following the IPO, which increases the investor’s risk of loss, particularly if the investor sells the shares in a relatively short time period.⁶⁸ The UITs that King sold these customers were similarly designed for long-term investment and carried two-year holding periods.⁶⁹

Notwithstanding the long-term nature of these investments, King held the investments in the customers’ accounts for less than one year, typically four months or less.⁷⁰ King sold the UIT and CEF investments and immediately used the proceeds of the sales to purchase other newly issued long-term investments.⁷¹ This conduct resulted in the customers’ incurring

⁶³ Complaint ¶¶ 6, 60, 61. CEFs are investment companies that sell a fixed number of shares in an initial public offering (“IPO”). Complaint ¶ 62. Sales charges are built into the CEF offering price in the IPO. *Id.* After the IPO, CEFs frequently trade at a discount to net asset value, particularly during the period immediately following the IPO. Complaint ¶ 65. After the IPO, the shares trade in the secondary market. Complaint ¶ 62.

⁶⁴ See *Terry Wayne White*, 50 S.E.C. 211, 213 (1990) (“Both the NASD and this Commission have emphasized that mutual fund shares are not a proper vehicle for short-term trading, particularly when that trading involves the repeated payment of sales commissions.”).

⁶⁵ See *Michael Flanagan*, Initial Decision Release No. 160, 2000 SEC LEXIS 123, at *108 (Jan. 31, 2000).

⁶⁶ Complaint ¶ 63.

⁶⁷ Complaint ¶ 64.

⁶⁸ Complaint ¶¶ 65, 66.

⁶⁹ Complaint ¶¶ 65-68.

⁷⁰ Complaint ¶¶ 61, 77, 82, 90, 97, 104. In some instances, King held the investment less than one month. *Id.*

⁷¹ Complaint ¶ 69.

additional, unnecessary charges. For example, in one customer account, on 12 occasions, King sold UITs or CEFs (many of which King purchased in IPOs) within four months of purchase and used the proceeds to immediately buy interests in other UITs or CEFs.⁷² This conduct resulted in the customers' incurring additional, unnecessary charges. In other customer accounts, King behaved similarly.⁷³ King's pattern of short-term trading or "switching" in these long-term investment products subjected his customers to the costs of the products, while depriving them of the benefits. These recommendations were therefore not suitable for any customer.

Additionally, King's short-term trading was not suitable on a customer-specific basis. Three of King's BBR customers were retired and two were 67 years old.⁷⁴ None of the four BBR customers was willing to accept significant risk. Two sought balanced/conservative growth with a risk tolerance of either conservative or moderate.⁷⁵ The remaining two customers sought growth with a moderate risk tolerance.⁷⁶ None of the four BBR Customers had a net worth greater than \$1 million. King did not have reasonable grounds to believe that his short-term trading of products designed to be long-term investments was suitable for the BBR Customers.

2. Quantitatively Unsuitable Trading

A cause of action based on quantitative suitability requires additional elements of proof that are not necessary under the other theories of unsuitable trading.⁷⁷ First, the registered representative must exert control over the account in question, either by exercising discretionary authority or having *de facto* control over the account because the client routinely follows the representative's advice.⁷⁸ Here, King exercised discretion in the BBR customer accounts.⁷⁹ King therefore exerted control.

The second element is excessive trading activity inconsistent with the customer's financial circumstances and investment objectives.⁸⁰ "[F]actors such as turnover rate, cost-to-equity ratio, and use of 'in and out' trading in an account may provide a basis for a finding of

⁷² Complaint ¶ 77.

⁷³ Complaint ¶ 82.

⁷⁴ Complaint ¶¶ 72, 84, 99. The remaining retired customer was 60 years old. ¶ 99. The fourth customer was 52 years old. ¶ 92.

⁷⁵ Complaint ¶¶ 74, 85.

⁷⁶ Complaint ¶¶ 85, 93.

⁷⁷ *Medeck*, 2009 FINRA Discip. LEXIS 7, at *34.

⁷⁸ See *Harry Glikman*, 54 S.E.C. 471, 475 (1999) ("De facto control is established if a customer relies on a broker's advice because the customer is unable to evaluate the broker's recommendations and exercise independent judgment."); *Peter C. Bucchieri*, 52 S.E.C. 800, 805 n.11 (1996) ("If a broker is formally given discretionary authority to buy and sell for the account of his customer, he clearly controls it.").

⁷⁹ Complaint ¶ 136.

⁸⁰ See *Rafael Pinchas*, 54 S.E.C. 331, 337 (1999); *Medeck*, 2009 FINRA Discip. LEXIS 7, at *34.

excessive trading.”⁸¹ An annualized turnover rate of six or more creates a presumption that excessive trading has occurred, although turnover rates as low as 3.1 have been used to reach the same conclusion.⁸² A cost-to-equity ratio in excess of 20 percent is indicative of excessive trading, but ratios as low as 12.1 percent have also been found to support excessive trading.⁸³

Under either of these measurements, King’s trading activity in the BBR customer accounts was excessive and unsuitable. The annualized turnover rates in these accounts ranged from 3.16 to 7.07 and the annualized cost-to-equity ratios ranged from 11 percent to 21.43 percent.⁸⁴ The fact that King did not trade stocks, but instead traded UITs and CEFs, which are investments with higher associated costs, adds to the egregiousness of King’s excessive trading.⁸⁵ Further, the BBR customers, three of whom are retired, had growth or conservative growth investment objectives and moderate risk tolerances.⁸⁶ King’s frenetic trading was inconsistent with their objectives and financial circumstances and resulted in customer losses of approximately \$163,000.⁸⁷

The Hearing Officer finds that King did not have reasonable grounds to believe that the number of CEF and UIT transactions that he executed in the BBR customer accounts between January 2013 and December 2014 was not excessive. King’s trading in four BBR customer accounts was quantitatively unsuitable.

The Hearing Officer finds that King violated FINRA Rules 2111 and 2010, as alleged in causes two and three.

G. King Exercised Discretion Without Prior Written Authorization and Firm Approval

Cause four alleges that King exercised discretionary trading authority without prior written authorization and firm approval in the accounts of four BBR customers, in violation of NASD Rule 2510(b) and FINRA Rule 2010.

⁸¹ *Medeck*, 2009 FINRA Discip. LEXIS 7, at *34.

⁸² *David Wong*, 55 S.E.C. 602, 611 n.18 (2002) (finding that an annual turnover rate in excess of six is generally presumed to reflect excessive trading); *Gerald E. Donnelly*, 52 S.E.C. 600, 603 (1996) (finding that annualized turnover rates of 3.1 to 3.8 were excessive).

⁸³ *Bucchieri*, 52 S.E.C. 800, 805 (finding that cost-to-equity ratios between 20 percent and 30 percent support a finding of excessive trading); *Thomas F. Bandyk*, Exchange Act Release No. 35415, 1995 SEC LEXIS 481, at *2-3 (Feb. 24, 1995) (finding that cost-to-equity ratios ranging from 12.1 percent to 18.0 percent were excessive).

⁸⁴ Complaint ¶ 70.

⁸⁵ The CEFs included sales charges of approximately 4.5 percent plus annual expenses between one and two percent. Complaint ¶ 63. King received net commissions on CEF trades ranging from two to three percent. *Id.*

⁸⁶ Complaint ¶¶ 72, 73, 84, 85, 93, 99, 100.

⁸⁷ Complaint ¶ 71.

NASD Rule 2510(b) prohibits a registered representative from exercising discretionary authority in a customer's account unless the customer has given prior written authorization and the member firm has accepted the account as discretionary and evidenced the acceptance in writing. A violation of NASD Rule 2510(b) is also a violation of FINRA Rule 2010.⁸⁸

From January 2013 through December 2014, King exercised discretion in the accounts of four BBR customers by effecting trades in their accounts, including transactions involving UITs and CEFs, without obtaining prior written authorization from those customers.⁸⁹ King also failed to obtain BBR's written acceptance of the accounts as discretionary.⁹⁰ In fact, BBR prohibited the use of discretion by its representatives.⁹¹

The Hearing Officer finds that King violated NASD Rule 2510(b) and FINRA Rule 2010, as alleged in cause four.

III. Sanctions

The Hearing Officer bars King from associating with any FINRA member firm in any capacity for fraudulently misrepresenting and omitting material facts to seven Royal Alliance customers as alleged in cause one. The Hearing Officer also bars King from associating with any member firm in any capacity for recommending quantitatively and qualitatively unsuitable transactions to four BBR customers as alleged in causes two and three. The Hearing Officer finds that King's unethical and dishonest actions and his willingness to take advantage of customers who placed their trust in him, many of whom lived on fixed incomes, demonstrate that he is unfit to remain in the securities industry. In light of these bars, the Hearing Officer has not imposed additional sanctions for King's exercise of discretion without authority or written approval from his firm, as alleged in cause four.

FINRA's Sanction Guidelines ("Guidelines") for fraud, misrepresentations or material omissions of fact recommend a bar for intentional or reckless misconduct.⁹² The Guidelines do not include principal considerations specific to fraud, misrepresentations or omissions, but the principal considerations applicable to all violations include several considerations that apply here as aggravating factors. King engaged in numerous acts or a pattern of misconduct over an extended period of time. He defrauded seven customers in 44 transactions over a three-year period.⁹³ King's misrepresentations and omissions were intentional and resulted in his own

⁸⁸ *Dep't of Enforcement v. Hardin*, No. E072004072501, 2007 NASD Discip. LEXIS 24, at *9-10 n.5 (NAC July 27, 2007).

⁸⁹ Complaint ¶ 136.

⁹⁰ *Id.*

⁹¹ Complaint ¶ 137.

⁹² *FINRA Sanction Guidelines* (2015), http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf, at 88.

⁹³ Complaint ¶ 1; *Guidelines* at 6-7 (Principal Considerations Nos. 8, 9, 18).

monetary gain of approximately \$38,000 in commissions.⁹⁴ King also failed to provide his customers with prospectuses, thereby concealing his misrepresentations and omissions.⁹⁵ King's fraudulent conduct resulted in customer harm. His Royal Alliance customers lost approximately \$17,000 (and had approximately \$43,000 in unrealized losses when they closed their accounts).⁹⁶ Six of the seven victims of King's fraud had no investment experience with UTTs.⁹⁷

In light of these aggravating factors and given the nature of King's misconduct, the Hearing Officer bars King from associating with any FINRA member firm in any capacity for violations under cause one.

FINRA's Guidelines for unsuitable recommendations recommend that the adjudicator fine and suspend an individual respondent for a period of ten business days to two years and consider a bar in situations in which aggravating factors predominate.⁹⁸ The Hearing Officer finds that numerous aggravating factors exist and that King's suitability violations were egregious. King engaged in numerous acts or a pattern of misconduct over an extended period of time. During a period of nearly two years, King recommended and executed approximately 150 unsuitable transactions in the accounts of four customers.⁹⁹ King's misconduct was intentional and resulted in his monetary gain of approximately \$210,000 in commissions.¹⁰⁰ King's misconduct also resulted in significant harm to his four BBR customers. In total, they suffered losses of approximately \$163,000.¹⁰¹ Finally, three of King's customers lived on fixed incomes and none of the four were willing to accept significant risk.¹⁰²

In light of these aggravating factors and given the nature of King's misconduct, the Hearing Officer bars King from associating with any member firm in any capacity for violations under causes two and three.

IV. Order

Respondent Glenn Robert King is barred from associating with any FINRA member firm in any capacity for fraudulently misrepresenting and omitting material facts to customers, recommending and executing unsuitable transactions in customer accounts, and exercising discretion in customer accounts without authority and firm approval, in violation of Section 10(b) of the Exchange Act, Rule 10b-5, FINRA Rules 2111, 2020, and 2010, and NASD Rules

⁹⁴ Complaint ¶ 12; *Guidelines* at 7 (Principal Considerations Nos. 13, 17).

⁹⁵ Complaint ¶ 118; *Guidelines* at 6 (Principal Consideration No. 10).

⁹⁶ Complaint ¶ 12; *Guidelines* at 6 (Principal Consideration No. 11).

⁹⁷ Complaint ¶¶ 17, 23, 29, 46, 55; *Guidelines* at 7 (Principal Consideration No. 19).

⁹⁸ *Guidelines* at 94.


⁹⁹ Complaint ¶¶ 60, 75, 79, 82, 95; *Guidelines* at 6-7 (Principal Considerations Nos. 8, 9, 18).

¹⁰⁰ Complaint ¶ 71; *Guidelines* at 7 (Principal Considerations Nos. 13, 17).

¹⁰¹ Complaint ¶ 71; *Guidelines* at 6 (Principal Considerations No. 11).

¹⁰² Complaint ¶¶ 72, 74, 84, 85, 92, 93; *Guidelines* at 7 (Principal Consideration No. 19).

2510, 2120, and 2110. The bar shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.


Carla Carloni
Hearing Officer

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