

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MARK SAM KOLTA
(CRD No. 5324620),

Respondent.

Disciplinary Proceeding
No. 2018057297102

Hearing Officer—MJD

**ORDER GRANTING ENFORCEMENT'S MOTION FOR
INTERIM CONDITIONS AND RESTRICTIONS ON
RESPONDENT PURSUANT TO FINRA RULE 9285**

On August 15, 2024, the Extended Hearing Panel issued its decision in this disciplinary proceeding (“Decision”).¹ The Panel found that the Department of Enforcement proved the allegations in the Complaint against Respondent Mark Sam Kolta. The Panel determined that Kolta made unsuitable recommendations to 16 customers to invest more than \$4.8 million in a risky, illiquid real estate investment trust, or REIT, in violation of FINRA Rules 2111 and 2010. The Panel found that Kolta ignored his customers’ investment needs and investment profiles, including their age, income, net worth, liquid net worth, investment objectives, and risk tolerances in making the unsuitable recommendations.²

The Panel also determined that Kolta caused materially false and inaccurate information to be recorded on new account forms, updates to account forms, and REIT investment documents. The falsifications misrepresented the customers’ income, net worth, risk tolerances, investment objectives, and investment experience. The objective of the misleading information was to make it appear that Kolta’s high-risk recommendations were suitable so the firm would approve the investments. This misconduct violated FINRA Rules 4511 and 2010.³

¹ *Dep’t of Enforcement v. Kolta*, No. 2018057297102, 2024 FINRA Discip. LEXIS 14 (OHO Aug. 15, 2024), *appeal docketed* (NAC Sept. 5, 2024).

² *Id.* at *77-78.

³ *Id.* at *79-80. The Panel also found that by falsifying records to overstate his customers’ income, net worth, risk tolerances, investment experience and objectives so his firm would approve their purchases of the REIT, Kolta independently violated FINRA Rule 2010. *Id.* at *81-82.

Additionally, the Panel concluded that Kolta violated FINRA Rules 2210 and 2010 when he sent investors four emails promoting the REIT that contained unwarranted, promissory, and misleading statements and claims. He also failed to obtain approval of the communications from a qualified registered principal at the firm before sending the emails, as required by FINRA Rule 2210(b)(1).⁴

Regarding sanctions, the Panel found multiple aggravating factors. Kolta's misconduct spanned nearly two years and involved 16 customers—six of whom were over 65 years old. The total amount of the unsuitable recommendations exceeded \$4.8 million and involved 34 separate purchases of the REIT. The investments resulted in large losses to the customers. The Panel held that the nature of the documents Kolta falsified—customer account forms and investment-related forms—was also an aggravating factor because the documents misled his firm into approving the REIT investments. Finally, the Panel concluded that Kolta was motivated by the especially attractive compensation brokers received for selling the REIT, which resulted in his earning \$297,823 in commissions from the unsuitable recommendations.⁵

For Kolta's unsuitable recommendations and falsification of customer information and records, the Panel barred him from associating with any FINRA member firm in any capacity and ordered him to disgorge to FINRA the commissions he was paid, plus prejudgment interest.⁶

Kolta appealed the Decision to the National Adjudicatory Council ("NAC") on September 5, 2024. The appeal automatically stayed the sanctions.⁷

On September 19, 2024, Enforcement moved for an order imposing interim conditions and restrictions on Kolta pursuant to FINRA Rule 9285 until FINRA's final decision takes effect and all appeals are exhausted ("Motion").⁸ Enforcement asks that I impose four conditions or restrictions on Kolta. Enforcement adds that the proposed interim conditions and restrictions are intended to take effect only in the event Kolta associates with a member firm during pendency of the appeal.⁹

⁴ *Id.* at *82-88.

⁵ *Id.* at *90-92.

⁶ *Id.* at *93-94, 97-98. For Kolta's violations of FINRA Rules 2210 and 2010 for circulating misleading communications about the REIT, the Panel assessed a \$40,000 fine and a two-year suspension from associating with any member firm in any capacity. In light of the bar for Kolta's unsuitable recommendations and multiple books and records violations, the Panel did not impose these sanctions. *Id.* at *96-98.

⁷ *See* FINRA Rule 9311(b).

⁸ Department of Enforcement's Motion for Interim Conditions and Restrictions (Sept. 19, 2024).

⁹ *Id.* At the time the hearing took place in April 2024, Kolta had not been associated with a member firm since October 2021. *Kolta*, 2024 FINRA Discip. LEXIS 14, at *14-15. In its Motion, Enforcement represents that Kolta is not currently associated with a member firm. Motion 4 n.11.

Kolta filed his opposition to the Motion on September 23, 2024 (“Opposition”).¹⁰ Kolta does not directly dispute the Motion. Instead he argues that he “probably” did not commit the violations alleged. He claims that the hearing was re-scheduled unreasonably soon after he was purportedly injured in a serious automobile accident.¹¹ He adds that “FINRA continues to create damage and impose non jurisdictional [sic] harms upon Mr. Kolta with no limits, despite having evidence against the basis for such.”¹² Kolta says he will “no longer be honoring any of FINRA’s unequitable and whimsical actions or attempts that exceed common law practices, without the intervention of a higher governing entity that actually abides by the Constitutional laws in place.”¹³

For the reasons set forth below, I grant Enforcement’s Motion.

I. Legal Standards

FINRA Rule 9285(a)(1) provides that if a respondent appeals a disciplinary decision finding that the respondent “violated a statute or rule provision,” Enforcement may move for an order imposing “conditions or restrictions on the activities” of the respondent “that are reasonably necessary for the purpose of preventing customer harm.”

FINRA Rule 9285(a)(3) permits respondents to file an opposition or other response to the motion. Any such filing “shall explain why no conditions or restrictions should be imposed or specify alternate conditions or restrictions that are sought to be imposed and explain why the conditions or restrictions are reasonably necessary for the purpose of preventing customer harm.” Kolta addressed only the fourth proposed condition or restriction in his Opposition and did not propose alternate conditions or restrictions for any of them.

A Hearing Officer is authorized by the Rule “to impose any conditions or restrictions that the Hearing Officer considers reasonably necessary for the purpose of preventing customer harm.”¹⁴ Under Rule 9285(d), the conditions or restrictions imposed by a Hearing Officer remain

¹⁰ Opposition to FINRA Rule 9285 Motions [sic] (Sept. 23, 2024). Although ostensibly represented by counsel in this disciplinary proceeding, on September 23, 2024, Kolta filed a response to Enforcement’s Motion himself. He simultaneously filed two documents, both of which bear the heading “Opposition to FINRA Rule 9285 Motions [sic].” One is a single page in length; the other document consists of two pages. The two filings contain repetitive statements and many nearly identical sentences. In his email transmitting the Opposition, Kolta described the filing as “unofficial” and said that an “official response” would be submitted October 3, 2024, the deadline for filing an opposition to the Motion pursuant to Rule 9285(a)(3). Kolta did not file anything additional on October 3. Accordingly, I treat Kolta’s September 23, 2024 filing as his Opposition. I have combined the two filings and treat them here as one single three-page document starting with the one-page filing as page one of Kolta’s Opposition.

¹¹ Opposition 2. The original hearing date was postponed for two months based on his representations concerning the purported accident.

¹² *Id.*

¹³ *Id.*

¹⁴ FINRA Rule 9285(a)(5).

in place until FINRA's final decision in the underlying disciplinary proceeding takes effect and all appeals are exhausted.

In FINRA Regulatory Notice 21-09, FINRA explained that Rule 9285 is intended to enhance investor protection by potentially preventing “associated persons and firms found to have violated a statute or rule from engaging in additional misconduct during the appeal process.”¹⁵ FINRA described the Rule as adding “an interim layer of investor protection” during that period.¹⁶

The Securities and Exchange Commission (“SEC”) stated in its order approving the adoption of Rule 9285 that the Hearing Officer should “target the misconduct demonstrated in the disciplinary proceeding” and tailor the conditions or restrictions “to the specific risks posed by the Respondents during the appeal period.”¹⁷ Furthermore, any conditions or restrictions “are not intended to be as restrictive as the underlying sanctions and would likely not be economically equivalent to imposing the sanctions during the appeal.”¹⁸ The SEC determined that post-Decision conditions or restrictions “will lead to greater oversight of disciplined Respondents’ activities during the appeal period, thereby reducing the potential risk of customer harm that may occur during this period.”¹⁹

II. Discussion of Enforcement’s Proposed Conditions or Restrictions on Kolta

Enforcement describes each of the proposed interim conditions or restrictions as consistent with the purposes of Rule 9285 and “reasonably necessary to prevent customer harm during the appeal process.” It adds that they are “tailored to target the misconduct demonstrated in the disciplinary proceeding and are not as restrictive as the sanctions imposed” by the Panel in its Decision.²⁰ The conditions or restrictions are intended to take effect only in the event Kolta re-associates with a member firm during the pendency of the appeal.²¹

Below, I list each proposed restriction or condition, along with Enforcement’s basis for the request. Kolta specifically objected to only one condition or restriction—the fourth one involving continuing education.

¹⁵ FINRA Regulatory Notice 21-09 (Mar. 2021), <https://www.finra.org/rules-guidance/notices/21-09>.

¹⁶ FINRA Regulatory Notice 21-09 at 3.

¹⁷ SR-FINRA-2020-011, Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Address Brokers with a Significant History of Misconduct, Exchange Act Release No. 90635, 85 Fed. Reg. 81540, 81542 (Dec. 16, 2020).

¹⁸ 85 Fed. Reg. at 81542.

¹⁹ 85 Fed. Reg. at 81543–44.

²⁰ Motion 1.

²¹ Motion 1.

A. First Proposed Condition: Principal Review and Approval of Customer Securities Transactions

Enforcement's first proposed condition or restriction is that I order that Kolta not be permitted to effect any solicited securities transactions in customer accounts unless a designated firm principal (i) first reviews and approves the transaction, and (ii) creates, signs, and maintains a written record that reflects the principal's conclusions about the transaction's suitability for a customer.²²

Enforcement argues that this condition or restriction targets Kolta's egregious misconduct in making unsuitable recommendations and is a reasonable means to reduce the risk of customer harm because a firm principal would have to first approve a recommendation before any transaction.²³

I find that this requirement is appropriate and serves a reasonably necessary purpose to prevent customer harm. It properly focuses on the specific misconduct that Kolta engaged in—making unsuitable recommendations. It addresses the possibility that Kolta, should he re-associate with a firm during the pendency of the appeal, could repeat his misconduct if left unchecked and thus pose a significant risk of harm to investors.

B. Second Proposed Condition: Principal Confirmation of Customer Investment Profiles

Enforcement's second condition or restriction would prohibit Kolta from effecting any solicited securities transactions in a customer's account unless a designated firm principal (i) receives written or oral confirmation from the customer that the customer's investment profile information provided on account forms or investment-related documents is accurate, and (ii) creates, signs, and maintains a written record of the customer's confirmation.²⁴

Enforcement argues that this condition or restriction targets Kolta's "repeated and egregious misconduct" in falsifying customers' income, net worth, liquid net worth, investment experience, and risk tolerance on firm records so the customers would appear suitable for an investment.²⁵ It is a reasonable way to reduce the risk of customer harm, Enforcement argues, if Kolta again associates with a member firm during the pendency of the appeal.

I agree that the proposed requirement is appropriate and would serve the important goal of preventing customer harm. It focuses on specific misconduct Kolta engaged in—falsification of customer account forms—that allowed him to make so many unsuitable recommendations resulting in large losses to customers, most of whom could not afford to lose their investments

²² Motion 5.

²³ Motion 5.

²⁴ Motion 6.

²⁵ Motion 6.

and some of whom were elderly. It addresses the significant risk to the investing public that Kolta would represent if he were to re-associate with a member firm.

C. Third Proposed Condition: Principal Review and Approval of Retail Communications

Enforcement's third condition or restriction is that Kolta be ordered not to disseminate any "retail communication" to investors, as the term is defined in FINRA Rule 2210, unless a designated firm principal (i) reviews and approves the communication, and (ii) creates, signs, and maintains a written record of the review and approval.²⁶ Enforcement's Motion states that the proposed restriction targets Kolta's misconduct of sending misleading communications to investors and the related misconduct of failing to obtain prior approval from a principal before circulating the communications.²⁷

The Panel found that Kolta's emails to investors about the REIT contained promissory and unwarranted statements. He also failed to get a principal to approve the communications. I find that this restriction is reasonable and promotes investor protection because it requires a firm principal to approve Kolta's communications before he distributes them.

D. Fourth Proposed Condition: Continuing Education

Enforcement's fourth condition or restriction is that Kolta be required to complete ten hours of continuing education about suitability, alternative investments, Regulation Best Interest, and maintaining accurate account records.²⁸ Enforcement proposes that Kolta undertake the continuing education within two months of associating with a member firm. The education program must be presented by a provider acceptable to Enforcement and Kolta must certify in writing to Enforcement within 30 days that he has completed it.²⁹

Enforcement argues that the continuing education requirement focuses on the misconduct the Panel found by obligating Kolta to learn about "core FINRA rules and securities principles that every registered representative should know and should follow."³⁰ The subject matters in the proposed continuing education, according to Enforcement, would "address the specific areas of risk [that Kolta] posed to customers based on the violations found in the Decision."³¹

Kolta denies there is any need for additional continuing education because he "has even satisfied FINRA's own [Maintaining Qualifications Program] containing more than what is being

²⁶ Motion 7.

²⁷ Motion 7.

²⁸ Motion 7-8.

²⁹ Motion 7-8.

³⁰ Motion 8.

³¹ Motion 8.

requested” by Enforcement in its Motion. Kolta adds that he will be on heightened supervision should he re-associate with any firm.³²

I find that the continuing education requirement is appropriate, promotes a reasonably necessary purpose to prevent customer harm, and is narrowly targeted to address Kolta’s misconduct. The Panel determined that Kolta knowingly made multiple unsuitable recommendations that resulted in significant customer harm. He also intentionally falsified dozens of customer account records, updates to account records, and investment-related documents so that proposed investments in the REIT would appear to his firm to be suitable for the customers. Kolta’s misconduct demonstrates that he is unwilling to comply with universal and fundamental obligations that a broker owes to customers.

III. Order

For the foregoing reasons, I **GRANT** Enforcement’s Motion for Interim Conditions and Restrictions and I impose the following conditions or restrictions on Kolta.

1. In the event Kolta re-associates with a member firm during the pendency of the appeal, he shall not effect any securities transactions in a customer’s account that he solicits unless a designated principal of the firm (i) reviews and approves the transaction, and (ii) creates, signs, and maintains a written record reflecting the principal’s conclusion regarding the suitability of the transaction.
2. In the event Kolta re-associates with a member firm during the pendency of the appeal, he shall not effect any securities transactions in a customer’s account that he solicits unless a designated principal of the firm (i) receives written or oral confirmation from the customer that the customer’s investment profile information provided in the customer’s account forms or investment-related documents is accurate, and (ii) creates, signs, and maintains a written record of the customer’s confirmation.
3. In the event Kolta re-associates with a member firm during the pendency of the appeal, he shall not disseminate any retail communications unless a designated principal of the firm (i) reviews and approves the communication, and (ii) creates, signs, and maintains a written record of the review and approval.

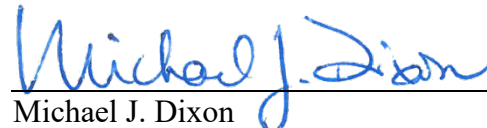
³² Opposition 1.

4. In the event Kolta re-associates with a member firm during the pendency of the appeal, within two months he shall complete ten hours of continuing education concerning suitability, alternative investments, Regulation Best Interest, and maintaining accurate account records that is presented by a continuing education provider acceptable to Enforcement. Kolta shall certify in writing to Enforcement that he completed the continuing education requirement within 30 days after completion.
5. The conditions and restrictions imposed in this Order shall become effective immediately as of the issuance of the Order.

The conditions or restrictions imposed by this Order that are not subject to any stay, or imposed by the NAC Review Subcommittee, shall remain effective until FINRA's final decision in the underlying disciplinary proceedings takes effect.³³

If the parties have any questions about this Order, they should contact the assigned Case Administrator, Tonya Howe, at 202-728-8349 or Tonya.Howe@finra.org.

SO ORDERED.


Michael J. Dixon
Hearing Officer

Date: October 7, 2024

Copies to:

Steven A. Lucia, Esq. (via email)
Payne L. Templeton, Esq. (via email)
Richard M. Cella, Esq. (via email)
Savvas Foukas, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)
Alan Lawhead, Esq. (via email)
Paxton Dunn, FINRA Member Supervision (via email)
rmstandards@finra.org

³³ See FINRA Rule 9285(d) (“Conditions or restrictions imposed by a Hearing Officer that are not subject to any stay, or imposed by the Review Subcommittee, shall remain effective until FINRA’s final decision in the underlying disciplinary proceeding takes effect.”).