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BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.

In the Matter of the Application of

Denise M. Olson

For Review of Disciplinary Action Taken by

FINRA

File No. 3-15916

FINRA'S BRIEF IN OPPOSITION TO DENISE M. OLSON'S APPLICATION FOR REVIEW

Alan Lawhead
Vice President and
Director – Appellate Group

Andrew Love
Associate General Counsel

Gary Dernelle
Associate General Counsel

FINRA
Office of General Counsel
1735 K Street, NW
Washington, DC 20006
202-728-8255

August 25, 2014

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FINRA'S BRIEF IN OPPOSITION TO DENISE M. OLSON'S APPLICATION FOR REVIEW

I. INTRODUCTION

In April 2010, Denise M. Olson used her Wells Fargo Advisors, LLC corporate credit card to purchase two Apple® iPods® as gifts for her niece and nephew. When she later accounted for this charge, Olson faced a singularly clear, principled path—claim the charge as a personal expense and pay for it herself. Olson, however, flouted this obvious route. She instead deceitfully elected to enter her personal expense as a business-related purchase, and she gamely made a false entry in Wells Fargo's records to obtain corporate reimbursement and to conceal her dishonesty. Olson accordingly converted her firm's funds for her personal benefit.

Olson appeals a May 9, 2014 decision of the FINRA Board of Governors ("FINRA Board") that imposed the sanction of a bar from the securities industry for her patently untrustworthy behavior, wrongdoing that she admits violated the fundamental, ethical prerequisites that are at the heart of FINRA's rulebook. The FINRA Board found Olson's willingness to acquire a sum of money through cheating to indicate a troubling disregard for basic principles of ethics and honesty. Absent compelling mitigative factors that are not present in this case, imposing a bar for Olson's misconduct, which is the standard sanction for conversion under the FINRA Sanction Guidelines ("Guidelines"), serves to maintain the high standards of conduct that FINRA promotes and is consistent with enduring precedent that fully embraces these principles. Given the gravity of her misconduct, excluding Olson from the securities industry serves a remedial purpose that does well to protect the investing public and other participants in the securities markets. The Commission should affirm FINRA's action and reaffirm the vital message that stealing—from customers or brokerage firms—is not tolerated.

II. FACTS

From September 2004 to June 2010, Olson was associated with Wells Fargo (formerly Wachovia Securities, Inc.).[1] RP 6-7, 12, 57, 105, 526.[2] She registered through the firm as a general securities representative and general securities sales supervisor, and she served as branch manager of the firm's Bloomington, Minnesota office. RP 6-7, 12, 57, 105, 280, 525, 303.

Wells Fargo issued Olson a corporate credit card. RP 7, 12, 58, 106, 314-15, 489. Olson periodically used the corporate credit card for both business and personal reasons. RP 7, 12, 58, 106, 282-83, 292-97, 318, 415-25, 436-37. Nevertheless, an expenditure that was not reimbursable as a corporate expense remained Olson's personal responsibility under the firm's policies. RP 58, 106, 468, 478, 499, 538-40, 623-24. Wells Fargo's computer-based, expense-management system included a pre-populated option to identify an expense charged to the corporate credit card as "personal," in which case the employee used another on-line system to

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1 Olson entered the securities industry in 1991.

2 References to "RP at __" are to corresponding pages of the certified record filed by FINRA on June 23, 2014.

pay for the personal charge using his or her own funds. RP 7, 12, 58, 106, 317, 320-21, 344-45, 415-25, 436-38, 441, 540.

On April 2, 2010, Olson purchased two Apple® iPods® as personal gifts for her niece and nephew. RP 7, 12, 58, 106, 439-40, 444-45. She charged the $740.10 purchase price to her corporate credit card. RP 7, 12, 58, 106, 312, 423.

Olson accounted for the charge on April 30, 2010, using Wells Fargo's computerized, expense-management system. RP 7, 13, 58, 106. She intentionally did not designate the expenditure as a personal expense. RP 7, 13, 58, 106, 317, 328, 335, 338-39, 431, 444. Olson instead falsely claimed that the expense was business related and that she incurred the expense to purchase branch office equipment. She knowingly entered in the space provided in Wells Fargo's expense-management system the fictitious description "branch equip for new cof [sic] room" to justify the outlay as a business cost. RP 7, 13, 58-59, 106-07, 317, 335, 423, 431, 439, 442, 444, 448. Consequently, Wells Fargo, not Olson, paid for the personal gifts that she purchased for her niece and nephew. RP 7, 13, 58, 106, 445-46.

Wells Fargo's corporate security division began investigating Olson's corporate credit card use the following month, in May 2010. RP 286-87. On June 2, 2010, Olson's supervisor requested that Olson come to his office, at which point Olson was diverted into a conference room for questioning by a member of Wells Fargo's corporate security office. Corporate security staff questioned Olson about each of the greater than 140 charges she made to her corporate credit card during an eight-month period. RP 286-88, 323-25. When they reached the April 2, 2010 charge for $740.10, Olson read the description she provided in Wells Fargo's expense-management system and falsely explained that the expense represented branch office equipment that she purchased for a conference room. RP 325-26. After the Wells Fargo representative inquired further and asked Olson to identify the conference room for which she made the purchase, Olson responded that she had in fact purchased two iPods® and admitted that she wrongly submitted the expenditure for approval as a business expense. RP 326.

At the end of this questioning, Olson provided Wells Fargo a "voluntary," hand-written statement in which she acknowledged that she did not account for the two iPods as a personal expense. RP 326, 337, 427, 455, 458. Wells Fargo terminated Olson's employment immediately.[3] RP 6-7, 12, 57, 105, 326, 458, 499, 526. Olson later reimbursed the firm the $740.10 that it paid to her corporate credit card as a result of her false entry. RP 13, 59, 108.

III. PROCEDURAL BACKGROUND

FINRA's Department of Enforcement filed a single-cause complaint on October 7, 2011, that alleged Olson purchased personal items using her corporate credit card, falsely claimed the expenditure as a business expense, justified the expense with a fictitious statement, and converted Wells Fargo's funds for her personal use. RP 6-8. Consequently, Enforcement further alleged, Olson violated FINRA Rule 2010. RP 6-8.

Olson filed an answer largely admitting the facts alleged in Enforcement's complaint, and she subsequently conceded liability for her misconduct. RP 11-13, 19, 267-68, 348. On October 12, 2012, a Hearing Panel convened to consider testimony and evidence concerning the sanctions to impose for Olson's wrongdoing. RP 19, 261-412. The Hearing Panel issued its majority decision on January 4, 2013, and found that Olson falsified an expense report and converted firm funds, in violation of FINRA Rule 2010. RP 699-715. The Hearing Panel majority imposed the

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3 Although she briefly associated with another firm after Wells Fargo terminated her, Olson is not currently associated with a FINRA member. RP 7, 12, 57, 105, 524, 1050.

sanction of a bar on Olson, concluding that it served as an appropriate, remedial sanction.[4] RP 711-12.

Olson appealed the Hearing Panel's decision to the National Adjudicatory Council ("NAC"). RP 717. Under FINRA Rule 9349(c), the NAC provided its proposed written decision to the FINRA Board, which exercised its discretionary review powers under FINRA Rule 9351(a). Decision at 2 n.3.[5]

The FINRA Board affirmed the Hearing Panel's findings that Olson engaged in egregious behavior that violated the fundamental ethical requirements imposed on her as a person associated with a FINRA member under FINRA Rule 2010. Decision at 4-5. After considering the Guidelines for conversion, which provide that a bar is the standard sanction, the FINRA Board affirmed the Hearing Panel's decision to bar Olson from the securities industry. Decision at 4-10.

In deciding to bar Olson, the FINRA Board found that Olson exhibited blatant dishonesty by intentionally taking funds from Wells Fargo to which she was not entitled. Decision at 5. Olson's misconduct, the FINRA Board emphasized, reflected negatively on her ability to comply with basic regulatory requirements and displayed a troubling disregard of basic principles of ethics and honesty which, on another occasion, might manifest itself in dealings with customers. Decision at 6 n.13, 10. The FINRA Board stressed the long line of cases in which FINRA and other self-regulatory organizations have barred individuals who, like Olson, engaged in the conversion, theft, or misappropriation of funds. Decision at 8. The FINRA Board carefully

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4 One Hearing Panelist dissented and would have imposed sanctions consisting of a six-month suspension and a $5,000 fine. RP 712-15.

5 References to "Decision at __" are to the May 9, 2014 FINRA Board decision that is the subject of Olson's application for review. *See* RP 1049-59.

considered each argument that Olson offered in support of lesser sanctions, but it concluded that there was no evidence of mitigation warranting a deviation from the standard sanction of a bar in this case. Decision at 6-10. Although Olson claimed she was remorseful and accepted responsibility, and her misconduct was not part of a continuing pattern of misconduct, the FINRA Board found Olson's pledge that she would not repeat her misconduct unconvincing and declined to give mitigative effect to these facts. Decision at 8-9, 10 n.18. The facts and circumstances of Olson's blatant misconduct, the FINRA Board concluded, leads to only one conclusion—barring Olson serves a remedial interest and protects the investing public. Decision at 10.

The decision of the FINRA Board constitutes the final disciplinary action of FINRA in this matter.[6] *See* FINRA Rule 9351(e).

IV. ARGUMENT

The scope and egregious nature of Olson's misconduct are not in dispute. Olson deceitfully falsified an expense report and converted her firm's funds for selfish, personal reasons. Through her wrongdoing, Olson exhibited flagrant dishonesty and displayed an unwillingness and inability to comply with basic regulatory requirements. Her serious misconduct and grave violations of the ethical standards that are central to the self-regulation of the securities markets render her unsuited for continued employment in the industry. A bar, which is consistent with the relevant sanction Guidelines and long-standing Commission precedent, is an appropriately remedial sanction that protects the public interest.

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6 At various points in her opening brief, Olson refers to the opinion of the Hearing Panel's dissenting panelist to support her appeal. *See, e.g.*, Br. at 4-5, 14-15. It is the decision of the FINRA Board, however, which is subject to Commission review in this matter. *See Edward S. Brokaw*, Exchange Act Release No. 70883, 2013 SEC LEXIS 3583, at *57 n.114 (Nov. 15, 2013). The opinion of the Hearing Panel's dissenting panelist is irrelevant. *See id.*

Championing expressions of remorse and an acceptance of responsibility that conveniently escaped her until she was confronted with the consequences of her grave actions, Olson requests that the Commission grant her a second chance and reverse her exclusion from the securities industry. In doing so, she fittingly portrays her misconduct as a fleeting, regrettable mistake and seeks to excuse her misconduct with largely subjective, self-serving arguments that contradict and undermine her claims that she fully grasps the seriousness of her actions.

The evidence roundly establishes that Olson's deception was not a mistake, but rather intentional acts motivated by a conscious desire to help herself to Wells Fargo's funds, without the mundane burden of justifying candidly her entitlement to reimbursement. Knowing full well her actions were wrong, she perpetrated them anyway. In an industry that depends very heavily on the integrity and trustworthiness of its participants, Olson's falsehoods and theft, even if they occurred just once, justify fully her bar from the securities industry.

A. Olson Faked a Business Expense and Converted Her Firm's Funds

The merit of FINRA's action cannot be disputed. FINRA found, and Olson concedes, that she failed to abide by the fundamental ethical responsibilities imposed on her as a securities industry professional when she falsified an expense report to steal funds from Wells Fargo to which she was not entitled.

FINRA Rule 2010 states that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."[7] "[C]onduct that

[7] FINRA Rule 2010 applies also to persons associated with a member under FINRA Rule 0140(a), which provides that "[p]ersons associated with a member shall have the same duties and obligations as a member under the Rules."

reflects negatively on an applicant's ability to comply with regulatory requirements fundamental to the securities industry is inconsistent with just and equitable principles of trade." *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 3134, at *22 (Aug. 22, 2008). Unethical, business-related misconduct, regardless of whether it involves a security, is subject to discipline under FINRA Rule 2010.[8] *See Daniel D. Manoff*, 55 S.E.C. 1155, 1162 (2002) (discussing the scope of NASD Rule 2110, the exact predecessor to FINRA Rule 2010).

Olson blatantly claimed the cost of personal gifts as a business expense, deliberately concealed her misconduct with a false entry in Wells Fargo's expense records, and brazenly converted her firm's funds for personal gain.[9] Her unjust and unprincipled conduct unmistakably defied the ethical requisites by which all professional securities industry participants must abide. Olson therefore violated FINRA Rule 2010. *See, e.g., Mullins*, 2012 SEC LEXIS 464, at *42 ("J. Mullins's conversion of the Foundation's property was a violation of NASD Rule 2110."); *John M.E. Saad*, Exchange Act Release No. 62178, 2010 SEC LEXIS 1761, at *14-15 (May 26, 2010) ("Saad admits he intentionally falsified receipts, submitted a fraudulent expense report, and accepted $1,144.63 in unentitled reimbursement. . . . Saad violated NASD Rule 2110."),

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8 Disciplinary proceedings under FINRA Rule 2010 are "ethical proceedings" and a violation of an applicant's ethical requirements may arise "where no legally cognizable wrong occurred." *Timothy L. Burkes*, 51 S.E.C. 356, 359 (1993), *aff'd*, 29 F.3d 630 (9th Cir. 1994).

9 "Conversion generally is an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it." *John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *33 (Feb. 10, 2012) (quoting *FINRA Sanction Guidelines* 38 (2007)) (internal quotations omitted). Olson's false expensing did not result in Wells Fargo paying her directly for the two iPods® that she purchased. Wells Fargo, however, effectively paid for this personal obligation when it paid the $740.10 that Olson incurred on her corporate credit card. Olson therefore converted her firm's funds. *See id.* ("It is undisputed that J. Mullins used gift certificates and wine, purchased with Foundation funds, for his own personal benefit . . . .").

aff'd in relevant part, 718 F.3d 904 (D.C. Cir. 2013); *Manoff*, 55 S.E.C. at 1161 ("We conclude that Manoff engaged in the unauthorized use of Fisher's credit card numbers when he charged . . . expenses to her accounts. As a result, Manoff is subject to discipline under Conduct Rule 2110.").

B. A Bar Is Remedial and Serves the Public Interest

FINRA barred Olson from associating with any member in any capacity for her theft of Wells Fargo's funds. The Commission should readily embrace and affirm this sanction. Imposing a bar for Olson's egregious misconduct furthers the well-reasoned tenet, reflected in the Guidelines for conversion and endorsed in long-standing Commission precedent, that stealing by associated persons of FINRA members is so profoundly incompatible with one's regulatory duties that it will not be tolerated, absent extraordinary circumstances.

Conversion is extremely serious misconduct and is one of the gravest violations that a securities industry professional can commit. *Mullins*, 2012 SEC LEXIS 464, at *73. At its core, the theft of funds or assets is "patently antithetical to the 'high standards of commercial honor and just and equitable principles of trade' that [FINRA] seeks to promote." *Wheaton D. Blanchard*, 46 S.E.C. 365, 366 (1976). The Guidelines for conversion are accordingly expressed in decidedly uncompromising terms; a bar is the standard sanction.[10] As the Commission has

[10] The Guidelines for conversion instruct adjudicators to "[b]ar the respondent regardless of [the] amount converted." *FINRA Sanction Guidelines* (2013), at 36 (Conversion or Improper Use of Funds or Securities), *available at* http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf (hereinafter "*Guidelines*"). Conversion is one of only three FINRA rule violations addressed in the Guidelines that carry a standard sanction of a bar. *Mullins*, 2012 SEC LEXIS 464, at *73-74 & n.81. Because a bar is standard, the Guidelines do not recommend a fine for conversion violations. *Guidelines*, at 36. Although the Commission is not bound by the Guidelines, it uses them as a benchmark when conducting its review of FINRA imposed sanctions under Section 19(e)(2) of the Securities Exchange Act of 1934 ("Exchange Act"). *Mullins*, 2012 SEC LEXIS 464, at *73 n.79.

acutely observed, this "reflects the reasonable judgment that, in the absence of mitigating factors warranting a different conclusion, the risk to investors and the markets posed by those who commit such violations justifies barring them from the securities industry." *Ortiz*, 2008 SEC LEXIS 3134, at *31; *accord Mullins*, 2012 SEC LEXIS 464, at *74 (quoting *Charles C. Fawcett, IV*, Exchange Act Release No. 56770, 2007 SEC LEXIS 2598, at *22 n.27 (Nov. 8, 2007)). The Commission has thus frequently and unfailingly affirmed the remedial necessity of barring individuals who, like Olson, have engaged in the conversion, theft, or misappropriation of funds or assets belonging to others.[11]

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[11] Commission precedent in this regard is plentiful. *See, e.g.*, *Mullins*, 2012 SEC LEXIS 464, at *80 (affirming a bar and holding that "[w]e support the NAC's conclusion that J. Mullins's misconduct 'reveals a troubling disregard for fundamental principles of the securities industry'"); *Mission Sec. Corp.*, Exchange Act Release No. 63453, 2010 SEC LEXIS 4053, at *53-54 (Dec. 7, 2010) ("A bar and expulsion are severe sanctions. Applicants' demonstrated lack of fitness to be in the securities industry, however, supports the remedial purpose to be served by such sanctions."); *Janet Gurley Katz*, Exchange Act Release No. 61449, 2010 SEC LEXIS 994, at *88 (Feb. 1, 2010) ("Misappropriating client funds and making misstatements are serious misconduct, and we have sustained bars as appropriate sanctions in the past for such conduct."); *Manoff*, 55 S.E.C. at 1166 ("We conclude that a bar is within the allowable sanction range under the NASD's Guidelines, and is not excessive, oppressive, or unduly burdensome on competition."); *Eliezer Gurfel*, 54 S.E.C. 56, 63-64 (1999) ("We conclude that, given the nature of Gurfel's misconduct, the NASD's sanctions are neither excessive nor oppressive . . . ."); *Henry A. Vail*, 52 S.E.C. 339, 342 (1995) ("His actions make us doubt his commitment to the high fiduciary standards demanded by the securities industry. Under these circumstances, we agree with the NASD that his continued presence in the industry threatens the public interest."), *aff'd*, 101 F.3d 37 (5th Cir. 1996); *Joel Eugene Shaw*, 51 S.E.C. 1224, 1226-27 (1994) ("Shaw's conduct could hardly be more serious. Thus we, [sic] do not find the sanctions imposed excessive or oppressive."); *Joseph H. O'Brien II*, 51 S.E.C. 1112, 1117 (1994) ("It is clear that his continued presence in the securities industry threatens the public interest."); *Ernest A. Cipriani*, 51 S.E.C. 1004, 1008 (1994) (holding that Cipriani misappropriated money from a customer and supplied false paperwork to conceal it, "an extremely serious violation," and finding that a bar is neither excessive nor oppressive); *Richard J. Daniello*, 50 S.E.C. 42, 46 (1989) (affirming a bar for misappropriating employer's funds and stating that "[p]rotection of the securities industry and public investors requires that a severe sanction be imposed to prevent any recurrence of such misconduct"); *Richard D. Earl*, 48 S.E.C. 334, 336 (1985) ("The hardship visited on Earl is outweighed by the necessity of ensuring that the NASD community and public investors are protected against a recurrence of the dishonest actions in which Earl engaged."),

[Footnote continued on next page]

"The public interest demands honesty from associated persons of [FINRA] members; anything less is unacceptable." *Ortiz*, 2008 SEC LEXIS 3134, at *29; *accord Gary M. Kornman*, Exchange Act Release No. 59403, 2009 SEC LEXIS 367, at *23 (Feb. 13, 2009) ("[T]he importance of honesty for a securities professional is so paramount . . . ."), *aff'd*, 592 F.3d 173 (D.C. Cir. 2010). Olson's conscious decision to make a false expense report to obtain funds to which she was not entitled was an exhibit of obvious dishonesty that renders her unsuited for continued association with a FINRA member. *Cf. Ortiz*, 2008 SEC LEXIS 3134, at *29 ("The industry must be protected from those who would undermine this trust; they cannot be, and have not been, allowed to continue to work in the industry."); *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005) ("[T]he purpose of expulsion or suspension from trading is to protect investors, not to penalize brokers."). Olson's exclusion from the securities industry is an appropriately remedial sanction that serves the public interest. *See Mission Sec. Corp.*, 2010 SEC LEXIS 4053, at *54 ("Applicants represent a clear danger to the investing public if they remain in the securities industry, and, as FINRA accurately observed in its decision, 'expelling Mission and barring Biddick in all capacities are the only effective remedial sanctions.'"); *Manoff*, 55 S.E.C. at 1166 ("We agree with the NASD that Manoff's continued presence in the securities industry threatens the public interest.").

[Cont'd]

aff'd, 798 F.2d 472 (9th Cir. 1986); *see also James A. Goetz*, 53 S.E.C. 472, 478-79 (1998) ("We agree with the NASD that a significant sanction is appropriate here.").

C. FINRA Considered Fully and Rejected Properly Olson's Numerous Claims for Mitigation

Olson's appeal is premised principally on the assertion that the FINRA Board's decision did not give fair consideration to numerous mitigating factors. Br. at 5.[12] Olson is plainly mistaken. Although the presence of certain factors may be aggravating, their absence does not necessarily draw an inference of mitigation. *Guidelines*, at 6 n.1 (citing *Rooms v. SEC*, 444 F.3d 1208, 1214-15 (10th Cir. 2006)). The relevance and qualifying nature of a particular factor instead depends on the facts and circumstances of each case and the type of misconduct involved. *See Guidelines*, at *6*. FINRA considered fully and discounted appropriately the mitigative value of Olson's self-centered arguments. Decision at 8-10.

Olson's claims of mitigation are unconvincing. Her remorse, after being confronted by Wells Fargo, and late acceptance of responsibility do not diminish her intentional dishonesty. Although she does not possess a disciplinary history, she should not be credited for otherwise acting in accordance with the duties imposed on all securities industry professionals, duties with which others act consistently every day without fault. Olson's deliberate actions reflect negatively on her ability to comply with fundamental regulatory requirements. If she has suffered hardship, she has no one but herself to blame. Her efforts to recast her misconduct in a more flattering light serve only to highlight her inability to grasp the severity of her misconduct. There is no doubt that she lied to and stole from her firm for the simple, selfish reason of obtaining gifts for members of her extended family.

Throughout her brief Olson suggests that the FINRA Board had a requirement to explain why Olson's conversion was worse than misconduct for which lesser sanctions were imposed in

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12 References to "Br. at __" are to the opening brief Olson filed on July 25, 2014.

other cases to justify its decision to bar Olson. Olson's argument relies on an incorrect application of the law. The sanctions assessed in other cases are not relevant to these proceedings. Exchange Act Section 19(e)(2) establishes the standard of review for FINRA's sanctions, and it provides that the Commission may eliminate, reduce, or alter a sanction imposed by FINRA if it finds that the sanction is excessive, oppressive, or imposes a burden on competition not necessary or appropriate to further the purposes of the Exchange Act. 15 U.S.C. § 78s(e)(2). Under this standard, Olson bears the burden to demonstrate why a bar for conversion is excessive or oppressive in this case.[13] Olson has failed to carry her burden.

"Disciplinary sanctions are remedial in nature and should be designed to deter future misconduct and to improve overall business standards in the securities industry." *Guidelines*, at 2. Barring Olson for her severe wrongdoing is consistent with this objective. Given the magnitude of her admitted offenses the conversion Guidelines should be followed. The Commission should resist Olson's call to create insubstantial, unwritten exceptions to the rule that those who steal from customers and brokerage firms are justifiably excluded from the securities industry.

1. Olson's Remorse and Acceptance of Responsibility Are Not Mitigating

Olson asserts that her tearful expressions of remorse and late acceptance of responsibility serve to mitigate the sanction imposed by FINRA for her deliberately dishonest misconduct. Br. at 1, 3-4, 5, 12-15. The FINRA Board correctly concluded that they do not. Decision at 8-9. Olson's half-hearted embrace of her wrongful actions, which occurred only after Wells Fargo

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13 Olson does not contend, and the record does not show, that the sanction imposed on her serves as an undue burden on competition.

conducted an investigation that uncovered her misconduct, should not be made grounds for a sanction of less than a bar in this case.

Acceptance of responsibility is mitigating "only when it occurs 'prior to detection and intervention by the firm . . . or a regulator.'" *Kent M. Houston*, Exchange Act Release No. 71589, 2014 SEC LEXIS 614, at *28 (Feb. 20, 2014) (quoting *Guidelines*, at 6 (2007)). That did not happen here. Instead, in response to questioning by Wells Fargo's corporate security division, Olson initially repeated the claim that the expense in question was a business expense. RP 325-26. When first asked about the $740.10 charge, Olson reiterated the falsehood that she purchased equipment for a branch office conference room.[14] RP 325-26. Only when it became clear that she could no longer falsely justify having claimed the iPods® as a business expense, and could not identify the conference room for which she purportedly purchased the equipment because the entire matter had been fabricated, did Olson "volunteer" that she wrongfully submitted a personal expense for reimbursement as a business outlay.[15] Br. at 2; RP 325-26.

[14] Olson claims that, when she reached this charge, she initially said it was for branch office equipment because that is what appeared on the spreadsheet detailing her expenses. Br. at 13. Olson, however, is the one who wrote the false description; when she repeated the description to the Wells Fargo's corporate security personnel, she was restating a falsehood for which she was entirely responsible.

[15] On appeal, Olson claims that FINRA's decision "misstated" or "incorrectly stated" the facts surrounding her "acceptance of responsibility." Br. at 5, 13. It did not. Although Olson ostensibly suggests that she was unaware of the purpose of her meeting with a member of Wells Fargo's corporate security division, Br. at 13, the preponderance of the evidence establishes that Wells Fargo conducted an investigation, not an audit, of Olson's corporate credit card use and suspected her of serious misconduct. RP 286-87. As a result, Olson's supervisor requested that she come to his office in June 2010, where, as even Olson admits, she was unexpectedly diverted into a conference room for questioning. RP 287, 323-24. After she acknowledged that she falsified an expense report, her supervisor immediately entered the conference room to inform her that she was being fired. RP 287-88. At that point, he read from "talking points" prepared by Wells Fargo's human resources department. RP 287-88, 499. Those talking points establish that Wells Fargo knew well the nature of Olson's misconduct before it questioned her. RP 499. Olson's highly suspicious claim that she was naive or clueless as to the purpose of Wells Fargo's

[Footnote continued on next page]

Instead of accepting responsibility prior to detection, Olson resisted it until her lies were no longer deniable. Her expressions of remorse and contrition cannot outweigh her highly troubling lack of judgment and do not justify modifying the bar FINRA imposed for her wrongdoing. Olson failed to appreciate the gravity of her actions at the time she submitted her false expense report, and she admittedly did not grasp the seriousness of her wrongdoing until after Wells Fargo terminated her employment. RP 335, 340-41. Olson testified that, after marking the charge for the iPods® as a business expense to avoid paying for them, and up to the point when Wells Fargo confronted her, she had no concern for what she had done and was unbothered by her actions. RP 335, 341.

Prior to this disciplinary proceeding, Olson never fully embraced the enormity of her misconduct. In her hand-written statement, Olson suggested that her false expense reporting was merely the result of "confusing" her corporate and personal credit cards, and she implied that she simply failed to mark the correct box when she accounted for the problematic charge in Wells Fargo's expense-reimbursement system. RP 427. Later, in response to a FINRA Rule 8210 request for information, Olson again suggested that her wrongdoing was the consequence of using the wrong credit card, and she modestly asserted that her failing to account for the $740.10 charge as a personal item was a humble "mistake" or "error." RP 431-32.

Olson's modest depictions of her wrongdoing after she was caught, however, stand in stark contrast to the contemporaneous evidence of her blatant misconduct. Olson intentionally took funds to which she was not entitled. *See Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 13). She knowingly, not mistakenly, submitted for reimbursement

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questioning does not make her assertion that she "voluntarily" accepted responsibility any more palatable.

of personal purchases as a business expense and described the purchases as equipment for a new conference room. In doing so, she mislead her firm in an attempt to conceal her misconduct and evade detection. *See id.* at 6 (Principal Considerations in Determining Sanctions, No. 10). Her self-serving behavior resulted in her obvious financial gain and caused Wells Fargo to pay her for expenses that were her obligation alone to bear. *See id.* at 6-7 (Principal Considerations in Determining Sanctions, Nos. 11, 17). Although Olson argues the FINRA Board gave undue weight to its view of aggravating factors, Br. at 16, Olson's misconduct was unquestionably accomplished by several conscious, measured acts of deception. The specific circumstances of her wrongdoing serve only to aggravate, not moderate, the seriousness of her violations. *See Mullins*, 2012 SEC LEXIS 464, at *75 ("J. Mullins acted with intent . . . . He knew the gift certificates and wine were not his property, but he used them for his own purposes . . . ."); *cf. Mark F. Mizenko*, 58 S.E.C. 846, 856 (2005) ("These were acts of deception, and we therefore reject this mitigation argument.").

Indeed, the evidence shows that Olson likely would have never spoken of her deceit, and her repayment of the converted funds to her firm would not have occurred, absent Wells Fargo's inquiry into her corporate credit card abuse.[16] Just days after falsely claiming the iPods® as a personal expense in April 2010, Olson's supervisor, unaware of her misdeeds, informed her that she should no longer use her corporate credit card for personal purchases. RP 319-20, 425. Soon thereafter a charge appeared on Olson's corporate card for a personal trip she had taken in March 2010. RP 319-320, 425. Because she marked this trip as a personal expense when she

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[16] Although Olson made restitution to her firm, Br. at 19, it has no bearing on the issue of the appropriate sanction to impose for her misconduct. *See Gurfel*, 54 S.E.C. at 63 ("The NASD was unimpressed by Gurfel's repayment of funds . . . . "); *Raymond M. Ramos*, 49 S.E.C. 868, 872 (1988) ("[T]he fact that Ramos ultimately paid the money back does not warrant permitting his return to the securities business . . . .").

made the initial reservation, RP 421, Olson had no choice but to claim the later, related charge the same way. RP 425. Concerned about her supervisor's reaction to this charge, however, Olson informed him that one last personal expense would be appearing for her in the firm's expense-management system. RP 319-20. Despite being presented with a clear opportunity to self-report her false expensing of the iPods®, Olson, seemingly content with the success of her deceptions, nevertheless made no mention of her deceitful actions and happily accepted Wells Fargo's payment for her $740.10 personal expense. Olson's duplicitous behavior supports fully FINRA's assessment that she should be barred for her misconduct. *See, e.g.*, *Shaw*, 51 S.E.C. at 1227 ("It appears that Shaw would have retained Luthi's money if she had not discovered his conversion."); *Richard Dale Grafman*, 48 S.E.C. 83, 84 (1985) ("Grafman's admitted misconduct . . . . would have continued even longer had it not been detected by [his] employer."). The FINRA Board correctly concluded that Olson's understandable emotions of regret, and her opportune embrace of accountability, are not mitigating.

2. **<u>One Act of Theft Is One Too Many</u>**

Olson suggests throughout her brief that she should be afforded leniency for having converted Wells Fargo's funds only once. Br. at 1, 3-4, 11-12, 17-18. Citing her "unblemished" record in the securities industry, Br. at 3, Olson wishes to be rewarded for acting consistently with the obligations imposed on her under FINRA rules on other occasions. It is, she claims, proof that she suffered simply from a momentary lapse in judgment that is not likely to be repeated.

Olson's arguments are alarming. There is no one-time exemption or free pass for conversion—nor should there be. The Guidelines for conversion, which state that a bar is the standard sanction "regardless of [the] amount converted," embrace the norm that a single instance of theft, no matter the sum involved, provides ample justification to bar an individual from the securities industry. *See Guidelines*, at 36. Olson's misconduct, even if it consisted of a single act of conversion, does not warrant her return to the securities industry.[17] *See Ramos*, 49 S.E.C. at 871 ("The various factors that Ramos cites afford no basis for leniency."); *cf. Kornman*, 2009 SEC LEXIS 367, at *26-27 ("Notwithstanding the lack of recurrence and Kornman's expressions of remorse and assurances against future violations . . . such factors do not outweigh our concern that Kornman will present a threat if we permit him to remain in the securities industry.").

The absence of a disciplinary history is not a factor that serves to mitigate the bar imposed on Olson by FINRA, and she should not be rewarded for instances where she otherwise acted in accordance with her duties as a securities industry professional. *See Mullins*, 2012 SEC LEXIS 464, at *79 (quoting *Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *74 (Jan. 30, 2009), *aff'd*, 416 F. App'x 142 (3d Cir. 2010)). Even if Olson was an "exemplary employee" when she returned, briefly, to work for another broker-dealer after Wells Fargo fired her, Br. at 4, it does not dull the assessment that she should be barred from associating with any FINRA member for her prior theft of her firm's funds. *See Hal S. Herman*, 55 S.E.C. 395, 404 (2001) ("We disagree that Herman's recent work at MetLife mitigates his prior violative conduct."); *see also Shaw*, 51 S.E.C. at 1227 n.11 ("We have considered the testimony of the two character witnesses presented on behalf of Shaw who testified as to his

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[17] Before FINRA, Olson argued repeatedly that her conversion of Wells Fargo's funds represented a "single, fleeting mistake," and she requested that FINRA find it mitigating that she did not engage in an ongoing pattern of misconduct over an extended period. *See Guidelines*, at 6 (Principal Considerations in Determining Sanctions, Nos. 8, 9). The FINRA Board, correctly, did not give any mitigative weight to these factors. Decision at 10 n.18. Although Olson may have only stolen once from her firm, several discrete, wrongful acts lie beneath her conversion.

honesty . . . . We nonetheless conclude that it is appropriate in the public interest that Shaw be barred . . . ."). Her statements that she would never repeat her misconduct, not because she knew it was wrong, but because of the stress and jeopardy to which she subjected her family, Br. at 13, further underscore her failure to meaningfully accept responsibility for her actions. *See Mullins*, 2012 SEC LEXIS 464, at *79 ("Mullins's claims that his misconduct will not be repeated because his relationship with Mrs. Weil will not be duplicated suggest a failure on his part to accept responsibility . . . .").

3. <u>Olson Is Not Entitled to "Credit" for Her Other Purchases</u>

Olson craftily argues that her conversion and theft of Wells Fargo's funds is rendered less objectionable because of her personal "generosity" to her firm and co-workers. *See, e.g.*, Br. at 16, 19. At the center of this assertion is a bold claim that she should be given "credit" or a "set off" for having allegedly spent approximately $2,000 of her own funds to purchase refrigerators for her branch office. Br. at 2, 16, 19, 20. The FINRA Board rightly discredited this plea for mitigation, Decision at 6 n.13, and the Commission should do the same. Olson's attempt to rationalize her misconduct shows that she possesses a palpable, unapologetic sense of entitlement that justifies FINRA's decision to bar her.

First, as a factual matter, Olson's oft-repeated contention that she falsified an expense report and stole Wells Fargo's funds because she had a "fleeting thought" in a "foolish . . . moment" to obtain reimbursement for refrigerators that she purchased with her own funds is disingenuous. Br. at 2, 17. As Olson testified, she never requested that Wells Fargo reimburse her for the refrigerators and "didn't have any intention of being reimbursed for them."[18] RP 311. Her self-serving claim that she should receive "credit" for other purchases evolved, expediently, as a justification for her misconduct only after Wells Fargo discovered her wrongdoing and terminated her employment. *Compare* RP 427 *and* RP 431, *with* RP 317-18 *and* RP 337-38 *and* RP 441-44.

Moreover, the fact that Olson "may have been able to obtain reimbursement for other legitimate expenses if submitted properly does not exonerate or lessen the significance of [her] unethical conduct."[19] *See Dep't of Enforcement v. Saad*, Complaint No. 2006006705601, 2009 FINRA Discip. LEXIS 29, at *22 (FINRA NAC Oct. 6, 2009), *aff'd*, Exchange Act Release No. 62178, 2010 SEC LEXIS 1761 (May 26, 2010), *aff'd in relevant part*, 718 F.3d 904 (D.C. Cir. 2013). The implicit, speculative claim that Olson did not profit from her misconduct and was not "greedy" does not alter the assessment that barring Olson serves an appropriately remedial objective. *See Katz*, 2010 SEC LEXIS 994, at *91-92 & n.66 (sustaining a bar although the respondent "may not have profited directly from misappropriating some of her clients' funds"); *see also Daniello*, 50 S.E.C. at 46 ("He asserts that he deserves a second chance because he did not intend to harm his employer . . . . [W]e are unable to conclude that the bar imposed on

18 Olson's Wells Fargo supervisor testified that the firm was unaware that she purchased refrigerators for her branch office and there was no legitimate reason for her to have done so. RP 291. Wells Fargo had a corporate division to handle such matters. *Id.*

19 FINRA disciplinary proceedings should not be used for an accounting of unrelated tangible and intangible factors that a respondent could perceivably foist upon adjudicators to justify their theft after the fact. It would, inevitably, lead to an ouroboros of familiar, irrelevant excuses that unnecessarily strip the conversion Guidelines of their remedial and deterrent effect. *See, e.g.*, *O'Brien*, 51 S.E.C. at 1115 (rejecting claims that respondent "was legally justified in removing these funds because Cogswell's debt to him for bookkeeping services 'has never been in dispute'"); *Shaw*, 51 S.E.C. at 1226 (finding that applicant converted funds and rejecting as not mitigating claims that Shaw was "under extreme emotional stress as a result of severe financial problems and his parents' and children's ill health").

Daniello is excessive or oppressive."); *cf. Herman*, 55 S.E.C. at 404 ("Herman asserts that his failure to receive any profits from his trading . . . is a mitigating factor. We disagree. . . . Herman's conduct . . . was not motivated by altruism.").

Olson's deliberate self-help and conscious unwillingness to follow proper reimbursement channels within her firm, no matter how burdensome or mundane they may have been (which they were not), reflect negatively on her ability to comply with basic regulatory requirements. *See Goetz*, 53 S.E.C. at 477 ("Goetz's misconduct here – disregarding his employer's foundation's fundamental rules for securing payment of matching gifts . . . reflects directly on Goetz's ability both to comply with regulatory requirements fundamental to the securities business and to fulfill his fiduciary responsibilities in handling other people's money."). Olson was not permitted to determine, as her whims guided her, and without prior accounting to her firm, the expenses for which she should receive reimbursement or for how much. *See Mullins*, 2012 SEC LEXIS 464, at *79 ("[E]ven if we accept for the sake of argument that the Foundation needed to purchase the gift certificates when it did, this would not permit or excuse his conversion of those assets at any time . . . ."); *see also O'Brien*, 51 S.E.C. at 1115 ("[T]he validity of O'Brien's claim against Cogswell for payment of his services is irrelevant to the issue of whether O'Brien had the authority to remove funds from her customer account.").

"The securities business presents a great many opportunities for abuse and overreaching, and depends very heavily on the integrity of its participants." *Grafman*, 48 S.E.C. at 84-85. As a firm supervisor and manager, responsible for approving the business expenses incurred by others within her Wells Fargo branch, RP 281, 334, Olson, of all people, should have understood the importance of accurate and truthful expense reporting.[20] *See, e.g.*, *Harry Friedman*, Exchange Act Release No. 64486, 2011 SEC LEXIS 1699, at *30 (May 13, 2011) ("We agree with FINRA that Friedman's industry experience and compliance responsibility at the Firm are aggravating factors here."). Her intentional acts, and the excuses she now offers to defend them, demonstrate that she fundamentally does not understand her regulatory obligations. *See Mission Sec. Corp.*, 2010 SEC LEXIS 4053, at *51; *see also Herman*, 55 S.E.C. at 405 ("Herman's disdain or ignorance of the required minimum level of conduct is reflected in his explanation . . . ."). Olson's theft of Wells Fargo's money is, in isolation, troubling enough to warrant a bar; her continued insistence that she believed, if just for a moment, that she was entitled to do so only underscores and makes "clear that [her] continued presence in the securities industry threatens the public interest." *See O'Brien*, 51 S.E.C. at 1117.

Olson's argument that her conversion "caused no harm to any investor" is also unavailing. Br. at 20. The fact that Olson stole from her firm, and not a customer, does not diminish the egregious character of her misconduct. Olson's wrongdoing is no less serious because it did not involve customer funds or securities. *See Grafman*, 48 S.E.C. at 85 n.2 ("The fact that he defrauded a brokerage firm instead is hardly a factor in his favor."). FINRA concluded, justifiably, that Olson's willingness to acquire Wells Fargo's money through patently improper means indicates a troubling disregard for basic principles of honesty that, on another

20 "Providing false information in any form . . . is an especially serious matter . . . ." *Herman*, 55 S.E.C. at 405. Fundamental concepts of commercial honor required that Olson, if she truly believed she was entitled to reimbursement for purchases she made on behalf of her branch office, follow Wells Fargo's expense policies and claim reimbursement for her corporate expenses honestly and transparently. By imposing a falsified expense report on Wells Fargo, Olson "evidenced a disregard of [her] responsibilities to . . . [her] employing member and the basic requirement that associated persons ensure the accuracy of member firm records." *See Ortiz*, 2008 SEC LEXIS 3134, at *28.

occasion, might manifest itself in a securities- or customer-related transaction. Decision at 10; *see generally Thomas E. Jackson*, 45 S.E.C. 771, 772 (1975) ("Although Jackson's wrongdoing in this instance did not involve securities, the NASD could justifiably conclude that on another occasion it might.").

4. Hardships Suffered As a Result of Olson's Wrongdoing Are Not Mitigating

Tugging at the Commission's heartstrings, Olson obliquely argues that the bar imposed on her by FINRA should be lessened because she is a single mother that has suffered financially as a result of her wrongdoing. Br. at 4. The "trauma of sudden termination," Olson further contends, Br. at 16, must be viewed as mitigating under the Guidelines. Olson's arguments are wholly misguided.

The Commission has roundly rejected the argument that lesser sanctions should be imposed on respondents that claim they have suffered hardship as a result of their own misconduct. *See, e.g.*, *Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *27 (Dec. 22, 2008) ("We also do not consider mitigating the economic disadvantages Craig alleges he suffered because they are a result of his misconduct."). Olson's current personal situation "does not outweigh the need to protect the investing public." *See id.* at *26 (rejecting a claim that sanctions should be reduced because the respondent cared for his ill mother); *accord Grafman*, 48 S.E.C. at 85 ("The hardship visited on Grafman is outweighed by the necessity of ensuring the exchange community and public investors are protected against a recurrence of the dishonest actions in which Grafman engaged."). Although Olson may, as she claims, be a "good, well-meaning" person, Br. at 16, her willingness to deceitfully place her personal interests before those of her firm reinforces the conclusion that a bar is the correct sanction in this case. *See*

Katz, 2010 SEC LEXIS 994, at *92 ("Katz's assertion that she was a nice person who did a good job for her clients similarly do not warrant a lesser sanction . . . .").

There is also no mitigative value in the fact that Wells Fargo terminated Olson after discovering her misconduct. The FINRA Board considered this issue and, as its decision makes clear, gave no weight to the fact that Olson was terminated by her firm when determining the appropriate sanction for her wrongdoing.[21] Decision at 10 n.19. The FINRA Board imposed, appropriately, a disciplinary sanction on Olson independent of Wells Fargo's decision to terminate her. *Id.* (citing *Dep't of Enforcement v. Prout*, Complaint No. C01990014, 2000 NASD Discip. LEXIS 18, at *11 (NASD NAC Dec. 18, 2000)). In this respect, FINRA noted that Wells Fargo terminated Olson for what it termed a "violation of company policy." In contrast, FINRA imposed a sanction for conversion, a violation that strikes at the heart of the integrity of the securities industry. The sanction that FINRA imposed in this case, as in all cases, represents the public announcement of what FINRA condemns, under its rules, as unacceptable conduct for securities industry professionals. To allow Olson to simply claim her termination from Wells Fargo as a source of mitigation would effectively vitiate long-standing Commission precedent that instructs that financial hardship suffered as a result of a respondent's own wrongdoing is not mitigating. *See, e.g.*, *Craig*, 2008 SEC LEXIS 2844, at *27. The Commission should not reward Olson's conversion and theft with a ready path for her to return

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[21] In *Saad*, the United States Court of Appeals for the District of Columbia remanded for further consideration a Commission decision that affirmed a bar imposed by FINRA for Saad's false expense reporting and misuse of his firm's funds. *See* 718 F.3d at 914. The D.C. Circuit criticized the Commission for failing to consider the respondent's claim that his firm's decision to terminate his employment served as a mitigating factor under principle number 14 of the Guidelines' Principal Considerations in Determining Sanctions. *Id.* at 913. Unlike the decision at issue in *Saad*, however, the FINRA Board considered fully Olson's claim that Wells Fargo's decision to terminate her should be given mitigative effect, and it concluded, under the facts and circumstances of this case, that it did not. Decision at 10 n.19.

to the securities industry, after serving a modest period of suspension, merely because her FINRA member firm concluded that an office manager who takes business reimbursement for personal expenses should be terminated.

5. <u>The Facts and Circumstances of This Case Warrant a Bar</u>

Olson requests that the Commission vacate the bar imposed by FINRA, and impose a lesser sanction, complaining that FINRA has assessed sanctions less than a bar in other proceedings for similar and more serious misconduct. Br. at 7-11. This argument is plainly a non-starter.

The Commission has long ruled that the determination of whether a particular sanction imposed by a self-regulatory association is excessive or oppressive "is made with regard to 'the facts and circumstances of each particular case, and cannot be precisely determined by comparison with the actions taken in other proceedings.'" *Herman*, 55 S.E.C. at 404 (quoting *Butz v. Glover Livestock Commission Co. Inc.*, 411 U.S. 182, 187 (1973)). FINRA's decision to bar Olson, a sanction that is fully consistent with the relevant Guidelines, and whose remedial purpose is amply supported by the facts, is not rendered punitive and invalid because it is more severe than the sanctions FINRA imposed in other cases. *Cf. Birklebach v. SEC*, 751 F.3d 472, 481 (11th Cir. 2014) ("In any event, '[t]he employment of a sanction within the authority of an administrative agency is . . . not rendered invalid because it is more severe than sanctions imposed in other cases.'") (quoting *Butz*, 411 U.S. at 187); *Hiller v. SEC*, 429 F.2d 856, 858 (2d Cir. 1970) ("[W]e cannot disturb the sanctions ordered in one case because they were different from those imposed in an entirely different proceeding.").

The decisions in *Department of Enforcement v. McCartney* and *Department of Enforcement v. Leopold*, Br. at 5, 7-11, have no bearing on the assessment of sanctions in this matter and do not mandate that a suspension is the correct sanction for Olson. In *McCartney* and *Leopold*, FINRA found that the respondents falsely reported expenses to their member firms in an effort to obtain reimbursements or other financial benefits to which they were not entitled, in violation of NASD Rule 2110. *See McCartney*, Complaint No. 2010023719601, 2012 FINRA Discip. LEXIS 60, at *9 (FINRA NAC Dec. 10, 2012); *Leopold*, Complaint No. 2007011489301, 2012 FINRA Discip. LEXIS 2, at *11 (FINRA NAC Feb. 24, 2012). FINRA, however, tailored remedial sanctions in those cases that did not include a bar after considering the specific Guidelines for the violations alleged and found: improper use of funds and the forgery or falsification of records.[22] *See McCartney*, 2012 FINRA Discip. LEXIS 60, at *11-12 & n.9; *Leopold*, 2012 FINRA Discip. LEXIS 2, at *15.

By drawing parallels to the misconduct examined and the sanctions FINRA imposed in the matters of *McCartney* and *Leopold*, Olson basically argues that FINRA erred by assessing a sanction for her misconduct under the Guidelines for conversion, and not under the Guidelines for improper use of funds or falsification of records. This argument is of no moment. FINRA, in harmony with the complaint and record evidence presented in this case, fittingly assessed a sanction for Olson's wrongdoing, a bar, allowed under the Guidelines for *conversion.*[23] *See*

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[22] In contrast to the Guidelines for conversion, the Guidelines for improper use of funds recommends that adjudicators "[c]onsider a bar" and, where mitigation exists, suspend the respondent in any or all capacities for a period of six months to two years and thereafter until the respondent pays restitution. *Guidelines*, at 36. The Guidelines for forgery and falsification of records recommends that adjudicators "consider," in cases where mitigation exists, suspending the respondent in any or all capacities for up to two years and, in "egregious" cases, a bar. *Id.* at 37.

[23] FINRA's decision in *Department of Enforcement v. Hunt* also provides Olson no consolation. *See* Br. at 9. In *Hunt*, although the respondent was charged with falsifying expense reports, he too was not charged with conversion, because his misconduct resulted only in his receiving reimbursements for legitimate expenses earlier than he was otherwise entitled. *See*

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Saad, 718 F.3d at 911 ("The SEC did not err when it upheld a sanction pursuant to the guidelines for conversion . . . ."). The sanctions FINRA imposed in unrelated cases do not support overturning the bar imposed for Olson's misconduct.[24]

Indeed, Olson's arguments concerning *McCartney* and *Leopold* only help to shine a bright light on the infirmity of her defense. Olson refuses, in her brief and elsewhere, to accept the fact that she converted Wells Fargo's funds. She prefers to reframe her misconduct as a modest "mistake" or "error," Br. at 3-4, 13, which amounts to nothing more than a simple matter of bookkeeping, where she "wrongfully received reimbursement from Wells Fargo" and "did not properly submit for or receive reimbursement for the refrigerators." Br. at 2. Olson uniformly refers to the term "conversion" only in quotations marks, as if it were an inconvenient label or regrettable euphemism that the Commission should readily ignore for the purpose of evaluating the appropriateness of the sanction FINRA imposed in this case.

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Hunt, Complaint No. 2009018068701, 2012 FINRA Discip. LEXIS 62, at *8 (FINRA NAC Dec. 18, 2012). More importantly, FINRA barred Hunt for another cause of action; he misappropriated the name, address, and social security number to make the customer a guarantor of a student loan without the customer's knowledge. *Id.* at *13-15.

24 The FINRA Board considered extensively Olson's arguments concerning *McCartney* and *Leopold* in its decision. Decision at 6-8. The FINRA Board noted, however, that FINRA's decisions in *McCartney* and *Leopold* were highly fact specific and did not rest on the presence or absence of any one aggravating or mitigating factor. Decision at 7 n.14. The FINRA Board thus cautioned FINRA adjudicators that relying on discrete statements from these cases to support a claim of mitigation is unsound. *Id.* The FINRA Board is entitled to interpret FINRA decisions and, where it deems appropriate, to limit their holdings. *Cf. Kindred Nursing Centers West, LLC v. NLRB*, 727 F.3d 552, 561 (6th Cir. 2013) ("[I]t is a general tenet of administrative law that '[a]n agency's interpretation of its own precedents receives considerable deference' from a reviewing court.") (quoting *Aburto-Rocha v. Mukasey*, 535 F.3d 500, 503 (6th Cir. 2008)). Yet Olson asks the Commission to expand the holdings of cases that are not on appeal before the Commission. Moreover, Olson fails to demonstrate why the FINRA Board was wrong to treat conversion as worse than other violations. The Commission should therefore uphold the FINRA Board's interpretation of FINRA case law.

Olson's attempts to recast her gross misconduct as something other than conversion must be rejected. Her wrongdoing was not the result of a trifling, erroneous acceptance of Wells Fargo's funds. *See Blanchard*, 46 S.E.C. at 366 ("We see no basis for leniency. This was no mere technical conversion."); *see also Goetz*, 53 S.E.C. at 477 ("We accordingly reject Goetz's claims that 'at its most heinous worst, [his conduct] is nothing but a technical omission to follow rules . . . . .'"). The decision of FINRA staff to charge Olson with conversion, and to seek her bar from the securities industry under the conversion Guidelines after they proved facts that fully supported this claim, is entitled to deference. *Cf. Butz v. Economou*, 438 U.S. 478, 515 (1978) ("An agency official, like a prosecutor, may have broad discretion in deciding whether a proceeding should be brought and what sanctions should be sought.").

Given the plain evidence of Olson's deceitful acts, and in light of her decision to concede liability to the charge presented—conversion, Olson's misconduct must be met with a real and meaningful sanction—a bar—to protect the investing public. Assessing a lesser sanction, based on the claims of mitigation that Olson has presented, would serve to debase the Guidelines for conversion and undermine the high standards of conduct in the securities industry that FINRA promotes. *See Blanchard*, 46 S.E.C. at 366; *see also Mullins*, 2012 SEC LEXIS 464, at *74.

V. CONCLUSION

The blatantly unethical and dishonest nature of Olson's misconduct is not in dispute. She falsified an expense report and deceitfully justified her firm's payment of a personal expense. In doing so, she converted her firm's funds to her personal benefit, in violation of FINRA Rule 2010. For this misconduct, FINRA rightly barred Olson. A bar is consistent with the Guidelines for conversion. It is a sanction that is justified under the facts, serves a remedial purpose, and will deter others who, like Olson, would abuse their firm's trust for their own financial gain.

Olson's claims of mitigation are unconvincing. Her conversion, although it occurred just once, was intentional, comprised of several acts of wrong doing, and performed despite her keen awareness that these acts were wrong. The Commission should affirm FINRA's action and reaffirm the well-reasoned principle that the conversion of another's funds or assets is conduct that is so profoundly incompatible with the high standards of ethics and honesty demanded of securities industry professionals that it will be met, in all but the most unique cases, with the standard sanction of a bar.

Respectfully submitted,

Gary Dernelle
Associate General Counsel
Office of General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8255

Dated: August 25, 2014