

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

Department of Enforcement,

Complainant,

v.

Gregory Walter McCloskey,
CRD No. 2820510,

Respondent.

Disciplinary Proceeding
No. 2018059242801

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. Between 2008 and 2018, Respondent Gregory Walter McCloskey, while associated with FINRA member firms, participated in two undisclosed private securities transactions (“PSTs”) involving Customer A, an elderly, retired widow, and then sought to conceal these transactions from his member firms and FINRA.

2. The first transaction occurred between 2008 and 2009, when McCloskey solicited Customer A to purchase \$20,000 in shares of stock of Company 1, a technology company that purportedly developed a wireless network system to control lighting for energy conservation. McCloskey never disclosed the transaction to his member firm.

3. Nor did McCloskey disclose this PST to FINRA when FINRA asked him to do so. In 2015 and 2016, FINRA was investigating whether McCloskey participated in PSTs with Company 1 away from his firm. During that investigation, FINRA asked McCloskey to list or otherwise identify all firm customers who invested in Company 1. FINRA first asked this

question in May 2015, pursuant to a FINRA Rule 8210 request for written information, and then again, in May 2016, during his on-the-record testimony (OTR). While McCloskey identified to FINRA some firm customers who invested in Company 1 in his written response to the Rule 8210 request and during his OTR, McCloskey never disclosed to FINRA that Customer A invested in Company 1.

4. In May 2017, McCloskey settled FINRA's investigation into his PSTs, wherein FINRA found that McCloskey participated in undisclosed PSTs in Company 1 with two firm customers. But FINRA did not make any findings relating to McCloskey's PST with Customer A because McCloskey lied to FINRA during its investigation.

5. Customer A's investment in Company 1 eventually surfaced because, in April 2018, Customer A sent a written complaint to McCloskey at his firm business address about her investment in Company 1. Customer A's complaint prompted McCloskey to participate in a second PST. To appease Customer A and further attempt to conceal his misconduct, between May 2018 and November 2018, McCloskey arranged to have his sister, Sister 1, purchase Customer A's \$20,000 investment in Company 1 stock. McCloskey never disclosed this PST to his firm.

6. Following FINRA's receipt of information regarding Customer A's complaint, FINRA opened another investigation into McCloskey's selling away activities, which McCloskey then attempted to obstruct. In August 2018, while under investigation by FINRA, McCloskey called Customer A to urge her to create and sign a false written statement indicating that McCloskey did not participate in any manner in Customer A's \$20,000 investment in Company 1. In exchange, McCloskey offered to let Customer A keep both the \$20,000 payment

she had already received from Sister 1, and her shares of stock in Company 1. Customer A did not accept McCloskey's proposal.

7. McCloskey hid his participation in Customer A's PSTs in Company 1 from his firms by using an unapproved email account to communicate with Customer A about her investment. McCloskey never provided his member firms with these emails or preserved them, thereby precluding his member firms from reviewing these communications and from complying with their books and records obligations.

8. McCloskey also concealed his misconduct by providing false information to his then firm on an annual compliance questionnaire and to FINRA on a Personal Activity Questionnaire (PAQ).

9. Specifically, in July 2018, McCloskey falsely responded to four questions on a PAQ that his employing firm submitted to FINRA. McCloskey misled FINRA on the PAQ by falsely attesting that while associated with a member firm he had not: (i) received any complaints against him from a customer during the past 12 months; (ii) utilized a third-party communication system, such as a third-party email address to communicate with customers; (iii) engaged in any PSTs; and (iv) prepared and distributed personalized account statements, consolidated statements or performance reports separate and apart from the account statements prepared and distributed by his member firm.

10. Then, in December 2018, McCloskey falsely stated on his annual compliance questionnaire that that he had not solicited, sold, or participated in any PSTs during the past 12 months.

11. Based on the foregoing conduct, McCloskey violated NASD Rules 3040 (for conduct prior to September 21, 2015) and 2110 (for conduct prior to December 15, 2008), and

FINRA Rules 3280 (for conduct on and after September 21, 2015) and 2010 (for conduct on or after December 15, 2008) [Private Securities Transactions]; FINRA Rule 8210 and 2010 [Providing False Information to FINRA]; FINRA Rule 2010 [Obstructing FINRA's Investigation and Providing False Information to Member Firms]; and NASD Rule 3110 (for conduct prior to December 5, 2011), and FINRA Rules 4511 (for conduct on or after December 5, 2011) and 2010 [Causing Inaccurate Books and Records; Use of Unapproved Email Account at two Member Firms].

RESPONDENT AND JURISDICTION

12. McCloskey first became registered with FINRA as a General Securities Representative (GSR) in February 1997. Between February 1997 and December 2007, McCloskey was registered as a GSR with FINRA and associated with seven different FINRA member firms. From December 2007 until July 2016, McCloskey was registered with FINRA as a GSR and associated with former FINRA member Newport Coast Securities, Inc. From July 2016 until November 2019, McCloskey was registered with FINRA as a GSR and associated with member firm WestPark Capital, Inc.

13. On November 5, 2019, WestPark Capital filed a Uniform Termination Notice for Securities Registration (Form U5) terminating McCloskey's registration and indicating that the firm had permitted him to resign: (i) due to McCloskey's failure to follow a heightened supervision plan, and (ii) after allegations were made that accused McCloskey of violating investment-related statutes, regulations, rules and industry standards of conduct.

14. Although McCloskey is no longer registered or associated with a FINRA member, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after

November 5, 2019, which was the effective date of termination of McCloskey's registration with WestPark Capital, Inc., and (2) the Complaint charges him with misconduct committed while he was registered or associated with a FINRA member.

FACTS

I. McCloskey's Relationship with Customer A.

15. In 2004, McCloskey was the financial adviser handling investments, retirement savings, and insurance for Customer A and Customer A's Husband. At that time, Customer A's Husband was suffering from a terminal illness and knew he did not have long to live. McCloskey was aware of Customer A's Husband's terminal illness. Customer A's Husband and Customer A trusted that McCloskey would take care of Customer A's finances when Customer A's Husband passed away.

16. Following the death of Customer A's Husband in February 2005, McCloskey continued to be the broker for Customer A's investments.

II. McCloskey's Disciplinary History with FINRA.

17. In 2015 and 2016, FINRA investigated whether McCloskey participated in PSTs in Company 1 with Newport Coast customers. On May 1, 2017, FINRA issued a Letter of Acceptance, Waiver and Consent (the May 2017 AWC), finding that McCloskey violated NASD Rules 3040 and 2110 and FINRA Rule 2010 by participating in undisclosed PSTs involving stock in Company 1.¹ Specifically, the May 2017 AWC found that between 2008 and 2010, McCloskey introduced Company 1 to two of his customers at Newport Coast who subsequently invested a total of \$50,000 in Company 1 stock. The AWC also found that, during that same period, McCloskey participated in another undisclosed PST when he personally invested \$50,000

¹ *Gregory Walter McCloskey*, AWC No. 2015044037901 (May 1, 2017).

in Company 1 stock. For this misconduct, FINRA suspended McCloskey for 15 business days and fined him \$5,000.

18. The May 2017 AWC, however, included no findings related to McCloskey's 2008/2009 PST with Customer A because, as discussed in greater detail herein, McCloskey concealed this PST from FINRA when FINRA investigated McCloskey's PSTs in 2015 and 2016.

III. McCloskey Participated in An Additional Undisclosed Private Securities Transaction Involving Company 1 in 2008 and 2009.

19. In 2008, McCloskey, while associated with Newport Coast, presented Customer A with an opportunity to purchase shares of stock of Company 1 as an alternative to investing in the stock market. McCloskey recommended Company 1 to Customer A, describing it to her as a "great investment" in a green energy company that provides efficient lighting for commercial buildings.

20. To assist Customer A in learning more about Company 1, McCloskey introduced Customer A to the Founder and Chief Executive Officer (CEO) of Company 1. McCloskey also informed Customer A that he had personally invested in Company 1.

21. In or around 2009, McCloskey invested \$20,000 of Customer A's money in shares of Company 1 stock.

22. McCloskey provided Customer A with oral confirmation of her investment in Company 1, but he did not provide her with any documents in connection with her investment.

23. Customer A's investment in Company 1 was a securities transaction.

24. Customer A's investment in Company 1 took place outside the regular course or scope of McCloskey's employment with Newport Coast.

25. Between 2007 and 2010, Newport Coast's written supervisory procedures (WSPs) required registered representatives to provide written notice to, and receive prior approval from, Newport Coast's compliance department prior to engaging in a PST, regardless of whether or not compensation was to be paid for effecting the transactions.

26. McCloskey never provided prior written notice to, nor did he receive approval from, Newport Coast before participating in the 2008/2009 PST involving Customer A's investment in Company 1.

IV. McCloskey Provided False Information to FINRA in a Prior Investigation.

A. *False Written Response*

27. In May 2015, in connection with FINRA's investigation that led to the May 2017 AWC, FINRA requested, pursuant to FINRA Rule 8210, that McCloskey "[p]rovide a list in a sortable MS Excel spreadsheet of all Newport Coast customers who invested in [Company 1], whether or not [he] participated in the purchase." The request further stated, "[t]he spreadsheet should include, at a minimum, the investor's last and first names; account number[.]"

28. In June 2015, McCloskey provided FINRA with a signed response to the Rule 8210 request in which he identified three of his Newport Coast customers by name as "the only Newport Coast Securities clients who made their own direct investments in [Company 1]."

29. McCloskey failed to identify Customer A as one of those customers.

30. McCloskey's response to the Rule 8210 request was false because he failed to include Customer A as one of his Newport Coast customers who invested in Company 1.

B. *False Testimony*

31. In May 2016, also in connection with FINRA's investigation that led to the May 2017 AWC, FINRA requested, pursuant to FINRA Rule 8210, that McCloskey appear for on-

the-record testimony. During that testimony, FINRA asked McCloskey about his Newport Coast customers who had invested in Company 1. McCloskey identified the same three customers he had identified in his June 2015 Rule 8210 written response—and again, omitted Customer A.

32. Specifically, FINRA asked McCloskey “[a]side from these three individuals that we have discussed who invested in [Company 1], do you have any other clients that you have told them about [Company 1]?” McCloskey answered, “[n]ot that I am aware.”

33. McCloskey’s testimony was false because he failed to identify Customer A as one of his Newport Coast customers who had invested in Company 1.

34. McCloskey failed to identify Customer A in his testimony with FINRA on May 24, 2016, even though McCloskey had previously prepared and sent Customer A account summaries that reflected the value of her investment in Company 1, together with the values of her other IRA and non-IRA investments. Specifically, McCloskey included Company 1 on the account summaries he provided to Customer A as of: August 2011; May 2012; October 2012; March 2013; May 2014; and April 2015.

35. However, on May 26, 2016—two days after McCloskey provided false testimony to FINRA—McCloskey prepared and sent Customer A an email with an account summary that omitted Company 1 from her investments.

36. Because McCloskey provided false information to FINRA during its investigation by failing to disclose Customer A’s investment in Company 1, FINRA did not know about, nor did the 2017 AWC include, Customer A’s investment in Company 1.

V. McCloskey Failed to Disclose Customer A’s Written Complaint about her \$20,000 Investment in Company 1.

37. McCloskey left Newport Coast and joined WestPark Capital in July 2016. Customer A followed McCloskey from Newport Coast to WestPark Capital.

38. Customer A sent a written complaint, dated April 30, 2018, to McCloskey's business address at WestPark Capital.

39. Customer A's written complaint expressed her "serious concerns" about her \$20,000 that McCloskey invested in Company 1. For example, Customer A felt that it was "a bit strange" because, as of the date of her written complaint, she had never received any paperwork or statements from Company 1 relating to her \$20,000 investment. Customer A was also concerned because even though McCloskey had listed Customer A's investment in Company 1 on a few account summaries he prepared and provided to her, he then began treating her investment in Company 1 as "a big secret." Specifically, McCloskey told Customer A not to "e-mail or put anything in writing about [Company 1]. . . ."

40. Although McCloskey had cautioned Customer A about putting anything in writing about her investment in Company 1, on numerous occasions, Customer A spoke to McCloskey on the phone inquiring about her investment. He always told her the same thing, "[it's] going to be a great investment." Since nine years had passed, and she had never received any gains or interest on her investment in Company 1, Customer A demanded the return of her \$20,000.

41. In July 2016, when McCloskey first became associated with WestPark Capital, he signed the firm's "General Acknowledgement" form. On this form, McCloskey acknowledged and represented that he understood his obligation to promptly inform WestPark Capital and his compliance supervisor if he received any written or verbal customer complaint.

42. During 2018, WestPark Capital's WSPs required an associated person who received a customer complaint—by letter, email, fax or instant messaging—to forward the customer complaint to his or her branch supervisor or designated principal. The firm's WSPs

also provided that the designated principal had the absolute right to determine the disposition of all customer complaints.

43. McCloskey failed to timely disclose to WestPark Capital Customer A's written complaint.

44. As a result, WestPark Capital was unable to timely report the complaint to FINRA, as required by FINRA Rule 4530.

45. It was not until months later, in August 2018, after McCloskey was served with a FINRA Rule 8210 request (a copy of which was sent to WestPark Capital's CCO) seeking information related to Customer A's complaint, that McCloskey disclosed Customer A's complaint to a supervisor and the CCO at WestPark Capital.

VI. McCloskey Participated in a Second Undisclosed Private Securities Transaction Involving Customer A and Company 1.

46. Beginning in or about May 2018, in response to Customer A's April 2018 written complaint about having lost her \$20,000 investment in Company 1, McCloskey participated in another PST involving Customer A.

47. Specifically, McCloskey recommended to his sister, Sister 1, that she purchase Customer A's shares of Company 1 stock for \$20,000.

48. In an effort to complete this transaction, McCloskey, together with his other sister, Sister 2, drafted a stock purchase agreement for the transaction between Sister 1 and Customer A.

49. He then arranged for Customer A to execute the stock purchase agreement, which Customer A signed on July 11, 2018.

50. He next arranged for Customer A to receive a \$20,000 check from Sister 1, which Customer A deposited in early August 2018.

51. Finally, in November 2018, McCloskey instructed Sister 1 to execute the stock purchase agreement, which she did on November 6, 2018.

52. Sister 1's purchase of Customer A's investment in Company 1 was a securities transaction outside the regular course or scope of McCloskey's employment with WestPark Capital.

53. When McCloskey became associated with WestPark Capital in July 2016, he signed a document that set forth the requirements of NASD Rule 3040 (Private Securities Transactions) as well as the firm's "Selling Away" guidelines. The "Selling Away" guidelines prohibited private securities transactions unless registered representatives provided written notice to WestPark Capital's Chief Compliance Officer (CCO) prior to participating in the proposed transactions.

54. By signing this document and acknowledging his awareness of NASD Rule 3040 and the firm's guidelines regarding private securities transactions, McCloskey represented and certified that he would not participate in any securities transactions away from WestPark Capital while employed with WestPark Capital, except within the guidelines set forth by NASD Rule 3040 and WestPark Capital.

55. WestPark Capital's WSPs in 2017 and 2018 also prohibited associated persons from participating in private securities transactions without first obtaining prior written approval from the firm's designated supervising principal.

56. McCloskey failed to provide prior written notice to anyone at WestPark Capital before he participated in the PST involving Sister 1's purchase of Customer A's stock in Company 1 for \$20,000 in May 2018.

VII. McCloskey Attempted to Obstruct FINRA's Investigation.

57. In August 2018, McCloskey called Customer A and asked her if she had been in contact with FINRA.

58. During this call, McCloskey urged Customer A to create and sign a false written statement indicating that McCloskey did not participate in any manner in Customer A's \$20,000 investment in Company 1 stock. In exchange, McCloskey offered to let Customer A keep the \$20,000 she received from Sister 1 in the PST, and to also keep her shares of stock in Company 1.

59. Customer A refused to agree to McCloskey's proposal.

60. McCloskey proposed this arrangement to Customer A in an effort to obstruct FINRA's investigation into his PSTs with Customer A.

VIII. McCloskey Used an Unapproved Email Address for Securities-Related Communications with Customer A.

61. From October 2010 through March 2018, while he was associated with both Newport Coast and WestPark Capital, McCloskey used an unapproved email address for securities-related communications with Customer A.

A. *While Associated with Newport Coast, McCloskey Communicated with Customer A Using an Unapproved Email Address*

62. Specifically, while registered with Newport Coast, McCloskey used an unapproved email address to communicate with Customer A regarding securities-related matters as follows:

- a. On October 28, 2010, McCloskey sent an email to Customer A regarding the status of Company 1's business; and

- b. On May 26, 2016, two days after McCloskey provided false testimony to FINRA by failing to identify Customer A as one of his Newport Coast customers who had invested in Company 1, McCloskey sent an email to Customer A containing an account summary he created for Customer A, dated May 25, 2016, that omitted Customer A's investment in Company 1. In response, on May 26, 2016, McCloskey received a response email from Customer A inquiring about the status of her investment in Company 1.

63. Between October 2010 and October 2014, Newport Coast's WSPs prohibited registered representatives from accessing or transmitting electronic business communications through any system not sponsored by the firm.

64. Beginning in November 2014, and continuing through at least May 2016, Newport Coast's WSPs also prohibited registered representatives from using electronic communications with customers, unless the registered representatives made all such emails available and subject to supervisory review by the firm.

65. McCloskey failed to disclose to Newport Coast that he was using an unapproved email address for securities-related business communications with Customer A.

66. McCloskey also failed to provide to Newport Coast any email communications from his unapproved email address that he either sent to, or received from, Customer A for supervisory review. Further, McCloskey neither printed nor otherwise preserved any of these emails from his unapproved email address for Newport Coast to review.

67. As a result of McCloskey's failure to disclose or receive approval to use his unapproved email address to communicate with a firm customer, Newport Coast was unable to review and preserve the email communications McCloskey sent to or received from Customer A.

B. *While Associated with WestPark Capital, McCloskey Continued to Improperly Communicate with Customer A Using an Unapproved Email Address*

68. While associated with WestPark Capital, McCloskey continued to use his unapproved email address to communicate regarding securities-related matters with Customer A as follows:

- a. On March 17, 2017, McCloskey sent an email to Customer A containing an account summary he created for her with investment values as of that date. But similar to the account summary he prepared two days after providing false testimony to FINRA in May 2016, McCloskey omitted Customer A's investment in Company 1 from the March 2017 account summary;
- b. On April 26, 2017, McCloskey sent an email to Customer A containing an email he had received from Company 1 regarding an update on a project involving Company 1; and
- c. On or about March 19, 2018, Customer A sent an email to McCloskey expressing her concerns about the decline in her securities account and her overall investments. In response, on March 23, 2018, McCloskey sent an email to Customer A containing an account summary he created for her regarding her investments. He, again, omitted from the March 2018 account summary Customer A's investment in Company 1.

69. In July 2016, when McCloskey became associated with WestPark Capital, he signed the firm's "2016 Policy and Procedure Acknowledgements" form. As part of this form, McCloskey acknowledged and represented that he understood WestPark Capital's policies

regarding the use of unapproved email accounts and agreed to comply in all respects with the firm's procedures for electronic correspondence.

70. On July 8, 2016, McCloskey also signed WestPark Capital's "Prohibited Acts" form, in which he acknowledged that he was prohibited from utilizing an unapproved email address to communicate with customers regarding investment matters or matters related to their account with WestPark Capital.

71. Between 2017 and 2018, WestPark Capital's WSPs prohibited the use of unapproved email accounts for securities-related business without prior written approval. The firm's WSPs required that if an associated person received written permission from the designated principal to use an otherwise unapproved email account to receive or to transmit securities-related business communications, the firm was required to supervise and capture such communications.

72. From July 2016 through October 2018, McCloskey failed to disclose to WestPark Capital his use of an unapproved email account for securities-related business communications with Customer A, as set forth above. During the same period, McCloskey did not request and WestPark Capital did not provide McCloskey with written permission to use any unapproved email address to receive or to transmit securities-related business communications.

73. From July 2016 through October 2018, McCloskey also failed to provide to WestPark Capital any email communications from his unapproved email account that he either sent to, or received from, Customer A for supervisory review. In addition, McCloskey neither printed nor otherwise preserved any of these emails from his unapproved email account for WestPark Capital to review, supervise and capture. McCloskey subsequently deleted these

emails from his unapproved email account, and therefore, failed to preserve these securities-related communications.

74. Lastly, from July 2016 through October 2018, McCloskey did not provide these unapproved email communications with Customer A to WestPark Capital for review and preservation.

IX. McCloskey Provided False and Misleading Information to FINRA on a Personal Activity Questionnaire.

75. In or about July 2018, in connection with a sales practice examination involving WestPark Capital, FINRA requested that some of the firm's representatives, including McCloskey, complete a PAQ that would be sent to FINRA.

76. While associated with WestPark Capital McCloskey provided false or misleading statements to FINRA in his responses to four questions on the PAQ.

77. McCloskey falsely stated that he had not received a customer complaint within the past 12 months of his completion of the PAQ. At the time of this statement, McCloskey had recently received (in early May 2018) Customer A's written complaint (dated April 30, 2018) about her investment in Company 1 stock. McCloskey failed to disclose Customer A's complaint to FINRA (and Westpark Capital).

78. McCloskey falsely denied participating in an undisclosed PST. At the time of this statement, McCloskey failed to disclose to FINRA (and WestPark Capital), that while associated with WestPark Capital, he participated in an undisclosed PST involving the purchase of Customer A's shares of Company 1 stock by Sister 1, between May 2018 and July 2018—activity which continued up to and after the date he completed the PAQ.

79. McCloskey falsely denied having utilized an undisclosed email address that operated through a third-party email provider to send business communications to customers. At

the time of this statement, McCloskey failed to disclose to FINRA (and WestPark Capital), that between March 2017 and March 2018, he used an unapproved email address to communicate with Customer A about securities business.

80. McCloskey falsely stated that he had not prepared and distributed account summaries to his customers, including Customer A. At the time of this statement, McCloskey failed to disclose to FINRA (and WestPark Capital), that he prepared and sent account summaries to Customer A in March 2017 and March 2018 using his undisclosed, unapproved email account.

81. After providing false and misleading information on the PAQ as described above, McCloskey signed the PAQ on July 12, 2018, representing that: “[b]y signing this document, I am attesting that the information provided is accurate and truthful.”

82. WestPark Capital submitted McCloskey’s completed PAQ, as the part of WestPark Capital’s response to FINRA on or about July 21, 2018.

X. McCloskey Provided False Information on a WestPark Capital Annual Compliance Questionnaire

83. McCloskey also provided false information on WestPark Capital’s annual compliance questionnaire about his 2018 PST with Sister 1 and Customer A.

84. Specifically, in December 2018, McCloskey falsely answered “no” in response to Question 1 under the heading, “Private Securities Transactions” that asked, “[i]n the past 12 months have you participated personally in any private securities transactions?”

85. McCloskey also falsely answered “no” in response to Question 2 under the heading “Private Securities Transactions” that asked, “[i]n the past 12 months, have you sold or solicited any private securities transactions?”

86. McCloskey's answers to both questions were false. McCloskey had participated in a private securities transaction involving Sister 1's purchase of Customer A's shares of stock in Company 1 in the preceding 12 months.

FIRST CAUSE OF ACTION
McCloskey Participated in Private Securities Transactions
(Violations of NASD Rules 3040 and 2110, and FINRA Rules 3280 and 2010)

87. The Department of Enforcement re-alleges and incorporates by reference paragraphs 1–86 above.

88. FINRA Rule 3280 and its predecessor, NASD Rule 3040, state that “[n]o person associated with a member shall participate in any manner in a private securities transaction” unless, prior to participation he or she provides “written notice to the member with which he [or she] is associated describing in detail the proposed transaction and person’s proposed role therein[.]” NASD Rule 3040 was in effect for conduct prior to September 21, 2015. FINRA Rule 3280 was in effect for conduct on or after September 21, 2015.

89. NASD Rule 3040(e)(1) and FINRA Rule 3280(e)(1) define a private securities transaction as “any securities transaction outside the regular course or scope of an associated person’s employment with a member[.]”

90. FINRA Rule 2010 requires members and associated persons to “observe high standards of commercial honor and just and equitable principles of trade” in the conduct of their business. Prior to December 15, 2008, NASD Rule 2110 imposed the same requirement.

91. Violations of NASD Rule 3040 and FINRA Rule 3280 are also violations of NASD Rule 2110, for conduct prior to December 15, 2008, and FINRA Rule 2010, for conduct on or after December 15, 2008.

92. In 2008 and 2009, and again between May 2018 and November 2018, while registered with Newport Coast and WestPark Capital, respectively, McCloskey participated in PSTs involving Customer A's \$20,000 investment in shares of stock of Company 1, and Sister 1's subsequent purchase of Customer A's shares of Company 1 stock for \$20,000.

93. The PSTs McCloskey participated in with Customer A involved an investment in securities in the form of shares of stock of Company 1.

94. McCloskey participated in an undisclosed PST involving Customer A's investment in stock of Company 1 between 2008 and 2009 by: presenting Customer A with the opportunity to invest in stock of Company 1; recommending the investment to Customer A; introducing Customer A to the Founder and CEO of Company 1; vouching for the issuer by telling Customer A that he personally invested in Company 1; investing Customer A's \$20,000 in stock of Company 1; and providing Customer A with oral confirmation of her \$20,000 investment.

95. McCloskey's activities, between 2008 and 2009, in connection with Customer A's investment in shares of stock of Company 1 involved a securities transaction conducted outside the regular course or scope of McCloskey's employment with Newport Coast.

96. McCloskey failed to provide written notice to Newport Coast prior to his participation in the PST involving Customer A's \$20,000 investment in Company 1 between 2008 and 2009.

97. McCloskey separately participated in the sale of Customer A's shares of stock in Company 1 to Sister 1 in 2018 by: recommending that Sister 1 purchase Customer A's shares of Company 1 stock for \$20,000; drafting a stock purchase agreement with Sister 2 to complete the stock purchase transaction; sending the stock purchase agreement to Customer A to sign;

arranging for Sister 1 to send a \$20,000 check to Customer A; and instructing Sister 1 to sign the stock purchase agreement.

98. McCloskey's activities during 2018 in connection with Sister 1's purchase of Customer's A shares of stock of Company 1 involved a securities transaction conducted outside the regular course and scope of McCloskey's employment with WestPark Capital.

99. McCloskey failed to provide written notice to WestPark Capital, including the CCO or designated principal, before he participated in the 2018 PST.

100. As a result of the foregoing conduct, Respondent McCloskey violated NASD Rules 3040 (for conduct prior to September 21, 2015) and 2110 (for conduct prior to December 15, 2008), and FINRA Rules 3280 (for conduct on and after September 21, 2015) and 2010 (for conduct on or after December 15, 2008).

SECOND CAUSE OF ACTION
McCloskey Provided False Information and False On-the-Record Testimony to FINRA
(Violation of FINRA Rules 8210 and 2010)

101. The Department of Enforcement re-alleges and incorporates by reference paragraphs 1–100 above.

102. FINRA Rule 8210 permits FINRA staff to “require a member, person associated with a member, or any other person subject to FINRA’s jurisdiction to provide information orally, in writing, or electronically . . . with respect to any matter involved in the investigation, complaint, examination, or proceeding.” Rule 8210 further requires members and registered persons to respond fully and truthfully.

103. Providing false or misleading information to FINRA in response to a request for information issued pursuant to FINRA Rule 8210 violates FINRA Rules 8210 and 2010.

104. As alleged above, on or about June 2015, McCloskey provided a signed written response to FINRA's Rule 8210 request seeking, among other things, the identity of each and every one of his Newport Coast customers who invested in Company 1. In his Rule 8210 response, McCloskey failed to identify Customer A as one of those customers who invested in Company 1.

105. McCloskey's Rule 8210 response was false because Customer A was also one of his Newport Coast customers who invested in Company 1.

106. In May 2016, during his on-the-record testimony to FINRA conducted pursuant to FINRA Rule 8210, McCloskey provided false testimony to FINRA because he, again, failed to identify Customer A as one of his Newport Coast customers who invested in Company 1.

107. As a result of the foregoing, Respondent McCloskey violated FINRA Rules 8210 and 2010.

**THIRD CAUSE OF ACTION
McCloskey Attempted to Obstruct FINRA's Investigation
(Violation of FINRA Rule 2010)**

108. The Department of Enforcement re-alleges and incorporates by reference paragraphs 1–107 above.

109. Attempting to create false evidence to deceive FINRA in connection with an investigation violates FINRA Rule 2010.

110. In August 2018, McCloskey asked Customer A to create and sign a false written statement indicating that McCloskey did not participate in any manner in Customer A's \$20,000 investment in Company 1. McCloskey made this request at a time when he was concerned that Customer A was speaking with FINRA about her investment in Company 1.

111. As a result of the foregoing conduct, Respondent McCloskey violated FINRA Rule 2010.

FOURTH CAUSE OF ACTION
McCloskey's Use of an Unapproved Email Address Caused
Newport Coast and WestPark Capital to have Inaccurate Books and Records
(Violation of NASD Rule 3110 and FINRA Rules 4511 and 2010)

112. The Department of Enforcement re-alleges and incorporates by reference paragraphs 1–111 above.

113. FINRA Rule 4511, like its predecessor, NASD Rule 3110, requires each member firm to “make and preserve books and records as required under the FINRA rules, the Exchange Act and applicable Exchange Act rules,” including Rules 17a-3 and 17a-4 of the Securities Exchange Act of 1934.

114. Exchange Act Rule 17a-4(b)(4) requires that every member or broker-dealer preserve all original communications received and copies of all communications sent by the member or broker-dealer relating to its business for three years. This requirement encompasses email communications.

115. NASD Rule 3110 was effective for conduct prior to December 5, 2011. FINRA Rule 4511 became effective for conduct on or after December 5, 2011.

116. A violation of NASD Rule 3110 and FINRA Rule 4511 constitutes a violation of FINRA Rule 2010.

117. While registered with FINRA and associated with member firms Newport Coast and WestPark Capital, McCloskey used an unapproved email account to communicate securities-related information to Customer A between October 2010 and March 2018. Neither McCloskey nor these member firms preserved or retained the communications he had with Customer A by way of his unapproved email account during this period.

118. McCloskey caused Newport Coast and WestPark Capital to violate Exchange Act Rule 17a-4, NASD Rule 3110 (for conduct prior to December 5, 2011), and FINRA Rules 4511 (for conduct on or after December 5, 2011) and 2010.

119. As a result of the foregoing conduct, Respondent McCloskey violated NASD Rule 3110 (for conduct prior to December 5, 2011), and FINRA Rules 4511 (for conduct on or after December 5, 2011) and 2010.

**FIFTH CAUSE OF ACTION
False or Misleading Statements to FINRA
(Violation of FINRA Rule 2010)**

120. The Department of Enforcement re-alleges and incorporates by reference paragraphs 1–119 above.

121. Providing false or misleading statements to FINRA constitutes conduct inconsistent with just and equitable principals of trade, in violation of FINRA Rule 2010.

122. On July 12, 2018, McCloskey completed and signed a PAQ that FINRA had requested through WestPark Capital. By signing the PAQ, McCloskey attested that the information provided was truthful and accurate. The firm submitted McCloskey’s PAQ to FINRA on or about July 21, 2018.

123. The PAQ included false or misleading information for the reasons alleged in paragraphs 76 through 80.

124. As a result of the foregoing conduct, Respondent McCloskey violated FINRA Rule 2010.

SIXTH CAUSE OF ACTION
McCloskey Provided False Statements on a Firm Compliance Questionnaire
(Violation of FINRA Rule 2010)

125. The Department of Enforcement re-alleges and incorporates by reference paragraphs 1–124 above.

126. Providing false information on a firm compliance questionnaire is conduct inconsistent with high standards of commercial honor and just and equitable principles of trade and violates FINRA Rule 2010.

127. In December 2018, McCloskey represented to WestPark Capital on an annual compliance questionnaire that he had not participated in any private securities transactions during the past 12 months.

128. His response on the questionnaire was false because between May 2018 and November 2018, McCloskey participated in the sale of Customer A’s stock in Company 1 to his sister, Sister 1, for \$20,000.

129. On this same annual compliance questionnaire, McCloskey also represented to WestPark Capital that he had not sold or solicited any private securities transactions during the past 12 months. His response was also false for the reason alleged in paragraph 128.

130. As a result of the foregoing conduct, Respondent McCloskey violated FINRA Rule 2010.

RELIEF REQUESTED

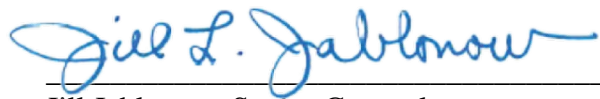
WHEREFORE, the Department of Enforcement respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent McCloskey committed the violations charged and alleged herein;

- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and
- C. order that Respondent McCloskey pay such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: December 1, 2020



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