

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

<p>Department of Enforcement,</p> <p style="text-align: center;">Complainant,</p> <p>v.</p> <p>Michael Ciro Colletti CRD No. 4577898,</p> <p style="text-align: center;">Respondent.</p>	<p>Disciplinary Proceeding No. 2019061942901</p>
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**COMPLAINT**

The Department of Enforcement alleges:

**SUMMARY**

1. Between March 2017 and February 2019, while associated with The Investment Center, Inc. (CRD No. 17839) (“ICI” or the “Firm”), Respondent Michael Ciro Colletti placed 73 trades with total principal value of approximately \$157,231 in the account of an elderly customer without the customer’s prior authorization. Colletti’s unauthorized trading resulted in realized losses of \$5,417.17 in Customer A’s account. By engaging in unauthorized trading in Customer A’s account, Colletti violated FINRA Rule 2010.

2. Additionally, Colletti unsuitably and excessively traded the same customer’s account by frequently purchasing and selling various equity positions that caused the customer to incur high cumulative costs. Colletti exercised *de facto* control over the account by placing trades without first obtaining the customer’s authorization. In Customer A’s account, Colletti effected 52 securities transactions between May 2018 and February 2019, which generated \$4,981 in commissions and \$256 in other trading costs. These trades

resulted in a cost-to-equity ratio of more than 72 percent and a turnover rate of more than 10 (annualized to over 86 percent and over 12, respectively). These measurements well exceed the benchmarks for excessive trading. By virtue of the foregoing, Colletti violated FINRA Rules 2111 and 2010.

### **RESPONDENT AND JURISDICTION**

3. Colletti first became registered with FINRA as a General Securities Representative through an association with a member firm in September 2002. From January 2017 through January 2020, Colletti was registered as a General Securities Representative through his association with ICI. From January 2017 through February 2018 and from October 2018 through January 2020, Colletti was also registered as a General Securities Principal through his association with ICI.

4. In January 2018, Colletti entered into an Offer of Settlement with FINRA, in which he consented to findings that he had violated NASD Rule 3010 and FINRA Rule 2010 by failing to reasonably supervise cold callers in his branch office. Colletti consented to sanctions including a \$7,500 fine and a three-month suspension from association with any FINRA member firm in a principal capacity. Colletti completed his suspension on or about May 19, 2018.

5. On February 4, 2020, Colletti became registered as a General Securities Representative, General Securities Principal, and Investment Banking Representative through an association with another FINRA member firm, where he is currently employed.

6. Colletti is currently registered with FINRA and is therefore subject to FINRA's jurisdiction.

## STATEMENT OF FACTS

### *Colletti's Unauthorized and Excessive Trading in Customer A's Account*

7. Customer A is a 67-year-old retiree. Prior to his retirement, Customer A was employed as an office manager for a paving company.

8. While Colletti was associated with a previous FINRA member firm, the paving company owner opened an individual retirement account (IRA) on behalf of Customer A. Colletti was assigned as the registered representative on the IRA.

9. Customer A was an unsophisticated investor. Outside of Colletti's excessive trading of Customer A's account at ICI beginning in May 2018, Customer A mainly bought and held mutual funds and stocks of well-established companies.

10. Customer A's IRA account was funded with payroll deductions and matching contributions by the paving company. After the IRA account was opened, Colletti used these funds to purchase four mutual funds and two equities in Customer A's account. Colletti did not speak to or meet with Customer A prior to effecting these transactions.

11. In January 2017, when Colletti left his prior firm and associated with ICI, Customer A's IRA was transferred to ICI. To effectuate this account transfer, the paving company provided Customer A with new account documents for ICI, which Customer A signed and returned to his employer. While at ICI, Customer A's account continued to be funded through payroll deductions and matching contributions from the paving company.

12. Customer A's new account documents with ICI reflected that, at the time of account opening, Customer A's annual income was \$75,000, his net worth was \$250,000, and his liquid net worth was \$50,000. Customer A's risk tolerance was "moderate," and his investment objectives were "income" and "growth."

13. Although they had never met or spoken, Colletti remained assigned as Customer A's registered representative at ICI.

14. Customer A's account at ICI was funded in February 2017 with the positions held in the IRA at the previous firm, namely, \$1,578.45 in securities (four mutual funds and two equities), and \$777.17 in cash. By the end of February 2017, the account had a total value of \$2,747.87.

15. Customer A's account at ICI was not approved for discretionary trading, and Customer A never authorized Colletti to use discretion in his account.

16. In March 2017, Colletti used the available cash in the account to purchase additional shares of the six securities already held in the account. Colletti did not contact Customer A prior to effecting these transactions, and Customer A did not authorize these transactions.

17. Colletti continued to use new cash deposits to purchase additional shares of these six securities in May 2017, September 2017, March 2018, and April 2018. Colletti did not contact Customer A prior to effecting these transactions, and Customer A did not authorize any of these transactions. As of the end of April 2018, Customer A's account had appreciated to \$7,547.54.

18. In May 2018, the same month that he completed his three-month principal capacity suspension, Colletti abandoned the buy-and-hold strategy he had previously employed for Customer A's account. Instead, he began a pattern of frequently buying and selling equities in Customer A's account. Colletti typically charged a commission of between 1.5 and two percent on both purchase and sale transactions. Colletti continued this high-frequency trading strategy until February 8, 2019.

19. On February 8, 2019, in advance of his retirement, Customer A called Colletti and requested that he sell the securities in and close his account. This conversation was the first time that Colletti and Customer A had ever spoken. On February 8, 2019, Colletti entered five sale transactions, in accordance with Customer A's instructions.

20. On February 13, 2019, without contacting Customer A, and despite Customer A's instruction to liquidate the account, Colletti entered another purchase transaction in Customer A's account. On February 20, 2019, without contacting Customer A, Colletti entered a transaction to sell the position.

21. Except for the five sale transactions entered on February 8, 2019, Colletti did not contact Customer A prior to effecting any of the transactions in Customer A's account during the period May 2018 through February 2019, and Customer A did not authorize any of the transactions in his account during that period.

22. By the end of February 2019, Customer A's account value had declined to \$5,856.38, despite Customer A and his employer depositing \$4,540.40 to the account in 2018 and 2019.

23. In April 2019, Customer A closed the IRA and transferred all the funds out of his account at ICI.

24. Between March 2017 and February 2019, Colletti effected 73 purchase and sale transactions in Customer A's account without obtaining prior authorization for any of the transactions. The 73 unauthorized transactions are listed in **Appendix A**. Colletti's unauthorized trading in Customer A's account caused \$5,417.17 in realized losses.

25. The average month-end value of Customer A's account during the period March 2017 to February 2019 was approximately \$6,265, and the principal value of Colletti's 73 unauthorized trades in Customer A's account totaled more than \$157,231.

26. During the period May 2018 (when Colletti changed his trading strategy in Customer A's account) through February 2019 (when Customer A initiated the process to close his account), except for the five authorized sale transactions on February 8, 2019, Colletti effected 52 securities transactions in Customer A's account that were unsuitable and excessive.<sup>1</sup>

27. Colletti effected each of these 52 transactions in Customer A's account without first obtaining Customer A's authorization.

28. Colletti's excessive trading in Customer A's account resulted in a turnover rate of 10.28 (annualized to 12.33) and a cost-to-equity ratio of 72.14 percent (annualized to 86.57 percent) during the period May 2018 through February 2019.

29. During the period May 2018 through February 2019, Colletti's excessive trading in Customer A's account generated \$4,981 in commissions and an additional \$256 in other trading costs and fees.

**FIRST CAUSE OF ACTION**  
**Unauthorized Trading**  
**(FINRA Rule 2010)**

30. Enforcement realleges and incorporates by reference all preceding paragraphs.

31. FINRA Rule 2010 requires registered representatives, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.

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<sup>1</sup> The 52 excessive trades are identified in Appendix A.

32. Unauthorized trading occurs when a registered representative effects trades in a customer's non-discretionary account without first obtaining the customer's authorization or consent.

33. Unauthorized trading is a breach of the duty to observe high standards of commercial honor and just and equitable principles of trade and, thus, is a violation of FINRA Rule 2010.

34. Customer A's account at the Firm was non-discretionary.

35. Colletti effected 73 trades in Customer A's account without first obtaining Customer A's required authorization or consent.

36. By reason of the foregoing, Colletti violated FINRA Rule 2010.

**SECOND CAUSE OF ACTION**  
**Excessive Trading/Quantitative Unsuitability**  
**(Violations of FINRA Rules 2111 and 2010)**

37. Enforcement realleges and incorporates by reference all preceding paragraphs.

38. FINRA Rule 2111 requires an associated person who has actual or *de facto* control over a customer account to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile.

39. FINRA Rule 2111, Supplementary Material 2111.05(c), which was in effect from May 1, 2014 through June 29, 2020, provided:

Quantitative suitability requires a member or associated person who has actual or *de facto* control over a customer account to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile, as delineated in Rule 2111(a). No single test defines excessive activity, but factors such as the turnover rate, the cost-equity ratio, and the use of in-and-out trading in a

customer's account may provide a basis for a finding that a member or associated person has violated the quantitative suitability obligation.

40. Unsuitable excessive trading exists when a registered representative (1) has actual or *de facto* control over trading in a customer's account, and (2) the level of activity in that account is inconsistent with the customer's investment objectives, financial situation, and needs.

41. A violation of FINRA Rule 2111 also is a violation of FINRA Rule 2010.

42. Between May 2018 and February 2019, Colletti exercised *de facto* control over the trading in Customer A's account. Without communicating with the customer or obtaining the customer's authorization, Colletti controlled the volume and frequency of trading in the account: He decided what securities to buy and sell, the quantity of each transaction, and the timing of each transaction. Colletti also determined the commission he would charge for each transaction.

43. Colletti's trading in Customer A's account was excessive and quantitatively unsuitable for the customer as evidenced by the high turnover rate and cost-to-equity ratio, the frequency of the transactions, and the transaction costs incurred as alleged herein.

44. By reason of the foregoing, Colletti violated FINRA Rules 2111 and 2010.

### **RELIEF REQUESTED**

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

- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed, including that Respondent be required to disgorge




fully any and all ill-gotten gains and/or make full and complete restitution,  
together with interest; and

- C. order that Respondent bears such costs of proceeding as are deemed fair  
and appropriate under the circumstances in accordance with FINRA Rule  
8330.

## **FINRA DEPARTMENT OF ENFORCEMENT**

Date: February 15, 2023



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John Sheehan  
Principal Counsel  
FINRA Department of Enforcement  
100 Pine Street, Suite 1800  
San Francisco, CA 94111  
Phone: 415-217-1156  
Email: John.Sheehan@finra.org

John Luburic  
Senior Litigation Director  
FINRA Department of Enforcement  
55 West Monroe Street, Suite 2600  
Chicago, IL 60603  
Phone: 312-899-4369  
Email: John.Luburic@finra.org

**Appendix A**  
**73 Unauthorized Transactions in Customer A's Account<sup>2</sup>**

Trade Date	Symbol	Buy or Sell	Trade Price	Trade Quantity	Principal Amount	Commission Amount
03/09/2017	GILD	BUY	68.47	1.00	68.47	0.00
03/09/2017	CIGAX	BUY	10.76	23.23	250.00	0.00
03/09/2017	FFRAX	BUY	9.96	25.10	250.00	0.00
03/09/2017	GE	BUY	29.77	2.00	59.54	0.00
03/09/2017	MDILX	BUY	14.98	16.69	250.00	0.00
03/09/2017	FALAX	BUY	33.74	7.41	250.00	0.00
05/22/2017	GILD	BUY	64.30	1.00	64.30	0.00
05/22/2017	CIGAX	BUY	10.93	16.01	175.00	0.00
05/22/2017	FFRAX	BUY	9.95	12.56	125.00	0.00
05/22/2017	GE	BUY	28.15	2.00	56.30	0.00
05/22/2017	MDILX	BUY	16.61	7.53	125.00	0.00
05/22/2017	FALAX	BUY	33.72	7.41	250.00	0.00
09/25/2017	GILD	BUY	83.37	1.00	83.37	0.00
09/25/2017	CIGAX	BUY	10.95	27.40	300.00	0.00
09/25/2017	FFRAX	BUY	9.91	20.18	200.00	0.00
09/25/2017	GE	BUY	25.15	3.00	75.44	0.00
09/25/2017	MDILX	BUY	17.51	11.42	200.00	0.00
09/25/2017	FALAX	BUY	35.48	8.46	300.00	0.00
03/26/2018	GILD	BUY	74.79	10.00	747.88	30.00
03/26/2018	GE	BUY	13.04	100.00	1303.65	55.00
04/20/2018	GE	BUY	14.53	50.00	726.25	30.00
05/16/2018	GE	SELL	15.07	162.00	2441.84	85.00
05/17/2018	MU	BUY	55.68	40.00	2227.16	63.00
05/30/2018	MU	SELL	61.97	40.00	2478.92	65.00
05/31/2018	MU	BUY	58.93	45.00	2651.77	70.00
06/28/2018	MU	SELL	53.08	45.00	2388.38	67.00
06/29/2018	GILD	SELL	71.01	15.00	1065.20	40.00
06/29/2018	CAT	BUY	136.62	25.00	3415.42	85.00
08/21/2018	AMD	BUY	20.23	200.00	4045.34	115.00
08/21/2018	CAT	SELL	140.30	25.00	3507.50	85.00
08/24/2018	AMD	SELL	23.28	200.00	4656.18	124.00
09/05/2018	BABA	BUY	164.36	25.00	4108.89	102.00
09/17/2018	MU	BUY	43.78	100.00	4377.90	109.00
09/17/2018	BABA	SELL	159.45	25.00	3986.36	99.00
09/21/2018	RIG	BUY	13.45	325.00	4369.92	145.00
09/21/2018	MU	SELL	44.52	100.00	4452.10	100.00

<sup>2</sup> Beginning with the transaction dated 5/16/2018 and all the subsequent transactions listed comprise the 52 trades that were also excessive and unsuitable.

Trade Date	Symbol	Buy or Sell	Trade Price	Trade Quantity	Principal Amount	Commission Amount
10/17/2018	RIG	SELL	12.48	325.00	4056.03	140.00
10/18/2018	DVAX	BUY	11.27	350.00	3945.76	150.00
10/31/2018	BABA	BUY	141.51	25.00	3537.64	90.00
10/31/2018	DVAX	SELL	9.70	350.00	3396.26	131.00
11/02/2018	BABA	SELL	151.61	25.00	3790.27	95.00
11/02/2018	SQ	BUY	77.87	45.00	3504.13	100.00
11/07/2018	SQ	SELL	82.25	45.00	3701.30	95.00
11/07/2018	DBX	BUY	25.30	140.00	3541.30	90.00
11/14/2018	AMD	BUY	20.24	160.00	3237.86	104.00
11/14/2018	DBX	SELL	23.45	140.00	3283.10	105.00
11/19/2018	AMD	SELL	19.53	160.00	3124.82	102.00
11/19/2018	GE	BUY	8.03	350.00	2809.84	120.00
11/26/2018	GE	SELL	7.29	350.00	2552.59	115.00
11/27/2018	JD	BUY	20.53	120.00	2463.42	101.00
12/10/2018	JD	SELL	20.46	120.00	2455.67	84.00
12/10/2018	DVAX	BUY	10.88	200.00	2175.98	100.00
12/12/2018	DVAX	SELL	11.64	200.00	2328.62	100.00
12/13/2018	DVAX	BUY	10.48	200.00	2095.34	100.00
12/27/2018	AMD	BUY	16.76	100.00	1675.90	60.00
12/27/2018	DVAX	SELL	8.21	200.00	1642.80	60.00
12/28/2018	AMD	SELL	18.08	100.00	1808.35	60.00
01/03/2019	AMD	BUY	17.19	125.00	2148.33	60.00
01/04/2019	AMD	SELL	18.64	125.00	2330.01	60.00
01/08/2019	DVAX	BUY	10.00	200.00	2000.00	60.00
01/16/2019	DVAX	SELL	11.99	200.00	2398.32	90.00
01/18/2019	AMD	BUY	20.37	100.00	2036.60	65.00
01/24/2019	AMD	SELL	20.76	100.00	2076.48	65.00
01/24/2019	OSTK	BUY	15.29	150.00	2293.50	90.00
01/25/2019	OSTK	SELL	19.16	100.00	1916.22	75.00
01/25/2019	DVAX	BUY	11.03	150.00	1654.50	80.00
02/01/2019	OSTK	SELL	17.43	50.00	871.58	40.00
02/06/2019	TWTR	BUY	34.25	75.00	2568.75	115.00
02/06/2019	DVAX	SELL	10.81	150.00	1622.22	75.00
02/07/2019	OSTK	BUY	19.69	100.00	1969.00	90.00
02/07/2019	TWTR	SELL	30.92	75.00	2319.12	100.00
02/13/2019	DVAX	BUY	10.63	550.00	5844.69	240.00
02/20/2019	DVAX	SELL	10.95	550.00	6022.50	220.00