BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC

In the Matter of the Application of

Meyers Associates, L.P. and Bruce Meyers

For Review of Disciplinary Action Taken by

FINRA

File No. 3-18359

BRIEF OF THE FINANCIAL INDUSTRY REGULATORY AUTHORITY IN OPPOSITION TO THE APPLICATION FOR REVIEW

Alan Lawhead
Vice President and Director—
Appellate Group

Gary Dernelle
Associate General Counsel

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

May 14, 2018

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

FINRA Decisions

Federal Statutes and Codes

FINRA Rules and Guidelines

BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC

In the Matter of the Application of

Meyers Associates, L.P. and Bruce Meyers

For Review of Disciplinary Action Taken by

FINRA

File No. 3-18359

BRIEF OF THE FINANCIAL INDUSTRY REGULATORY AUTHORITY IN OPPOSITION TO THE APPLICATION FOR REVIEW

I. INTRODUCTION

Meyers Associates, L.P. ("Meyers Associates") and Bruce Meyers ("Meyers") (together, the "Applicants") request that the Commission review a January 4, 2018 FINRA disciplinary decision. Their application should be denied.

Meyers Associates and Meyers engaged in wide-ranging misconduct that violated both the federal securities laws and numerous FINRA rules. They communicated repeatedly with the public using misleading emails that painted an extremely positive picture of a development-phase company that Meyers owned, without a fair and balanced treatment of risks and potential benefits or the disclosure of essential facts and information necessary to provide a sound basis for evaluating the details they presented.

Meyers Associates' and Meyers's misconduct also demonstrated supervisory failures that resulted in Meyers Associates keeping inaccurate books and records and failing to report critical information concerning potential patterns of abuse by the firm's brokers. In this respect, Meyers

Associates' failure to supervise reasonably the activities of the firm, due to inept reviews of electronic correspondence, an inability to identify and report customer complaint information, and inadequate supervisory controls, was consistent in its lack of quality.

The record supports fully the National Adjudicatory Council's ("NAC") findings. They rest upon an abundance of evidence and are without any meaningful controversy. The legal theories are well established and the findings are not predicated on or ancillary to any claims that were dismissed in the proceedings before FINRA adjudicators. Instead, the Applicants violated aspects of the federal securities laws and FINRA rules that strike at the core of a broker-dealer's day-to-day responsibilities as a FINRA member. Meyers Associates and Meyers offer no coherent, recognizable legal arguments or counter statement of facts that undermines the NAC's findings. The Commission should therefore affirm them.

The Commission also should affirm the significant sanctions that the NAC imposed on the Applicants for their misconduct. For instance, their use of misleading communications with the public, which included numerous unfair, unbalanced, and unwarranted claims, was wide-ranging and persistent. Their conduct was egregious, and the monetary sanction the NAC imposed for this misconduct is consistent with the FINRA Sanction Guidelines ("Guidelines") and serves the public interest.

Justified too is the unitary monetary sanction that the NAC imposed on Meyers Associates for its other violations. They represent a systematic failure of the firm's supervisory responsibilities and are indicative of the Applicants' apparent refusal to allocate their resources to supervisory concerns and implement reasonable supervisory procedures and controls. In this respect, Meyers has shown himself, as Meyer Associates' self-proclaimed "boss," incapable of or indifferent to supervising his firm's activities, and the decision to bar him from acting as a

principal or supervisor of a FINRA member firm in the future is an appropriately prophylactic measure.

Although the Applicants would like FINRA to ignore their extensive regulatory and disciplinary histories, the Commission should not. Far from evidencing regulatory bullying, the numerous actions taken against the Applicants by FINRA and other regulators, when taken as a whole, paint a deeply troubling picture of their ability and desire to comply fully with the important regulatory responsibilities that confront all securities industry professionals and their firms. The Applicants vow that they have gotten better, but their self-serving claims of corrective actions taken and supervisory upgrades explored lack credibility when viewed against the backdrop of their regulatory histories and the evidence of their ongoing recalcitrance in this and other recent cases. Indeed, given the Applicants' persistence in blaming everyone—firm staff, public auditors, and even FINRA—for their woeful regulatory failures, the NAC rejected appropriately their assertions that the prospects for their improvement are promising.

II. BACKGROUND

A. The Applicants

Meyers Associates, now known as Windsor Street Capital, L.P., became a FINRA member in 1994. RP 1127.[1] Headquartered in New York City, the firm engages in a retail securities business and investment banking. *Id.*

At all relevant times, Meyers owned Meyers Associates indirectly, acted as the firm's managing partner, Chief Executive Officer ("CEO"), and self-described "boss," and he was

[1] "RP" refers to the page number in the certified record.

registered with the firm as a general securities representative and a general securities principal.[2] RP 1128, 1442-1444. Meyers is no longer associated with a FINRA member.

B. FINRA's Disciplinary Proceedings

FINRA's Department of Enforcement ("Enforcement") filed a nine-cause complaint initiating disciplinary proceedings against the Applicants on October 6, 2014. RP 1-59. The first cause of action alleged that the Applicants offered to sell securities that did not meet the registration requirements of Section 5 of the Securities Act of 1933 ("Securities Act"), in violation of FINRA Rule 2010.[3] The second cause of action alleged that the Applicants used unbalanced and misleading communications with the public, in violation of NASD Rule 2210(d) and FINRA Rule 2010.[4] The third cause of action, which Enforcement withdrew prior to hearing, claimed that Meyers failed timely to file a private placement memorandum for an entity that he controlled, in violation of FINRA Rules 5122 and 2010. The fourth cause of action asserted that the Applicants and Imtiaz A. Khan ("Khan") maintained, or caused the firm to maintain, inaccurate books and records, in violation of Section 17 of the Securities Exchange Act of 1934 ("Exchange Act"), Exchange Act Rules 17a-3, 17a-4, and 17a-5, NASD Rule 3110, and FINRA Rules 4511 and 2010. The fifth cause of action alleged that the Applicants and Khan falsified, or caused to be falsified, federal tax forms, in violation of FINRA Rule 2010. The sixth cause of action claimed that the Applicants failed to supervise reasonably preparation of the firm's books and records, in violation of NASD Rule 3010 and FINRA Rule 2010. The seventh

---

[2] Meyers entered the securities industry in 1982, and he associated with several FINRA members before founding Meyers Associates in 1994. RP 1128.

[3] FINRA applied the conduct rules that existed at the time of the conduct at issue.

[4] The relevant NASD rules applied to the misconduct that remains at issue in this appeal proceeding are attached at Attachment A.

cause of action alleged that Meyers Associates failed to supervise reasonably the firm's electronic correspondence, in violation of NASD Rules 3010 and 2110, and later FINRA Rule 2010. The eighth cause of action claimed that Meyers Associates failed to report to FINRA, or failed to report timely, information concerning customer complaints, in violation of NASD Rules 3070 and 2110, and FINRA Rule 2010. Finally, the ninth cause of action alleged that Meyers Associates failed to establish and maintain an adequate system of supervisory control procedures, in violation of NASD Rule 3012 and FINRA Rule 2010.

The Applicants filed an answer and denied all allegations that their conduct violated FINRA rules. RP 273-330. On April 27, 2016, an Extended Hearing Panel of FINRA issued a decision after conducting a six-day hearing. RP 14653-682. The Extended Hearing Panel dismissed as unproven the first and fifth causes of action. The Extended Hearing Panel also dismissed as unproven the allegations against Meyers and Kahn in the complaint's fourth cause of action. The decision nevertheless found the Applicants liable for the misconduct otherwise alleged in the complaint's second, fourth, sixth, seventh, eighth, and ninth causes of action. Assessing sanctions by cause, the Extended Hearing Panel fined Meyers Associates a total of $700,000. The Extended Hearing Panel also fined Meyers a total of $75,000 and barred him from acting in any supervisory or principal capacity with any FINRA member.

The Applicants appealed the Extended Hearing Panel's decision to FINRA's NAC.[5] On January 4, 2018, the NAC affirmed the Extended Hearing Panel's liability findings, but it

---

[5] Enforcement did not cross-appeal the dismissal of the first and fifth causes of action, or those aspects of the fourth cause of action pertaining to Meyers and Kahn. The allegations associated with those elements of the complaint thus are no longer at issue in this matter. Because the Extended Hearing Panel dismissed the two causes of action that named Khan as a respondent, he is no longer a party to these proceedings.

modified the sanctions the panel imposed. RP 15007-28. First, the NAC fined Meyers Associates and Meyers $200,000 and $50,000, respectively, for their use of misleading communications with the public, concluding that the communications were, at a minimum, the result of reckless misconduct and decidedly egregious and widespread in their use. Second, the NAC imposed a unitary sanction, a $500,000 fine, for Meyers Associates' remaining, supervision-related misconduct. The NAC viewed this misconduct to have occurred from the firm's persistent and systemic supervisory shortcomings, which resulted in part from its inability, or unwillingness, to respond to the prior disciplinary actions of FINRA and other regulators. Finally, the NAC fined Meyers $50,000 and barred him in any principal or supervisory capacity for his failure to supervise the firm's books and records. These sanctions reflect, among other things, Meyers's demonstrated indifference to his responsibility to maintain an effective supervisory system for his firm.

The Applicants timely appealed the NAC's decision to the Commission.

III. ARGUMENT

A. The Applicants Violated FINRA Rules Concerning Communications with the Public

The NAC found that the Applicants, over a six-month period in 2011, emailed to more than 1,000 individuals sales literature that failed to uphold the content standards that apply to the public communications of FINRA members, in violation of NASD Rule 2210 and FINRA Rule 2010.[6] The record, which includes each of the offending emails and the testimony of

---

[6] A violation of any FINRA rule constitutes also a violation of FINRA Rule 2010, which requires FINRA members, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade. *See Wedbush Sec., Inc.*, Exchange Act Release No. 78568, 2016 SEC LEXIS 2794, at *15 n.11 (Aug. 12, 2016), *aff'd*, 2018 U.S. App. LEXIS 10009 (9th Cir. Apr. 20, 2018).

knowledgeable FINRA staff, supports fully FINRA's findings.[7] The Commission should therefore affirm them.

1. Meyers Sent Emails That Violated Applicable Content Standards

FINRA regulates through NASD Rule 2210 the communications that its members have with the public.[8] *See Davrey Fin. Servs., Inc.*, 58 S.E.C. 474, 482 (2005). The rule imposes content standards that apply to all FINRA member communications, as well as standards that apply specifically to sales literature.[9] *See* NASD Rule 2210(d)(1), (2).

These standards require that communications with the public be consistent with principles of fair dealing and good faith, and be fair and balanced. *See* NASD Rule 2210(d)(1)(A). Communications must therefore provide a sound basis for evaluating the facts about any particular security or type of security, industry, or service discussed and disclose any material fact that, if omitted, would cause the communications to be misleading. *Id.* These standards further prohibit communications that make "any false, exaggerated, unwarranted or misleading statement or claim," and a member may not publish, circulate, or distribute any communication the member "knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading." *See* NASD Rule 2210(d)(1)(B). Communications also "may not predict or project performance, imply that past performance will

---

[7] In this brief, FINRA cites the facts supporting the NAC's decision in relation to each violation.

[8] FINRA Rule 2210 replaced NASD Rule 2210, effective February 4, 2013.

[9] "Sales literature" is a subset of "communications with the public," and includes any written or electronic communication, other than an advertisement, independently prepared reprint, institutional sales material, and correspondence, that is generally distributed or made available to customers or the public, including form letters, circulars, research reports, and market letters. *See* NASD Rule 2210(a)(2).

recur or make any exaggerated or unwarranted claim, opinion or forecast." *See* NASD Rule 2210(d)(1)(D). Finally, sales literature must, among other things, prominently disclose the name of the member and reflect any relationship between the member and any non-member or individual who is named in the sales literature. *See* NASD Rule 2210(d)(2)(C).

From January to June 2011, Meyers sent on behalf of Meyers Associates 1,037 emails, each to a different individual, which constituted sales literature and violated the foregoing standards.[10] RP 1619, 1960-61, 9237-10277, 12235-87. Each of these public communications concerned a biotechnology company, SignPath Pharma, Inc. ("SignPath"), that Meyers co-founded in 2006 to develop synthesized, proprietary formulations of curcumin for medicinal use. RP 1129, 1585-87, 12128, 12235-87. Meyers composed the emails as "form letters," and he sent them to individuals associated with venture capital and hedge funds that invest in biotechnology companies, investors in biotechnology companies, and biotechnology industry analysts and service providers to familiarize them with SignPath and its products and prospects.[11] RP 1619-22, 1627, 1640-48.

The emails referred to SignPath as a "development phase" company and provided information about its various formulations of curcumin, their progress through various stages of testing and development, and the company's prospects for acquiring the rights to other promising drugs. *See, e.g.*, RP 9237-53, 9254-9490, 9491-10277. Although the emails did not reference any specific offering of SignPath securities, they stated that SignPath "is a public company

---

[10] Meyers sent all of the emails from his Meyers Associates email account. RP 9237-10277, 12235-87.

[11] Meyers compiled the list of email recipients from a database that he created. RP 1620-21. Three of the recipients were customers of Meyers Associates. RP 1624.

which anticipates trading shares in the [first] quarter of 2011" and is "currently seeking prospective investors" and "capital." *See, e.g.*, RP 9237, 9254, 9491. The emails routinely encouraged recipients to take advantage of the "opportunity" presented to them by contacting Meyers for additional information. *See, e.g.*, RP 9248, 9254, 9491.

The emails, when viewed through the lens of NASD Rule 2210, violated FINRA's rules governing the content of member communications with the public. First, a large number of the emails made unwarranted and misleading claims about SignPath's future, and its ability and prospects to acquire successfully another promising drug. *See* RP 9237, 9247-48, 9254-490. Meyers declared in these emails that SignPath "has a unique opportunity in obtaining an oral incretin-mimetic designed for individuals with type II diabetes which will catapult SignPath Pharma's direct entry into clinical Phase III and IV within the next several months." RP 9254-490. In several other emails, Meyers declared that it had "obtained confirmation of the rights" to the oral anti-diabetic drug to which he referred, Dutogliptin. RP 9237, 9247-48.

The opportunity to acquire Dutogliptin, however, was not distinctive to SignPath, and the company had not obtained any rights to acquire and develop the drug. RP 1651-53, 2757-2763. Statements in the emails about this "unique opportunity" were thus false and misleading, and they constituted unwarranted claims and predictions in contravention of NASD Rules 2210(d)(1)(A), 2210(d)(1)(B), and 2210(d)(1)(D). The emails failed also to disclose other material facts that were necessary, under NASD Rules 2210(d)(1)(A) and 2210(d)(1)(B), to make the claims made in the emails fair and balanced and not misleading. These facts included that SignPath needed to raise $3 million to entertain the possibility of purchasing Dutogliptin and an additional $125 million for clinical trials. RP 1652-56, 2071-72, 2756-63.

Second, the emails were uniformly one-sided in their discussion of SignPath and the prospects for the products that it was developing. *See* RP 9239-10277. Among other claims, Meyers stated routinely that SignPath anticipated that its shares would be publicly traded beginning in the first quarter of 2011. *See, e.g.*, RP 9239-53. A large swath of emails further stated, "financial returns on investment within the two immediate years will enhance the stature of SignPath . . . as a young but imposing pharmaceutical company." *See, e.g.*, RP 9254-490. Moreover, all of the emails touted the promising early results of SignPath's curcumin formulations and the prospect, without any apparent hindrances, for their continued testing and development. *See* RP 9239-10277.

These emails were not fair and balanced in their presentation, did not provide a sound basis on which to evaluate their claims, constituted unwarranted claims and predictions, and omitted material information concerning SignPath's viability that rendered their otherwise true statements misleading. *See* RP 2061-2087. The emails omitted to disclose SignPath's lack of experience in manufacturing, marketing, selling, and distributing its products. The emails also omitted to mention the company's financial pitfalls. The company had a history of significant losses, it did not anticipate revenues necessary to bring its products successfully to market in the near future, and any investment in the company was inherently illiquid and risky in nature. *See* RP 1595-96, 1649-59, 1961-64, 2044-46, 2061-88, 8367-593. The emails thus violated NASD Rules 2210(d)(1)(A), 2210(d)(1)(B), and 2210(d)(1)(D). *See Donner Corp. Int'l*, Exchange Act Release No. 55313, 2007 SEC LEXIS 334, at *38 (Feb. 20, 2007) ("[T]he negative financial information providing the basis for such an opinion constitute material facts."); *Davrey Fin. Servs., Inc.*, 58 S.E.C. at 487 ("Davrey's discussion of the 'million dollar plan' contained no risk disclosure, no description of the risky strategies on which it was based, and promised specific

results without a reasonable basis in violation of NASD Conduct Rule 2210."); *see also Daniel C. Montano*, 53 S.E.C. 681, 687-88 (1998) ("The overall effect of these statements was to imply any investor could expect returns.").

Finally, all of the emails, which were sales literature, failed to disclose information in accordance with NASD Rule 2210(d)(2)(C). For instance, many of the emails failed to disclose prominently the name of the broker-dealer from which they originated, as is required by NASD Rule 2210(d)(2)(C)(i). Meyers sometimes signed the emails as "President, Meyers Associates," but he often made no specific reference, as required, to Meyers Associates, instead referring only to SignPath as "my biotech company" and to himself as a "principal" of that company. *See, e.g.*, RP 2080-81, 9919-10277. Moreover, none of the emails disclosed the material information required by NASD Rule 2210(d)(1)(C)(ii) concerning the existing relationships between SignPath and the Applicants. They failed to disclose the ongoing investment banking relationship that existed between Meyers Associates and SignPath, and did not reveal that, at the time, the Applicants collectively owned greater than 60 percent of SignPath's common stock.[12] *See* RP 1606-07, 2070-71, 2081-82, 2085. In sum, the emails made misleading claims, were not balanced, made unwarranted statements, and failed to make required disclosures.

2. The Applicants' Arguments Do Not Excuse Their Defective Communications

In their appeal brief, the Applicants raise a number of arguments that they claim warrant the reversal of FINRA's findings concerning their communications with the public. These

---

[12] Meyers Associates provided investment-banking services to SignPath and worked as the exclusive placement agent for the company's securities offerings. RP 1130. Meyers Associates raised approximately $13 million in capital for SignPath and earned greater than $1 million in compensation for its efforts, including commissions, fees, and options to purchase SignPath securities. RP 1130, 1603-04.

arguments are defective and unpersuasive, and they seek to recast the established meaning of NASD Rule 2210 and the content standards that apply to the public communications of FINRA members. Whether taken on their individual merits or together, the Commission should reject them.

First, the Applicants assert that the emails did not refer to any specific offering of SignPath's securities. Br. at 4, 6. The application of NASD Rule 2210 to the emails Meyers sent on behalf of Meyers Associates is nevertheless entirely consistent with the plain terms and purpose of the rule. FINRA regulates generally the "dealings" of its members "with the investing public" through NASD Rule 2010. *Robert L. Wallace*, 53 S.E.C. 989, 995 (1998). NASD Rule 2210 is therefore not limited to advertising or communications for an offering of securities, and it instead provides standards that apply to *all* FINRA member communications with the public. *Id.; see also* NASD Rule 2210(d)(1)(A) ("*All* member communications with the public shall be based on principles of fair dealing and good faith . . . and must provide a sound basis for evaluating the facts in regard to *any particular security or type of security, industry, or service.*") (emphasis added); NASD IM-2210-1 ("Every member is responsible for determining whether *any* communication with the public . . . complies with *all* applicable standards . . . .") (emphasis added). The fact that the 1,037 emails at issue sought to promote SignPath and its capital raising efforts generally, and not a specific security issued or offered by that company, provides no fertile ground for a reversal of FINRA's findings.[13] *See Sheen Fin. Res., Inc.*, 52

[13] It is for this reason that the Applicants' arguments, Br. at 3-4, that FINRA erred by finding they violated NASD Rule 2210 when the Extended Hearing Panel found that they did not engage in a general solicitation to offer or sell SignPath's securities, fail. There is plainly no requirement that a member's communications with the public also constitute a general solicitation for the offer or sale of securities under Rule 502(c) of Regulation D for NASD Rule 2210's content standards to apply. Indeed, contrary to the Applicants' novel reading of

Footnote continued on next page

S.E.C. 185, 190 n.22 (1995) ("We reject the claim that the advertisements cannot be found misleading because they did not mention specific investments."); *cf. Philip L. Spartis*, Exchange Act Release No. 64489, 2011 SEC LEXIS 1693, at *41 (May 13, 2011) ("[NYSE] Rule 472.30 is very broadly worded, proscribing the 'utilization of any communication which contains . . . any untrue statement or omission of material facts or is otherwise misleading.'").

Second, the Applicants assert that there is no evidence that the emails were fraudulently misleading. Br. at 4-5. FINRA, however, did not allege a fraud violation and it need not establish the elements of fraud, including scienter, to establish a violation of the communications with the public rule, NASD Rule 2210. *See Dep't of Enforcement v. Reynolds*, Complaint No. CAF99018, 2001 NASD Discip. LEXIS 17, at *41 (NASD NAC June 25, 2001) ("We reject his contentions . . . as a defense to Conduct Rules 2110 and 2210, neither of which requires a showing of scienter."); *Cf. Spartis*, 2011 SEC LEXIS 1693, at *44-45 ("The language of Rule 472.30 . . . is even broader than [Exchange Act Section 10(b) and Exchange Act Rule 10b-5] and the Exchange Act has not otherwise indicated that a scienter requirement should be read into the express language of the Rule.").

Third, the Applicants claim that FINRA failed to consider that SignPath maintains a website from which interested persons could obtain additional, "detailed" information about the company and its products. Br. at 7. As the Commission has long held, FINRA member communications with the public nevertheless "must stand on their own when judged against the standards of [NASD Rule 2210]." *Sheen Fin. Res., Inc.*, 52 S.E.C. at 191; *accord Pac. On-Line*

---

cont'd

Enforcement's complaint, Br. at 1-2, none of the claims that remain at issue in this appeal area "predicated" on or "ancillary" to any cause of action previously dismissed in these proceedings by FINRA adjudicators. Each remaining claim rests on its own facts and law.

Trading & Secs., Inc., 56 S.E.C. 1111, 1120 (2003). Detailed explanations available or provided elsewhere do not cure the Applicants' flawed sales literature. *See Sheen Fin. Res., Inc.*, 52 S.E.C. at 190-91; *see also Excel Fin., Inc.*, 53 S.E.C. 303, 311-12 (1997) (rejecting an argument that a communication, which did not contain a balanced statement of the benefits of an investment and its risks, should be viewed in conjunction with a private placement memorandum).

Fourth, the Applicants complain that FINRA failed to consider the sophistication of the individuals to which they directed the emails. Br. at 4, 8. That the individuals who received the Applicants' decidedly one-sided emails may have been institutional or sophisticated investors does not excuse the Applicants' fundamental disregard for NASD Rule 2210's content standards, including that all communications be fair and balanced.[14] *See Excel Fin., Inc.*, 53 S.E.C. at 312 ("The fact that some of the intended audience were accredited investors did not excuse its failure to provide disclosure that was not misleading."); *see also Dep't of Enforcement v. Hedge Fund Capital Partners, LLC*, Complaint No. 2006004122402, 2012 FINRA Discip. LEXIS 42, at *17 (FINRA NAC May 1, 2012) ("The content standards for communications with the public . . . expressly include institutional sales material.").

---

[14] The Applicants argued before FINRA that the relevant emails were not sales literature but "institutional sales material," which FINRA defines as "any communication that is distributed or made available only to institutional investors." *See* NASD Rule 2211(a)(2). FINRA found, as an evidentiary matter, that the Applicants did not limit the audience for the SignPath-related emails only to institutional investors. Moreover, the content standards at issue in this case, other than those that apply specifically to advertisements and sales literature, apply to both sales literature and institutional sales material. *See* NASD Rule 2211(d)(1) ("All institutional sales material and correspondence are subject to the content standards of Rule 2210(d)(1) . . . ."). Consequently, FINRA concluded, correctly, that the distinction the Applicants attempted to draw is largely irrelevant.

Finally, the Applicants contend that FINRA failed to establish that any particular statement made in the emails was factually inaccurate or misleading. Br. at 7-8. This argument, however, fails on two levels. As a threshold matter, FINRA found specifically that many of the emails contained unwarranted and factually misleading claims, including that SignPath was "uniquely" positioned to acquire the drug Dutogliptin. More importantly, even if elements of the emails were true, the decidedly positive nature of those statements, and the failure to balance them with a fair discussion of risk or a disclosure of other facts necessary to evaluate the information presented, caused the emails to violate NASD Rule 2210. *See Sheen Fin. Res., Inc.*, 52 S.E.C. at 190 ("[T]he blanket nature of the statements made in the advertisements, appearing as they did with neither detail nor qualification, renders them violative of NASD advertising rules."); *cf. Spartis*, 2011 SEC LEXIS 1693, at *36 ("Given the one-sided disclosure that was made . . . [a] reasonable investor would want to know of any risks or potential harms . . . ." (internal quotation marks omitted)). FINRA members must ensure that statements are not misleading within the context in which they are made and provide a balanced treatment of *both* the risks and potential benefits associated with a particular investment product or investment-related service or opportunity. *See* NASD Rule 2210(d)(1)(A) ("No member may omit any material fact or qualification if the omission, in the light of the context of the material presented, would cause the communications to be misleading."); NASD IM-2210-1 ("An essential test in this regard is the balanced treatment of risk and potential benefits."); *see also Jay Michael Fertman*, 51 S.E.C. 943, 950 (1994) (holding that FINRA rules require that member communications "disclose in a balanced way the risks and rewards of the touted investments"). *All* members of the investing public are entitled to the protections provided by NASD Rule 2210's content standards *at all* stages of their interaction with a FINRA member, whether a

member intends its communications merely to arouse or inform investor interest or more immediately to close a deal. *See Wallace*, 53 S.E.C. at 996 (rejecting an argument that communications offering only general information did not violate FINRA's advertising standards and holding that "[t]he rules that Wallace violated provide important safeguards for the protection of public investors"). Meyers Associates and Meyers denied the recipients of the 1,037 emails the protections found in FINRA's rules.

B. Meyers Associates Created and Maintained Inaccurate Books and Records

The NAC found that Meyers Associates kept inaccurate books and records, in violation of Section 17 of the Exchange Act, Exchange Act Rules 17a-3, 17a-4, and 17a-5, NASD Rule 3110, and FINRA Rules 4511 and 2010. The Applicants did not contest these findings before the NAC, and they offer no meritorious resistance to FINRA's findings now. These findings should therefore be affirmed.

1. Meyers Associates Failed to Treat Personal Expenses Paid for Meyers and Kahn as Compensation

The facts that support FINRA's findings are plentiful and straightforward. On November 1, 2010, Meyers Associates entered into employment agreements with Meyers and Kahn that required the firm to advance or reimburse them "each month for all expenses and disbursements of any kind or nature incurred" in connection with their duties on behalf of the firm. RP 12293, 12315. The expenses covered by this provision included, but were not limited to, "travel, entertainment, meals, car expenses, airline travel *and certain personal expenses*" to the sum of $10,000 per month for Meyers and $7,5000 for Kahn "on a non-accountable basis." RP 12293, 12315 (emphasis added). Meyers and Kahn each understood the employment agreements to provide that Meyers Associates would reimburse them each month for personal expenses up to $10,000 and $7,500, respectively. RP 1517-19, 1831-34.

In 2011 and 2012, Meyers and Kahn charged both business and personal expenses to their corporate and personal credit cards. RP 1837, 12331-596. In accordance with the expense reimbursement clause in their employment agreements, Meyers Associates paid for these expenses, including $60,769.95 for Meyers's and Kahn's personal expenses, such as jewelry, clothing, spa services, and personal travel for their family members. RP 1328-29, 1330-32, 1334-35, 1344-53, 1518-20, 1532-34, 1837, 1887-903, 1910, 10949-50, 12331-595.

Meyers Associates, however, inaccurately recorded the personal expenses reimbursed on behalf of Meyers and Kahn as *business* expenses in the firm's general ledger. RP 1336-1343, 10950, 10967-68, 12597-13000. This caused Meyers Associates to underreport the compensation that it paid Meyers and Kahn on the firm's FOCUS Reports and Annual Audited Reports during and for the years 2011 and 2012. RP 1336-1343, 2321-22, 2355-56, 14095-351; *see also* RP 12305-08, 12323-34. Although the inaccuracies did not affect Meyers Associates' total amount of reported expenses or income, and they had no impact on the firm's net capital computations, they nevertheless required Meyers Associates, after FINRA's investigation of this matter, to issue new forms 1099 to restate Meyers's and Kahn's compensation for the years 2011 and 2012.[15] RP 1353-55, 10991, 1556-62, 1846-48, 12309-10, 12329-30; *see also* RP 12301-03, 12307-08.

By inaccurately reflecting as business expenses the payments that Meyers Associates made for Meyers's and Kahn's personal expenses, the firm incorrectly reported in its general ledger, and on routinely filed FOCUS Reports and Annual Audit Reports, the compensation that it paid these individuals. There is thus no doubt that, as the NAC found, Meyers Associates

---

[15] Meyers and Kahn restated their personal income tax returns for those same years.

violated Exchange Act Section 17, Exchange Act Rules 17a-3, 17a-4, and 17a-5, NASD Rule 3110, and FINRA Rules 4511 and 2010.[16] *See Mitchell H. Fillet*, Exchange Act Release No. 75054, 2015 SEC LEXIS 2142, at *47 (May 27, 2015) ("The recordkeeping rules 'include the requirement that the records be accurate . . . .'" (quoting *Eric J. Brown*, Exchange Act Release No. 66469, 2012 SEC LEXIS 636, at *32 (Feb. 27, 2012)).

2. The Applicants Offer Only Irrelevant Arguments to Contest FINRA's Findings

The Applicants seek to challenge FINRA's action with several plainly irrelevant arguments. The Commission should reject them all.

First, Meyers Associates claims that the misstatements resulting from the firm's erroneous accounting for Meyers's and Kahn's personal expenses were immaterial. Br. at 8, 10-11. Immateriality, however, is not an excuse for the firm's failure to keep and maintain accurate books and records under the federal securities laws and FINRA rules. *See Palm State Equities, Inc.*, 52 S.E.C. 333, 336 (1995) ("Exchange Act Rule 17a-3 requires that a broker-dealer keep

---

[16] The recordkeeping requirements at issue here have several sources. Exchange Act Section 17(a)(1) requires that broker-dealers make and keep records as prescribed by the Commission. 15 U.S.C. § 78q(a)(1). Exchange Act Rule 17a-3(a)(2) prescribes that these records include ledgers or other records that reflect "all assets and liabilities, income and expense and capital accounts" of the broker-dealer. *See* 17 C.F.R. § 240.17a-3(a)(2). Under Exchange Act Rules 17a-5(a) and (d), they must include also monthly or quarterly FOCUS Reports and Annual Audit Reports that are filed with the Commission and incorporate a statement of income or loss reflecting the broker-dealer's revenues and expenses, including employee compensation and benefits. *See* 17 C.F.R. § 240.17a-5(a), (d). Exchange Act Rule 17a-4 requires that firms keep the foregoing records for a minimum three years. *See* 17 C.F.R. § 240.17a-4

FINRA rules extend these recordkeeping requirements to its members. NASD Rule 3110(a) required, until December 5, 2011, that each FINRA member make and preserve records in conformity with "all applicable laws, rules, and regulations," including Exchange Act Rule 17a-3. Its successor, FINRA Rule 4511, requires that FINRA members "make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules."

and maintain current books and records. It does not permit a broker-dealer to avoid this requirement merely because, in retrospect, the resulting adjustments prove to be immaterial.").

Second, the Applicants assert that the firm did not intentionally violate the recordkeeping and reporting requirements at issue in this case. Br. at 8. Proof of scienter nevertheless is not required to establish a violation of the relevant provisions of the Exchange Act, Exchange Act Rules, or FINRA rules. *See Orlando Joseph Jett*, 57 S.E.C. 350, 396 (2004) ("Scienter is not required to violate Exchange Act Section 17(a)(1) and the rules thereunder."); *see also Fillet*, 2015 SEC LEXIS 2142, at *48 ("Proof of scienter is not required [under NASD Rule 3110].").

Third, the Applicants demur that the firm's misconduct was simply a matter of "putting a penny in a wrong jar" and no harm to the investing public occurred. Br. at 9, 10. Violations of the recordkeeping requirements imposed under Exchange Act 17(a)(1), and the rules thereunder, are not simply "technical" in nature, and it is of no moment if evidence of customer harm is lacking as the violations in question undermined directives that are central to the regulation and surveillance of broker-dealers. *See David R. Williams*, 48 S.E.C. 122, 124-25 (1985) ("Williams' violations were not merely 'technical.' . . . 'Our recordkeeping rules are a keystone of the surveillance of brokers and dealers by our staff and by the securities industry's self-regulatory bodies.'" (quoting *Edward J. Mawod & Co.*, 46 S.E.C. 865, 873 n. 39 (1977), *aff'd* 591 F.2d 588 (10th Cir. 1979)).

Finally, the Applicants maintain that the firm's public auditors issued two "clean" opinion letters after the audits they conducted of Meyers Associates' financial statements for the calendar years 2011 and 2012. A broker-dealer nonetheless cannot shift its commitment to maintain accurate books and records to its accountants or auditors; that responsibility rests

squarely with the firm and its officers.[17] *See Tiger Options*, 52 S.E.C. 1062, 1068 (1996) ("[T]he firm cannot shift the obligation to comply with its recordkeeping and reporting requirements [to its outside accountants]."); *Cost Containment Servs., Inc.*, 52 S.E.C. 266, 269 (1995) ("Respondents attempt to place responsibility for any recordkeeping discrepancies on the shoulders of the firm's accountants. However, we note that officers of securities firms bear a heavy responsibility in ensuring compliance with all applicable rules and regulations.").

C. The Applicants Engaged in Several Other Acts of Supervision-Related Misconduct That They Do Not Meaningfully Contest

1. The Applicants Failed to Supervise the Firm's Books and Records

NASD Rule 3010 requires that each FINRA member establish and maintain a system to supervise the activities of the persons that are associated with it that is reasonably designed to achieve compliance with the federal securities laws and FINRA rules.[18] *See* NASD Rule 3010(a). It must include written procedures to supervise the types of business in which the firm engages and the activities of its registered representatives, registered principals, and other associated persons. *See* NASD Rule 3010(a)(1), (b)(1).

---

[17] The Applicants claim concerning the scope of the Meyers Associates 2011 and 2012 audits are also factually specious. The testimony of a representative from the public accounting firm that conducted those audits made clear that the auditors were not provided copies of the employment agreements for either Meyers or Kahn, and they did not review in the course of the audits the accounting for the personal expenses Meyers Associates paid pursuant to those employment agreements. RP 2315-29, 2331-39, 2376-77, 11591-601, 11811. The letter from which the Applicants quote brazenly, Br. at 10, to support the claim that the firm's auditors reviewed Meyers Associates' general ledger, and passed judgment on the firm's accounting for the personal expenses of its executives, was not proven to be authentic. RP 2315-29, 2371-74, 11591-601, 11811.

[18] FINRA Rule 3110 recodifies NASD Rule 3010, effective December 1, 2014.

Meyers Associates' written supervisory procedures made Meyers, the firm's CEO, responsible for "ultimate supervision" of the firm's supervisory personnel, and during the critical period he supervised the firm's chief financial officer and FINOP. RP 1436, 5556, 5560, 6240. In 2010, Meyers executed both his and Kahn's employment agreements on behalf of Meyers Associates and knew well the terms of those agreements. RP 12299, 12321. Nevertheless, he took no steps to ensure that the firm had in place procedures to account appropriately for the payments of personal expenses that Meyers Associates made for him and Kahn as compensation. RP 1451-52, 1578. It is not disputed that, during 2011 and 2012, Meyers Associates' supervisory system did not include procedures to account for accurately in the firm's books and records the personal expenses that the firm paid for Meyers and Kahn under the terms of their employment agreements. RP 1578.

Meyers instead kept the firm's chief financial officer and FINOP in the dark. The firm's accounting personnel were not aware, and had not seen copies, of either Meyer's or Kahn's employment agreement. RP 2433, 2594. Meyers and Kahn did not inform the relevant personnel that the charges that they incurred on their credit cards included those for personal expenses, and they did not provide the firm with a breakdown of their business and personal expenses. RP 1571-73, 1905-08, 2423-29. Instead, Meyers and Kahn provided the firm's accounting personnel only with cover pages of their credit card statements that provided the total expenses that each of them incurred monthly. RP 1397-99, 2423-29. Consequently, unaware of the facts necessary to accurately account for Meyers's and Kahn's personal charges, Meyers Associates reported solely as business expenses the personal expenses Meyers and Kahn submitted for repayment.

Based on these uncontested facts, there is no room for the Applicants to argue now that FINRA erred when it found that the Applicants failed to supervise reasonably preparation of the firm's books and records, in violation of NASD Rule 3010 and FINRA Rule 2010. *See Wedbush Sec., Inc.*, 2016 SEC LEXIS 2794, at *28-31 (finding FINRA member and its president liable for failing to supervise reasonably the firm's regulatory filings where such filings were, among other things, knowingly inaccurate). Meyers cannot shift responsibility for his supervisory failures to Meyers Associates' chief financial officer and FINOP. Br. at 12. Having failed to develop appropriate written supervisory procedures and to provide firm personnel with the information they needed to perform their functions completely, he cannot claim that he reasonably delegated his supervisory responsibilities to others. *See James Michael Brown*, 50 S.E.C. 1322, 1325-26 (1992) ("Brown failed to discharge his duties as president. He was fully aware that no one at the firm was maintaining the firm's books and records. . . . Under these circumstances, there can be no finding of reasonable delegation."); *see also Stuart K. Patrick*, 51 S.E.C. 419, 422 (1993) ("[I]t is not sufficient for the person with overarching supervisory responsibilities to delegate supervisory responsibility to a subordinate, even a capable one, and then simply wash his hands of the matter until a problem is brought to his attention. . . . Implicit is the additional duty to follow up and review that delegated authority to ensure it is being properly exercised."), *aff'd*. 19 F.3d 66 (2d Cir. 1994). Accordingly, Meyers Associates had deficient written supervisory procedures for maintaining its books and records and Meyers failed to supervise the chief financial officer and FINOP.

2. Meyers Associates Failed to Supervise Electronic Correspondence

Meyers Associates does not contest FINRA's findings that it violated NASD Rule 3010 and 2110, as well as FINRA Rule 2010, by failing to supervise reasonably the firm's incoming

and outgoing electronic correspondence.[19] Br. at 12. It is without dispute that, from March 2007 to September 2010, Meyers Associates did not establish and maintain policies and procedures designed reasonably to achieve the firm's review of its electronic correspondence. RP 2169-72, 11073. Its supervisory procedures failed to address how supervisors were to review electronic correspondence, the frequency of such reviews, or the manner in which to document a review. RP 2169-72, 11073. The firm thus did not maintain any records that identified which business-related electronic correspondence the firm reviewed, the registered principal that reviewed the correspondence, and the dates on which the reviews, if any, took place. RP 2158-61, 2172-84, 11065, 11069, 11144, 11229.

The requirement that a FINRA member establish and maintain an adequate supervisory system includes the development of written procedures for a registered principal's review of the member's incoming and outgoing written and electronic correspondence with the public concerning its investment banking and securities business. *See* NASD Rule 3010(d)(2). Meyers Associates simply failed to discharge this essential broker-dealer obligation, let alone reasonably, during the relevant period.[20] The Commission should therefore affirm the NAC's findings. *See*

---

[19] FINRA Rule 2010 succeeded NASD Rule 2110, effective December 15, 2008.

[20] Although the Applicants do not contest the merits of FINRA's findings concerning its review of electronic correspondence, the firm nevertheless accuses FINRA of unfair "pile on" or "bootstrapping," suggesting that the NAC's decision imposes sanctions on the firm a second time for misconduct that was the subject of an earlier Letter of Acceptance, Waiver, and Consent ("AWC") that the firm executed on November 11, 2008, to settle disciplinary charges. Br. at 13, 14. That AWC, however, covered misconduct related to Meyers Associates' review of electronic correspondence during the period April 2005 to April 2006. RP 3329-33. When it entered into that AWC, Meyers Associates did not receive, as it now suggests, a pass for any subsequent misconduct; in this case, misconduct that occurred during the period March 2007 to September 2010. *See Pac. On-Line Trading, Inc.*, 56 S.E.C. 1111, 1122-23 (2003) ("We further reject the Applicants' claim that NASD's acceptance of a settlement offer . . . forecloses this proceeding. . . . Subsequent time periods are at issue here.").

Dep't of Enforcement v. North, Complaint No. 2010025087302, 2017 FINRA Discip. LEXIS 7, at *21 (FINRA NAC Mar. 15, 2017) ("[The] procedures . . . . lacked specificity regarding the size of the review sample, method, frequency of review, and the documentation of the review."), *appeal docketed*, Admin. Proc. No. 3-17909 (SEC Apr. 6, 2017).

3. Meyers Associates Failed to Report Customer Complaints or Reported Them Late

NASD Rule 3070 requires a FINRA member to report statistical and summary information about customer complaints. *See* NASD Rule 3070(c). During the period March 2007 to July 2010, Meyers Associates did not report to FINRA any statistical and summary information about 49 written customer complaints that it received, in violation of NASD Rules 3070 and 2110, and FINRA Rule 2010. Meyers Associates failed to report timely to FINRA summary and statistical information regarding three customer complaints the firm received in 2009, also in violation of NASD Rules 3070 and 2110, and FINRA Rule 2010.[21]

The Applicants do not confront the NAC's findings or the facts on which those findings rest, which the record supports fully. RP 1485-1513, 2191-20, 2196-207, 11245-46, 11247-425, 11427-53. They instead offer two nonsensical reasons as to why the Commission should excuse the firm's misconduct. Neither of the reasons offered, however, serves to exonerate the firm, and the Commission should therefore affirm FINRA's findings.

First, the Applicants claim that the underreporting of customer complaints was not due to the "absence of a supervisory system," and Meyers Associates "successfully reported the previously unreported 49 customer complaints to FINRA by December 24, 2015, more than five

---

[21] NASD Rule 3070 requires a member to report the required information by the 15th day of the month following the calendar quarter in which the member received the customer complaints. *Id.* The firm submitted each of these reports more than one year late. RP 2199-207.

years after the complaints and months after the hearing FINRA held in this matter. Br. at 12. This claim provides the firm no solace. Its purported corrective action does not justify or cure its violation of NASD Rule 3070 and provides no room for mitigating the sanctions FINRA imposed on the firm. *See KCD Fin., Inc.*, Exchange Act Release No. 80340, 2017 SEC LEXIS 986, at *34 (Mar. 29, 2017) ("It is well established that '[t]he presence of procedures alone is not enough. Without sufficient implantation, guidelines and strictures do not ensure compliance.'" (quoting *Rita H. Malm*, 52 S.E.C. 64, 69 n.17 (1994)); *see also Wedbush Sec., Inc.*, 2016 SEC LEXIS 2794, at *55 ("We also find . . . that the Firm's purported corrective actions are not mitigation because some were taken only after regulators notified them of the reporting failures . . . .").

Second, the Applicants intimate that they were prejudiced in mounting a defense in this case by what it deems FINRA's "lengthy delay" in initiating disciplinary proceedings against the firm. Br. at 13-14. In this respect, Meyers Associates' states that it is only required to maintain customer complaints for a period of three years, yet FINRA staff filed the complaint in this matter in late 2014, more than 7 years after the firm received the first of the customer complaints it failed to report to FINRA. *Id.* The Applicants nevertheless do not explain or establish how FINRA's action prejudiced them. *See Robert Marcus Lane*, Exchange Act Release No. 74269, 2015 SEC LEXIS 558, at *78 (Feb. 13, 2015) ("[Applicant] identifies no specific instances in which Applicants were prejudiced, and we are unaware of any."); *Stephen J. Gluckman*, 54 S.E.C. 175, 188 (1999) ("Gluckman has not shown any prejudice caused by NASD's alleged delay in commencing the proceeding."). Nor can they. This is not a case where documents were lost to the vagaries of time or due to the expiration of the document retention period established

under Exchange Act Rue 17a-4(b)(1).[22] Meyers Associates had the unreported (and untimely reported) customer complaints in its records (as is evidenced by, among other things, its claimed corrective action), but because of the supervisory failures related to its review of electronic correspondence, the firm simply failed to identify and report them in accordance with NASD Rule 3070. RP 2207-24. No amount of additional evidence or testimony could change this obvious conclusion. *See Gluckman*, 54 S.E.C. 175, 190-91 (1999) (finding that applicant suffered no prejudice from an inability to examine a witness during an NASD hearing because of the passage of time where testimony of the witness would not have had a material impact on the proceeding). The NAC's conclusion that Meyers Associates failed to report, and reported late, customer complaints is well supported.

4. Meyers Associates Failed to Maintain Adequate Supervisory Controls

Meyers Associates likewise does not challenge the remaining FINRA findings, namely that the firm failed to maintain adequate supervisory controls. From 2009 to June 2011, Meyers Associates' supervisory control policies and procedures did not explain how the firm identified producing managers, reviewed the customer account activities of those managers, or determined if they were in need of heightened supervision because they generated 20 percent or more of the revenue of the business units supervised by the manager's supervisor, all as required by FINRA

[22] Indeed, the customer complaint reporting violations FINRA found to exist in this case result from FINRA's review of Meyers Associates' reporting of customer complaints during examinations of the firm conducted in 2009 and 2010, which was within the period when the firm was required to maintain copies of the complaints in its records. RP 2190-91.

Rule 3012.[23] RP 2224-2227. They also did not discuss how the firm monitored the transmittals of customer funds and securities. RP 2227-28.

Moreover, the 2009, 2010, and 2011 annual reports detailing the firm's system of supervisory controls did not adequately explain the procedures used to test and verify the efficacy of the system. RP 2228-35, 11443-50, 11455-77. The reports instead contained conclusory, generic statements about unspecified testing of the system that claimed to justify the adequacy of the firm's supervisory controls. RP 2228-35, 11443-50, 11455-77.

Based on this abundance of evidence, it is clear, as the NAC found, that Meyers Associates failed to establish, maintain, and enforce a system of supervisory control policies and procedures reasonably designed to achieve compliance with the federal securities laws and FINRA rules, in violation of NASD Rule 3012 and FINRA Rule 2010. Given the Applicants' silence on this issue on appeal, the Commission should affirm FINRA's findings.

---

[23] NASD Rule 3012 requires each FINRA member to designate one or more principals who must establish, maintain, and enforce a system of supervisory control policies and procedures. *See* NASD Rule 3012(a)(1). The system must verify, after testing, that the member reasonably designed its supervisory procedures to achieve compliance with the federal securities laws and FINRA rules and create additional or amended supervisory procedures the member identifies are needed. *Id.* A member's procedures must include systems to: review and monitor independently the customer account activity of the firm's producing managers; review and monitor all transmittals of customer funds or securities to third-party accounts, customer address changes, and changes of customer investment objectives; and provide heightened supervision of the activities of each producing manager that generates 20 percent or more of the revenue of the business units supervised by the producing manager's supervisor. *See* NASD Rule 3012(a)(2). The principal or principals responsible for the firm's supervisory control system must submit no less than annually to the member's senior management a report that details the member's system of supervisory controls, summarizes the results of the testing performed and any significant identified exceptions, and any new or amended supervisory procedures created in response to the test results. *See* NASD Rule 3012(a)(1). NASD Rule 3012 was amended and renumbered as FINRA Rule 3120, effective December 1, 2014.

D. The Sanctions FINRA Imposed Serve a Remedial Purpose and Protect the Public Interest

The NAC fined Meyers Associates $200,000 and Meyers $50,000 for violating the content standards that apply to the public communications of all FINRA members. FINRA further imposed a unitary sanction, a $500,000 fine, for the remaining misconduct in which Meyers Associates engaged, concluding that the conduct that occurred resulted fundamentally from the firm's persistent supervision failures. Finally, FINRA fined Meyers $50,000 and barred him in any principal or supervisory capacity for his failure to supervise the preparation of Meyers Associates' relevant books and records.

Although the Applicants argue that these sanctions represent an "egregious" burden, lack any "logical" explanation, and are punitive, Br. at 14-16, they are mistaken. The sanctions FINRA imposed are neither excessive nor oppressive.[24] They are in accordance with the Guidelines, serve an appropriately remedial purpose, and correctly account for the gravity of the Applicants' misconduct in this case, which when viewed against the backdrop of their extensive disciplinary histories warrant stringent sanctions to deter future misconduct.[25] The Commission, therefore, should uniformly sustain the NAC's determination of sanctions.

1. FINRA Considered Rightly the Applicants' Disciplinary Histories

In determining the appropriate sanctions to impose on the Applicants for their misconduct, FINRA considered their extensive disciplinary histories. Although the Applicants

---

[24] Under Section 19(e) of the Exchange Act, the Commission must dismiss the application for review if it finds that the Applicants engaged in conduct that violated FINRA rules, FINRA applied its rules in a manner consistent with the Exchange Act, and FINRA imposed sanctions that are neither excessive nor oppressive and that do not impose an unnecessary or inappropriate burden on competition. 15 U.S.C. § 78s(e).

[25] The relevant Guidelines applied in this matter are attached as Attachment B.

suggest FINRA erred in doing so, resulting in what it suggestively calls "exaggerated unwarranted sanction[s]," Br. at 14, consideration of Meyers Associates' and Meyers's other misconduct is fully consistent with the Guidelines and consistent with the purposes of the Exchange Act.

Meyers Associates' disciplinary history is "highly troubling." *See Continued Ass'n of Bruce Meyers*, Decision No. SD-2069, slip. op. at 29 (FINRA NAC May 9, 2016), http://www.finra.org/sites/default/files/SD-2069-Meyers_0.pdf, *aff'd*, Exchange Act Release No. 81778, 2017 SEC LEXIS 3096 (Sept. 29, 2017). The firm has been the subject of at least 16 final disciplinary actions since 2000, and it has paid approximately $390,000 in monetary sanctions as result of them.[26] *Id.* at 17-18. These prior actions concerned misconduct the same as, or similar to, the misconduct that the NAC found to have occurred here: supervisory failures, making untrue statements or omitting to state material facts in connection with a securities offering, failing to keep adequate books and records, inadequate review of electronic correspondence, and failing to report or timely report customer complaints. *Id.* Other violations

---

[26] On December 22, 2017, FINRA'S NAC issued a decision stemming from other disciplinary action against Meyers Associates in which the NAC found the firm failed to adequately supervise its Chicago office and failed to establish and implement adequate AML policies and procedures, in violation of FINRA Rules. *See Dep't of Enforcement v. Meyers Assocs., L.P.*, Complaint No. 2013035533701, 2017 FINRA Discip. LEXIS 47 (FINRA NAC Dec. 22, 2017), *appeal docketed*, Admin. Proc. No. 3-18350 (Jan. 23, 2018). The NAC fined the firm $500,000 and concluded that it is also subject to a statutory disqualification. On July 28, 2017, the Commission also entered against Meyers Associates an Order Making Findings and Imposing Remedial Sanctions and a Cease and Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934. *See Windsor St. Capital, L.P.*, Exchange Act Release No. 81254, 2017 SEC LEXIS 2265 (July 28, 2017). The order found that the firm willfully violated Sections 5(a) and 5(c) of the Securities Act and Section 17(a) of the Exchange and rules thereunder. The order imposed various sanctions and undertakings, including a $200,000 civil monetary penalty.

comprised failing to produce documents to regulators and in FINRA arbitrations, failing to comply with regulatory reporting requirements, and registration violations. *Id.*

Meyers too possesses an "extensive" and "troubling" disciplinary history. *Id.* at 31. He has been the subject of at least six final disciplinary actions since 1990, including an action by the Connecticut Department of Banking in March 2015 that resulted in Meyers's statutory disqualification. *Id.* at 3. All but one of these actions concerned Meyers's failure to fulfill his supervisory responsibilities. *Id.* at 13-14. To settle one of these actions, Meyers served a four-month suspension in all principal and supervisory capacities.

The Guidelines instruct that FINRA should "always" consider a respondent's disciplinary history when determining sanctions.[27] Sanctions imposed in the disciplinary process should thus be more severe for recidivists in order to deter and prevent future misconduct.[28] In this respect, the disciplinary histories of the Applicants evidence an extended disregard for fundamental regulatory and supervisory requirements and support stark sanctions to emphasize the need for meaningful corrective action and discourage future misconduct by them and other respondents.[29] *See Consol. Inv. Servs., Inc.*, 52 S.E.C. 582, 591 (1996) ("Prior disciplinary history provides evidence of whether an applicant's misconduct is isolated, the sincerity of the applicant's assurance that he will not commit future violations and/or the egregiousness of the applicant's misconduct."). Although the Applicants assert that they have undertaken a "consistent effort to upgrade and tighten [their] already existing proper supervisory systems," Br. at 12, the disciplinary histories of both Meyers Associates and Meyers belie this claim. The Applicants

---

27 *Guidelines*, at 2 (General Principles Applicable to All Sanction Determinations, No. 2).

28 *Id.*

29 *See id.*

simply have not provided any evidence from which one could plausibly conclude that the prior actions taken against Meyers Associates and Meyers should not inform, in part, the proper assessment of sanctions in this matter.[30] *See John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at *47 (June 14, 2013) ("Plunkett states that '[t]he NAC statement of my [disciplinary] history again shows bias and is prejudiced' because it is not 'relevant to this case.' We disagree."). Indeed, their persistence in blaming everyone but themselves for their woeful inadequacies undermines the Applicants' credibility to claim otherwise. *See Keith D. Geary*, Exchange Act Release No. 80322, 2017 SEC LEXIS 995, at *42 (Mar. 28, 2017) ("His compliance . . . does not provide any meaningful assurance as to future violations, particularly when he continues to shift responsibility for the violations that occurred."), *aff'd*, 2018 U.S. App. LEXIS 5944 (10th Cir. Mar. 9, 2018).

2. The Sanctions Imposed for the Applicants' Use of Misleading Communications Are Remedially Justified

The fines FINRA imposed on the Applicants for their use of emails that failed to adhere to the content standards that apply to public communications of all FINRA members are appropriately remedial under the Guidelines and justified by the record.[31] The Commission

---

[30] The Applicants contend that FINRA unfairly considered as part of Meyers Associates' prior disciplinary history an AWC the firm entered into relating to its review of electronic correspondence. Br. at 13. The Applicants are plainly mistaken. FINRA correctly considered the AWC when assessing sanctions. *See, e.g., Midas Sec., LLC*, Exchange Act Release No. 66200, 2012 SEC LEXIS 199, at *67 (Jan. 20, 2012) ("Applicants' repeated misconduct underscores the egregiousness of their violations and demonstrates a conscious disregard for their regulatory obligations."). Indeed, the AWC in question, which Meyers Associates executed in 2008, stated that, "this AWC will become part of the firm's permanent disciplinary record and may be considered in any future action bought by FINRA or any other regulator against it. . . ." RP 3331.

[31] For public communications that violate NASD Rule 2210 communication standards, the Guidelines recommend a fine of $1,000 to $29,000. *Guidelines*, at 80 (Communications with the

Footnote continued on next page

should therefore affirm the $200,000 and $50,000 fines FINRA imposed, respectively, on Meyers Associates and Meyers.

As FINRA found correctly, and the Applicants do not contest, the communications Meyers sent on behalf of the firm in this case resulted, at a minimum, from reckless misconduct. *See CapWest Sec., Inc.*, Exchange Act Release No. 71340, 2014 SEC LEXIS 4604, at *41 (Jan. 17, 2014) ("The [Guidelines] for Rule 2210 violations also recommend differing sanctions depending on whether the adjudicator finds that the violations were 'inadvertent,' as opposed to finding them to have been 'intentional or reckless.'"). The communications made unwarranted and misleading claims, failed to disclose material information, included unwarranted forecasts, and omitted to disclose key information concerning potential conflicts of interest, all with the view of creating an unbalanced, positive view of SignPath and enticing capital investments in the company. The breadth of their nonconformity establishes that the Applicants' conduct was unmistakably reckless. *See Davrey Fin. Servs., Inc.*, 58 S.E.C. at 487 ("We agree with NASD that Davrey's appearance on the program contained numerous statements that were exaggerated, unwarranted, and misleading".).

Moreover, the large number of misleading communications (1,037 emails), their wide dissemination (to a like number of unique individuals), the extended period over which the emails were sent (six months), and the potential for the Applicants to gain monetarily from their

---

cont'd

Public). For the intentional or reckless use of misleading communications, the Guidelines recommend a fine of $10,000 to $146,000. *Id.* at 81. The Guidelines recommend also that adjudicators consider suspending the member with respect to any or all activities or a responsible individual in any or all capacities for up to two years and imposing "pre-use" filing requirements. *Id.* at 80-81. The sole principal consideration for such violations is whether the communications circulated widely. *Id.* at 80.

use of the deficient communications (as SignPath's investment banker and exclusive placement agent), all steadfastly support FINRA's conclusion that the misconduct of the Applicants was egregious.[32] *See CapWest Sec., Inc.*, 2014 SEC LEXIS 4604, at *40 ("The NAC correctly found the wide circulation of many of the communications to be an aggravating factor in its sanction determination."); *Vincent M. Uberti*, Exchange Act Release No. 58917, 2008 SEC LEXIS 3158, at *23 (Nov. 7, 2008) ("The Principal Considerations applicable to all violations identify several factors to be weighed . . . ."). NASD Rule 2210 serves an important policy objective—encouraging FINRA members and their associated persons to provide full and fair disclosure to the public—and the Applicants thwarted this policy goal through their extensive use of violative communications. *See CapWest Sec., Inc.*, 2014 SEC LEXIS 4604, at *43.

"'The public interest requires that appropriate sanctions be imposed to secure compliance with the rules, regulations and policies of both [FINRA] and [the] SEC.'" *Sisung Sec. Corp.*, Exchange Act Release No. 56741, 2007 SEC LEXIS 2562, at *34 n.57 (Nov. 5, 2007) (quoting *Boruski v. SEC*, 289 F.2d 738, 740 (2d Cir. 1961)). The fines imposed by FINRA for the Applicants' violations of the public communications rule protect investors and serve the public interest by impressing on the Applicants the importance of complying with the applicable FINRA rules in the future.[33] *See Lek Sec. Corp.*, Exchange Act Release No. 82981, 2018 SEC

---

[32] *See Guidelines*, at 7-8 (Principal Considerations in Determining Sanctions, Nos. 8, 9, 16); *see also id.* at 80 (Principal Considerations in Determining Sanctions, No. 1).

[33] The $200,000 fine FINRA imposed on Meyers Associates, although above the range of monetary sanctions recommended by the Guidelines for the relevant misconduct, is appropriately remedial. *See, e.g., Sisung*, 2007 SEC LEXIS 2562, at *32-33 (affirming fines above the range recommended as neither excessive nor oppressive and consistent with the public interest and protection of investors); *Kevin Lee Otto*, 54 S.E.C. 847, 851 n.7 (2000) ("The NAC concluded that a fine above the recommended maximum was warranted in view of the facts of this case."), *aff'd*, 253 F.3d 960 (7th Cir. 2001); *see also Guidelines*, at 5 (General Principles Applicable to

Footnote continued on next page

LEXIS 830, at *41 n.47 (April 8, 2018) ("This fine will protect investors by impressing on LSC the importance of complying with FINRA rules in the future.").

3. The Sanctions Imposed for the Applicants' Remaining Supervision-Related Violations Are Consistent with the Guidelines and Serve to Remediate Their Misconduct

The NAC imposed a unitary sanction, a $500,000 fine, for the remaining misconduct in which Meyers Associates engaged.[34] The NAC found, correctly, that the rule violations in the complaint's fourth, sixth, seventh, eighth, and ninth causes of action resulted fundamentally from the firm's persistent supervisory failures. *See Hedge Fund Capital Partners, LLC*, 2012 FINRA Discip. LEXIS 42, at *97 ("[W]e find that it is appropriate to impose a unitary sanction for these remaining violations because the remaining violations of FINRA rules all resulted from the broad and systematic supervisory failures at the Firm."). FINRA therefore applied the Guidelines for systemic supervisory failures when assessing the appropriate sanctions to impose on the firm for its supervision-related violations.[35]

Those Guidelines recommend fines of $10,000 to $292,000 for the firm, or higher fines where aggravating factors are prominent.[36] The breadth of aggravating factors that predominate here warrant fully the fine the NAC imposed on Meyers Associates. They include, first, that the

---

cont'd

All Sanction Determinations, No. 3) ("Adjudicators may determine that egregious misconduct requires the imposition of sanctions above or otherwise outside of a recommended range.").

[34] The Guidelines permit the aggregation or batching of similar violations for assessing sanctions. *See Guidelines*, at 4 (General Principles Applicable to All Sanction Determinations, No. 4).

[35] *Guidelines*, at 105.

[36] *Id.* The Guidelines permit adjudicators to consider suspending firm activities or expelling a firm, as well as imposing undertakings. *Id.* at 106.

firm's supervisory failures allowed other misconduct to occur.[37] For instance, the evidence established that the firm's recordkeeping violations and failure to report customer-complaint information resulted directly from the firm's failure to implement written supervisory procedures reasonably designed to ensure the accuracy of the firm's books and records and fulfill its review of electronic correspondence. Second, Meyers Associates failed to respond to warnings from FINRA and other regulators.[38] Particularly disquieting is the existence of FINRA action against the firm for recordkeeping violations and a failure to review emails that Meyers Associates settled just prior to the misconduct that occurred in this case. RP 3329-33. Failure to increase to even a minimal level its scrutiny of the firm's activities in these areas is deeply troubling. *See Wedbush Sec., Inc.*, 2016 SEC LEXIS 2794, at *55 ("The Firm's failure to take effective action despite being thus put on notice is a highly aggravating circumstance."). Third, it is clear that Meyers Associates failed to allocate its resources to prevent or detect supervisory failures.[39] It instead persistently ignored its supervisory shortcomings and chose to pay significant fines rather than strengthen its system of controls. FINRA sanctions to date have not served to deter meaningfully Meyers Associates' persistent misconduct. Fourth, the firm's supervisory failures affected the integrity of, among other things, the firm's financial and regulatory reporting.[40] The firm maintained inaccurate books and records for two years by incorrectly accounting for Meyers's and Kahn's personal expenses as business expenses and its failure to supervise electronic correspondence resulted in serious underreporting of customer complaint information

---

37 *See id.* at 105 (Principal Considerations in Determining Sanctions, No. 1).

38 *See id.* (Principal Considerations in Determining Sanctions, No. 2).

39 *See Guidelines*, at 105 (Principal Considerations in Determining Sanctions, No. 3).

40 *See id.* at 106 (Principal Considerations in Determining Sanctions, No. 7).

for two years, thus hiding from FINRA information concerning a potentially serious pattern of sales practice abuse. RP 2192-98. Finally, the firm's controls and procedures were poorly implemented or did not exist at all.[41] Meyers Associates had no procedures to account for personal expenses as compensation, its procedures for reviewing electronic correspondence were grossly deficient, and the firm's system of controls failed to address material requirements of NASD Rule 3012. Considering that aggravating factors predominate, a $500,000 fine—that is higher than the recommended fine range—is appropriate.

The sanctions the NAC imposed on Meyers for his failure to supervise the preparation of the firm's books and records are appropriately remedial too. The $50,000 fine and bar from associating with any FINRA member in any principal or supervisory capacity are clearly in the public interest.[42] In this respect, Meyers's implementation of Meyers Associates' system of supervisory procedures and controls proved suboptimal at best, as it has in other cases.[43] Over an extended period, Meyers has proven himself incapable of adopting, implementing, and maintaining supervisory procedures and controls necessary to ensure his firm's compliance with the federal securities laws and FINRA rules. His hearing testimony showed him to be largely distanced from, and indifferent to, Meyers Associates' obligation to maintain an effective supervisory system. RP 1479-79, 1662-64, 1670, 2909-11, 2938-39. It is entirely fitting therefore that the NAC barred Meyers from acting in any principal or supervisory capacity. *See Ronald Pellegrino*, Exchange Act Release No. 59125, 2008 SEC LEXIS 2843, at *66 (Dec. 19,

---

41 *See id.* (Principal Considerations in Determining Sanctions, No. 8).

42 The Guidelines for a failure to supervise recommend a fine of $5,000 to $73,000 and, in egregious cases, limiting a responsible individual's activities, including a bar in any or all capacities. *See Guidelines*, at 104.

43 *See id.* (Principal Considerations in Determining Sanctions, No. 3).

2008) ("The principal bar will protect investors from dealing with securities professionals who are not adequately supervised." (internal quotation marks omitted)).

4. The Applicants' Remaining Arguments Fail

Meyers Associates and Meyers's remaining arguments concerning sanctions are without merit. For instance, the Applicants aver that FINRA failed to provide "any logical explanation" for imposing a unitary sanction for Meyers Associates' remaining misconduct. Br. at 14. The NAC decision, which the record supports fully, proves otherwise. RP 15021-22.

Applicants also object that imposing a unitary sanction in this case resulted in an "inflated" monetary penalty that is inconsistent with the sanctions imposed by the Extended Hearing Panel or recommended by Enforcement. Br. at 14-15. This argument too is without merit. The NAC is not prohibited from effectively increasing sanctions imposed by a FINRA hearing panel or imposing a unitary sanction higher than the aggregate sanctions recommended by Enforcement or suggested by its calculus.[44] *See William J. Murphy*, Exchange Act Release No. 69923, 2013 SEC LEXIS 1933, at *118 (July 2, 2013) ("It is well established, however, that the NAC reviews hearing panel decisions *de novo* and has broad discretion to review hearing panel decisions and sanctions." (internal quotation marks omitted)), *aff'd sub nom.*, *Birkelbach v. SEC*, 751 F.3d 472 (7th Cir. 2014); *see also Keith D. Geary*, 2017 SEC LEXIS 995, at *29 ("We find no unfairness because the complaint and the Sanction Guidelines put Geary on notice that the sanctions . . . could exceed [Enforcement's] recommendation.").

---

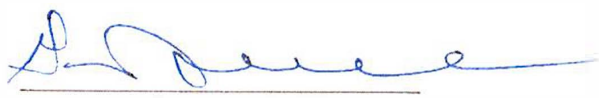
[44] Indeed, FINRA Rule 9348 provides clearly that the NAC "may affirm, modify, reverse, increase, or reduce any sanction" imposed by a FINRA hearing panel or impose "any other fitting sanction."

Finally, the Applicants claim that the sanctions imposed on Meyers Associates fail to account for the firm's size and thus are "*prima facie* punitive." Br. at 16. An appropriately remedial sanction, however, does not become punitive because imposing it might cause harm to a small firm. *See North Woodward Fin. Corp.*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867, at *49 (May 8, 2015). The respondents provided no evidence of the firm's financial condition as of the time of the hearing, and they did not seek to supplement the record on appeal. They failed to meet their burden to prove a claimed inability to pay. Nor have they shown that the firm cannot obtain financing, employ other sources of funds to discharge a monetary liability, or agree to an installment plan or an alternative payment option with FINRA. *Id.* at *77. Moreover, net capital does not govern monetary sanctions imposed on a member. *See ACAP Fin., Inc.*, Exchange Act Release No. 70046, 2013 SEC LEXIS 2156, at *76 & n.158 (July 26, 2013) (citing 2011 *Guidelines*, at 5), *aff'd*, 783 F.3d 763 (10th Cir. 2015). The sanctions FINRA imposed on Meyers Associates, and Meyers, are appropriately remedial and the Commission should affirm them given the threat the Applicants present to the public interest.

IV. CONCLUSION

The record supports the NAC's findings that the Applicants violated the federal securities laws and FINRA rules through their conduct. The sanctions imposed by the NAC for the Applicants' misconduct are neither excessive nor oppressive. They instead represent a well-reasoned implementation of the Guidelines, serve an appropriately remedial purpose, and respond to Meyers Associates' and Meyers's extensive disciplinary histories. The Commission should affirm the NAC's decision in all respects.

Respectfully submitted,



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

Dated: May 14, 2018

CERTIFICATE OF SERVICE

I, Gary Dernelle, certify that on this 14th day of May, 2018, I caused the original and three copies of the Brief of FINRA in Opposition to the Application for Review, in the matter of Meyers Associates, L.P. and Bruce Meyers, Administrative Proceeding No. 3-18359, to be served by messenger on:

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F St., NE
Room 10915
Washington, DC 20549-1090

with an additional copy served via overnight FedEx on:

Lawrence R. Gelber, Esq.
Attorney at Law
The Vanderbilt Plaza
34 Plaza Street – Suite 1107
Brooklyn, NY 11238

Different methods of service were used because courier service could not be provided to Mr. Gelber.

Respectfully submitted,

Gary Dernelle
Associate General Counsel
FINRA
1735 K Street, N.W.
Washington, D.C. 20006
(202) 728-8255

CERTIFICATE OF COMPLIANCE

I, Gary Dernelle, certify that this Brief of FINRA in Opposition to the Application for Review, in the matter of Meyers Associates, L.P. and Bruce Meyers, Administrative Proceeding No. 3-18359, complies with the length limitation set forth in SEC Rule of Practice 450(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 11,781 words.

Gary Dernelle
Associate General Counsel
FINRA
1735 K Street, N.W.
Washington, DC 20006
(202) 728-8255

ATTACHMENT A

IM-2210-1. Guidelines to Ensure That Communications With the Public Are Not Misleading

This rule is no longer applicable. NASD IM-2210-1 has been superseded by FINRA Rule 2210. Please consult the appropriate FINRA Rule.

Every member is responsible for determining whether any communication with the public, including material that has been filed with the Department, complies with all applicable standards, including the requirement that the communication not be misleading. In order to meet this responsibility, member communications with the public must conform with the following guidelines. These guidelines do not represent an exclusive list of considerations that a member must make in determining whether a communication with the public complies with all applicable standards.

(1) Members must ensure that statements are not misleading within the context in which they are made. A statemente made in one context may be misleading even though such a statement could be appropriate in another context. An essential test in this regard is the balanced treatment of risks and potential benefits. Member communications should be consistent with the risks of fluctuating prices and the uncertainty of dividends, rates of return and yield inherent to investments.

(2)dMembers must consider the nature of the audience to which the communication will be directed. Different levels of explanation or detail may be necessary depending on the audience to which a communication is directed. Members must keep in mind that it is not always possible to restrict the audience that may have access to a particular communication with the public. Additional information or a different presentation of information may be required depending upon the medium used for a particular communication and the possibility that the communication will reach a larger or different audience than the one initially targeted.

(3) Member communications must be clear. A statement made in an unclear manner can cause a misunderstanding. Ae complex or overly technical explanation may be more confusing than too little information.

(4)dn communications with the public, income or investment returns may not be characterized as tax-free or exempte from income tax when liability is merely postponed or deferred, such as when taxes are payable upon redemption.

(5)dn advertisements and sales literature, references to tax-free or tax-exempt income must indicate which income taxese apply, or which do not, unless income is free from all applicable taxes. For example, if income from an investment company investing in municipal bonds is subject to state or local income taxes, this fact must be stated, or the illustration must otherwise make it clear that income is free only from federal income tax.

(6)dRecommendationse

(A) In making a recommendation in advertisements and sales literature, whether or not labeled as such, a member muste have a reasonable basis for the recommendation and must disclose any of the following situations which are applicable:
(i)dhat at the time the advertisement or sales literature was published, the member was making a market in the securitiese being recommended, or in the underlying security if the recommended security is an option or security future, or that the member or associated persons will sell to or buy from customers on a principal basis;

(ii) that the member and/or its officers or partners have a financial interest in any of the securities of the issuer whose securities are recommended, and the nature of the financial interest (including, without limitation, whether it consists of any option, right, warrant, future, long or short position), unless the extent of the financial interest is nominal;

(iii)dhat the member was manager or co-manager of a public offering of any securities of the recommended issuer withine the past 12 months.

(B)dThe member shall also provide, or offer to furnish upon request, available investment information supporting the recommendation. Recommendations on behalf of corporate equities must provide the price at the time the recommendation is made.

(C) A member may use material referring to past recommendations if it sets forth all recommendations as to the samee type, kind, grade or classification of securities made by a member within the last year. Longer periods of years may be covered if they are consecutive and include the most recent year. Such material must also name each security recommended and give the date and nature of each recommendation (e.g., whether to buy or sell), the price at the time of the recommendation, the price at which or the price range within which the recommendation was to be acted upon, and indicate the general market conditions during the period covered.

(D) Also permitted is material that does not make any specific recommendation but which offers to furnish a list of all recommendations made by a member within the past year or over longer periods of consecutive years, including the most recent

year, if this list contains all the information specified in subparagraph (C). Neither the list of recommendations, nor material offering such list, shall imply comparable future performance. Reference to the results of a previous specific recommendation, including such a reference in a follow-up research report or market letter, is prohibited if the intent or the effect is to show the success of a past recommendation, unless all of the foregoing requirements with respect to past recommendations are met.

Adopted by SR-NASD-2000-12 eff. Nov. 3, 2003.

Selected Notice: 03-38.

2210. Communications with the Public

This rule is no longer applicable. NASD Rule 2210 has been superseded by FINRA Rule 2210. Please consult the appropriate FINRA Rule.

(a) Definitions

For purposes of this Rule and any interpretation thereof, "communications with the public" consist of:

(1)t"Advertisement." Any material, other than an independently prepared reprint and institutional sales material, that ist published, or used in any electronic or other public media, including any Web site, newspaper, magazine or other periodical, radio, television, telephone or tape recording, videotape display, signs or billboards, motion pictures, or telephone directories (other than routine listings).

(2) "Sales Literature." Any written or electronic communication, other than an advertisement, independently preparedt reprint, institutional sales material and correspondence, that is generally distributed or made generally available to customers or the public, including circulars, research reports, performance reports or summaries, form letters, telemarketing scripts, seminar texts, reprints (that are not independently prepared reprints) or excerpts of any other advertisement, sales literature or published article, and press releases concerning a member's products or services.

(3)t"Correspondence" as defined in Rule 2211(a)(1).t

(4) "Institutional Sales Material" as defined in Rule 2211(a)(2).

(5) "Public Appearance." Participation in a seminar, forum (including an interactive electronic forum), radio or televisiont interview, or other public appearance or public speaking activity.

(6) "Independently Prepared Reprint."
(A) Any reprint or excerpt of any article issued by a publisher, provided that:
(i) the publisher is not an affiliate of the member using the reprint or any underwriter or issuer of a security mentioned in the reprint or excerpt and that the member is promoting;

(ii) neither the member using the reprint or excerpt nor any underwriter or issuer of a security mentioned in the reprint or excerpt has commissioned the reprinted or excerpted article; and

(iii) the member using the reprint or excerpt has not materially altered its contents except as necessary to make the reprintt or excerpt consistent with applicable regulatory standards or to correct factual errors;

(B) Any report concerning an investment company registered under the Investment Company Act of 1940, provided that:t
(i) the report is prepared by an entity that is independent of the investment company, its affiliates, and the member usingt the report (the "research firm");

(ii) the report's contents have not been materially altered by the member using the report except as necessary to make thet report consistent with applicable regulatory standards or to correct factual errors;

(iii)tthe research firm prepares and distributes reports based on similar research with respect to a substantial number of investment companies;

(iv) the research firm updates and distributes reports based on its research of the investment company with reasonable regularity in the normal course of the research firm's business;

(v)tneither the investment company, its affiliates nor the member using the research report has commissioned the research used by the research firm in preparing the report; and

(vi) if a customized report was prepared at the request of the investment company, its affiliate or a member, then the report includes only information that the research firm has already compiled and published in another report, and does not omit information in that report necessary to make the customized report fair and balanced.

Cross Reference—

Rules Concerning Review and Endorsement of Correspondence are Found in paragraph (d) to Conduct Rule 3010.

(b) Approval and Recordkeeping

(1) Registered Principal Approval for Advertisements, Sales Literature and Independently Prepared Reprints

(A)eA registered principal of the member must approve by signature or initial and date each advertisement, item of salese literature and independently prepared reprint before the earlier of its use or filing with NASD's Advertising Regulation Department ("Department").

(B)eWith respect to debt and equity securities that are the subject of research reports as that term is defined in Rule 472e of the New York Stock Exchange, the requirements of paragraph (A) may be met by the signature or initial of a supervisory analyst approved pursuant to Rule 344 of the New York Stock Exchange.

(C)eA registered principal qualified to supervise security futures activities must approve by signature or initial and datee each advertisement or item of sales literature concerning security futures.

(D)eThe requirements of paragraph (A) shall not apply with regard to any advertisement, item of sales literature, ore independently prepared reprint if, at the time that a member intends to publish or distribute it:

(i)eanother member has filed it with the Department and has received a letter from the Department stating that it appearse to be consistent with applicable standards; and

(ii)ethe member using it in reliance upon this paragraph has not materially altered it and will not use it in a manner that ise inconsistent with the conditions of the Department's letter.

(2) Record-keeping

(A)eMembers must maintain all advertisements, sales literature, and independently prepared reprints in a separate file fore a period beginning on the date of first use and ending three years from the date of last use. The file must include:

(i)ea copy of the advertisement, item of sales literature or independently prepared reprint, and the dates of first and (ife applicable) last use of such material;

(ii)ethe name of the registered principal who approved each advertisement, item of sales literature, and independentlye prepared reprint and the date that approval was given, unless such approval is not required pursuant to paragraph (b)(1)(D); and

(iii)efor any advertisement, item of sales literature or independently prepared reprint for which principal approval is note required pursuant to paragraph (b)(1)(D), the name of the member that filed the advertisement, sales literature or independently prepared reprint with the Department, and a copy of the corresponding review letter from the Department.

(B)eMembers must maintain in a file information concerning the source of any statistical table, chart, graph or othere illustration used by the member in communications with the public.

(c) Filing Requirements and Review Procedures

(1)eDate of First Use and Approval Informatione

The member must provide with each filing under this paragraph the actual or anticipated date of first use, the name and title of the registered principal who approved the advertisement or sales literature, and the date that the approval was given.

(2) Requirement to File Certain Material

Within 10 business days of first use or publication, a member must file the following communications with the Department:

(A)eAdvertisements and sales literature concerning registered investment companies (including mutual funds, variablee contracts, continuously offered closed-end funds, and unit investment trusts) not included within the requirements of paragraph (c)(3). The filing of any advertisement or sales literature that includes or incorporates a performance ranking or performance comparison of the investment company with other investment companies must include a copy of the ranking or comparison used in the advertisement or sales literature.

(B) Advertisements and sales literature concerning public direct participation programs (as defined in Rule 2810).

(C)eAdvertisements concerning government securities (as defined in Section 3(a)(42) of the Act).e

(D)eany template for written reports produced by, or advertisements and sales literature concerning, an investmente analysis tool, as such term is defined in Rule IM-2210-6.

(3)eSales Literature Containing Bond Fund Volatility Ratingse

Sales literature concerning bond mutual funds that include or incorporate bond mutual fund volatility ratings, as defined in Rule IM-2210-5, shall be filed with the Department for review at least 10 business days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changed by NASD, shall be withheld from publication or circulation until any changes specified by NASD have been made or, if expressly disapproved, until the sales literature has been refiled for, and has received, NASD approval. Members are not required to file advertising and sales literature

which have previously been filed and which are used without change. The member must provide with each filing the actual or anticipated date of first use. Any member filing sales literature pursuant to this paragraph shall provide any supplemental information requested by the Department pertaining to the rating that is possessed by the member.

(4)eRequirement to File Certain Material Prior to Usee

At least 10 business days prior to first use or publication (or such shorter period as the Department may allow), a member must file the following communications with the Department and withhold them from publication or circulation until any changes specified by the Department have been made:

(A)eAdvertisements and sales literature concerning registered investment companies (including mutual funds, variablee contracts, continuously offered closed-end funds and unit investment trusts) that include or incorporate performance rankings or performance comparisons of the investment company with other investment companies when the ranking or comparison category is not generally published or is the creation, either directly or indirectly, of the investment company, its underwriter or an affiliate. Such filings must include a copy of the data on which the ranking or comparison is based.

(B) Advertisements concerning collateralized mortgage obligations.e

(C) Advertisements concerning security futures.e

(5)eRequirement for Certain Members to File Material Prior to Usee

(A) Each member that has not previously filed advertisements with the Department (or with a registered securitiese exchange having standards comparable to those contained in this Rule) must file its initial advertisement with the Department at least 10 business days prior to use and shall continue to file its advertisements at least 10 business days prior to use for a period of one year.

(B)eNotwithstanding the foregoing provisions, the Department, upon review of a member's advertising and/or salese literature, and after determining that the member has departed from the standards of this Rule, may require that such member file all advertising and/or sales literature, or the portion of such member's material which is related to any specific types or classes of securities or services, with the Department, at least 10 business days prior to use. The Department will notify the member in writing of the types of material to be filed and the length of time such requirement is to be in effect. Any filing requirement imposed under this paragraph will take effect 21 calendar days after service of the written notice, during which time the member may request a hearing under Rules 9551 and 9559.

(6)eFiling of Television or Video Advertisementse

If a member has filed a draft version or "story board" of a television or video advertisement pursuant to a filing requirement, then the member also must file the final filmed version within 10 business days of first use or broadcast.

(7)eSpot-Check Procedurese

In addition to the foregoing requirements, each member's written and electronic communications with the public may be subject to a spot-check procedure. Upon written request from the Department, each member must submit the material requested in a spot-check procedure within the time frame specified by the Department.

(8)eExclusions from Filing Requirementse

The following types of material are excluded from the filing requirements and (except for the material in paragraphs (G) through (J)) the foregoing spot-check procedures:

(A)eAdvertisements and sales literature that previously have been filed and that are to be used without material change.e

(B) Advertisements and sales literature solely related to recruitment or changes in a member's name, personnel,e electronic or postal address, ownership, offices, business structure, officers or partners, telephone or teletype numbers, or concerning a merger with, or acquisition by, another member.

(C) Advertisements and sales literature that do no more than identify a national securities exchange symbol of thee member or identify a security for which the member is a registered market maker.

(D)eAdvertisements and sales literature that do no more than identify the member or offer a specific security at a statede price.

(E) Prospectuses, preliminary prospectuses, fund profiles, offering circulars and similar documents that have been filede with the Securities and Exchange Commission (the "SEC") or any state, or that is exempt from such registration, except that an investment company prospectus published pursuant to SEC Rule 482 under the Securities Act of 1933 will not be considered a prospectus for purposes of this exclusion.

(F) Advertisements prepared in accordance with Section 2(10)(b) of the Securities Act of 1933, as amended, or any rule thereunder, such as SEC Rule 134, and announcements as a matter of record that a member has participated in a private placement, unless the advertisements are related to direct participation programs or securities issued by registered investment companies.

(G) Press releases that are made available only to members of the media.

(H) Independently prepared reprints.

(I) Correspondence.

(J) Institutional sales material.

Although the material described in paragraphs (c)(8)(G) through (J) is excluded from the foregoing filing requirements, investment company communications described in those paragraphs shall be deemed filed with NASD for purposes of Section 24(b) of the Investment Company Act of 1940 and Rule 24b-3 thereunder.

(9) Material that refers to investment company securities, direct participation programs, or exempted securities (as defined in Section 3(a)(12) of the Act) solely as part of a listing of products or services offered by the member, is excluded from the requirements of paragraphs (c)(2) and (c)(4).

(10) Pursuant to the Rule 9600 Series, NASD may exempt a member or person associated with a member from the pre-filing requirements of this paragraph (c) for good cause shown.

(d) Content Standards

(1) Standards Applicable to All Communications with the Public

(A) All member communications with the public shall be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member may omit any material fact or qualification if the omission, in the light of the context of the material presented, would cause the communications to be misleading.

(B) No member may make any false, exaggerated, unwarranted or misleading statement or claim in any communication with the public. No member may publish, circulate or distribute any public communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

(C) Information may be placed in a legend or footnote only in the event that such placement would not inhibit an investor's understanding of the communication.

(D) Communications with the public may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast. A hypothetical illustration of mathematical principles is permitted, provided that it does not predict or project the performance of an investment or investment strategy.

(E) If any testimonial in a communication with the public concerns a technical aspect of investing, the person making the testimonial must have the knowledge and experience to form a valid opinion.

(2) Standards Applicable to Advertisements and Sales Literature

(A) Advertisements or sales literature providing any testimonial concerning the investment advice or investment performance of a member or its products must prominently disclose the following:

(i) The fact that the testimonial may not be representative of the experience of other clients.

(ii) The fact that the testimonial is no guarantee of future performance or success.

(iii) If more than a nominal sum is paid, the fact that it is a paid testimonial.

(B) Any comparison in advertisements or sales literature between investments or services must disclose all material differences between them, including (as applicable) investment objectives, costs and expenses, liquidity, safety, guarantees or insurance, fluctuation of principal or return, and tax features.

(C) All advertisements and sales literature must:

(i) prominently disclose the name of the member and may also include a fictional name by which the member is commonly recognized or which is required by any state or jurisdiction;

(ii) reflect any relationship between the member and any non-member or individual who is also named; and

(iii) if it includes other names, reflect which products or services are being offered by the member.

This paragraph (C) does not apply to so-called "blind" advertisements used to recruit personnel.

(3) Disclosure of Fees, Expenses and Standardized Performance

(A) Communications with the public, other than institutional sales material and public appearances, that present non-money market fund open-end management investment company performance data as permitted by Rule 482 under the Securities Act of 1933 and Rule 34b-1 under the Investment Company Act of 1940 must disclose:

(i) the standardized performance information mandated by Rule 482 and Rule 34b-1; and

(ii) to the extent applicable:

a. the maximum sales charge imposed on purchases or the maximum deferred sales charge, as stated in the investment company's prospectus current as of the date of submission of an advertisement for publication, or as of the date of distribution of other communications with the public; and

b. the total annual fund operating expense ratio, gross of any fee waivers or expense reimbursements, as stated in the fee table of the investment company's prospectus described in paragraph (a).

(B) All of the information required by paragraph (A) must be set forth prominently, and in any print advertisement, in a prominent text box that contains only the required information and, at the member's option, comparative performance and fee data and disclosures required by Rule 482 and Rule 34b-1.

(e) Violation of Other Rules

Any violation by a member of any rule of the SEC, the Securities Investor Protection Corporation or the Municipal Securities Rulemaking Board applicable to member communications with the public will be deemed a violation of this Rule 2210.

Cross Reference—

SEC Rules Concerning Investment Company Sales Literature and Advertising (SEC Rules and Regulation T Tab).

Amended by SR-FINRA-2008-044 eff. Feb. 5, 2009.
Amended by SR-FINRA-2007-020 eff. March 26, 2008.
Amended by SR-NASD-2004-043 eff. April 1, 2007.
Amended by SR-NASD-2006-105 eff. Sept. 7, 2006.
Amended by SR-NASD-2005-087 eff. Aug. 1, 2006.
Amended by SR-NASD-2003-110 eff. June 28, 2004.
Amended by SR-NASD-2000-12 and SR-NASD-2003-94 eff. Nov. 3, 2003.
Amended by SR-NASD-2002-40 eff. Oct. 15, 2002.
Amended by SR-NASD-98-32 eff. April 1, 2000.
Amended by SR-NASD-98-57 eff. March 26, 1999.
Amended by SR-NASD-98-29 eff. Nov. 16, 1998.
Amended by SR-NASD-98-28 eff. July 15, 1998.
Amended by SR-NASD-97-28 eff. Aug. 7, 1997.
Amended by SR-NASD-97-33 eff. May 9, 1997.
Amended by SR-NASD-95-39 eff. Aug. 20, 1996.
Amended by SR-NASD-95-12 eff. Aug. 9, 1995.
Amended by SR-NASD-93-66 eff. Mar. 17, 1994.
Amended by SR-NASD-92-53 eff. July 1, 1993.
Amended eff. Aug. 2, 1983; June 5, 1987; July 1, 1988; Nov. 28, 1988; June 26, 1990; Mar. 27, 1991; Sept. 13, 1991; Nov. 16, 1992.

Selected Notices: 98-83, 99-16, 00-15, 00-22, 03-38, 04-36, 06-48, 09-10.

2211. Institutional Sales Material and Correspondence

This rule is no longer applicable. NASD Rule 2211 has been superseded by FINRA Rule 2210. Please consult the appropriate FINRA Rule.

(a)tDefinitionst

For purposes of Rule 2210, this Rule, and any interpretation thereof:

(1)t"Correspondence" consists of any written letter or electronic mail message and any market letter distributed by at member to:

(A)tone or more of its existing retail customers; andt

(B)tfewer than 25 prospective retail customers within any 30 calendar-day period.t

(2)t"Institutional Sales Material" consists of any communication that is distributed or made available only to institutionalt investors.

(3)t"Institutional Investor" means any:t

(A)tperson described in Rule 3110(c)(4), regardless of whether that person has an account with an NASD member;t

(B)tgovernmental entity or subdivision thereof;t

(C)temployee benefit plan that meets the requirements of Section 403(b) or Section 457 of the Internal Revenue Codet and has at least 100 participants, but does not include any participant of such a plan;

(D)tqualified plan, as defined in Section 3(a)(l2)(C) of the Act, that has at least 100 participants, but does not includet any participant of such a plan;

(E)tNASD member or registered associated person of such a member; andt

(F) person acting solely on behalf of any such institutional investor.t

No member may treat a communication as having been distributed to an institutional investor if the member has reason to believe that the communication or any excerpt thereof will be forwarded or made available to any person other than an institutional investor.

(4)t"Existing Retail Customer" means any person for whom the member or a clearing broker or dealer on behalf of thet member carries an account, or who has an account with any registered investment company for which the member serves as principal underwriter, and who is not an institutional investor. "Prospective Retail Customer" means any person who has not opened such an account and is not an institutional investor.

(5)t"Market Letter" means any written communication excepted from the definition of "research report" pursuant to Rulet 2711 (a)(9)(A).

(b) Approval and Recordkeeping

(1) Registered Principal Approval

(A) Correspondence. Correspondence need not be approved by a registered principal prior to use, unless sucht correspondence is distributed to 25 or more existing retail customers within any 30 calendar-day period and makes any financial or investment recommendation or otherwise promotes a product or service of the member. All correspondence is subject to the supervision and review requirements of Rule 3010(d).

(B) Institutional Sales Material. Each member shall establish written procedures that are appropriate to its business, size,t structure, and customers for the review by a registered principal of institutional sales material used by the member and its registered representatives. Such procedures should be in writing and be designed to reasonably supervise each registered representative. Where such procedures do not require review of all institutional sales material prior to use or distribution, they must include provision for the education and training of associated persons as to the firm's procedures governing institutional sales material, documentation of such education and training, and surveillance and follow-up to ensure that such procedures are implemented and adhered to. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to NASD upon request.

(2) Record-keeping

(A)tMembers must maintain all institutional sales material in a file for a period of three years from the date of last use.t The file must include the name of the person who prepared each item of institutional sales material.

(B) Members must maintain in a file information concerning the source of any statistical table, chart, graph or other illustration used by the member in communications with the public.

(c) Spot-Check Procedures

Each member's correspondence and institutional sales literature may be subject to a spot-check procedure under Rule 2210. Upon written request from the Advertising Regulation Department (the "Department"), each member must submit the material requested in a spot-check procedure within the time frame specified by the Department.

(d) Content Standards Applicable to Institutional Sales Material and Correspondence

(1) All institutional sales material and correspondence are subject to the content standards of Rule 2210(d)(1) and the applicable Interpretive Materials under Rule 2210, and all correspondence is subject to the content standards of Rule 2210(d)(3).

(2) All correspondence (which for purposes of this provision includes business cards and letterhead) must:
(A) prominently disclose the name of the member and may also include a fictional name by which the member is commonly recognized or which is required by any state or jurisdiction;

(B) reflect any relationship between the member and any non-member or individual who is also named; and

(C) if it includes other names, reflect which products or services are being offered by the member.

(3) Members may not use investment company rankings in any correspondence other than rankings based on (A) a category or subcategory created and published by a Ranking Entity as defined in IM-2210-3(a) or (B) a category or subcategory created by an investment company or an investment company affiliate but based on the performance measurements of a Ranking Entity.

(e) Violation of Other Rules

Any violation by a member of any rule of the SEC, the Securities Investor Protection Corporation or the Municipal Securities Rulemaking Board applicable to institutional sales material or correspondence will be deemed a violation of this Rule and Rule 2210.

Amended by SR-FINRA-2008-044 eff. Feb. 5, 2009.
Amended by SR-NASD-2004-043 eff. April 1, 2007.
Amended by SR-NASD-2006-011 eff. Dec. 1, 2006.
Adopted by SR-NASD-2000-12 eff. Nov. 3, 2003.

Selected Notices: 06-45, 06-48, 09-10.

3010. Supervision

This rule is no longer applicable. NASD Rule 3010 has been superseded by FINRA Rules 3110 and 3170. Please consult the appropriate FINRA Rules.

(a) Supervisory System

Each member shall establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules. Final responsibility for proper supervision shall rest with the member. A member's supervisory system shall provide, at a minimum, for the following:

(1) The establishment and maintenance of written procedures as required by paragraphs (b) and (c) of this Rule.e

(2) The designation, where applicable, of an appropriately registered principal(s) with authority to carry out thee supervisory responsibilities of the member for each type of business in which it engages for which registration as a broker dealer is required.

(3) The designation as an office of supervisory jurisdiction (OSJ) of each location that meets the definition contained in paragraph (g) of this Rule. Each member shall also designate such other OSJs as it determines to be necessary in order to supervise its registered representatives, registered principals, and other associated persons in accordance with the standards set forth in this Rule, taking into consideration the following factors:

(A) whether registered persons at the location engage in retail sales or other activities involving regular contact withe public customers;

(B) whether a substantial number of registered persons conduct securities activities at, or are otherwise supervised from, such location;

(C) whether the location is geographically distant from another OSJ of the firm;e

(D) whether the member's registered persons are geographically dispersed; and

(E) whether the securities activities at such location are diverse and/or complex.e

(4) The designation of one or more appropriately registered principals in each OSJ, including the main office, and one ore more appropriately registered representatives or principals in each non-OSJ branch office with authority to carry out the supervisory responsibilities assigned to that office by the member.

(5) The assignment of each registered person to an appropriately registered representative(s) and/or principal(s) who shall be responsible for supervising that person's activities.

(6) Reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities.

(7) The participation of each registered representative and registered principal, either individually or collectively, no less than annually, in an interview or meeting conducted by persons designated by the member at which compliance matters relevant to the activities of the representative(s) and principal(s) are discussed. Such interview or meeting may occur in conjunction with the discussion of other matters and may be conducted at a central or regional location or at the representative's(') or principal's(') place of business.

(b)eWritten Procedures

(1) Each member shall establish, maintain, and enforce written procedures to supervise the types of business in which ite engages and to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of NASD.

(2)eTape recording of conversations

(A) Each member that either is notified by NASD or otherwise has actual knowledge that it meets one of the criteria in paragraph (b)(2)(H) relating to the employment history of its registered persons at a Disciplined Firm as defined in paragraph (b)(2)(J) shall establish, maintain, and enforce special written procedures for supervising the telemarketing activities of all of its registered persons.

(B)eThe member must establish and implement the supervisory procedures required by this paragraph within 60 days ofe receiving notice from NASD or obtaining actual knowledge that it is subject to the provisions of this paragraph.

A member that meets one of the criteria in paragraph (b)(2)(H) for the first time may reduce its staffing levels to fall below the threshold levels within 30 days after receiving notice from NASD pursuant to the provisions of paragraph (b)(2)(A) or obtaining actual knowledge that it is subject to the provisions of the paragraph, provided the firm promptly notifies the Department of Member Regulation, NASD, in writing of its becoming subject to the Rule. Once the member has reduced its staffing levels to fall below the threshold levels, it shall not rehire a person terminated to accomplish the staff reduction for a period of 180 days. On or prior to reducing staffing levels pursuant to this paragraph, a member must provide the Department of Member Regulation, NASD with written notice, identifying the terminated person(s).

(C) The procedures required by this paragraph shall include tape-recording all telephone conversations between the member's registered persons and both existing and potential customers.

(D) The member shall establish reasonable procedures for reviewing the tape recordings made pursuant to the requirements of this paragraph to ensure compliance with applicable securities laws and regulations and applicable rules of NASD. The procedures must be appropriate for the member's business, size, structure, and customers.

(E) All tape recordings made pursuant to the requirements of this paragraph shall be retained for a period of not less than three years from the date the tape was created, the first two years in an easily accessible place. Each member shall catalog the retained tapes by registered person and date.

(F) Such procedures shall be maintained for a period of three years from the date that the member establishes and implements the procedures required by the provisions of this paragraph.

(G) By the 30th day of the month following the end of each calendar quarter, each member firm subject to the requirements of this paragraph shall submit to NASD a report on the member's supervision of the telemarketing activities of its registered persons.

(H) The following members shall be required to adopt special supervisory procedures over the telemarketing activities of their registered persons:

- A firm with at least five but fewer than ten registered persons, where 40% or more of its registered persons have been associated with one or more Disciplined Firms in a registered capacity within the last three years;
- A firm with at least ten but fewer than twenty registered persons, where four or more of its registered persons have been associated with one or more Disciplined Firms in a registered capacity within the last three years;
- A firm with at least twenty registered persons, where 20% or more of its registered persons have been associated with one or more Disciplined Firms in a registered capacity within the last three years.

For purposes of the calculations required in subparagraph (H), firms should not include registered persons who:

(1) have been registered for an aggregate total of 90 days or less with one or more Disciplined Firms within the past three years; and

(2) do not have a disciplinary history.

(I) For purposes of this Rule, the term "registered person" means any person registered with NASD as a representative, principal, or assistant representative pursuant to the Rule 1020, 1030, 1040, and 1110 Series or pursuant to Municipal Securities Rulemaking Board ("MSRB") Rule G-3.

(J) For purposes of this Rule, the term "disciplined firm" means either a member that, in connection with sales practices involving the offer, purchase, or sale of any security, has been expelled from membership or participation in any securities industry self-regulatory organization or is subject to an order of the Securities and Exchange Commission revoking its registration as a broker dealer; or a futures commission merchant or introducing broker that has been formally charged by either the Commodity Futures Trading Commission or a registered futures association with deceptive telemarketing practices or promotional material relating to security futures, those charges have been resolved, and the futures commission merchant or introducing broker has been closed down and permanently barred from the futures industry as a result of those charges; or a futures commission merchant or introducing broker that, in connection with sales practices involving the offer, purchase, or sale of security futures is subject to an order of the Securities and Exchange Commission revoking its registration as a broker or dealer.

(K) For purposes of this Rule, the term "disciplinary history" means a finding of a violation by a registered person in the past five years by the Securities and Exchange Commission, a self-regulatory organization, or a foreign financial regulatory authority of one or more of the provisions (or comparable foreign provision) listed in IM-1011-1 or rules or regulations thereunder.

(L) Pursuant to the Rule 9600 Series, NASD may in exceptional circumstances, taking into consideration all relevant factors, exempt any member unconditionally or on specified terms and conditions from the requirements of this paragraph. A member seeking an exemption must file a written application pursuant to the Rule 9600 Series within 30 days after receiving notice from NASD or obtaining actual knowledge that it meets one of the criteria in paragraph (b)(2)(H). A member that meets one of the criteria in paragraph (b)(2)(H) for the first time may elect to reduce its staffing levels pursuant to the provisions of paragraph (b)(2)(B) or, alternatively, to seek an exemption pursuant to paragraph (b)(2)(L), as appropriate; such a member may not seek relief from the Rule by both reducing its staffing levels pursuant to paragraph (b)(2)(B) and requesting an exemption.

(3) The member's written supervisory procedures shall set forth the supervisory system established by the member pursuant to paragraph (a) above, and shall include the titles, registration status and locations of the required supervisory personnel and the responsibilities of each supervisory person as these relate to the types of business engaged in, applicable securities laws and regulations, and the Rules of this Association. The member shall maintain on an internal record the names of all persons who are designated as supervisory personnel and the dates for which such designation is or was effective. Such record shall be preserved by the member for a period of not less than three years, the first two years in an easily accessible place.

(4) A copy of a member's written supervisory procedures, or the relevant portions thereof, shall be kept and maintained in each OSJ and at each location where supervisory activities are conducted on behalf of the member. Each member shall amend its written supervisory procedures as appropriate within a reasonable time after changes occur in applicable securities laws and regulations, including the Rules of this Association, and as changes occur in its supervisory system, and each member shall be responsible for communicating amendments through its organization.

(c) Internal Inspections

(1) Each member shall conduct a review, at least annually, of the businesses in which it engages, which review shall be reasonably designed to assist in detecting and preventing violations of, and achieving compliance with, applicable securities laws and regulations, and with applicable NASD rules. Each member shall review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses.

(A) Each member shall inspect at least annually every office of supervisory jurisdiction and any branch office that supervises one or more non-branch locations.

(B) Each member shall inspect at least every three years every branch office that does not supervise one or more non-branch locations. In establishing how often to inspect each non-supervisory branch office, the firm shall consider whether the nature and complexity of the securities activities for which the location is responsible, the volume of business done, and the number of associated persons assigned to the location require the non-supervisory branch office to be inspected more frequently than every three years. If a member establishes a more frequent inspection cycle, the member must ensure that at least every three years, the inspection requirements enumerated in paragraph (c)(2) have been met. The non-supervisory branch office examination cycle, an explanation of the factors the member used in determining the frequency of the examinations in the cycle, and the manner in which a member will comply with paragraph (c)(2) if using more frequent inspections than every three years shall be set forth in the member's written supervisory and inspection procedures.

(C) Each member shall inspect on a regular periodic schedule every non-branch location. In establishing such schedule, the firm shall consider the nature and complexity of the securities activities for which the location is responsible and the nature and extent of contact with customers. The schedule and an explanation regarding how the member determined the frequency of the examination schedule shall be set forth in the member's written supervisory and inspection procedures.

Each member shall retain a written record of the dates upon which each review and inspection is conducted.

(2) An office inspection and review by a member pursuant to paragraph (c)(1) must be reduced to a written report and kept on file by the member for a minimum of three years, unless the inspection is being conducted pursuant to paragraph (c)(1)(C) and the regular periodic schedule is longer than a three-year cycle, in which case the report must be kept on file at least until the next inspection report has been written. The written inspection report must also include, without limitation, the testing and verification of the member's policies and procedures, including supervisory policies and procedures in the following areas:

(A) Safeguarding of customer funds and securities;

(B) Maintaining books and records;

(C) Supervision of customer accounts serviced by branch office managers;

(D) Transmittal of funds between customers and registered representatives and between customers and third parties;

(E) Validation of customer address changes; and

(F) Validation of changes in customer account information.

If a member does not engage in all of the activities enumerated above, the member must identify those activities in which it does not engage in the written inspection report and document in the report that supervisory policies and procedures for such activities must be in place before the member can engage in them.

(3) An office inspection by a member pursuant to paragraph (c)(1) may not be conducted by the branch office manager or any person within that office who has supervisory responsibilities or by any individual who is directly or indirectly supervised by such person(s). However, if a member is so limited in size and resources that it cannot comply with this limitation (e.g., a member with only one office or a member has a business model where small or single-person offices report directly to an office of supervisory jurisdiction manager who is also considered the offices' branch office manager), the member may have a principal who has the requisite knowledge to conduct an office inspection perform the inspections. The member, however, must document in the office inspection reports the factors it has relied upon in determining that it is so limited in size and resources that it has no other alternative than to comply in this manner.

A member must have in place procedures that are reasonably designed to provide heightened office inspections if the person conducting the inspection reports to the branch office manager's supervisor or works in an office supervised by the branch manager's supervisor and the branch office manager generates 20% or more of the revenue of the business units supervised by the branch office manager's supervisor. For the purposes of this subsection only, the term "heightened inspection" shall mean those inspection procedures that are designed to avoid conflicts of interest that serve to undermine complete and effective inspection because of the economic, commercial, or financial interests that the branch manager's supervisor holds in the associated persons and businesses being inspected. In addition, for the purpose of this section only, when calculating the 20% threshold, all of the revenue generated by or credited to the branch office or branch office manager shall be attributed as revenue generated by the business units supervised by the branch office manager's supervisor irrespective of a member's internal allocation of such revenue. A member must calculate the 20% threshold on a rolling, twelve-month basis.

(d) Review of Transactions and Correspondence

(1) Supervision of Registered Representatives

Each member shall establish procedures for the review and endorsement by a registered principal in writing, on an internal record, of all transactions and for the review by a registered principal of incoming and outgoing written and electronic correspondence of its registered representatives with the public relating to the investment banking or securities business of such member. Such procedures should be in writing and be designed to reasonably supervise each registered representative. Evidence that these supervisory procedures have been implemented and carried out must be maintained and made available to the Association upon request.

(2) Review of Correspondence

Each member shall develop written procedures that are appropriate to its business, size, structure, and customers for the review of incoming and outgoing written (i.e., non-electronic) and electronic correspondence with the public relating to its investment banking or securities business, including procedures to review incoming, written correspondence directed to registered representatives and related to the member's investment banking or securities business to properly identify and handle customer complaints and to ensure that customer funds and securities are handled in accordance with firm procedures. Where such procedures for the review of correspondence do not require review of all correspondence prior to use or distribution, they must include provision for the education and training of associated persons as to the firm's procedures governing correspondence; documentation of such education and training; and surveillance and follow-up to ensure that such procedures are implemented and adhered to.

(3) Retention of Correspondence

Each member shall retain correspondence of registered representatives relating to its investment banking or securities business in accordance with Rule 3110. The names of the persons who prepared outgoing correspondence and who reviewed the correspondence shall be ascertainable from the retained records and the retained records shall be readily available to the Association, upon request.

(e) Qualifications Investigated

Each member shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications, and experience of any person prior to making such a certification in the application of such person for registration with this Association. Where an applicant for registration has previously been registered with the Association, the member shall review a copy of the Uniform Termination Notice of Securities Industry Registration (Form U-5) filed with the Association by such person's most recent previous NASD member employer, together with any amendments thereto that may have been filed pursuant to Article V, Section 3 of the Association's By-Laws. The member shall review the Form U-5 as required by this Rule no later than sixty (60) days following the filing of the application for registration or demonstrate to the Association that it has

made reasonable efforts to comply with the requirement. In conducting its review of the Form U-5 and any amendments thereto, a member shall take such action as may be deemed appropriate.

Where an applicant for registration has been previously registered with a registered futures association ("RFA") member that is or has been registered as a broker/dealer pursuant to Section 15(b)(11) of the Act ("notice-registered broker/dealer") with the SEC to trade security futures, the member shall review a copy of the Notice of Termination of Associated Person (Form 8-T) filed with the RFA by such person's most recent previous RFA member employer, together with any amendments thereto. The member shall review the Form 8-T as required by this Rule no later than sixty (60) days following the filing of the application for registration or demonstrate to the Association that it has made reasonable efforts to comply with the requirement. In conducting its review of a Form 8-T and any amendments, a member shall take such action as may be deemed appropriate.

(f) Applicant's Responsibility

Any applicant for registration who receives a request for a copy of his or her Form U-5 from a member pursuant to this Rule shall provide such copy to the member within two (2) business days of the request if the Form U-5 has been provided to such person by his or her former employer. If a former employer has failed to provide the Form U-5 to the applicant for registration, such person shall promptly request the Form U-5, and shall provide it to the requesting member within two (2) business days of receipt thereof. The applicant shall promptly provide any subsequent amendments to a Form U-5 he or she receives to the requesting member.

(g) Definitions

(1) "Office of Supervisory Jurisdiction" means any office of a member at which any one or more of the following functions take place:

(A) order execution and/or market making;

(B) structuring of public offerings or private placements;

(C) maintaining custody of customers' funds and/or securities;

(D) final acceptance (approval) of new accounts on behalf of the member;

(E) review and endorsement of customer orders, pursuant to paragraph (d) above;

(F) final approval of retail communications for use by persons associated with the member, pursuant to FINRA Rule 2210(b)(1), except for an office that solely conducts final approval of research reports; or

(G) responsibility for supervising the activities of persons associated with the member at one or more other branch offices of the member.

(2)(A) A "branch office" is any location where one or more associated persons of a member regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, or is held out as such, excluding:

(i) Any location that is established solely for customer service and/or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office;

(ii) Any location that is the associated person's primary residence; provided that

a. Only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location;

b. The location is not held out to the public as an office and the associated person does not meet with customers at the location;

c. Neither customer funds nor securities are handled at that location;

d. The associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person;

e. The associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with Rule 3010;

f. Electronic communications (e.g., e-mail) are made through the member's electronic system;

g. All orders are entered through the designated branch office or an electronic system established by the member that is reviewable at the branch office;

h. Written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the member; and

i. A list of the residence locations is maintained by the member;

(iii) Any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided the member complies with the provisions of paragraph (A)(2)(ii)a. through h. above;

(iv) Any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office; *

(v) Any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than 25 securities transactions in any one calendar year; provided that any retail communication identifying such location also sets forth the address and telephone number of the location from which the associated person(s) conducting business at the non-branch locations are directly supervised;

(vi) The Floor of a registered national securities exchange where a member conducts a direct access business with public customers; or

(vii) A temporary location established in response to the implementation of a business continuity plan.

(B) Notwithstanding the exclusions in paragraph (2)(A), any location that is responsible for supervising the activities of persons associated with the member at one or more non-branch locations of the member is considered to be a branch office.

(C) The term "business day" as used in Rule 3010(g)(2)(A) shall not include any partial business day provided that the associated person spends at least four hours on such business day at his or her designated branch office during the hours that such office is normally open for business.

* Where such office of convenience is located on bank premises, signage necessary to comply with applicable federal and state laws, rules and regulations and applicable rules and regulations of the NYSE, other self-regulatory organizations, and securities and banking regulators may be displayed and shall not be deemed "holding out" for purposes of this section.

Amended by SR-FINRA-2013-025 eff. Dec. 1, 2014.
Amended by SR-FINRA-2013-001 eff. Feb. 4, 2013.
Amended by SR-FINRA-2007-008 eff. Dec. 19, 2007.
Amended by SR-NASD-2006-037 eff. July 3, 2006.
Amended by SR-NASD-2005-033 eff. Aug. 1, 2005.
Amended by SR-NASD-2005-004 eff. July 25, 2005
Amended by SR-NASD-2002-162 and SR-NASD-2004-116 eff. Jan. 31, 2005.
Amended by SR-NASD-2002-40 eff. Oct. 15, 2002.
Amended by SR-NASD-2002-04 eff. Oct. 14, 2002.
Amended by SR-NASD-99-28 eff. Aug. 16, 1999.
Amended by SR-NASD-98-52 eff. March 15, 1999.
Amended by SR-NASD-98-86 eff. Nov. 19, 1998.

Amended by SR-NASD-97-69 eff. August 17, 1998.
Amended by SR-NASD-98-45 postponed eff. date of provision in Notice to Members 98-11.
Amended by SR-NASD-98-31 eff. Apr. 7, 1998, postponed eff. date of provision in Notice to Members.
Amended by SR-NASD-98-10 postponed eff. date.
Amended by SR-NASD-97-24 eff. Feb. 15, 1998.
Amended by SR-NASD-97-41 eff. Sept. 4, 1997.
Amended eff. June 12, 1989; Apr. 30, 1992.

Selected Notices to Members: 86-65, 88-84, 89-34, 89-57, 91-48, 92-18, 96-33, 96-59, 96-82, 98-11, 98-18, 98-38, 98-52, 98-96, 99-03, 99-45, 04-71, 05-67, 06-13, 07-64, 14-10.

3012. Supervisory Control System

This rule is no longer applicable. NASD Rule 3012 has been superseded by FINRA Rule 3120. Please consult the appropriate FINRA Rule.

(a) General Requirements

(1)rEach member shall designate and specifically identify to NASD one or more principals who shall establish, maintain, and enforce a system of supervisory control policies and procedures that (A) test and verify that the member's supervisory procedures are reasonably designed with respect to the activities of the member and its registered representatives and associated persons, to achieve compliance with applicable securities laws and regulations, and with applicable NASD rules and (B) create additional or amend supervisory procedures where the need is identified by such testing and verification. The designated principal or principals must submit to the member's senior management no less than annually, a report[1] detailing each member's system of supervisory controls, the summary of the test results and significant identified exceptions, and any additional or amended supervisory procedures created in response to the test results.

(2) The establishment, maintenance, and enforcement of written supervisory control policies and procedures pursuant to paragraph (a) shall include:

(A) procedures that are reasonably designed to review and supervise the customer account activity conducted by the member's branch office managers, sales managers, regional or district sales managers, or any person performing a similar supervisory function.

(i) General Supervisory Requirement. A person who is either senior to, or otherwise independent of, the producingn manager must perform such supervisory reviews. For purposes of this Rule, an "otherwise independent" person: may not report either directly or indirectly to the producing manager under review; must be situated in an office other than the office of the producing manager; must not otherwise have supervisory responsibility over the activity being reviewed (including not being directly compensated based in whole or in part on the revenues accruing for those activities); and must alternate such review responsibility with another qualified person every two years or less.

(ii) "Limited Size and Resources" Exception. If a member is so limited in size and resources that there is no qualifiedn person senior to, or otherwise independent of, the producing manager to conduct the reviews pursuant to (i) above (e.g., a member has only one office or an insufficient number of qualified personnel who can conduct reviews on a two-year rotation), the reviews may be conducted by a principal who is sufficiently knowledgeable of the member's supervisory control procedures, provided that the reviews are in compliance with (i) to the extent practicable.

(iii) Notification Requirement. If a member determinc that it must rely on the "limited size and resources" exception setn forth in (ii) above to conduct any of its producing managers' supervisory reviews, the member must notify NASD through an electronic process (or any other process prescribed by NASD) within 30 days of the date on which the member first relies on the exception,[2] and annually thereafter.[3] If a member subsequently determines that it no longer needs to rely on the exception to conduct any of its producing managers' supervisory reviews, the member must, within 30 days of ceasing to rely on the exception, notify NASD by using the electronic process or any other process prescribed by NASD.

(iv) Documentation Requirement. A member relying on (ii) above must document in its supervisory control procedures the factors used to determine that complete compliance with all of the provisions of (i) is not possible and that the required supervisory systems and procedures in place with respect to any producing manager comply with the provisions of (i) above to the extent practicable.

(B) procedures that are reasonably designed to review and monitor the following activities:n

(i) all transmittals of funds (e.g., wires or checks, etc.) or securities from customers to third party accounts (i.e., an transmittal that would result in a change of beneficial ownership); from customer accounts to outside entities (e.g., banks, investment companies, etc.); from customer accounts to locations other than a customer's primary residence (e.g., post office box, "in care of" accounts, alternate address, etc.); and between customers and registered representatives, including the hand-delivery of checks;

(ii) customer changes of address and the validation of such changes of address; andn

(iii) customer changes of investment objectives and the validation of such changes of investment objectives.n

The policies and procedures established pursuant to paragraph (a)(2)(B) must include a means or method of customer confirmation, notification, or follow-up that can be documented. If a member does not engage in all of the activities enumerated above, the member must identify those activities in which it does not engage in its written supervisory control policies and procedures and document in those policies and procedures that additional supervisory policies and procedures for such activities must be in place before the member can engage in them; and

(C) procedures that are reasonably designed to provide heightened supervision over the activities of each producing manager who is responsible for generating 20% or more of the revenue of the business units supervised by the producing manager's supervisor. For the purposes of this subsection only, the term "heightened supervision" shall mean those supervisory procedures that evidence supervisory activities that are designed to avoid conflicts of interest that serve to undermine complete and effective supervision because of the economic, commercial, or financial interests that the supervisor holds in the associated persons and businesses being supervised. In addition, for the purpose of this section only, when calculating the 20% threshold, all of the revenue generated by or credited to the producing manager or the producing manager's office shall be attributed as revenue generated by the business units supervised by the producing manager's supervisor irrespective of a member's internal allocation of such revenue. A member must calculate the 20% threshold on a rolling, twelve-month basis.

(b) Dual Member

Any member in compliance with substantially similar requirements of the New York Stock Exchange, Inc. shall be deemed to be in compliance with the provisions of this Rule.

[1] Rule 3012 became effective on January 31, 2005, which would require a member's first Rule 3012 report to be submitted by no later than January 31, 2006 and at least annually thereafter; however, a member may elect to submit its first Rule 3012 report by no later than April 1, 2006. Importantly, a member's first Rule 3012 report must encompass the period from January 31, 2005 (the effective date of Rule 3012) up to the submission date (or a reasonable period of time immediately preceding the submission date). Each ensuing Rule 3012 report may not be for a period greater than 12 months from the date of the preceding Rule 3012 report (but may be for a shorter time period if a member elects to prepare a report more frequently than annually).

[2] The "limited size and resources" exception became effective on January 31, 2005, prior to the effective date of the notification requirement set forth in this subparagraph (iii). In the event a member is already relying on the "limited size and resources" exception (or determines to rely on the exception prior to the effective date of the notification requirement), the member must notify NASD of such reliance within 30 days of the effective date of the notification requirement.

[3] Members must ensure that each ensuing annual notification is effected no later than on the anniversary date of the previous year's notification.

Amended by SR-NASD-2005-084 eff. Feb. 14, 2006.
Amended by SR-NASD-2005-121 eff. Oct. 14, 2005.
Amended by SR-NASD-2004-116 eff. Jan. 31, 2005.
Adopted by SR-NASD-2002-162 eff. Jan. 31, 2005.

Selected Notices: 04-71, 05-29, 06-04.

3070. Reporting Requirements

This rule is no longer applicable. NASD Rule 3070 has been superseded by FINRA Rule 4530. Please consult the appropriate FINRA Rule.

(a) Each member shall promptly report to the Association whenever such member or person associated with the member:

(1) has been found to have violated any provision of any securities law or regulation, any rule or standards of conduct of any governmental agency, self-regulatory organization, or financial business or professional organization, or engaged in conduct which is inconsistent with just and equitable principles of trade; and the member knows or should have known that any of the aforementioned events have occurred;

(2) is the subject of any written customer complaint involving allegations of theft or misappropriation of funds or securities or of forgery;

(3) is named as a defendant or respondent in any proceeding brought by a regulatory or self-regulatory body alleging the violation of any provision of the Act, or of any other federal or state securities, insurance, or commodities statute, or of any rule or regulation thereunder, or of any provision of the By-laws, rules or similar governing instruments of any securities, insurance or commodities regulatory or self-regulatory organization;

(4) is denied registration or is expelled, enjoined, directed to cease and desist, suspended or otherwise disciplined by any securities, insurance or commodities industry regulatory or self-regulatory organization or is denied membership or continued membership in any such self-regulatory organization; or is barred from becoming associated with any member of any such self-regulatory organization;

(5) is indicted, or convicted of, or pleads guilty to, or pleads no contest to, any felony; or any misdemeanor that involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or a conspiracy to commit any of these offenses, or substantially equivalent activity in a domestic, military, or foreign court;

(6) is a director, controlling stockholder, partner, officer or sole proprietor of, or an associated person with, a broker, dealer, investment company, investment advisor, underwriter or insurance company which was suspended, expelled or had its registration denied or revoked by any agency, jurisdiction or organization or is associated in such a capacity with a bank, trust company or other financial institution which was convicted of or pleaded no contest to, any felony or misdemeanor;

(7) is a defendant or respondent in any securities or commodities-related civil litigation or arbitration which has been disposed of by judgment, award or settlement for an amount exceeding $15,000. However, when the member is the defendant or respondent, then the reporting to the Association shall be required only when such judgment, award, or settlement is for an amount exceeding $25,000;

(8) is the subject of any claim for damages by a customer, broker, or dealer which is settled for an amount exceeding $15,000. However, when the claim for damages is against a member, then the reporting to the Association shall be required only when such claim is settled for an amount exceeding $25,000;

(9) is associated in any business or financial activity with any person who is subject to a "statutory disqualification" as that term is defined in the Act, and the member knows or should have known of the association. The report shall include the name of the person subject to the statutory disqualification and details concerning the disqualification;

(10) is the subject of any disciplinary action taken by the member against any person associated with the member involving suspension, termination, the withholding of commissions or imposition of fines in excess of $2,500, or otherwise disciplined in any manner which would have significant limitation on the individual's activities on a temporary or permanent basis.

(b) Each person associated with a member shall promptly report to the member the existence of any of the conditions set forth in paragraph (a) of this Rule. Each member shall report to the Association not later than 10 business days after the member knows or should have known of the existence of any of the conditions set forth in paragraph (a) of this rule.

(c) Each member shall report to the Association statistical and summary information regarding customer complaints in such detail as the Association shall specify by the 15th day of the month following the calendar quarter in which customer complaints are received by the member. For the purposes of this paragraph, "customer" includes any person other than a broker or dealer with whom the member has engaged, or has sought to engage, in securities activities, and "complaint" includes any written grievance by a customer involving the member or person associated with a member.

(d) Nothing contained in this Rule shall eliminate, reduce, or otherwise abrogate the responsibilities of a member or person associated with a member to promptly file with full disclosure, required amendments to Form BD, Forms U-4 and U-5, or other required filings, and to respond to NASD with respect to any customer complaint, examination, or inquiry.

(e) Any member subject to substantially similar reporting requirements of another self-regulatory organization of which it is a member is exempt from paragraphs (a), (b) and (c) of this Rule.

(f) Each member shall promptly file with NASD copies of:

(1) any indictment, information or other criminal complaint or plea agreement for conduct reportable under paragraph (a)(5) of this Rule;

(2) any complaint in which a member is named as a defendant or respondent in any securities or commodities-related private civil litigation;

(3) any securities or commodities-related arbitration claim filed against a member in any forum other than the NASD Dispute Resolution forum;

(4) any indictment, information or other criminal complaint, any plea agreement, or any private civil complaint or arbitration claim against a person associated with a member that is reportable under question 14 on Form U-4, irrespective of any dollar thresholds Form U-4 imposes for notification, unless, in the case of an arbitration claim, the claim has been filed in the NASD Dispute Resolution forum.

(g) Members shall not be required to comply separately with paragraph (f) in the event that any of the documents required by paragraph (f) have been the subject of a request by NASD's Registration and Disclosure staff, provided that the member produces those requested documents to the Registration and Disclosure staff not later than 30 days after receipt of such request. This paragraph does not supersede any NASD rule or policy that requires production of documents specified in paragraph (f) sooner than 30 days after receipt of a request by the Registration and Disclosure staff.

Amended by SR-NASD-2002-112 eff. May 21, 2003.
Amended by SR-NASD-2002-27 eff. July 15, 2002.
Adopted by SR-NASD-95-16 eff. Sept. 8, 1995.

Selected Notices: 94-95, 95-81, 96-85, 02-34, 03-23, 06-34.

3110. Books and Records

This rule is no longer applicable. NASD Rule 3110 (a, c, d, e, f, g, h, & j) has been superseded by FINRA Rule 4510 Series, NASD Rule 3110(i) has been superseded by FINRA Rule 3150. Please consult the appropriate FINRA Rules.

(a) Requirements

Each member shall make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations and statements of policy promulgated thereunder and with the Rules of this Association and as prescribed by SEC Rule 17a-3. The record keeping format, medium, and retention period shall comply with Rule 17a-4 under the Securities Exchange Act of 1934.

(b)tMarking of Customer Order Ticketst

A person associated with a member shall indicate on the memorandum for each transaction in a non-exchange-listed security, as that term is defined in Rule 2320, the name of each dealer contacted and the quotations received to determine the best inter-dealer market; however, the requirements of this paragraph shall not apply if the member can establish and has documented that:

(1)ttwo or more priced quotations for the security are displayed in an inter-dealer quotation system, as defined in Rule 2320(f), that permits quotation updates on a real-time basis for which NASD has access to historical quotation information; or

(2)tthe transaction is effected in compliance with Rule 2320(f)(3)(B) or (C).t

(c)tCustomer Account Informationt

Each member shall maintain accounts opened after January 1, 1991 as follows:
(1)tfor each account, each member shall maintain the following information:t

(A)tcustomer's name and residence;t

(B) whether customer is of legal age;t

(C)tsignature of the registered representative introducing the account and signature of the member or partner, officer, ort manager who accepts the account; and

(D)tif the customer is a corporation, partnership, or other legal entity, the names of any persons authorized to transactt business on behalf of the entity;

(2)tfor each account other than an institutional account, and accounts in which investments are limited to transactions in open-end investment company shares that are not recommended by the member or its associated persons, each member shall also make reasonable efforts to obtain, prior to the settlement of the initial transaction in the account, the following information to the extent it is applicable to the account:

(A)tcustomer's tax identification or Social Security number;t

(B)toccupation of customer and name and address of employer; andt

(C) whether customer is an associated person of another member; andt

(3)tfor discretionary accounts, in addition to compliance with subparagraphs (1) and (2) above, and Rule 2510(b) of theset Rules, the member shall:

(A)tobtain the signature of each person authorized to exercise discretion in the account;t

(B) record the date such discretion is granted; andt

(C)tin connection with exempted securities other than municipals, record the age or approximate age of the customer.t

(4)tFor purposes of this Rule, Rule 2310, and Rule 2510 the term "institutional account" shall mean the account of:t

(A)ta bank, savings and loan association, insurance company, or registered investment company;t

(B)tan investment adviser registered either with the Securities and Exchange Commission under Section 203 of thet Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or

(C) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million.

(d) Record of Written Complaints

Each member shall keep and preserve in each office of supervisory jurisdiction, as defined in Rule 3010, either a separate file of all written complaints of customers and action taken by the member, if any, or a separate record of such complaints and a clear reference to the files containing the correspondence connected with such complaint as maintained in such office.

(e) "Complaint" Defined

A "complaint" shall be deemed to mean any written statement of a customer or any person acting on behalf of a customer alleging a grievance involving the activities of those persons under the control of the member in connection with the solicitation or execution of any transaction or the disposition of securities or funds of that customer.

(f) Requirements When Using Predispute Arbitration Agreements for Customers Accounts

(1) Any predispute arbitration clause shall be highlighted and shall be immediately preceded by the following language in outline form.

This agreement contains a predispute arbitration clause. By signing an arbitration agreement the parties agree as follows:
(A) All parties to this agreement are giving up the right to sue each other in court, including the right to a trial by jury, except as provided by the rules of the arbitration forum in which a claim is filed.

(B) Arbitration awards are generally final and binding; a party's ability to have a court reverse or modify an arbitration award is very limited.

(C) The ability of the parties to obtain documents, witness statements and other discovery is generally more limited in arbitration than in court proceedings.

(D) The arbitrators do not have to explain the reason(s) for their award.

(E) The panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.

(F) The rules of some arbitration forums may impose time limits for bringing a claim in arbitration. In some cases, a claim that is ineligible for arbitration may be brought in court.

(G) The rules of the arbitration forum in which the claim is filed, and any amendments thereto, shall be incorporated into this agreement.

(2)(A) In any agreement containing a predispute arbitration agreement, there shall be a highlighted statement immediately preceding any signature line or other place for indicating agreement that states that the agreement contains a predispute arbitration clause. The statement shall also indicate at what page and paragraph the arbitration clause is located.

(B) Within thirty days of signing, a copy of the agreement containing any such clause shall be given to the customer who shall acknowledge receipt thereof on the agreement or on a separate document.

(3)(A) A member shall provide a customer with a copy of any predispute arbitration clause or customer agreement executed between the customer and the member, or inform the customer that the member does not have a copy thereof, within ten business days of receipt of the customer's request. If a customer requests such a copy before the member has provided the customer with a copy pursuant to subparagraph (2)(B) of this paragraph, the member must provide a copy to the customer by the earlier date required by this subparagraph (3)(A) or by subparagraph (2)(B).

(B) Upon request by a customer, a member shall provide the customer with the names of, and information on how to contact or obtain the rules of, all arbitration forums in which a claim may be filed under the agreement.

(4) No predispute arbitration agreement shall include any condition that:

(A) limits or contradicts the rules of any self-regulatory organization;

(B) limits the ability of a party to file any claim in arbitration;

(C) limits the ability of a party to file any claim in court permitted to be filed in court under the rules of the forums in which a claim may be filed under the agreement;

(D) limits the ability of arbitrators to make any award.

(5)dIf a customer files a complaint in court against a member that contains claims that are subject to arbitration pursuanto to a predispute arbitration agreement between the member and the customer, the member may seek to compel arbitration of the claims that are subject to arbitration. If the member seeks to compel arbitration of such claims, the member must agree to arbitrate all of the claims contained in the complaint if the customer so requests.

(6)oAll agreements shall include a statement that "No person shall bring a putative or certified class action to arbitration,o nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action; or who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative class action until: (i) the class certification is denied; or (ii) the class is decertified; or (iii) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this agreement except to the extent stated herein."

(7)ôThe provisions of this Rule shall become effective on May 1, 2005. The provisions of subparagraph (3) shall apply too all members as of the effective date of this Rule regardless of when the customer agreement in question was executed. Otherwise, agreements signed by a customer before May 1, 2005 are subject to the provisions of this Rule in effect at the time the agreement was signed.

(g) Negotiable Instruments Drawn From A Customer's Account

No member or person associated with a member shall obtain from a customer or submit for payment a check, draft, or other form of negotiable paper drawn on a customer's checking, savings, share, or similar account, without that person's express written authorization, which may include the customer's signature on the negotiable instrument. Each member shall maintain this authorization for a period of three years. This provision shall not, however, require maintenance of copies of negotiable instruments signed by customers.

(h) Order Audit Trail System Record keeping Requirementso

(1)ŒEach member that is a Reporting Member, as that term is defined in Rule 6951(m), shall record and maintain, witho respect to each order, as that term is defined in Rule 6951(i), for such security that is received or executed at its trading department:

(A)œan identification of each registered person who receives the order directly from a customer;o

(B)œan identification of each registered person who executes the order; ando

(C) when an order is originated by the member and transmitted manually to another department, an identification of theo department that originated the order.

(2) Each Reporting Member shall maintain and preserve records of the information required to be recorded undero paragraph (h)(1) of this Rule for the period of time and accessibility specified in SEC Rule 17a-4(b).

(3) The records required to be maintained and preserved under paragraph (h)(1) of this Rule may be immediatelyo produced or reproduced on "micrographic media" as defined in SEC Rule 17a-4(f)(1)(i) or by means of "electronic storage media" as defined in SEC Rule 17a-4(f)(1)(ii) that meet the conditions set forth in SEC Rule 17a-4(f) and be maintained and preserved for the required time in that form.

(i) Holding of Customer Mailo

Upon the written instructions of a customer, a member may hold mail for a customer who will not be at his or her usual address for the period of his or her absence, but (A) not to exceed two months if the member is advised that such customer will be on vacation or traveling or (B) not to exceed three months if the customer is going abroad.

(j) Changes in Account Name or Designationo

Before any customer order is executed, there must be placed upon the memorandum for each transaction, the name or designation of the account (or accounts) for which such order is to be executed. No change in such account name(s) (including related accounts) or designation(s) (including error accounts) shall be made unless the change has been authorized by a member or a person(s) designated under the provisions of NASD rules. Such person must, prior to giving his or her approval of the account designation change, be personally informed of the essential facts relative thereto and indicate his or her approval of such change in writing on the order or other similar record of the member. The essential facts relied upon by the person approving the change must be documented in writing and preserved for a period of not less than three years, the first two years in an easily accessible place, as the term "easily accessible place" is used in SEC Rule 17a-4.

For purposes of this paragraph (j), a person(s) designated under the provisions of NASD rules to approve account name or designation changes must pass a qualifying principal examination appropriate to the business of the firm.

Cross References

Rule 2360(b)(17). Options, Maintenance of Records
Rule 8210, Reports and Inspection of Books for Purpose of Investigating Complaints
Rule 9552, Failure to Provide Information or Keep Information Current
IM-2310-2, Fair Dealing with Customers

Amended by SR-FINRA-2011-052 eff. May 31, 2012.
Amended by SR-FINRA-2010-052 eff. Dec. 5, 2011.
Amended by SR-FINRA-2010-003 eff. June 28, 2010.
Amended by SR-FINRA-2007-024 eff. Sep. 8, 2009.
Amended by SR-NASD-2004-130 eff. Sep. 28, 2007.
Amended by SR-NASD-2005-087 eff. Aug. 1, 2006.
Amended by SR-NASD-2005-103 eff. Aug. 29, 2005
Amended by SR-NASD-98-74 eff. May 1, 2005
Amended by SR-NASD-2005-045 eff. April 12, 2005
Amended by SR-NASD-2002-162 & SR-NASD-2004-116 eff. Jan. 31, 2005
Amended by SR-NASD-2004-175 eff. Jan 3, 2005
Amended by SR-NASD-2003-110 eff. June 28, 2004
Amended by SR-NASD-2003-131 eff. March 31, 2004
Amended by SR-NASD-00-20 eff. Nov. 24, 2000
Amended by SR-NASD-98-38 eff. according to schedule in Rule 6957
Amended by SR-NASD-98-35 eff. May 29, 1998
Amended by SR-NASD-98-31 eff. Apr. 7, 1998
Amended by SR-NASD-98-10 postponed eff. date
Amended by SR-NASD-97-56 eff. according to schedule in Rule 6957
Amended by SR-NASD-97-24 eff. Feb. 15, 1998
Amended by SR-NASD-96-28 eff. Dec 2, 1996
Amended by SR-NASD-95-39 eff. Oct 10, 1996
Amended by SR-NASD-95-13 eff. June 9, 1995
Amended by SR-NASD-92-12 eff. Sept. 6, 1994
Amended by SR-NASD-92-28 eff. Oct. 28, 1992
Amended by SR-NASD-90-09 & SR-NASD-90-39 eff. May 2, 1990 eff. for accounts opened and recommendations made after Jan. 1, 1991
Amended by SR-NASD-88-21 eff. Aug. 1, 1988, May 10, 1989
Amended by SR-NASD-87-23 eff. Aug. 3, 1987
Amended by SR-NASD-86-17 eff. Oct, 15, 1986

Selected Notices: 86-29, 86-69, 87-15, 88-40, 88-83, 88-91, 89-58, 90-12, 90-52, 91-46, 92-65, 95-16, 95-54, 95-85, 96-44, 96-82, 97-01, 98-11, 98-33, 98-47, 98-73, 00-78, 04-15, 04-36, 04-71, 05-08, 07-40, 10-26, 11-19, 12-13.

ATTACHMENT B

FINRA

Financial Industry Regulatory Authority

April 2017

Sanction Guidelines

Table of Contents

General Principles Applicable to All Sanction Determinations

1t **Disciplinary sanctions should be designed to protect the investingt public by deterring misconduct and upholding high standards oft business conductt**

The purpose of FINRA's disciplinary process is to protect thet investing public, support and imptove the overall businesst standards in the securities industry, and decrease the likelihood ott recurrence of misconduct by the disciplined respondent. Toward thts end, Adjudicators should design sanctions that are meaningful andt significant enough to prevent and discourage future misconduct by a respondent and deter others from engaging in similar misconduct.

Sanctions should be more than a cost of doing business. Sanctions should be a meaningful deterrent and reflect the seriousness of the misconduct at issue. To meet this standard, certain cases may necessitate the imposition of sanctions in excess of the upper sanction guideline. For example, when the violations at issue in a particular case have widespread impact, result in significantt ill-gotten gains, or result from reckless or intentional actions, Adjudicators should assess sanctions that exceed the recommended range of the guidelines.

Finally, as Adjudicators apply these principles and tailor sanctions, Adjudicators should consider a firm's size with a view toward ensuring that the sanctions imposed are remedial and designed to deter future misconduct, but are not punitive. Factors to consider in connection with assessing a firm's size are: the financial resources of the firm; the nature of the firm's business; the number of individuals associated with the firm; and the level of trading activity at the firm. This list is included for illustrative purposes and is not exhaustive. Other factors also may be considered in connection with assessing firm size.

2. **Disciplinary sanctions should be more severe for recidivists.** An important objective of the disciplinary process is to deter and prevent future misconduct by imposing progressively escalating sanctions on recidivists beyond those outlined in these guidelines, up to and including barring associated persons and expelling firms. Sanctions imposed on recidivists should be more severe because a recidivist, by definition, already has demonstrated a failure to comply with FINRA's rules or the securities laws. The imposition of more severe sanctions emphasizes the need for corrective action after a violation has occurred, discourages future misconduct by the same respondent, and deters others from engaging in similar misconduct.

Adjudicators should always consider a respondent's relevant disciplinary history in determining sanctions and should ordinarily impose progressively escalating sanctions on recidivists. In certain cases, the guidelines recommend responding to second and subsequent disciplinary actions with increasingly severe suspensions, monetary sanctions, and in certain cases, prohibitions or limitations on a respondent's lines of business. This escalation is consistent with the concept that repeated misconduct calls for increasingly severe sanctions.

Adjudicators also should consider imposing more severe sanctions when a respondent's disciplinary history includes significant past misconduct that: (a) is similar to that at issue; or (b) evidences a reckless disregard for regulatory requirements, investor protection, or market integrity. Certain regulatory incidents are not relevant to the determination of sanctions because they do not qualify as disciplinary history. Arbitration proceedings, whether pending, settled, or litigated to conclusion, are not "disciplinary" actions. Similarly, pending investigations or the existence of ongoing regulatory proceedings prior to a final decision are not disciplinary history.

3. **Adjudicators should tailor sanctions to respond to the misconduct at issue.** Sanctions in disciplinary proceedings are intended to be remedial and to prevent the recurrence of misconduct. Adjudicators therefore should impose sanctions tailored to address the misconduct involved in each particular case. Section 15A of the Securities Exchange Act of 1934 and FINRA Rule 8310 provide that FINRA may enforce compliance with its rules by: limitation or modification of a respondent's business activities, functions and operations; fine; censure; suspension (of an individual from functioning in any or all capacities, or of a firm from engaging in any or all activities or functions, for a defined period or contingent on the performance of a particular act); bar (permanent expulsion of an individual from associating with a firm in any or all capacities); expulsion (of a firm from FINRA membership and, consequently, from the securities industry); or any other fitting sanction.

To address the misconduct effectively in any given case, Adjudicators may design sanctions other than those specified in these guidelines. For example, to achieve deterrence and remediate misconduct, Adjudicators may impose sanctions that: (a) require a respondent firm to retain a qualified independent consultant to design and/or implement procedures for improved future compliance with regulatory requirements; (b) suspend or bar a respondent firm from engaging in a particular line of business; (c) require an individual or member firm respondent, prior to conducting future business, to disclose certain information to new and/or existing clients, including disclosure of disciplinary history; (d) require a respondent firm to implement heightened supervision of certain individuals or departments in the firm; (e) require an individual or member firm respondent to obtain a FINRA staff letter stating that a proposed communication with the public is consistent with FINRA standards prior to disseminating that communication to the public; (f) limit the number of securities in which a respondent firm may make a market; (g) limit the activities of a respondent firm; or (h) require a respondent firm to institute tape recording procedures. **This list is illustrative, not exhaustive, and is included to provide examples of the types of sanctions that Adjudicators may design to address specific misconduct and to achieve deterrence. Adjudicators may craft other sanctions specifically designed to prevent the recurrence of misconduct.**

The recommended ranges in these guidelines are not absolute. The guidelines suggest, but do not mandate, the range and types of sanctions to be applied. Depending on the facts and circumstances of a case, Adjudicators may determine that no remedial purpose is served by imposing a sanction within the range recommended in the applicable guideline, *i.e.*, that a sanction below the recommended range, or no sanction at all, is appropriate. Conversely, Adjudicators may determine that egregious misconduct requires the imposition of sanctions above or otherwise outside of a recommended range. For instance, in an egregious case, Adjudicators may consider barring an individual respondent and/or expelling a respondent member firm, regardless of whether the individual guidelines applicable to the case recommend a bar and/or expulsion or other less severe sanctions. Adjudicators must always exercise judgment and discretion and consider appropriate aggravating and mitigating factors in determining remedial sanctions in each case. In addition, whether the sanctions are within or outside of the recommended range, Adjudicators must identify the basis for the sanctions imposed.

4. **Aggregation or "batching" of violations may be appropriate for purposes of determining sanctions in disciplinary proceedings.** The range of monetary sanctions in each case may be applied in the aggregate for similar types of violations rather than per individual violation. For example, it may be appropriate to aggregate similar violations if: (a) the violative conduct was unintentional or negligent (*i.e.*, did not involve manipulative, fraudulent or deceptive intent); (b) the conduct did not result in injury to public investors or in cases involving injury to the public, if restitution was made; or (c) the violations resulted from a single systemic problem or cause that has been corrected.

   Depending on the facts and circumstances of a case, however, multiple violations may be treated individually such that a sanction is imposed for each violation. In addition, numerous, similar violations may warrant higher sanctions, since the existence of multiple violations may be treated as an aggravating factor.

5. **Where appropriate to remediate misconduct, Adjudicators should order restitution and/or rescission.** Restitution is a traditional remedy used to restore the status quo ante where a victim otherwise would unjustly suffer loss. Adjudicators may determine that restitution is an appropriate sanction where necessary to remediate misconduct. Adjudicators may order restitution when an identifiable person, member firm or other party has suffered a quantifiable loss proximately caused by a respondent's misconduct.

   Adjudicators should calculate orders of restitution based on the actual amount of the loss sustained by a person, member firm or other party, as demonstrated by the evidence. Orders of restitution may exceed the amount of the respondent's ill-gotten gain. Restitution orders must include a description of the Adjudicator's method of calculation.

   When a member firm has compensated a customer or other party for losses caused by an individual respondent's misconduct, Adjudicators may order that the individual respondent pay restitution to the firm.

   Where appropriate, Adjudicators may order that a respondent offer rescission to an injured party.

Principal Considerations in Determining Sanctions

The following list of factors should be considered in conjunction with the imposition of sanctions with respect to all violations. Individual guidelines may list additional violation-specific factors.

Although many of the general and violation-specific considerations, when they apply in the case at hand, have the potential to be either aggravating or mitigating, some considerations have the potential to be only aggravating or only mitigating. For instance, the presence of certain factors may be aggravating, but their absence does not draw an inference of mitigation. The relevancy and characterization of a factor depends on the facts and circumstances of a case and the type of violation. This list is illustrative, not exhaustive, as appropriate. Adjudicators should consider case-specific factors in addition to those listed here and in the individual guidelines.

1. The respondent's relevant disciplinary history *(see General Principle No. 2)*.

2. Whether an individual or member firm respondent accepted responsibility for and acknowledged the misconduct to his or her employer (in the case of an individual) or a regulator prior to detection and intervention by the firm (in the case of an individual) or a regulator.

3. Whether an individual or member firm respondent voluntarily employed subsequent corrective measures, prior to detection or intervention by the firm (in the case of an individual) or by a regulator, to revise general and/or specific procedures to avoid recurrence of misconduct.

4. Whether the respondent voluntarily and reasonably attempted, prior to detection and intervention, to pay restitution or otherwise remedy the misconduct.

5. Whether, at the time of the violation, the respondent member firm had developed reasonable supervisory, operational and/or technical procedures or controls that were properly implemented.

6. Whether, at the time of the violation, the respondent member firm had developed adequate training and educational initiatives.

7. Whether the respondent demonstrated reasonable reliance on competent legal or accounting advice.

8. Whether the respondent engaged in numerous acts and/or a pattern of misconduct.

9. Whether the respondent engaged in the misconduct over an extended period of time.

10. Whether the respondent attempted to conceal his or her misconduct or to lull into inactivity, mislead, deceive or intimidate a customer, regulatory authorities or, in the case of an individual respondent, the member firm with which he or she is/was associated.

11. With respect to other parties, including the investing public, the member firm with which an individual respondent is associated, and/or other market participants, (a) whether the respondent's misconduct resulted directly or indirectly in injury to such other parties, and (b) the nature and extent of the injury.

12. Whether the respondent provided substantial assistance to FINRA in its examination and/or investigation of the underlying misconduct, or whether the respondent attempted to delay FINRA's investigation, to conceal information from FINRA, or to provide inaccurate or misleading testimony or documentary information to FINRA

13. Whether the respondent's misconduct was the result of an intentional act, recklessness or negligence

14. Whether the respondent engaged in the misconduct at issue notwithstanding prior warnings from FINRA, another regulator or a supervisor (in the case of an individual respondent) that the conduct violated FINRA rules or applicable securities laws or regulations

15. Whether the respondent member firm can demonstrate that the misconduct at issue was aberrant or not otherwise reflective of the firm's historical compliance record

16. Whether the respondent's misconduct resulted in the potential for the respondent's monetary or other gain

17. The number, size and character of the transactions at issue

18. The level of sophistication of the injured or affected customer

19. Whether the respondent exercised undue influence over the customer

Applicability

These guidelines supersede prior editions of the *FINRA Sanction Guidelines*, whether published in a booklet or discussed in *FINRA Regulatory Notices* (formerly *NASD Notices to Members*). These guidelines are effective as of the date of publication, and apply to all disciplinary matters, including pending matters. FINRA may, from time to time, amend these guidelines and announce the amendments in a *Regulatory Notice* or post the changes on FINRA's website (*www.finra.org*). Additionally, the NAC may, on occasion, specifically amend a particular guideline through issuance of a disciplinary decision. Amendments accomplished through the NAC decision-making process or announced via *Regulatory Notices* or on the FINRA website should be treated like other amendments to these guidelines, even before publication of a revised edition of the *FINRA Sanction Guidelines*. Interested parties are advised to check FINRA's website carefully to ensure that they are employing the most current version of these guidelines.

Communications With the Public—Late Filing; Failing to File[1]; Failing to Comply With Rule Standards or Use of Misleading Communications[2]

FINRA Rules 2010, 2210 *et. seg.* and 2200

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
See Principal Considerations in Introductory Section	***Failure to File***	***Failure to File***
Failure to File	Fine of $1,000 to $22,000.	In egregious cases, consider imposing, for a definite period, a "pre-use" filing requirement to obtain an FINRA Regulation staff "no objection" letter on proposed communications with the public. Also consider suspending the responsible individual in any or all capacities for up to five business days.
1. Whether failure to file was inadvertent. 2. Whether communications with the public were circulated widely without having been filed with the Advertising Regulation Department. 3. Whether an individual respondent failed to notify a supervisor of a communication with the public.		
Late Filing	***Late Filing***	***Late Filing***
1. Whether late filing was inadvertent. 2. Whether communications with the public were circulated widely before having been filed with the Advertising Regulation Department. 3. Number of days late.	Fine of $1,000 to $15,000.	In egregious cases, consider imposing, for a definite period, a "pre-use" filing requirement to obtain an FINRA Regulation staff "no objection" letter on proposed communications with the public. Also consider suspending the responsible individual in any or all capacities for up to 10 business days.

1. Failing to file includes instances in which a respondent files with FINRA Regulation staff a communication with the public in response to a notice from FINRA Regulation staff that a necessary filing had not been made.

2. This guideline is appropriate for disciplinary actions that name as respondents member firms that have violated FINRA rules or associated persons who have circumvented the firm's procedures or violated FINRA rules.

3. This guideline also is appropriate for violations of MSRB Rule G-21

Communications With the Public—Late Filing; Failing to File; Failing to Comply With Rule Standards or Use of Misleading Communications—continued

FINRA Rules 2010, 2210 *et seq.*, and 2220

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
See Principal Considerations in Introductory Section *Failure to Comply with Rule Standards/ Misleading* 1 Whether violative communications with the public were circulated widely	*Failure to Comply/Misleading* *Failure to Comply with Rule Standards or Inadvertent Use of Misleading Communications* Fine of $1,000 to $29,000	*Failure to Comply/Misleading* *Failure to Comply with Rule Standards* In cases involving inadvertent use of misleading communications, consider suspending firm with respect to any or all activities or functions for up to six months and thereafter imposing, for a definite period, a "pre-use" filing requirement to obtain a FINRA Regulation staff "no objection" letter on proposed communications with the public. In egregious cases, consider suspending the firm with respect to any or all activities or functions for up to one year and thereafter imposing, for a definite period, a "pre-use" filing requirement to obtain FINRA Regulation staff "no objection" letter on proposed communications with the public. Also consider suspending the responsible person in any or all capacities for up to 60 days

Communications With the Public—Late Filing; Failing to File; Failing to Comply With Rule Standards or Use of Misleading Communications—continued

FINRA Rules 2010, 2210 *et. seq.*, and 2220

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
See Principal Considerations in Introductory Section	*Intentional or Reckless Use of Misleading Communications* Fine of $10,000 to $146,000	***Use of Misleading Communications with the Public*** In cases involving intentional or reckless use of misleading communications with the public, consider suspending the firm with respect to any or all activities or functions for up to two years. Also consider suspending the responsible person in any or all capacities for up to two years. In cases involving numerous acts of intentional or reckless misconduct over an extended period of time, consider suspending the firm with respect to any or all activities or functions for up to two years, suspending the responsible person in any or all capacities for up to two years, expelling the firm, and/or barring the responsible individual.

Supervision—Failure to Supervise

FINRA Rules 2010 and 3110

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
See Principal Considerations in Introductory Section 1. Whether respondent ignored "red flag" warnings that should have resulted in additional supervisory scrutiny. Consider whether individuals responsible for underlying misconduct attempted to conceal misconduct from respondent. 2. Nature, extent, size and character of the underlying misconduct. 3. Quality and degree of supervisor's implementation of the firm's supervisory procedures and controls.	Fine of $5,000 to $73,000 Consider independent (rather than joint and several) monetary sanctions for firm and responsible individual(s).	Consider suspending responsible individual in all supervisory capacities for up to 30 business days. Consider limiting activities of appropriate branch office or department for up to 30 business days. In egregious cases, consider limiting activities of the branch office or department for a longer period or suspending the firm with respect to any or all activities or functions for up to 30 business days. Also consider suspending the responsible individual in any or all capacities for up to two years or barring the responsible individual.

Supervision—Systemic Supervisory Failures

FINRA Rules 3110 and 2010

Adjudicators should use this Guideline when a supervisory failure is significant and is widespread or occurs over an extended period of time. While systemic supervisory failures typically involve failures to implement or use supervisory procedures that exist, systemic supervisory failures also may involve supervisory systems that have both ineffectively designed procedures and procedures that are not implemented.

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
See Principal Considerations in Introductory Section	Fine of $10,000 to $73,000 for the responsible individual(s)[1]	*Individual*
1. Whether the deficiencies allowed violative conduct to occur or to escape detection	Fine of $13,000 to $292,000 for the firm	Where the deficiency persists, consider suspending any responsible individual(s) in any or all capacities for a period of 10 business days to six months
2. Whether the firm or individual failed to timely correct or address deficiencies/once identified, failed to respond reasonably to prior warnings from FINRA or another regulator, or failed to respond reasonably to other "red flag" warnings	Where aggravating factors predominate, consider a higher fine	Where aggravating factors predominate, consider suspending the responsible individual(s) in any or all capacities for a period of 10 business days/s to two years, or consider barring the responsible individual(s)
3. Whether the firm appropriately allocated its resources to prevent or detect the supervisory failure, taking into account the potential impact on customers or markets	Adjudicators should consider ordering restitution or disgorgement, as appropriate, in these cases	
4. The number and type of customers, investors or market participants affected by the deficiencies		
5. The number and dollar value of the transactions not adequately supervised as a result of the deficiencies		

[1] See [illegible]

Supervision—Systemic Supervisory Failures—continued

FINRA Rules 3110 and 2010[1]

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
6. The nature, extent, size, character, and complexity of the activities or functions not adequately supervised as a result of the deficiencies 7. The extent to which the deficiencies affected market integrity, market transparency, the accuracy of regulatory reports, or the dissemination of trade or other regulatory information 8. The quality of controls or procedures available to the supervisors and the degree to which the supervisors implemented them		*Firm* Where aggravating factors predominate, consider a suspension of the firm with respect to any or all relevant activities or functions for a period of 10 business days to two years, or consider expulsion of the firm. Consider imposing undertakings ordering the firm to revise its supervisory systems and procedures, or ordering the firm to engage an independent consultant to recommend changes to the firm's supervisory systems and procedures.

FINRA

Financial Industry Regulatory Authority

HARD COPY

Gary J. Dernelle
Associate General Counsel

Direct: (202) 728-8255
Fax: (202) 728-8264

May 14, 2018

VIA MESSENGER

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Room 10915
Washington, DC 20549-1090

RE: The Application for Review of Meyers Associates, L.P. and Bruce Meyers
Administrative Proceeding No. 3-18359

Dear Mr. Fields:

Enclosed please find the original and three copies of the Brief of FINRA in Opposition to the Application for Review in the above-captioned matter.

Please contact me at (202) 728-8255 if you have any questions.

Very truly yours,

Gary Dernelle

cc: Lawrence R. Gelber
Melanie Campbell