

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

In the Matter of the Application of
Bruce M. Zipper and Dakota Securities Int'l, Inc.
For Review of Disciplinary Action Taken by
FINRA
Administrative Proceeding File No. 3-20811

FINRA'S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW

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I. Introduction

The Commission already has determined in a prior decision that Bruce M. Zipper and Dakota Securities International, Inc., engaged in several serious violations of FINRA rules and the federal securities laws. The Commission found that (1) Zipper associated with Dakota while he was suspended and statutorily disqualified, and that Dakota allowed him to do so; (2) Zipper and Dakota intentionally misidentified on Dakota's books and records the representative of record for hundreds of trades; and (3) Dakota failed to supervise its business. In this appeal from FINRA's decision on remand, the only issue before the Commission is the appropriate sanctions for these violations.

FINRA previously had barred Zipper and expelled Dakota for their violations. On appeal, however, the Commission set aside part of FINRA's findings of violation and directed FINRA to redetermine sanctions for all violations.

On remand, FINRA's National Adjudicatory Council ("NAC") examined the entire record anew, focused on the findings that the Commission upheld, and imposed appropriately remedial sanctions. For Zipper's and Dakota's violations of FINRA's rules arising from

Zipper's association with the firm while suspended and statutorily disqualified, the NAC barred Zipper and expelled Dakota. For Zipper's and Dakota's books-and-records violations, the NAC reduced the sanction. Rather than a bar and expulsion, the NAC assessed on each Zipper and Dakota a \$100,000 fine, a two-year suspension on Zipper, and a one-year suspension on Dakota. In light of the sanctions it imposed for Zipper's and Dakota's other violations, however, the NAC did not impose either the fines or suspensions. Last, the NAC expelled Dakota for its supervisory violations. These sanctions are appropriate and warranted in light of Zipper's and Dakota's recidivism, their intentional and egregious violations of FINRA's rules, and their demonstrated disregard for FINRA's authority.

Zipper and Dakota have not provided any bases for disturbing the sanctions the NAC imposed. Zipper and Dakota devote their brief in support of their application ("Applicants' Brief") to the sanctions the NAC assessed for the books-and-records violations. While these sanctions are appropriately remedial, the Commission need not reach this issue because the NAC did not impose these sanctions in light of its bar of Zipper and expulsions of Dakota for their other violations. Further, while Zipper and Dakota argue in their notice of appeal that FINRA staff gave Zipper permission to associate with Dakota while he was suspended and statutorily disqualified, the Commission already has considered and rejected this argument because, as the Commission found, there is no credible evidence in the record to support it. Zipper and Dakota provide no reason for the Commission to reopen its prior decision to change its findings.

The record fully supports the sanctions the NAC imposed on remand, and the Commission should dismiss the application for review.

II. Factual Background

A. Zipper and Dakota

Zipper entered the securities industry in 1981 and founded Dakota in 2004. (RP 757, 2211.)¹ Dakota was a broker-dealer that serviced retail customers. (RP 613.) Except for the period of his suspension, Zipper was Dakota’s president, chief executive officer (“CEO”), financial and operations principal, and chief compliance officer (“CCO”). (RP 614, 767, 1119.) Zipper also was Dakota’s majority owner until 2018, when he sold his shares to his wife. (RP 308, 767, 964-65.)²

B. Zipper Agrees to a Three-Month Suspension and Is Statutorily Disqualified

In 2016, Zipper and FINRA’s Department of Enforcement (“Enforcement”) executed a Letter of Acceptance, Waiver and Consent (the “AWC”) relating to Zipper’s alleged failure to disclose certain material facts on his Uniform Application for Securities Registration and Transfer (“Form U4”). (RP 2435-42.) In the AWC, Zipper consented to a finding that he willfully failed to disclose material information on his Form U4, which subjected him to statutory disqualification. (RP 2438-39.) Zipper also consented to a three-month suspension from associating with a FINRA member firm in any capacity, “including clerical or ministerial functions, during the period of the . . . suspension.” (RP 2436-42.) Zipper’s suspension was scheduled to run from May 31, 2016, through August 30, 2016 (the “Suspension Period”). (RP 2355.)

¹ “RP__” refers to the page number in the certified record that FINRA filed with the Commission.

² Dakota’s FINRA membership terminated in October 2018. (RP 2806.)

Before the Suspension Period began, in response to Zipper's inquiries, FINRA staff told Zipper that he could not associate with the firm or intervene in its business in any way during his suspension. (RP 1078-1083, 2059-60, 2063.). Shortly before Zipper's suspension began, Zipper personally updated the firm's written supervisory procedures ("WSPs") to read: "Starting on June 1, 2016 [sic] and ending on August 31[,] 2016 Bruce Zipper . . . will be on a 90 day suspension and will not be involved in the company's business for that time period." (RP 1629.)

C. Zipper Associates with Dakota While Suspended and Statutorily Disqualified

Dakota remained in business during the Suspension Period. Zipper's close friend, Robert Lefkowitz, took over for Zipper as Dakota's president, CEO, and CCO, and generally acted for Zipper. (RP 995-96, 998-1002, 1629, 2421.) Lefkowitz was responsible for responding to incoming telephone calls and emails, opening new accounts, answering client inquiries, and handling Dakota's finances. (RP 995-96, 998-1002, 1629, 2421.) Along with running Dakota, Lefkowitz also was supposed to handle Zipper's customers' accounts. (RP 1001-02.)

During the Suspension Period, Dakota continued operating from its principal place of business in Zipper's home. (RP 1008.) Lefkowitz visited Zipper's home "to periodically do administrative duties." (RP 1011.) Dakota received mail at Zipper's home, stored files there, and kept a computer with access to the firm's systems there. (RP 1008-1011.) The computer was not password protected, and Lefkowitz did not restrict Zipper's access to the computer or the firm's trading or email systems. (RP 607, 845, 1008-10, 1015, 1027-28.) While he was suspended, Zipper reviewed reports of Dakota's trading activity, as well as customer account holdings and statements. (RP 845-46, 2079, 2081, 2257, 2262.)

Zipper also routinely accessed his Dakota email and emailed customers repeatedly during the Suspension Period. Many of Zipper's emails to customers during this period included a signature block identifying him as Dakota's "President." (*See, e.g.*, RP 2077, 2079, 2081, 2083,

2141, 2143, 2145, 2146.) In several emails, he recommended specific securities transactions to customers. (*See, e.g.*, RP 2141, 2146, 2183.) Zipper also sent several emails to another Dakota customer telling her how to access her account online and attaching copies of her account statements. (RP 2077, 2083-2139; RP 2157-76; RP 2193-98; RP 2199-2204.)

Zipper further conducted Dakota's securities business during the Suspension Period by handling financial and operations matters for the firm. For example, Zipper communicated with a vendor regarding invoices due and made payment to that vendor (RP 2069-70), communicated with a vendor regarding the firm's email service (RP 2185, 2189-91), repeatedly communicated with Dakota's clearing firm regarding Dakota's securities business (RP 851-53, 2071, 2073, 2075, 2155, 2179-2181), and negotiated a settlement to a customer's arbitration claim (RP 935-40, 2205).

Lefkowitz was responsible for supervising the firm's electronic correspondence during the Suspension Period and was notified when Zipper received an email in his Dakota email account. (RP 1002-04.) He did not, however, review Zipper's Dakota emails and did not learn that Zipper was using his Dakota email address to conduct firm business while suspended. (RP 1002-04, 1006.)

D. Zipper Continues Associating with Dakota While Statutorily Disqualified

Although Zipper's suspension ended on August 30, 2016, he remained statutorily disqualified due to his willful failure to disclose material information on his Form U4. Dakota filed an MC-400 Membership Continuance Application requesting permission for Zipper to associate with the firm despite his disqualification. (RP 2265-72.) Under FINRA's rules and policies in place at that time, Zipper could associate with Dakota until the NAC acted on the firm's MC-400.

The NAC denied Dakota's MC-400 on October 2, 2017, because it found that Zipper had improperly associated with the firm during the Suspension Period and that the proposed supervisors for Zipper were unable to stringently supervise him as a disqualified individual. (RP 2207-27.) Zipper was no longer permitted to associate with Dakota after that date. FINRA notified Zipper that he must immediately terminate his association with Dakota unless the Commission stayed the effect of the NAC's order denying the MC-400. (RP 2228.) The Commission did not stay the effect of the NAC's order. Nevertheless, Zipper continued to associate with Dakota through November 2017. (RP 969-971.)

E. Zipper and Dakota Intentionally Misidentify the Representative of Record on Hundreds of Trades

Before, during, and after the Suspension Period, Zipper and Lefkowitz often intentionally misidentified the representative of record when entering trades in Dakota's trading system. Each registered person at Dakota had a representative code that was included on the order memorandum and trade confirmation for each transaction entered into the trading system. (RP 1160-61.) Three of these codes are relevant here: DS01, which belonged to Chris McNamee, a person formerly registered at Dakota; DS02, which belonged to Zipper; and DS03, which McNamee and Zipper shared. (RP 1161, 1168.)

After McNamee left Dakota, Zipper continued using McNamee's representative code and their shared code (DS01 and DS03, respectively) for hundreds of transactions he entered for customers. (RP 898-901, 906-11, 1599-1610.) Lefkowitz also used all three codes for hundreds of orders during the Suspension Period to reflect falsely that Zipper or McNamee had entered or accepted the order. (RP 1041-42, 1044-46, 1611-16; 1617-20.) Zipper testified that he and Lefkowitz did this because they "didn't want to double pay" to register in a state in which a Dakota registered representative already registered. (RP 912.) As a result of this conduct,

Dakota's books and records were inaccurate with respect to hundreds of orders entered between February and November 2016.

III. Procedural History

A. The NAC Finds Zipper and Dakota Liable for Several Violations

In March 2019, the NAC issued a decision finding Zipper and Dakota liable for violations of the federal securities laws, FINRA By-Laws, and NASD and FINRA rules. (RP 2621-41.) With respect to Zipper's association with Dakota while suspended and statutorily disqualified, under cause one, the NAC found that Zipper breached the terms of his AWC by associating with Dakota while suspended, in violation of FINRA Rule 2010. Under cause two, the NAC found that Zipper violated Article III, Section 3(b) of FINRA's By-Laws by associating with Dakota while he was statutorily disqualified, and that he violated NASD Rule 1031 and FINRA Rule 2010 by engaging in activities requiring registration during the Suspension Period. Under cause three, the NAC found that Dakota violated Article III, Section 3(b) of FINRA's By-Laws by allowing Zipper to associate with the firm while statutorily disqualified, that Dakota violated FINRA Rules 8311 and 2010 by allowing Zipper to associate with the firm during the Suspension Period, and that Dakota violated NASD Rule 1031 by allowing Zipper to engage in activities requiring registration during the Suspension Period. For these violations, the NAC barred Zipper and expelled Dakota.

With respect to Zipper's and Dakota's misidentification of the representative of record on trades entered in Dakota's books and record, under cause five, the NAC found that Zipper and Dakota violated FINRA Rules 4511 and 2010 by intentionally misidentifying the representative of record for hundreds of transactions. The NAC further found that Dakota willfully violated Section 17(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Exchange Act Rule 17a-3. For these books-and-records violations, the NAC barred Zipper and expelled

Dakota. The NAC also determined that, because Dakota willfully violated the Exchange Act, the firm was statutorily disqualified.

With respect to Dakota's supervision, under cause four, the NAC found that Dakota violated FINRA Rules 3110 and 2010 by failing to establish, maintain, and enforce a system of written procedures to supervise its business and associated persons. The NAC found that Dakota's supervisory failures allowed the other misconduct to occur. For this violation, the NAC expelled Dakota.

B. The Commission Affirms, in Part, the NAC's Findings of Violation and Remands for Redetermination of Sanctions.

Zipper appealed the NAC's decision. In December 2020, the Commission issued its decision affirming all but two of the NAC's findings of violation. (RP 2805-32.) The only findings of violation the Commission set aside were the NAC's findings under causes two and three that Zipper and Dakota each violated NASD Rule 1031 and FINRA Rule 2010 as a result of Zipper's activities while suspended and statutorily disqualified. The Commission affirmed the NAC's other findings of violation arising from this misconduct.

The Commission remanded the case to FINRA to redetermine sanctions for all violations. (RP 2829-31.) The Commission directed FINRA to redetermine the sanctions for the violations arising from Zipper's association with Dakota while suspended and statutorily disqualified in light of its finding that neither Zipper nor Dakota violated NASD Rule 1031 as a result of this conduct. The Commission directed FINRA to further explain the basis for the bar and expulsion it imposed on Zipper and Dakota, respectively, for the books-and-records violations. Last, the Commission directed FINRA to clarify the basis of its decision to expel Dakota for its supervisory violations in light of the Commission's finding that neither Zipper nor Dakota violated NASD Rule 1031.

C. The NAC Redetermines Sanctions

In March 2022, the NAC issued its decision redetermining sanctions. (RP 2975-95.) The NAC imposed on Zipper and Dakota a bar and an expulsion, respectively, for their violations of FINRA's rules arising from Zipper's association with Dakota while suspended and statutorily disqualified. (RP 2985-88.) The NAC determined that Zipper's and Dakota's misconduct was intentional, demonstrated their disregard for FINRA's authority, and put investors at risk. The NAC concluded that, unless Zipper was barred and Dakota remained out of the securities business, they almost certainly would engage in the same misconduct in the future, once again putting investors at risk. (RP 2987-88.)

The NAC also imposed on Dakota an expulsion for its supervisory violations. (RP 2992-93.) The NAC found that Dakota's failure to supervise its business enabled Zipper to associate with Dakota while he was suspended and statutorily disqualified, and also allowed Zipper and Lefkowitz to misidentify the representative of record on hundreds of trades for almost one year. The NAC noted that, under Zipper's leadership, Dakota had exhibited a troubling pattern of non-compliance. The NAC concluded that, if Dakota were allowed to resume its securities business, there was a substantial likelihood that Zipper would involve himself in the firm's supervisory practices in the future, putting investors and the market at risk. (RP 2993.)

The NAC reduced the sanction for Zipper's and Dakota's books-and-records violations. Rather than barring and expelling Zipper and Dakota for these violations, the NAC fined each of them \$100,000, suspended Zipper for two years, and suspended Dakota for one year. (RP 2988-92.) The NAC noted that Zipper and Lefkowitz were responsible for ensuring Dakota's compliance at the time these violations occurred, that Zipper and Dakota refuse to recognize the seriousness of their misconduct or accept responsibility for it, and that Zipper and Dakota acted intentionally with the specific purpose of evading state registration requirements. In light of the

bar and expulsions it imposed on Zipper and Dakota for their other violations, the NAC assessed but did not impose the fines or suspensions for these violations. (RP 2992.)

IV. Argument

The sanctions the NAC imposed for Zipper's and Dakota's violations are neither oppressive nor excessive and therefore the Commission should dismiss the application for review. *See* 15 U.S.C. § 78s(e)(2).³

A. Zipper's and Dakota's Disciplinary Histories Are Aggravating Factors

The NAC properly considered Zipper's and Dakota's robust disciplinary histories as an aggravating factor for each of their respective violations. *See FINRA Sanction Guidelines 2* (Apr. 2017) (*hereinafter* "Guidelines") (General Principles Applicable to All Sanction Determinations, No. 2).⁴ Zipper and Dakota have been sanctioned several times for misconduct. In 1989, NASD censured Zipper and fined him \$1,000 for effecting transactions in non-exempt securities while failing to maintain sufficient net capital. (RP 2305.) In 1994, NASD censured Zipper, fined him \$5,000, and suspended him for five days for failing to comply with an arbitration award. (RP 2305-08.) In 1995, the Florida Department of Banking and Finance fined Zipper \$1,000 for failing to timely notify the department about an NASD action. (RP 2309-17.) In 2009, the Florida Office of Financial Regulation fined Zipper and Dakota \$5,000 for failing to conduct independent testing of Dakota's anti-money laundering compliance program. (RP 2319-27.) In 2010, FINRA censured Dakota and fined it \$5,000 for failing to retain and review email communications. (RP 2329-35.) In 2016, FINRA sanctioned Zipper and Dakota for failing to

³ Zipper and Dakota do not assert that any sanction imposes an undue burden on competition.

⁴ The NAC applied the April 2017 version of the Guidelines. A copy of the Guidelines is attached as Appendix A.

supervise the firm's email communications and ensure those communications were preserved. (RP 2337-42.) Zipper was suspended in a principal capacity for one month and fined \$10,000. Dakota was censured and fined \$10,000. The NAC properly considered Zipper's and Dakota's recidivism when determining the appropriate sanctions for their current violations.

B. A Bar and Expulsion Are Appropriate for Zipper's and Dakota's Violations Related to Zipper's Improper Association with the Firm While Suspended and Statutorily Disqualified

The bar and expulsion the NAC imposed on Zipper and Dakota, respectively, for their violations of FINRA's By-Laws and rules related to Zipper's improper association with the firm while he was suspended and statutorily disqualified are appropriate and necessary for the protection of investors. In redetermining sanctions for these violations, the NAC accounted for the Commission's dismissal of part of the NAC's findings of violation for this misconduct. (RP 2985.) The NAC determined, however, that a bar and expulsion were still warranted considering the seriousness of Zipper's and Dakota's misconduct, which put investors at risk, flouted FINRA's regulatory authority, and threatened the integrity of FINRA's disciplinary process. (RP 2987-88.)

The Guidelines do not specifically address the appropriate sanction for a person who associates with a firm while suspended and statutorily disqualified, or for a firm that allows this misconduct to occur. The NAC therefore considered the analogous Guidelines for a disqualified person associating with a firm. *See Guidelines*, at 1. For associating with a firm while statutorily disqualified, or allowing a statutorily disqualified person to do so, the Guidelines recommend a fine of \$5,000 to \$73,000 each for the individual and the firm and, in egregious cases, a bar for the individual and a suspension of up to two years for the firm. *Guidelines*, at 43. Although Zipper's and Dakota's violations are similar to a disqualified person associating with a firm, their misconduct here was a more serious violation of FINRA rules because Zipper also

was suspended when he associated with Dakota. *See Dep't of Enf't v. Perpetual Sec. Inc.*, Complaint No. C9B040059, 2006 NASD Discip. LEXIS 18, at *72 n.34 (NASD NAC Aug. 16, 2006) (expelling the firm and barring its responsible principals for operating the firm while it was suspended, and stating that the firm's "conducting [of a securities] business while suspended, although a similar violation to allowing a statutorily disqualified person to associate with a firm, is a more serious violation of NASD rules"), *aff'd*, Exchange Act Release No. 56613, 2007 SEC LEXIS 2353 (Oct. 4, 2007).

Zipper's and Dakota's violations were egregious and implicated several aggravating factors. Zipper's association with Dakota during the Suspension Period was not an isolated incident—it was persistent and continuous throughout the Suspension Period. *See Guidelines*, at 7 (Principal Considerations in Determining Sanctions Nos. 8 and 9). Moreover, Zipper's activities during the Suspension Period were not limited to technical or administrative matters. Rather, Zipper repeatedly discussed particular securities with his customers, including recommending securities transactions to them, and otherwise conducted the firm's securities business, even though FINRA staff told him before the Suspension Period began that he could not do so while he was suspended. (RP 2813-17); *see id.* at 8 (Principal Considerations in Determining Sanction No. 14). Zipper intentionally violated the terms of the AWC, FINRA's membership rules, and Dakota's WSPs, and Dakota allowed this misconduct to occur. *See id.* (Principal Considerations in Determining Sanctions No. 13).

Zipper's post-suspension misconduct is highly aggravating because it demonstrates his and the firm's disregard for FINRA's authority. *See David C. Ho*, Exchange Act Release No.

54481, 2006 SEC LEXIS 2100, at *22 (Sept. 22, 2006).⁵ Zipper remained disqualified after his suspension ended on August 31, 2016. Under FINRA’s rules and policies in place at that time, once the suspension ended, Zipper was permitted to associate with Dakota until FINRA made its decision on Dakota’s MC-400. FINRA denied Dakota’s MC-400 on October 2, 2017, and Zipper was prohibited from associating with Dakota after that date. In its decision denying Dakota’s MC-400, the NAC wrote, in part, that it denied the MC-400 because it found that “Zipper engaged in serious misconduct . . . by associating with [Dakota] while suspended[.]” (RP 2208.) Yet Zipper continued to associate with the firm, and the firm allowed him to do so, after FINRA denied the MC-400. (RP 969-971.) In other words, after Zipper and Dakota learned that FINRA had denied the MC-400 precisely because Zipper had violated the terms of his suspension by associating with Dakota while suspended and statutorily disqualified, Zipper continued to associate with Dakota while he was statutorily disqualified. Zipper’s and Dakota’s ongoing dismissal of FINRA’s denial of the MC-400 and the importance of Zipper not associating with Dakota while statutorily disqualified further bolsters the NAC’s decision to bar Zipper and expel Dakota. *See, e.g., E. Magnus Oppenheim & Co.*, Exchange Act Release No. 51479, 2005 SEC LEXIS 764, at *17 (Apr. 6, 2005) (“Whatever negative opinion [Applicant] has of the rule does not obviate the need to comply with it.”).

Zipper’s and Dakota’s refusal to acknowledge their wrongdoing or accept responsibility also is aggravating. *Guidelines*, at 7 (Principal Considerations in Determining Sanctions No. 2). Throughout this proceeding, Zipper and Dakota have tried to shift blame for their misconduct to

⁵ Although Zipper was not charged with this misconduct, the NAC properly considered it for sanctions purposes because it is similar to the misconduct charged in the complaint. *See Wanda P. Sears*, Exchange Act Release No. 58075, 2008 SEC LEXIS 1521, at *22 n.33 (July 1, 2008) (finding, in an unauthorized trading case, that evidence of unauthorized trading, which was not alleged in the complaint, was admissible to gauge aggravating factors to assess sanctions).

FINRA staff by claiming that staff told Zipper he could associate with Dakota during the Suspension Period under some circumstances. As the Commission found, however, there is no credible evidence in the record to support these claims. (*See* RP 2815-17.) Indeed, the record shows that FINRA staff made clear to Zipper that he could not involve himself in Dakota's securities business in any way while he was suspended. (*See* RP 2815-17.)

There are no mitigating factors.

Barring Zipper and expelling Dakota is appropriate and necessary for the protection of investors. Zipper and Dakota have lengthy histories of disregard for FINRA's authority and its rules. As the Commission found, Zipper's and Dakota's current violations constitute "very serious misconduct that presents a risk to investors." (RP 2820.). Given that Zipper acted intentionally, it is highly likely that, unless Zipper is barred, he will engage in similar misconduct in the future, once again putting investors at risk. *See Aaron v. SEC*, 446 U.S. 680, 701 (1980) (stating that an "important factor" in assessing the likelihood that future violations will occur is "the degree of intentional wrongdoing evident in a defendant's past conduct."). Indeed, in light of Zipper's behavior during his prior suspension and statutory disqualification, it is very likely that he would fail to comply with the terms of any suspension the NAC imposed. *See Perpetual Sec.*, 2007 SEC LEXIS 2353, at *44-45 ("By operating after receiving notice of the suspension of its membership, the firm demonstrated that its disregard for NASD's regulatory authority is sufficiently great that only a bar will deter further misconduct and provide the requisite investor protection.").

Moreover, because Zipper and Dakota are, essentially, one and the same, barring Zipper without also expelling Dakota would be wholly ineffective. Although Zipper no longer owns Dakota, the firm remains in the hands of Zipper's family, with Zipper's wife owning 90 percent

of Dakota's stock. There is a substantial likelihood that, if Zipper were barred but Dakota was allowed to operate its securities business, Zipper would once again put investors at risk by involving himself in the firm's day-to-day operations, including recommending securities to customers and managing the firm's affairs. *See id.* at *44 ("Applicants' misconduct in operating a securities business while the Firm's membership was suspended demonstrates a risk too great to the self-regulatory system—and the markets and investors it protects—to allow Applicants to remain in the securities industry."). Given the likelihood that Zipper and Dakota will engage in similar misconduct in the future, thereby putting investors at risk, it is necessary for the protection of investors to bar Zipper and expel Dakota. *See John M.E. Saad*, Exchange Act Release No. 86751, 2019 SEC LEXIS 2216, at *46 (Aug. 23, 2019) (stating that a bar "seek[s] not to punish past transgressions, but to prevent such misconduct from occurring in the future."), *aff'd*, 980 F.3d 103 (D.C. Cir. 2020). The sanctions the NAC imposed are appropriately remedial for Zipper's and Dakota's misconduct.⁶

C. The Sanctions Assessed but Not Imposed for Dakota's Books-and-Records Violations Are Appropriate

For their books-and-records violations, the NAC assessed on each Zipper and Dakota a \$100,000 fine, a two-year suspension on Zipper, and a one-year suspension on Dakota. In light of the bar and expulsions imposed for their other violations, however, the NAC did not impose the suspensions or fines. These sanctions are appropriate given the presence of numerous aggravating factors. For these violations, the Guidelines recommend a fine of \$1,000 to \$15,000, and when aggravating factors predominate, a fine of \$10,000 to \$146,000 for the responsible

⁶ The NAC imposed a unitary sanction on Zipper for his violations under causes one and two because they arose from the same conduct. *See Blair C. Mielke*, Exchange Act Release No. Release No. 75981, 2015 SEC LEXIS 3927, at *41-42 (Sept. 24, 2015) (affirming a unitary sanction for violations arising from same conduct).

individual and the firm. *Guidelines*, at 29. For the responsible individual, the Guidelines recommend a suspension for a period of 10 business days to three months, and when aggravating factors predominate, a suspension of up to two years or a bar. *Id.* For the firm, when aggravating factors predominate, the Guidelines recommend a suspension for a period of 10 business days to two years or expulsion. *Id.*

The NAC properly assessed sanctions at the higher end of the recommended ranges because aggravating factors predominate. First, Zipper was responsible for ensuring Dakota's compliance with federal securities laws and FINRA rules. *See Isaac M. Zucker*, Exchange Act Release No. 64486, 2011 SEC LEXIS 1699, at *30 (May 13, 2011) (finding that industry experience and compliance responsibility were aggravating factors). When Zipper falsified Dakota's books and records, he was serving as Dakota's president, CEO, and CCO. When Lefkowitz assumed these roles during the Suspension Period, he continued Zipper's practice of misidentifying the representative of record on trades he entered. As a result of Zipper's and Lefkowitz's misconduct, Dakota's books and records were inaccurate with respect to hundreds of trades entered between February and November 2016. (RP 2821-22.)

Second, Zipper and Dakota refuse to recognize the seriousness of their misconduct or accept responsibility for it. *See Michael Earle McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *31 (Mar. 15, 2016) ("We . . . are troubled by [applicant's] continued attempts to minimize the importance of his disclosure obligations and the seriousness of his violations."), *aff'd*, 672 F. App'x 865 (10th Cir. 2016). At the hearing, for example, Zipper stated that his falsification of Dakota's books and records was "[n]o different than a traffic citation. . . . I changed lanes without signaling. You want to give me a ticket, give me a ticket.

No one got hurt. We did it for the reason I said and shoot me [sic].” (RP 911-12.) Dakota made similar arguments minimizing the seriousness of these violations. (RP 2508-09.).

Third, Zipper and Dakota, through Zipper and Lefkowitz, intentionally misidentified the representative of record on hundreds of trades, and did so with the specific purpose of evading state registration requirements. *See Guidelines*, at 29 (Principal Considerations in Determining Sanctions No. 3). This was not a technical error or mistake. As the Commission held, “[t]he record amply supports the NAC’s finding that Zipper and Dakota acted with intent to mislead state securities regulators ‘in order to avoid New Jersey’s [broker] registration requirements.’” (RP 2822.) Specifically, the Commission found that Zipper used McNamee’s representative codes “to save costs,” as Zipper “didn’t want to double pay” to register in New Jersey. (RP 2822.)

In making this finding, the Commission rejected Zipper’s and Dakota’s argument that Zipper could not have been trying to avoid registering in New Jersey because, as Zipper claimed, he and Dakota were exempt from registration under the state’s “de minimis” exemption. (RP 2919.)⁷ The Commission found that, “In light of Zipper’s testimony that the reason he and former registered representatives used each other’s codes was to save money on registration fees, we agree with the NAC that the record establishes that Zipper and Dakota intentionally falsified their records to mislead regulators.” (RP 2823.) In response to Zipper’s and Dakota’s claims about the exemption, the Commission noted that “while Zipper told the Hearing Panel he would look for a copy of a waiver he said he received from New Jersey regulators allowing him to

⁷ *See* N.J. Stat. Ann. § 49:3-56(b) (providing the requirements for the exemption from registration under New Jersey law).

effect trades under this exemption, neither he nor Dakota produced any such records.” (RP 2823.)

Notwithstanding the Commission’s findings in its prior decision, Zipper and Dakota continue to argue that they were exempt from registering in New Jersey, and therefore could not have been trying to avoid registering there by misidentifying the representative of record on trades. (Applicants’ Brief at 2-3.) Zipper and Dakota point to an email that Zipper purportedly received from an investigator with the New Jersey Bureau of Securities on March 24, 2021 (after the Commission issued its prior decision in this case). (RP 2946.) In the email, the investigator wrote that Dakota’s “broker-dealer registration was withdrawn in the State of New Jersey on December 21, 2015[.]” The investigator further wrote that “as long as the firm has 5 or less NJ accounts (note not clients) within any 12 consecutive month period OR the total number of NJ transactions don’t [sic] 15 within any 12 consecutive month period, the de minimis exception would apply.” Zipper and Dakota argue that the email proves that neither Zipper nor Dakota was required to register in New Jersey in 2016, that Zipper knew that neither he, McNamee, nor Dakota was registered in New Jersey in 2016, and that Zipper and Lefkowitz therefore could not have been trying to avoid the state’s registration requirements when they made the false entries in the firm’s books and records. (See Notice of Appeal at 3-4, 11.) The email proves none of those things.⁸

⁸ The email is not relevant to Zipper’s and Dakota’s liability for this violation. Zipper and Dakota were not found liable for violating New Jersey’s registration laws. Rather, they were found liable under the Exchange Act and FINRA rules for intentionally falsifying Dakota’s books and records by using McNamee’s representative codes on trades entered by Zipper and Lefkowitz. The books and records were false regardless of whether Zipper and Dakota were eligible for the exemption from registration in New Jersey because McNamee did not take the orders.

The email does not establish that either Zipper or Dakota was, in fact, exempt from registering in New Jersey, and neither Zipper nor Dakota points to any evidence in the record establishing an exemption. In the email, the investigator merely states that Dakota's registration in New Jersey terminated in 2015 and describes the requirements for the exemption under New Jersey law. The investigator does not state that either Zipper or Dakota qualified for the exemption in 2016. Zipper and Dakota assert in their brief that Dakota was eligible for the exemption because the firm "had only 3 accounts in the state of N.J.," so Zipper "immediately applied for that exemption with both FINRA" and Dakota's clearing firm. Applicants' Brief at 2. Zipper and Dakota, however, do not cite any record evidence to establish their eligibility for the exemption or that they contacted FINRA or the clearing firm to "app[ly] for that exemption[.]"⁹

Even if Zipper and Dakota were exempt from registering in New Jersey, it would not contradict the Commission's prior finding that Zipper and Lefkowitz were, in fact, attempting to avoid registering in that state by falsifying Dakota's books and records. Had Zipper believed that he and Dakota were exempt from registering in New Jersey, there would have been no need for him or Lefkowitz to use McNamee's representative codes when entering trades for customers in that state.

Zipper and Dakota assert in their brief that they used McNamee's representative code when entering the trades in Dakota's books and records because changing the code would have delayed entering trades for the firm's New Jersey customers. According to Zipper and Dakota, "the accounts in New Jersey were active traders and to change a rep code would take some time

⁹ Zipper testified at the hearing that he did not know "exactly when" he got the purported exemption from New Jersey. (RP 910.)

in this case and [Zipper] didn't want the clients from New Jersey to be delayed due to Chris McNamee having to leave the company.” (Applicants’ Brief at 2.) But Zipper and Dakota cite no evidence in the record that Zipper ever attempted to change the representative code or that doing so would have caused any delay. To the contrary, Zipper admitted at the hearing that had he known he was eligible for an exemption in New Jersey in 2016, he would have asked Dakota’s clearing firm to change the representative code on the firm’s New Jersey accounts from McNamee’s to his own. (RP 905-06.) When Zipper was asked how McNamee’s “name got on” a trade made after McNamee had left the firm, Zipper replied that he did not “take [McNamee’s] name off it for whatever the reason because DS01 is still in my opinion registered to him in New Jersey. I’m trying to remember exactly what happened.” (RP 907-08.) And when Zipper was asked why Dakota did not move all of McNamee’s accounts to another representative’s code when McNamee left the firm, Zipper replied, “If we had done that, we would have had to reregister. Brokers would have [had] to reregister in a lot of those states which have already been paid. . . . That state [New Jersey] was paid for 2016.” (RP 908.) When Zipper was pressed further, he testified that he continued using McNamee’s representative code after McNamee left the firm because he “didn’t see the reason to change it until the following year because 2016 was all accounted for as far as the state payments.” (RP 909.)

Zipper and Dakota also claim that, on the day McNamee left the firm, Zipper called the New Jersey Bureau of Securities and “discussed [his] situation with them,” and then withdrew McNamee’s and Dakota’s registration in the state. (Applicants’ Brief at 2.) But Zipper and Dakota cite no record evidence of this purported telephone call.¹⁰ Instead, Zipper’s own

¹⁰ Indeed, Zipper testified at the hearing that he had no memory of terminating Dakota’s registration in New Jersey. (RP 914-917; 918-19.)

testimony makes clear that Zipper erroneously believed that Dakota and McNamee were registered in New Jersey throughout 2016, when Zipper and Lefkowitz were using McNamee's representative codes (RP 901); that Zipper and Lefkowitz thought they could avoid registering in the state by using McNamee's codes (RP 910-11); and that Zipper believed that there was nothing wrong with doing so (RP 911-12). In fact, at the hearing, when Enforcement's attorney told Zipper that neither Dakota nor McNamee was registered in New Jersey at any time in 2016, Zipper disputed that fact. (RP 904.) Only after Enforcement's attorney confronted Zipper with undisputable evidence that neither Dakota nor McNamee was registered in New Jersey at any time in 2016 did Zipper claim that he and Dakota were relying on the exemption from registration provided under New Jersey law. (RP 904.) Zipper's shifting testimony establishes that he and Lefkowitz intentionally falsified Dakota's books and records specifically to avoid registering in New Jersey, and nothing in the record controverts the Commission's finding on this issue.

There are no mitigating factors. Zipper and Dakota contend that no customer complained about or lost money because of their falsification of Dakota's books and records, but the absence of complaints or monetary losses is not mitigating. *See Kevin M. Glodek*, Exchange Act Release No. 60937, 2009 SEC LEXIS 3936, at *27 (Nov. 9, 2009) ("The fact that many of the customers did not lose money and did not complain about the violations does not further mitigate [respondent's] misconduct."). Zipper and Dakota also claim that their customers consented to the falsification of Dakota's books and records. Even if this were true, it is not mitigating, either, because a customer cannot grant permission to violate FINRA rules or the federal securities laws.

Given the predominance of aggravating factors and the lack of any mitigating factors, the NAC appropriately assessed sanctions at the higher end of the ranges specified in the Guidelines. Recordkeeping requirements are integral to investor protection because a firm's books and records are the primary means of monitoring its compliance with applicable securities laws. *Elec. Storage of Broker-Dealer Records*, 68 Fed. Reg. 25281 (May 12, 2003). In this case, Zipper and Dakota intentionally falsified the firm's books and records with the specific intent of concealing their non-compliance with New Jersey's securities laws. This type of deceptive conduct presents a grave risk to investors because it hinders regulators' ability to detect other violations. The NAC correctly determined that a significant sanction was needed to deter respondents and others from engaging in similar misconduct in the future. *See Guidelines*, at 2 (General Principles Applicable to All Sanctions Determinations No. 1). Accordingly, the NAC properly assessed, but did not impose, on both Zipper and Dakota \$100,000 fines, a two-year suspension for Zipper, and a one-year suspension for Dakota.

The Commission need not reach the issue of whether these sanctions are appropriate because the NAC assessed but did not impose them. *William Scholander*, Exchange Act Release No. 77492, 2016 SEC LEXIS 1209, at *44 n.68 (Mar. 31, 2016) ("Because FINRA did not impose sanctions for the Rule 3030 violations, we do not make findings as to whether the sanctions FINRA would have imposed (absent the bars) were excessive or oppressive."); *Mielke*, 2015 SEC LEXIS 3927, at *54 n.83 ("Since FINRA imposed no sanctions for these violations, [respondent's] argument on appeal that these violations merited only 'minimal' sanctions is not relevant in this appeal.").

D. An Expulsion Is Appropriate for Dakota's Supervisory Violations

The expulsion the NAC imposed on Dakota for its supervisory violations is appropriate and necessary for the protection of investors. Zipper and Dakota do not address the expulsion for the firm's supervisory violations in either their notice of appeal or their brief.

In determining the appropriate sanction, the NAC applied the Guidelines for systemic supervisory failures because Dakota's supervisory failures were significant, occurred over an extended period, and involved the firm's failure to implement or use supervisory procedures that existed. *Guidelines*, at 105. For systemic supervisory violations, the Guidelines recommend a fine of \$10,000 to \$292,000 and, when aggravating factors predominate, a suspension of up to two years or expulsion. *Id.* Zipper was able to associate with Dakota and communicate with the firm's customers throughout the entire Suspension Period, even though Dakota's WSPs explicitly prohibited such conduct. The WSP's stated that, during a suspension, an employee may not have "direct or indirect contact with customers" or "give investment advice or counsel." (RP 1671.) Additionally, shortly before Zipper's suspension began, Zipper personally updated the WSPs to read: "Starting on June 1, 2016 [sic] and ending on August 31[,], 2016 Bruce Zipper . . . will be on a 90 day suspension and will not be involved in the company's business for that time period." (RP 1629.)

Aggravating factors predominate here. Dakota's supervisory violations were central to its other violations. *Guidelines*, at 105 (Principal Considerations No. 1). Dakota's supervisory failures enabled Zipper to continue associating with the firm while he was suspended and statutorily disqualified, and caused the firm to miss numerous red flags that would have alerted it to Zipper's misconduct. *Id.* (Principal Considerations No. 2). Dakota failed to supervise and adequately review email communications during the Suspension Period, even though FINRA previously had sanctioned the firm for similar misconduct. And after Dakota received the denial

of its MC-400, instructing the firm that it could no longer allow Zipper to associate with it, the firm continued to allow Zipper's association. Dakota's supervisory violations also enabled Zipper and Lefkowitz to falsify the firm's books and records for almost an entire year. As a result of Dakota's supervisory failures, Zipper and Lefkowitz were able to misidentify the representative of record on hundreds of transactions entered between February and November 2016. *Id.* (Principal Considerations No. 5). Dakota's failure to adapt and implement procedures to ensure the accuracy of its books and records reflects a failure to allocate resources to prevent or detect supervisory failures. *Id.* (Principal Considerations No. 3).

Dakota's expulsion is necessary for the protection of investors. Under Zipper's leadership, Dakota has exhibited a troubling pattern of non-compliance with its supervisory obligations. Although Zipper no longer owns a majority interest in the firm, his wife holds 90 percent of Dakota's stock. Given Zipper's past behavior, there is a substantial likelihood that, should Dakota resume its securities business, Zipper will involve himself in the firm's management in the future, including its supervisory practices, and that Dakota's culture of non-compliance will continue, putting investors and the market at risk. Expulsion of Dakota therefore is necessary to protect investors.

V. Conclusion

The sanctions that the NAC imposed are fully supported by the record and appropriate under the facts and circumstances of this case. The Commission therefore should dismiss the application for review.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Michael M. Smith, certify that this brief complies with SEC Rule of Practice 450(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 7,509 words.

I, Michael M. Smith, also certify that this brief complies with the Commission's Rules of Practice by filing a brief that omits or redacts any sensitive personal information described in Rule of Practice 151(e).

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CERTIFICATE OF SERVICE

I, Michael M. Smith, certify that on this 15th day of July 2022, I caused a copy of the foregoing FINRA's Brief in Opposition, in the matter of the *Application for Review of Bruce Zipper and Dakota Securities International, Inc.*, Administrative Proceeding File No. 3-20811, to be filed through the SEC's eFAP system and served by electronic mail on:

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

In the Matter of the Application of
Bruce M. Zipper and Dakota Securities Int'l, Inc.
For Review of Disciplinary Action Taken by
FINRA
Administrative Proceeding File No. 3-20811

FINRA'S INDEX TO APPENDIX

Appendix

Description

A FINRA Sanction Guidelines (April 2017)

Appendix A

April 2017

Sanction Guidelines

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Overview

The regulatory mission of FINRA is to protect investors and strengthen market integrity through vigorous, even-handed and cost-effective self-regulation. FINRA embraces self-regulation as the most effective means of infusing a balance of industry and non-industry expertise into the regulatory process. FINRA believes that an important facet of its regulatory function is the building of public confidence in the financial markets. As part of FINRA's regulatory mission, it must stand ready to discipline member firms and their associated persons by imposing sanctions when necessary and appropriate to protect investors, other member firms and associated persons, and to promote the public interest.

The National Adjudicatory Council (NAC), formerly the National Business Conduct Committee, has developed the *FINRA Sanction Guidelines* for use by the various bodies adjudicating disciplinary decisions, including Hearing Panels and the NAC itself (collectively, the Adjudicators), in determining appropriate remedial sanctions. FINRA has published the *FINRA Sanction Guidelines* so that members, associated persons and their counsel may become more familiar with the types of disciplinary sanctions that may be applicable to various violations. FINRA staff and respondents also may use these guidelines in crafting settlements, acknowledging the broadly recognized principle that settled cases generally result in lower sanctions than fully litigated cases to provide incentives to settle.

These guidelines do not prescribe fixed sanctions for particular violations. Rather, they provide direction for Adjudicators in imposing sanctions consistently and fairly. The guidelines recommend ranges for sanctions and suggest factors that Adjudicators may consider in determining, for each case, where within the range the sanctions should fall or whether sanctions should be above or below the recommended range. These guidelines are not intended to be absolute. Based on the facts and circumstances presented in each case, Adjudicators may impose sanctions that fall outside the ranges recommended and may consider aggravating and mitigating factors in addition to those listed in these guidelines.

These guidelines address some typical securities-industry violations. For violations that are not addressed specifically, Adjudicators are encouraged to look to the guidelines for analogous violations.

In order to promote consistency and uniformity in the application of these guidelines, the NAC has outlined certain **General Principles Applicable to All Sanction Determinations** that should be considered in connection with the imposition of sanctions in all cases. Also included is a list of **Principal Considerations in Determining Sanctions**, which enumerates generic factors for consideration in all cases. Also, a number of guidelines identify potential principal considerations that are specific to the described violation.

General Principles Applicable to All Sanction Determinations

1. **Disciplinary sanctions should be designed to protect the investing public by deterring misconduct and upholding high standards of business conduct.**

The purpose of FINRA's disciplinary process is to protect the investing public, support and improve the overall business standards in the securities industry, and decrease the likelihood of recurrence of misconduct by the disciplined respondent. Toward this end, Adjudicators should design sanctions that are meaningful and 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 significant ill-gotten gains, or result from reckless or intentional actions, Adjudicators should assess sanctions that exceed the recommended range of the guidelines.¹

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

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.

1. See, e.g., *Dep't of Enforcement v. Murray*, Complaint No. 2008016437801, 2012 FINRA Discip. LEXIS 64, at *31 (FINRA OHO Oct. 25, 2012) (finding that respondent's disregard of his supervisory duties supported sanctions above the range recommended by the Sanction Guidelines), *aff'd*, 2013 FINRA Discip. LEXIS 33, at *5 (FINRA NAC Dec. 17, 2013).

2. Adjudicators may consider a firm's small size in connection with the imposition of sanctions with respect to rule violations involving negligence. With respect to violations involving fraudulent, willful or reckless misconduct, Adjudicators should consider whether, given the totality of the circumstances involved, it is appropriate to consider a firm's small size and may determine that, given the egregious nature of the fraudulent activity, firm size will not be considered in connection with 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.³

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.

3. Other avenues, such as arbitration, are available to injured customers as a means to redress grievances.

6. **To remediate misconduct, Adjudicators should consider a respondent’s ill-gotten gain when determining an appropriate remedy.** In cases in which the record demonstrates that the respondent obtained a financial benefit⁴ from his or her misconduct, where appropriate to remediate misconduct, Adjudicators may require the disgorgement of such ill-gotten gain by ordering disgorgement of some or all of the financial benefit derived, directly or indirectly.⁵ In appropriate cases, Adjudicators may order that the respondent’s ill-gotten gain be disgorged and that the financial benefit, directly and indirectly, derived by the respondent be used to redress harms suffered by customers. In cases in which the respondent’s ill-gotten gain is ordered to be disgorged to FINRA, and FINRA collects the full amount of the disgorgement order, FINRA’s routine practice is to contribute the amount collected to the FINRA Investor Education Foundation.
7. **Where appropriate, Adjudicators should consider sanctions previously imposed by other regulators or previous corrective action imposed by a firm on an individual respondent based on the same conduct.** A final action by another regulator against an individual respondent for the same conduct is a potentially mitigating circumstance. When Adjudicators consider a respondent’s claim of sanctions imposed by another regulator, the respondent must show that the conduct at issue before the other regulator was essentially identical and that any fine has already been fully paid, any suspension has been fully served, and any other sanction has been satisfactorily completed. When another regulator’s sanction applies to misconduct that is not substantially similar to violations found by FINRA, Adjudicators should accord commensurately less mitigative weight, if any, based on their assessment of the extent of the overlap between the two cases.

For an individual respondent, Adjudicators should acknowledge firms that address an individual’s misconduct by taking corrective action. A firm-imposed fine or suspension is most comparable to FINRA-imposed sanctions when FINRA’s sanctions would have also included a fine or suspension, and Adjudicators should consider according some mitigative weight where these firm-imposed sanctions have already been fully satisfied by a respondent. With regard to a firm’s prior termination of the respondent’s employment based on the same conduct at issue in a subsequent FINRA disciplinary proceeding, Adjudicators should consider whether a respondent has demonstrated that the termination qualifies for any mitigative value, keeping in mind the goals of investor protection and maintaining high standards of business conduct. Among other things, the respondent has the burden to prove that a firm’s termination of the respondent’s employment has materially reduced the likelihood of misconduct in the future. In cases where a respondent’s misconduct is serious, Adjudicators may find—even considering a firm’s prior termination of the respondent’s employment for the same misconduct at issue—that there is no guarantee of changed behavior and therefore may impose the sanction of a bar.⁶ FINRA has determined that how long a respondent takes to regain employment, loss of salary, and other impacts of an employment termination are merely collateral consequences of being terminated and should not be considered as mitigating by Adjudicators.⁷

4. “Financial benefit” includes any commissions, concessions, revenues, profits, gains, compensation, income, fees, other remuneration, or other benefits the respondent received, directly or indirectly, as a result of the misconduct.

5. Certain guidelines specifically recommend that Adjudicators consider ordering disgorgement in addition to a fine. These guidelines are singled out because they involve violations in which financial benefit occurs most frequently. These specific references should not be read to imply that it is less

important or desirable to order disgorgement of ill-gotten gain in other instances. The concept of ordering disgorgement of ill-gotten gain is important and, if appropriate to remediate misconduct, may be considered in all cases whether or not the concept is specifically referenced in the applicable guideline.

6. See Denise M. Olson, Exchange Act Release No. 75837 (Sept. 3, 2015).

7. See Kent M. Houston, Exchange Act Release No. 71584 (Feb. 20, 2014).

8. **Where appropriate, Adjudicators should require a respondent to requalify in any or all capacities.** The remedial purpose of disciplinary sanctions may be served by requiring an individual respondent to requalify by examination as a condition of continued employment in the securities industry. Such a sanction may be imposed when Adjudicators find that a respondent's actions have demonstrated a lack of knowledge or familiarity with the rules and laws governing the securities industry.
9. **When raised by a respondent, Adjudicators are required to consider ability to pay in connection with the imposition, reduction or waiver of a fine or restitution.** Adjudicators are required to consider a respondent's *bona fide* inability to pay when imposing a fine or ordering restitution. The burden is on the respondent to raise the issue of inability to pay and to provide evidence thereof.⁶ If a respondent does not raise the issue of inability to pay during the initial consideration of a matter before "trial-level" Adjudicators, Adjudicators considering the matter on appeal generally will presume the issue of inability to pay to have been waived (unless the inability to pay is alleged to have resulted from a subsequent change in circumstances). Adjudicators should require respondents who raise the issue of inability to pay to document their financial status through the use of standard documents that FINRA staff can provide. Proof of inability to pay need not result in a reduction or waiver of a fine, restitution or disgorgement order, but could instead result in the imposition of an installment payment plan or another alternate payment option. In cases in which Adjudicators modify a monetary sanction based on a *bona fide* inability to pay,

the written decision should so indicate. Although Adjudicators must consider a respondent's *bona fide* inability to pay when the issue is raised by a respondent, monetary sanctions imposed on member firms need not be related to or limited by the firm's required minimum net capital.

8. See In re Toney L. Reed, Exchange Act Rel. No. 37572 (August 14, 1996), wherein the Securities and Exchange Commission directed FINRA to consider financial ability to pay when ordering restitution. In these guidelines, the NAC has explained its understanding of the Commission's directives to FINRA based on the Reed decision and other Commission decisions.

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.¹ 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.

1. See, e.g., *Rooms v. SEC*, 444 F.3d 1208, 1214-15 (10th Cir. 2006) (explaining that while the existence of a disciplinary history is an aggravating factor when determining the appropriate sanction, its absence is not mitigating).

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.

Technical Matters

Calculation of days of suspension. When imposing suspensions, Adjudicators should consult the suspension range listed in the specific guideline applicable to the violation to determine whether the length of the suspension should be measured in business days or calendar days. When imposing a suspension that is measured in days, Adjudicators should specify business or calendar days.

Censures. These guidelines do not specifically recommend whether or not Adjudicators should impose censures under any of the individual sanction guidelines for particular violations. In the following two instances, however, Adjudicators generally should not impose censures: 1) in cases in which the total monetary sanction (fines, disgorgement, and restitution) is \$5,000 or less and 2) in cases in which an Adjudicator imposes a bar, expulsion or suspension. Adjudicators should impose censures in cases in which fines above \$5,000 are reduced or eliminated due to a respondent's inability to pay or bankruptcy. Adjudicators also may impose censures in cases in which this policy would suggest no censure if the Adjudicator determines that extraordinary circumstances exist.¹

Change in terminology; "actions" replaces "violations." Many of the guidelines recommend progressively escalating monetary sanctions for second and subsequent disciplinary "actions." The term "actions" is used to acknowledge that every violation of a rule will not necessarily rise to the level of a formal disciplinary action by FINRA, and also to reflect that, as discussed herein, multiple violations may be aggregated or "batched" into one "action" (see *General Principle no. 4*).

An "action" means a Letter of Acceptance, Waiver and Consent (AWC), a settled case or a fully litigated case. FINRA Regulation staff-issued Cautionary Action Letters and staff interviews are informal actions that are not included for purposes of the *FINRA Sanction Guidelines* in the term "action."

Fines. Fines may be imposed individually as to each respondent in a case, or jointly and severally as to two or more respondents.

1. Interested parties are directed to *NASD Notice to Members 99-91* (November 1999) for additional information on FINRA's Censure Policy.

Monetary sanctions—Imposition and collection of monetary sanctions.

FINRA has identified the circumstances under which Adjudicators generally will impose and FINRA generally will collect monetary sanctions. In that the overriding purpose of all disciplinary sanctions is to remedy misconduct, deter future misconduct and protect the investing public, Adjudicators may exercise their discretion in applying FINRA’s policy on the imposition and collection of monetary sanctions as necessary to achieve FINRA’s regulatory purposes.²

- ▶ Adjudicators generally should not impose a fine if an individual is barred and there is no customer loss.
- ▶ Adjudicators generally should not impose a fine if an individual is barred and the Adjudicator has ordered restitution or disgorgement of ill-gotten gains as appropriate to remediate the misconduct.
- ▶ Nevertheless, Adjudicators generally should impose a fine and require payment of restitution and disgorgement even if an individual is barred in all sales practice cases if:
 - the case involves widespread, significant and identifiable customer harm; or
 - the respondent has retained substantial ill-gotten gains.

- ▶ In all cases, Adjudicators may exercise their discretion and, if a bar is imposed, refrain from imposing a fine, but require proof of payment of an order of restitution when a respondent files an application for re-entry into the securities industry.³ Adjudicators also may, in their discretion, impose a suspension and a fine, but require proof of payment of the fine when the respondent re-enters the securities industry. In this regard, Adjudicators should consider the following factors:
 - whether the respondent is suspended or otherwise not in the securities industry when the sanction is imposed; and
 - the number of customers harmed.

2. Interested parties are directed to NASD *Notice to Members 99-86* (October 1999) for additional information on FINRA’s Monetary Sanctions Policy.

3. Adjudicators have the discretion to impose post-judgment interest on restitution orders.

Monetary sanctions—payment of monetary sanctions. Respondents may be permitted to pay fines and costs through an installment payment plan. Installment payment plans generally will be limited to two years (although in extraordinary cases, installment payment plans may be extended to not more than five years). Respondents who are allowed to utilize an installment payment plan will be required to execute promissory notes that track the installment payment plan.

Organization. These guidelines are organized into 11 subject-matter categories and arranged alphabetically by name in each category. In addition, the index lists all the guidelines alphabetically by name.

Restitution—Payment of interest. When ordering restitution, Adjudicators may consider requiring the payment of interest on the base amount. Generally, interest runs from the date(s) of the violative conduct and should be calculated at the rate established for the underpayment of federal income tax in Section 6621 of the Internal Revenue Code, 26 U.S.C. Section 6621(a)(2). If appropriate, Adjudicators may order payment to a state escheat fund of any amount that a respondent is not able to pay in restitution because he or she is unable, after reasonable and documented efforts, to locate a customer or other party to whom payment is owed.

Suspensions, bars and expulsions. These guidelines recommend suspensions that do not exceed two years. This upper limit is recommended because of the NAC's sense that, absent extraordinary circumstances, any misconduct so serious as to merit a suspension of more than two years probably should warrant a bar (of an individual) or expulsion (of a member firm) from the securities industry. Notwithstanding the NAC's recommendation in these guidelines to impose suspensions that do not exceed two years, under FINRA's rules, an Adjudicator may suspend the membership of a member or the registration of a person associated with a member for a definite period that may exceed two years or for an indefinite period with a termination contingent on the performance of a particular act.

It should be noted that an individual who is barred from associating with a member firm in any capacity generally may not re-enter the industry. Although a barred individual may seek special permission to re-enter the industry via FINRA's eligibility process, to date, the NAC has disfavored applications for re-entry.⁴

4. In Securities Exchange Act Release No. 34720 (September 26, 1994), Securities and Exchange Commission staff indicated in a letter to various self-regulatory organizations, including FINRA, that "[h]enceforth, imposition of an unqualified bar evidences the Commission's conclusion that the public interest is served by permanently excluding the barred person from the securities industry. Accordingly, absent extraordinary circumstances, a person subject to an unqualified bar will be unable to establish that it is in the public interest to permit reentry to the securities industry."

I. Activity Away From Associated Person's Member Firm

- Outside Business Activities—Failure to Comply With Rule Requirements
- Selling Away (Private Securities Transactions)
- Transactions for or by Associated Persons—Failure to Comply With Rule Requirements



Outside Business Activities—Failure to Comply With Rule Requirements

FINRA Rules 2010 and 3270

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none">1. Whether the outside activity involved customers of the firm.2. Whether the outside activity resulted directly or indirectly in injury to other parties, including the investing public, and, if so, the nature and extent of the injury.3. The duration of the outside activity, the number of customers and the dollar volume of sales.4. Whether the respondent's marketing and sale of the product or service could have created the impression that the employer (member firm) had approved the product or service.5. Whether the respondent misled his or her employer member firm about the existence of the outside activity or otherwise concealed the activity from the firm.6. The importance of the role played by the respondent in the outside business activity.	<p>Fine of \$2,500 to \$73,000.¹</p>	<p>Consider suspending the respondent in any or all capacities for a period of 10 business days to three months.</p> <p>Where the outside business activities involve aggravating factors, consider a longer suspension of up to one year.</p> <p>Where aggravating factors predominate, consider a longer suspension (of up to two years) or a bar.</p>

1. As set forth in General Principle No. 6, Adjudicators may also order disgorgement.

Selling Away (Private Securities Transactions)

FINRA Rules 2010 and 3280

<u>Principal Considerations in Determining Sanctions¹</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> The dollar volume of sales. The number of customers. The length of time over which the selling away activity occurred. Whether the product sold away has been found to involve a violation of federal or state securities laws or federal, state or SRO rules. Whether the respondent had a proprietary or beneficial interest in, or was otherwise affiliated with, the selling enterprise or issuer and, if so, whether respondent disclosed this information to his or her customers. Whether respondent attempted to create the impression that his or her employer (member firm) sanctioned the activity, for example, by using the employer’s premises, facilities, name and/or goodwill for the selling away activity or by selling a product similar to the products that the employer (member firm) sells. 	<p><i>Associated Person</i></p> <p>Fine of \$5,000 to \$73,000.¹</p>	<p><i>Associated Person</i></p> <p>The first step in determining sanctions is to assess the extent of the selling away, including the dollar amount of sales, the number of customers and the length of time over which the selling away occurred. Adjudicators should consider the following range of sanctions based on the dollar amount of sales:</p> <ul style="list-style-type: none"> ▶ Up to \$100,000 in sales: 10 business days to 3 months ▶ \$100,000 to \$500,000: 3 to 6 months ▶ \$500,000 to \$1,000,000: 6 to 12 months ▶ Over 1,000,000: 12 months to a bar <p>Following this assessment, Adjudicators should consider other factors as described in the Principal Considerations for this Guideline and the General Principles applicable to all Guidelines. The presence of one or more mitigating or aggravating factors may either raise or lower the above-described sanctions.</p>

1. As set forth in General Principle No. 6, Adjudicators should also order disgorgement.

Selling Away (Private Securities Transactions)—continued

FINRA Rules 2010 and 3280

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> 7. Whether the respondent’s selling away activity resulted, either directly or indirectly, in injury to the investing public and, if so, the nature and extent of the injury. 8. Whether the respondent sold away to customers of his or her employer (member firm). 9. Whether the respondent provided his or her employer firm with verbal notice of the details of the proposed transaction and, if so, the firm’s verbal or written response, if any. 10. Whether the respondent sold away after being instructed by his or her firm not to sell the type of the product involved or to discontinue selling the specific product involved in the case. 11. Whether the respondent participated in the sale by referring customers or selling the product directly to customers. 12. Whether the respondent recruited other registered individuals to sell the product. 13. Whether the respondent misled his or her employer (member firm) about the existence of the selling away activity or otherwise concealed the selling away activity from the firm. 	<p><i>Member Firm</i></p> <p>Where member firm receives written notice of a private securities transaction, but fails to provide written notice of approval, disapproval or acknowledgement, fine of \$2,500 to \$15,000.²</p>	<p><i>Member Firm</i></p> <p>Where member firm receives written notice of a private securities transaction, but fails to provide written notice of approval, disapproval or acknowledgement, consider suspending responsible supervisory personnel in any or all capacities for up to two years.</p>

2. If the allegations involve a member’s failure to supervise the selling away activity, then Adjudicators should also consider the Supervision–Failure to Supervise guideline.

Transactions for or by Associated Persons—Failure to Comply With Rule Requirements

FINRA Rules 2010 and 3210¹

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> Whether violative transactions presented real or perceived conflicts of interest for the employer firm and/or customers. Whether violative transaction(s) involved violations of the Restrictions on the Purchase and Sale of Initial Public Offerings (FINRA Rule 5130). Whether the respondent provided verbal notice of the violative transactions to the employer member and/or executing member, and whether the employer member verbally acquiesced. 	<p>Associated Person</p> <p>Fine of \$1,000 to \$37,000.</p> <p>Executing Member Firm</p> <p>Fine of \$2,500 to \$73,000.</p>	<p>Associated Person</p> <p>In egregious cases, consider suspending the associated person in any or all capacities for up to two years or barring the associated person.</p> <p>Executing Member Firm</p> <p>In egregious cases, consider suspending the firm with respect to any or all activities or functions for up to two years. Also consider suspending the responsible individual at the executing firm in any or all capacities for up to two years or barring the responsible individual.</p>

1. This guideline also is appropriate for violations of MSRB Rule G-28.

II. Arbitration

- Arbitration Award—Failure to Honor or Failure to Honor in a Timely Manner



Arbitration Award—Failure to Honor or Failure to Honor in a Timely Manner

FINRA Rules 2010 and 10330¹

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> Whether the respondent has paid any portion of the arbitration award. Whether the respondent has made a good-faith attempt to satisfy the award in whole or in part. Consider the promptness of any such good-faith effort. Whether the respondent negotiated a settlement or payment schedule with the arbitration claimant and then failed to abide by the terms of the agreement. 	<p><i>Failure to Honor</i></p> <p>Fine of at least \$5,000.</p> <p>In egregious cases, consider incorporating a daily escalator into the fine amount.</p> <p><i>Failure to Honor in a Timely Manner</i></p> <p>Fine of at least \$2,500.</p>	<p><i>Failure to Honor</i></p> <p>Suspend the respondent in all capacities until the respondent satisfies the arbitration award (by payment or fully paid settlement) plus at least 30 additional business days. In egregious cases, consider a bar.</p> <p><i>Failure to Honor in a Timely Manner</i></p> <p>Suspend the respondent in all capacities for up to five business days.</p>

1. In addition, FINRA Rule 9554 indicates that FINRA also may suspend or cancel the membership of a member or the registration of a person for failure to honor an arbitration award or settlement agreement related to an arbitration or mediation under Article V, Section 3 of the FINRA By-Laws. This guideline also is appropriate for violations of MSRB Rule G-35.

III. Distributions of Securities

- Corporate Financing Rule—Failure to Comply With Rule Requirements
- Engaging in Prohibited Municipal Securities Business
- Escrow Violations—Prohibited Representations in Contingency Offerings; Transmission or Maintenance of Customer Funds in Underwritings
- Restrictions on the Purchase and Sale of Initial Equity Public Offerings Violations
- Unregistered Securities—Sales of



Corporate Financing Rule—Failure to Comply With Rule Requirements

FINRA Rules 2010 and 5110

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <p><i>Failure to Comply with Filing Requirements</i></p> <p><i>Unfair or Unreasonable Underwriting Compensation</i></p> <ol style="list-style-type: none"> Percentage and dollar amount of unreasonable compensation as compared to maximum amount of underwriting compensation considered fair and reasonable (see FINRA Rule 5110). 	<p><i>Failure to Comply with Filing Requirements</i></p> <p>Fine of \$2,500 to \$37,000.</p> <p><i>Unfair or Unreasonable Underwriting Compensation</i></p> <p>Fine of \$5,000 to \$73,000.¹</p>	<p><i>Failure to Comply with Filing Requirements</i></p> <p>In egregious cases, consider suspending the firm with respect to any or all activities or functions for five business days and/or suspending the responsible individual in any or all capacities for a period of 30 business days to two years.</p> <p><i>Unfair or Unreasonable Underwriting Compensation</i></p> <p><i>Individual</i></p> <p>Consider suspending the responsible individual in any or all capacities for a period of 30 business days to two years.</p> <p>In egregious cases, consider barring the responsible individual.</p> <p><i>Firm</i></p> <p>Consider suspending the firm with respect to any or all activities or functions for five business days.</p> <p>In egregious cases, consider suspending the firm for a longer period of time.</p>

1. As set forth in General Principle No. 6, Adjudicators may also order disgorgement.

Engaging in Prohibited Municipal Securities Business

MSRB Rule G-37¹

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> 1. Position in firm of person making contribution. 2. Position of official to whom the contribution was made. 3. Nature of prohibited municipal securities business in which respondent engaged. 4. Whether the respondent firm knew or should have known of contribution. 5. Relative size of the contribution. 	<p>Firm</p> <p>Fine of \$10,000 to \$73,000.²</p> <p>Responsible Individual</p> <p>Fine of \$10,000 to \$73,000.³</p>	<p>In cases involving several prohibited municipal underwritings, or reckless conduct on the part of the firm, consider suspending the firm from engaging in municipal securities business with prohibited issuers for up to two years beyond the time proscribed by MSRB Rule G-37 and consider suspending the responsible individual(s) from acting as municipal principal(s) for a similar time period.</p> <p>In egregious cases, consider prohibiting the firm from engaging in any future business with prohibited issuers or with the involved official and barring the responsible individual(s) in any or all principal capacities.</p>

1. MSRB Rule G-37 prohibits dealers from engaging in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by the dealer, any municipal finance professional associated with the dealer, and any political action committee controlled by the dealer or any municipal finance professional.

2. As set forth in General Principle No. 6, Adjudicators may also order disgorgement.

3. As set forth in General Principle No. 6, Adjudicators may also order disgorgement.

Escrow Violations—Prohibited Representations in Contingency Offerings; Transmission or Maintenance of Customer Funds in Underwritings

FINRA Rule 2010; SEC Rule 15c2-4 and SEC Rule 10b-9

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> Amount of commissions and/or other underwriting compensation retained by the respondent. Whether the respondent was affiliated with the issuer or other entity to which customer funds were released. Whether subscription funds were released from escrow before the contingency occurred. <p>SEC Rule 15c2-4</p> <ol style="list-style-type: none"> Extent to which the customer funds were exposed to risk or loss. <p>SEC Rule 10b-9</p> <ol style="list-style-type: none"> Extent of failure to satisfy the contingency described in the prospectus or offering circular. Whether the respondent used non-<i>bona fide</i> sales to give the false appearance that the contingency was satisfied. 	<p>SEC Rule 15c2-4</p> <p>Fine of \$1,000 to \$15,000.</p> <p>SEC Rule 10b-9</p> <p>Fine of \$5,000 to \$73,000.</p>	<p>SEC Rule 15c2-4</p> <p>In egregious cases, consider suspending the firm with respect to any or all activities or functions and/or the responsible individual in any or all capacities for up to 30 business days.</p> <p>SEC Rule 10b-9</p> <p>In egregious cases, consider suspending the firm with respect to any or all activities or functions and/or the responsible individual in any or all capacities for up to two years. In appropriate cases, consider requiring a rescission offer.</p>

Restrictions on the Purchase and Sale of Initial Equity Public Offerings Violations

FINRA Rules 2010 and 5130

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none">1. Nature of restricted account(s) involved. Consider whether the account is absolutely or conditionally restricted.2. Whether the respondent has any interest in the restricted account(s).3. Whether the case involves <i>bona fide</i> dispute regarding normal investment practice, proportion of allocation or substantiality of allocation.4. Whether the respondent engaged in misconduct for the purpose of improperly conferring financial benefit on another person or entity.	<p>If the respondent is the restricted buyer, a fine of \$1,000 to \$22,000.</p> <p>If the respondent is the selling member firm and/or an associated person of the firm, a fine of \$1,000 to \$22,000.</p> <p>If the restricted buyer is not subject to FINRA jurisdiction, “transaction profit” may be added to the fine for the selling member and/or associated person. In egregious cases or those with evidence of willful misconduct, consider a higher fine of up to three times the “transaction profit.”</p>	<p><i>Individual</i></p> <p>Consider suspending the respondent representative (buyer or seller) in any or all capacities for up to 30 business days.</p> <p>In egregious cases, consider a longer suspension (of up to two years) or a bar.</p> <p><i>Firm</i></p> <p>Consider suspending the respondent firm with respect to any or all activities or functions for five to 10 business days.</p> <p>In egregious cases, consider a longer suspension (of up to two years) or an expulsion.</p>

Unregistered Securities—Sales of

FINRA Rule 2010 and Section 5 of the Securities Act of 1933

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none">1. Whether the respondent's unregistered securities sales resulted from an intentional act, recklessness or negligence.2. Whether the respondent sold before the effective date of a registration statement.3. Share volume of transactions, dollar amount of transactions, and amount of compensation earned by the respondent or the respondent's firm on the transactions involved.4. Whether the sales of unregistered securities were made in connection with an attempt to evade regulatory oversight.5. Whether the respondent had implemented procedures that were reasonably designed to ensure that it did not participate in an unregistered distribution.6. Whether the respondent disregarded "red flags" suggesting the presence of unregistered distribution.7. Whether the respondent's conduct involved a high volume of, or recurring transactions in, penny stocks as defined in Section 3(a)(51) of the Securities Exchange Act of 1934 or related Exchange Act Rule 3a51-1.	<p>Fine of \$2,500 to \$73,000.</p> <p>Where the respondent's conduct involved a high volume of or recurring transactions in penny stocks, impose a fine of \$5,000 to \$146,000.</p> <p>Where aggravating factors predominate, consider a higher fine.¹</p>	<p><i>Individual</i></p> <p>Consider suspending an individual in any or all capacities for a period of 10 business days to six months.</p> <p>Where aggravating factors predominate, or where the respondent's conduct involved a high volume of or recurring transactions in penny stocks, consider a longer suspension in any or all capacities for up to two years or a bar.</p> <p><i>Firm</i></p> <p>Consider suspending the firm with respect to any or all relevant activities or functions for up to 30 business days or until procedural deficiencies are remedied.</p> <p>Where aggravating factors predominate, or where the firm's conduct involved a high volume of or recurring transactions in penny stocks, consider a longer suspension or an expulsion.</p>

1. As set forth in General Principle No. 6, Adjudicators may also order disgorgement.

IV. Financial and Operational Practices

- Customer Confirmations—Failure to Comply With Rule Requirements
- Customer Protection Rule—Failure to Comply With Rule Requirements
- Net Capital Violations
- Recordkeeping Violations
- Regulation T and Margin Requirements—Violations of Regulation T and/or FINRA Margin Requirements



Customer Confirmations—Failure to Comply With Rule Requirements

SEC Rule 10b-10¹ and FINRA Rule 2232

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> 1. Nature and materiality of the inaccurate or missing information. 2. Number of affected confirmations. 	<p>First Action Fine of \$1,000 to \$7,000.</p> <p>Second Action Fine of \$5,000 to \$15,000.</p> <p>Subsequent Actions Fine of \$10,000 to \$146,000.</p>	<p>Firm</p> <p>Consider suspending the firm with respect to any or all activities or functions for up to 30 business days.</p> <p>In egregious cases, consider a lengthier suspension (of up to two years) or expulsion of the firm.</p> <p>Individual</p> <p>Consider suspending the responsible party in any or all capacities for up to 30 business days.</p> <p>In egregious cases, consider a lengthier suspension (of up to two years) or a bar.</p>

1. This guideline is also appropriate for violations of MSRB Rule G-15.

Customer Protection Rule—Failure to Comply With Rule Requirements

FINRA Rule 2010 and SEC Rule 15c3-3

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none">1. Extent to which the respondent exposed customer funds to potential risk or loss.	<p>Fine of \$1,000 to \$73,000.</p> <p>Repeated violations should carry individual fine for Financial Principal and/or responsible supervisor.</p>	<p><i>Firm</i></p> <p>Consider suspending the firm with respect to any or all activities or functions for up to 30 business days.</p> <p>In egregious cases, consider a lengthier suspension (of up to two years) or expulsion of the firm.</p> <p><i>Individual</i></p> <p>Consider suspending the Financial Principal or responsible party in any or all capacities for up to 30 business days.</p> <p>In egregious cases, consider a lengthier suspension (of up to two years) or a bar.</p>

Net Capital Violations

FINRA Rule 2010 and SEC Rule 15c3-1

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none">1. Whether the firm continued in business while knowing of deficiencies/inaccuracies or voluntarily ceased conducting business because of the deficiencies/inaccuracies.2. Whether respondent attempted to conceal deficiencies or inaccuracies by any means, including “parking” of inventory and inflating “mark-to-market” calculations.	<p>Fine of \$1,000 to \$73,000.</p>	<p><i>Firm</i></p> <p>Consider suspending the firm with respect to any or all activities or functions for up to 30 business days.</p> <p>In egregious cases, consider a lengthier suspension (of up to two years) or expulsion of the firm.</p> <p><i>Individual</i></p> <p>Consider suspending the Financial Principal or responsible party in any or all capacities for up to 30 business days.</p> <p>In egregious cases, consider a lengthier suspension (of up to two years) or a bar.</p>

Recordkeeping Violations

FINRA Rules 4511 and 2010 and SEC Rules 17a-3 and 17a-4¹

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> 1. Nature and materiality of inaccurate or missing information. 2. The nature, proportion, and size of the firm records (<i>e.g.</i>, emails) at issue. 3. Whether in accurate or missing information was entered or omitted intentionally, recklessly, or as the result of negligence. 4. Whether the violations occurred during two or more examination or review periods or over an extended period of time, or involved a pattern or patterns of misconduct. 5. Whether the violations allowed other misconduct to occur or to escape detection. 	<p>Monetary Sanction</p> <p>Fine of \$1,000 to \$15,000.</p> <p>Where aggravating factors predominate, consider a fine of \$10,000 to \$146,000.</p> <p>Where significant aggravating factors predominate, consider a higher fine.</p>	<p>Suspension, Bar or Other Sanctions</p> <p><i>Responsible Individual</i></p> <p>Consider suspending the responsible individual in any or all capacities for a period of 10 business days to three months.</p> <p>Where aggravating factors predominate, consider a longer suspension (of up to two years) or a bar.</p> <p><i>Firm</i></p> <p>Where aggravating factors predominate, consider suspending the firm for a period of 10 business days to two years, or consider expulsion of the firm.</p>

1. This guideline also is appropriate for violations of MSRB Rules G-8 and G-9.

Regulation T and Margin Requirements—Violations of Regulation T and/or FINRA Margin Requirements

Regulation T; Part 220 Issued by the Board of Governors of the Federal Reserve Board; and FINRA Rules 2010 and 4210

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> Extent and nature of the respondent’s failure to comply. 	<p>Fine of \$1,000 to \$73,000.</p> <p>Repeated violations should carry an individual fine for the responsible individual.</p>	<p><i>Firm</i></p> <p>Consider suspending the firm with respect to any or all activities or functions for up to 30 business days.</p> <p>In egregious cases, consider a lengthier suspension (of up to two years) or expulsion of the firm.</p> <p><i>Individual</i></p> <p>Consider suspending the responsible individual in any or all capacities for up to 30 business days.</p> <p>In egregious cases, consider a lengthier suspension (of up to two years) or a bar.</p>

V. Impeding Regulatory Investigations

- Confidentiality Agreements—Settling With Customer in Exchange for Customer Agreement Not to Cooperate With Regulatory Authorities
- Failure to Respond, Failure to Respond Truthfully or in a Timely Manner, or Providing a Partial but Incomplete Response to Requests Made Pursuant to FINRA Rule 8210
- Settling Customer Complaints Away From the Firm



Confidentiality Agreements—Settling With Customer in Exchange for Customer Agreement Not to Cooperate With Regulatory Authorities

FINRA Rule 2010

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> 1. Nature of restriction contained in confidentiality clause. 2. Whether the respondent voluntarily released the customer from terms of confidentiality agreement without regulatory intervention. 3. Whether the respondent released the customer from terms of confidentiality agreement (as applied to cooperation with regulatory authorities) after regulator advised the respondent to do so. 	<p>Fine of \$2,500 to \$73,000.</p>	<p>Consider suspending the individual respondent in any or all capacities or suspending the firm (and/or responsible individual) with respect to any or all activities or functions for a period of one month to two years.</p> <p>In egregious cases, expel the firm (and/or bar responsible individual) or bar the individual respondent.</p>

Failure to Respond, Failure to Respond Truthfully or in a Timely Manner, or Providing a Partial but Incomplete Response to Requests Made Pursuant to FINRA Rule 8210

FINRA Rules 2010 and 8210

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <p><i>Failure to Respond or to Respond Truthfully</i></p> <ol style="list-style-type: none"> Importance of the information requested as viewed from FINRA’s perspective. <p><i>Providing a Partial but Incomplete Response</i></p> <ol style="list-style-type: none"> Importance of the information requested that was not provided as viewed from FINRA’s perspective, and whether the information provided was relevant and responsive to the request. Number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response. Whether the respondent thoroughly explains valid reason(s) for the deficiencies in the response. <p><i>Failure to Respond in a Timely Manner</i></p> <ol style="list-style-type: none"> Importance of the information requested as viewed from FINRA’s perspective. Number of requests made and the degree of regulatory pressure required to obtain a response. Length of time to respond. 	<p><i>Failure to Respond or to Respond Truthfully</i></p> <p>Fine of \$25,000 to \$73,000.</p> <p><i>Providing a Partial but Incomplete Response</i></p> <p>Fine of \$10,000 to \$73,000.</p> <p><i>Failure to Respond in a Timely Manner</i></p> <p>Fine of \$2,500 to \$37,000.</p>	<p><i>Individual</i></p> <p>If the individual did not respond in any manner, a bar should be standard.¹</p> <p>Where the individual provided a partial but incomplete response, a bar is standard unless the person can demonstrate that the information provided substantially complied with all aspects of the request.</p> <p>Where mitigation exists, or the person did not respond in a timely manner, consider suspending the individual in any or all capacities for up to two years.²</p> <p><i>Firm</i></p> <p>In an egregious case, expel the firm. If mitigation exists, consider suspending the firm with respect to any or all activities or functions for up to two years.</p> <p>In cases involving failure to respond in a timely manner, consider suspending the responsible individual(s) in any or all capacities and/or suspending the firm with respect to any or all activities or functions for a period of up to 30 business days.</p>

1. When a respondent does not respond until after FINRA files a complaint, Adjudicators should apply the presumption that the failure constitutes a complete failure to respond.

2. The lack of harm to customers or benefit to a violator does not mitigate a Rule 8210 violation.

Settling Customer Complaints Away From the Firm

FINRA Rule 2010

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none">1. Whether the respondent provided the employer with verbal notice of settlement and the employer acquiesced, or whether the respondent deceived his employer.2. Whether the actions delayed or obviated the filing of required Forms U-4 or U-5 or NASD Rule 3070 filings.	<p>Fine of \$2,500 to \$73,000.</p>	<p>Consider suspending the respondent in any or all capacities for up to two years. In egregious cases, consider barring respondent.</p>

VI. Improper Use of Funds/Forgery

- Conversion or Improper Use of Funds or Securities
- Forgery, Unauthorized Use of Signatures or Falsification of Records



Conversion or Improper Use of Funds or Securities

FINRA Rules 2010 and 2150¹

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p>	<p>Conversion²</p> <p>(No fine recommended, since a bar is standard.)</p> <p>Improper Use</p> <p>Fine of \$2,500 to \$73,000.</p>	<p>Conversion</p> <p>Bar the respondent regardless of amount converted.</p> <p>Improper Use</p> <p>Consider a bar. Where the improper use resulted from the respondent's misunderstanding of his or her customer's intended use of the funds or securities, or other mitigation exists, consider suspending the respondent in any or all capacities for a period of six months to two years and thereafter until the respondent pays restitution.</p>

1. This guideline also is appropriate for violations of MSRB Rule G-25.
2. Conversion generally is an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it.

Forgery, Unauthorized Use of Signatures or Falsification of Records

FINRA Rule 2010

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> Nature of the document(s) signed or falsified. Whether the respondent had a good-faith, but mistaken, belief of express or implied authority. Whether the customer possessed or saw the document before the customer’s signature was affixed to it, and the customer affirmed the signature. If the document pertained to a transaction, whether the transaction was agreed to by an authorized person. Whether the customer re-signed the document or ratified the signature. 	<p>For signatures or falsifications involving a transaction, if the transaction is authorized, in the absence of other violations or customer harm: fine of \$5,000 to \$10,000.¹</p> <p>Where a respondent affixes a signature to or falsifies a document without authorization, in the absence of other violations or customer harm: fine of \$5,000 to \$146,000.</p>	<p>For signatures or falsifications involving a transaction, if the transaction is authorized, in the absence of other violations or customer harm: consider suspending the respondent for period of 10 business days to six months.²</p> <p>Where a respondent affixes a signature to or falsifies a document without authorization or ratification, in the absence of other violations or customer harm: consider suspending the respondent for a period of two months to two years.</p> <p>Where a respondent affixes a signature to or falsifies a document without authorization, in furtherance of another violation, resulting in customer harm or accompanied by significant aggravating factors: a bar is standard.</p>

1. Where the respondent falsifies a document to assist a customer’s or third party’s wrongdoing, this lower tier would not apply.
 2. Where the respondent falsifies a document to assist a customer’s or third party’s wrongdoing, this lower tier would not apply.

VII. Qualification and Membership

- Branch Offices—Failure to Register
- Cheating, Using an Impostor, or Possessing Unauthorized Materials in Qualifications Examinations or in the Regulatory Element of Continuing Education
- Continuing Education (Firm Element)—Failure to Comply With Rule Requirements
- Continuing Education (Regulatory Element)—Failure to Comply With Rule Requirements
- Disqualified Person Associating With Firm Prior to Approval; Firm Allowing Disqualified Person to Associate Prior to Approval
- Member Agreement Violations
- Registration Violations



Branch Offices—Failure to Register

FINRA Rules 2010 and 3110

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none">1. Number of branch office locations not properly registered.2. Duration of period when branch office(s) were not properly registered.3. The manner and scope of activities conducted in unregistered branch office(s).	<p>Fine of \$1,000 to \$7,000 plus the dollar amount of registration fees that would have been assessed if the branch had been registered properly.</p>	<p>Individual</p> <p>In egregious cases (including, but not limited to, those in which the firm previously has engaged in similar misconduct), consider suspending the responsible individual in any or all capacities for up to 30 business days.</p> <p>Firm</p> <p>In egregious cases (including, but not limited to, those in which the firm previously has engaged in similar misconduct), consider suspending the firm and/or the branch office at issue with respect to any or all activities or functions for up to five business days. Also require demonstrated compliance with the rule.</p>

Cheating, Using an Impostor, or Possessing Unauthorized Materials in Qualifications Examinations or in the Regulatory Element of Continuing Education

FINRA Rule 2010¹

Principal Considerations in Determining Sanctions ²	Monetary Sanction	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> Whether nature of material indicated that it would not be useful for taking examination; <i>i.e.</i>, whether content of material makes it clear that respondent did not intend to cheat. 	<p>Cheating</p> <p><i>Unauthorized Possession That Does Not Rise to the Level of Cheating</i></p> <p>Fine of \$5,000 to \$37,000.</p>	<p>A bar is standard. If mitigation is documented (only in cases of unauthorized possession that do not rise to the level of cheating), consider a lesser sanction, such as suspending the individual in any or all capacities for up to two years.</p>

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

2. (a) The Membership and Registration Rules prohibit applicants from receiving assistance while taking an examination; (b) study outlines provided by FINRA Regulation Qualifications Department advise applicants that examinations are "closed book"; (c) examination pamphlet given to applicants advises that unauthorized materials may not be brought by the applicant into the testing center;

(d) applicants taking an examination by computer must certify by prescribed keystrokes, to continue computer operation, that they will take the examination in the prescribed fashion and not receive assistance while taking the examination and, for paper examinations, applicants must sign a certification before beginning examination; and (e) proctor instructions before examinations advise applicants that unauthorized materials are not allowed during the examination.

Continuing Education (Firm Element)—Failure to Comply With Rule Requirements¹

FINRA Rules 2010² and 1250

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> Whether the firm’s misconduct effectively denied several registered persons access to participation in firm-sponsored continuing education. Whether the firm has completed a training needs analysis and/or has developed written training plans aligned with the business activities of the firm. 	<p><i>Individual</i></p> <p>Fine of \$1,000 to \$7,000.</p> <p><i>Firm and/or Responsible Principal</i></p> <p>Fine of \$2,500 to \$29,000.</p>	<p><i>Individual</i></p> <p>In egregious cases, such as where there is intentional misconduct and/or repeat violations, suspend the individual in any or all capacities for 30 or more days (up to two years) or consider a bar.</p> <p><i>Firm and/or Responsible Principal</i></p> <p>In cases involving multiple violations or a violation of extended duration, where the firm has taken no corrective actions and appears unwilling to comply, consider suspending the firm (and/or responsible principal) with respect to any or all activities or functions for up to five business days and requiring demonstrated compliance with the requirements of FINRA Rule 1250.</p> <p>In egregious cases, such as where the firm has not conducted a needs analysis or developed a written training plan, consider suspending the firm (and/or responsible principal) for a longer period (up to two years) or expelling the firm (and/or barring responsible principal).</p>

- This guideline is intended to apply to member firms that have not developed sufficient continuing education programs and/or made available to registered employees continuing education programs, and to individuals who fail to comply with the firm educational program.
- This guideline also is appropriate for violations of MSRB Rule G-3.

Continuing Education (Regulatory Element)—Failure to Comply With Rule Requirements¹

FINRA Rules 2010² and 1250

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p> <p>1. Nature and extent of responsibilities of inactive person(s).</p> <p>Violations by Individuals</p> <p>2. Whether the respondent knowingly functioned with inactive registration.</p> <p>Violations by Firms</p> <p>3. Whether the firm knowingly allowed individual to function while registration was inactive.</p>	<p>Individual</p> <p>Fine of \$1,000 to \$7,000.³</p> <p>Firm</p> <p>Fine of \$2,500 to \$29,000.⁴</p>	<p>Individual</p> <p>In egregious cases, such as where there is intentional misconduct and/or repeat violations, suspend individual in any or all capacities for 30 or more days (up to two years) or consider a bar.</p> <p>Firm</p> <p>Where the firm has taken no corrective actions and appears unwilling to comply, consider suspending the firm (and/or responsible principal) with respect to any or all activities or functions for up to five business days. In egregious cases, such as those where the firm knowingly allowed a person with lapsed registration to act in a registered capacity and/or in cases with other aggravating factors, consider a longer suspension (of up to two years) of the firm (and/or responsible principal) or expulsion of the firm (and/or bar of the responsible principal).</p>

1. This guideline is intended to apply to individuals who have not complied with the Regulatory Element and are acting in a registered capacity and to firms that have employed one or more individuals whose registration has lapsed for non-compliance with continuing education requirements and who continue to work in registered capacities.

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

3. As set forth in General Principle No. 6, Adjudicators may also order disgorgement.

4. As set forth in General Principle No. 6, Adjudicators may also order disgorgement.

Member Agreement Violations

FINRA Rule 2010

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none">1. Whether the respondent breached a material provision of the agreement.2. Whether the respondent breached a provision of the agreement that contained a restriction that was particular to the firm.3. Whether the firm had applied for, was in the process of applying for, or had been denied a waiver of a restriction at the time of the misconduct.	<p>Fine of \$2,500 to \$73,000.¹</p>	<p>In cases involving a serious breach of a restrictive agreement, suspend the firm with respect to any or all activities or functions and/or suspend the responsible individual in any or all capacities for up to two years.</p> <p>In egregious cases, consider expelling the firm and/or barring the responsible individual.</p>

1. As set forth in General Principle No. 6, Adjudicators may also order disgorgement.

Registration Violations

FINRA Rules 2010 and 1122, and NASD Rules 1000 through 1120¹

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
<ol style="list-style-type: none"> Whether the respondent has filed a registration application. Nature and extent of the unregistered person’s responsibilities. 	<p><i>Firm and/or Individual</i></p> <p>Fine of \$2,500 to \$73,000²</p>	<p><i>Firm</i></p> <p>In egregious cases, consider suspending the firm with respect to any or all activities or functions for up to 30 business days.</p> <p><i>Individual</i></p> <p>Consider suspending the individual in any or all capacities for up to six months.</p> <p>In egregious cases, consider a lengthier suspension (of up to two years) or bar.</p>

1. This guideline also is appropriate for violations of MSRB Rules G-2 and G-3.
 2. As set forth in General Principle No. 6, Adjudicators may also order disgorgement.

VIII. Quality of Markets

- Extended Hours Trading Risk Disclosure—Failure to Comply With Rule Requirements
- Anti-Intimidation/Coordination—Failure to Comply With Rule Requirements
- Backing Away
- Best Execution—Failure to Comply With Requirements for Best Execution
- ECN Display Rule—Failure to Comply With Rule Requirements
- Failure to Display Minimum Size in NASDAQ Securities, CQS Securities and OTC Bulletin Board™ Securities
- Limit Order Display Rule—Failure to Comply With Rule Requirements
- Limit Order Protection Rule—Failure to Comply With Rule Requirements
- Locked/Crossed Market—Failure to Comply With Rule Requirements
- Marking the Close or Open
- Options Exercise and Positions Limits—Failure to Comply With Rule Requirements
- Options Positions Reporting—Late Reporting and Failing to Report
- Order Audit Trail System (OATS)™—Late Reporting; Failing to Report; False, Inaccurate or Misleading Reporting; and Clock Synchronization Failure
- Passive Market Making Violations
- Prohibition on Transactions, Publication of Quotations or Publication of Indications of Interest During a Trading Halt
- Reports of Execution Quality and Order Routing
- Short Interest Reporting
- Short Sale Violations
- Trade Reporting and Compliance Engine (TRACE)—Late Reporting; Failing to Report; False, Inaccurate or Incomplete Reporting
- Trade Reporting—Late Reporting; Failing to Report; False, Inaccurate or Misleading Reporting



Extended Hours Trading Risk Disclosure—Failure to Comply With Rule Requirements

FINRA Rule 2265

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none">1. Whether the firm failed to provide customer(s) with a risk disclosure statement.2. Whether the firm provided its customer(s) with an inadequate risk disclosure statement, or furnished the risk disclosure statement to its customer(s) in an untimely manner or a manner not designed to provide actual notice.3. In all cases, consider the nature, quality and timing of the risk disclosure actually provided to the customer(s).4. Whether extended-hours trading was appropriate for the affected customer(s).	<p>Fine of \$5,000 to \$146,000</p>	<p>Consider suspending the responsible individual in any or all capacities for a period of 10 business days to one year.</p> <p>In egregious cases, particularly cases involving numerous customers, consider suspending for a longer period (of up to two years) or barring the responsible individual and suspending the firm with respect to any or all activities or functions for a period of up to two years.</p>

Anti-Intimidation/Coordination—Failure to Comply With Rule Requirements

FINRA Rules 2010 and 5240

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> Whether the behavior was collusive or part of a larger manipulation. Whether the behavior attempted to affect or actually affected publicly disseminated quotes or otherwise inhibited market transparency. Whether the behavior attempted to or actually resulted in late or inaccurate trade reporting. Whether the behavior attempted to or actually altered market prices. In the case of intimidation or harassment, nature and content of the respondent’s speech, communications and/or harassing behavior. The general effect of the behavior on the fair and efficient operation of the securities markets. Whether the behavior was repetitive or a single impulsive action. 	<p><i>Intimidation/Harassment</i></p> <p>Fine of \$5,000 to \$73,000.</p> <p>In egregious cases, consider a fine in excess of \$73,000.</p> <p><i>Coordination</i></p> <p>Fine of \$10,000 to \$146,000.</p> <p>In egregious cases, consider a fine in excess of \$146,000.</p>	<p><i>Intimidation/Harassment</i></p> <p>In egregious cases, suspend the individual respondent in any or all capacities and/or the member firm respondent with respect to any or all activities or functions for a period of 10 business days to two years.</p> <p>In egregious cases involving intimidation, consider barring the individual respondent.</p> <p><i>Coordination</i></p> <p>Suspend the individual respondent in any or all capacities and/or the member firm respondent with respect to any or all activities or functions for a period of 30 business days to two years.</p> <p>In egregious cases, consider expelling the member firm and/or barring the individual respondent.</p>

Backing Away

FINRA Rules 2010 and 5220¹

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction²</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none">Whether the respondent offered contemporaneous trades or otherwise remediated the failures to execute.While the respondents are responsible for the systems that they use and the third-party vendors that they employ, the appropriate level of sanctions will depend on whether the respondent diligently chose, installed and tested a system that nevertheless malfunctioned; the frequency and thoroughness with which the respondent ensured that the system was operating in compliance with applicable rules; and the care that the respondent exercised in undertaking all necessary steps to correct systems-related malfunctions. The same considerations apply to a respondent that has relied on a third-party vendor's products or services.	<p>First Action³ Fine of \$5,000 to \$15,000.</p> <p>Second Action Fine of \$10,000 to \$73,000.</p> <p>Subsequent Actions Fine of \$10,000 to \$146,000.⁴</p>	<p>In egregious cases, consider suspending the firm with respect to any or all activities or functions and/or suspending the responsible individual in any or all capacities for up to two years.</p>

1. This guideline also is appropriate for violations of MSRB Rule G-13.

2. In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second, or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent's compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range.

3. Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.

4. If the respondent's second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

Best Execution—Failure to Comply With Requirements for Best Execution

FINRA Rule 5310 and 2010¹

Principal Considerations in Determining Sanctions	Monetary Sanction ²	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> Nature of the best execution violation; <i>i.e.</i>, whether the execution was at an inferior price or was untimely. Whether the respondent failed to conduct reasonable regular and rigorous reviews of execution quality that considered all relevant factors (<i>e.g.</i>, potential for price improvement). While the respondents are responsible for the systems that they use and the third-party vendors that they employ, the appropriate level of sanctions will depend on whether the respondent diligently chose, installed and tested a system that nevertheless malfunctioned; the frequency and thoroughness with which the respondent ensured that the system was operating in compliance with applicable rules; and the care that the respondent exercised in undertaking all necessary steps to correct systems-related malfunctions. The same considerations apply to a respondent that has relied on a third-party vendor's products or services. 	<p>First Action³ Fine of \$5,000 to \$73,000.</p> <p>Second Action Fine of \$10,000 to \$146,000.</p> <p>Subsequent Actions Fine of \$25,000 to \$292,000.⁴</p>	<p>Negligent Misconduct</p> <p>Consider suspending the responsible individual in any or all capacities or the firm with respect to any or all activities or functions for a period of 10 to 30 business days.</p> <p>Intentional or Reckless Misconduct</p> <p>Consider suspending the responsible individual in any or all capacities, or suspend the firm with respect to any or all relevant activities or functions, for a period of 10 business days to two years.</p> <p>Where aggravating factors predominate, consider barring the individual or expelling the firm.</p>

1. This guideline may also be appropriate for violations of MSRB Rules G-18 and G-30 that do not involve a dealer's excessive profit, but do involve unfair pricing based on an inattention to market value. See MSRB Notice 2004-3 (Review of Dealer Pricing Responsibilities) (Jan. 26, 2004).

2. In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent's compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range. Adjudicators should order restitution or increase the recommended fine amount by adding the amount of a respondent's

financial benefit in all cases in which the best execution violation resulted in a quantifiable loss for the customer. In cases involving best execution violations that arose from intentional or reckless misconduct, Adjudicators may consider imposing a set fine amount per violation rather than in the aggregate.

3. Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.

4. If the respondent's second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

Best Execution—Failure to Comply With Requirements for Best Execution—continued

FINRA Rule 5310 and 2010

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p>4. For securities with limited quotations or pricing information available, whether the character of the market for the security was reasonably assessed, including an analysis of price, volatility and relative liquidity, and whether reliable source(s) of pricing information or potential liquidity were considered.</p> <p>5. The number of affected customers and quantified customer harm.</p>		

ECN Display Rule—Failure to Comply With Rule Requirements

FINRA Rule 2010 and Regulation NMS, Rule 602

Principal Considerations in Determining Sanctions	Monetary Sanction ¹	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> Whether the priced order was a customer order, rather than an order entered for the account of the market maker. Whether the priced customer order was executed during the period of non-compliance, while other transactions were executed in the marketplace at prices equal to or better than that priced order. Evidence of significant adverse impact on market-price discovery or transparency that occurred because the order was not displayed at all, was displayed only after long delay, or was displayed in a grossly incorrect manner. While respondents are responsible for the systems that they use and the third-party vendors that they employ, the appropriate level of sanctions will depend on whether the respondent diligently chose, installed and tested a system that nevertheless malfunctioned; the frequency and thoroughness with which the respondent ensured that the system was operating in compliance with applicable rules; and the care that the respondent exercised in undertaking all necessary steps to correct systems-related malfunctions. The same considerations apply to a respondent that has relied on a third-party vendor's products or services. 	<p>First Action² Fine of \$5,000 to \$15,000.</p> <p>Second Action Fine of \$10,000 to \$73,000.</p> <p>Subsequent Actions Fine of \$10,000 to \$146,000.³</p>	<p>In egregious cases, consider suspending the firm with respect to any or all activities or functions and/or suspending the responsible individual in any or all capacities for up to two years or expelling the firm and/or barring the responsible individual.</p>

1. In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second, or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent's compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range.

2. Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.

3. If respondent's second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

Failure to Display Minimum Size in NASDAQ Securities, CQS Securities and OTC Bulletin Board Securities

FINRA Rules 2010, 6170 and 6272, and SEC Rule 144A

Principal Considerations in Determining Sanctions	Monetary Sanction ¹	Suspension, Bar, or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p>	<p>First Action² Fine of \$5,000 to \$15,000.</p> <p>Second Action Fine of \$10,000 to \$73,000.</p> <p>Subsequent Actions Fine of \$10,000 to \$146,000.³</p>	<p>In egregious cases, consider suspending the firm with respect to any or all activities or functions for up to 20 business days and/or suspending the responsible individual in any or all capacities for up to 20 business days.</p>

1. In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second, or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent's compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range.

2. Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.

3. If respondent's second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

Limit Order Display Rule—Failure to Comply With Rule Requirements

FINRA Rule 2010 and Regulation NMS, Rule 604

Principal Considerations in Determining Sanctions	Monetary Sanction ¹	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> Whether the customer limit order was executed during the period of non-compliance and whether other transactions were executed at prices equal to or better than that customer limit order. Whether the misconduct had a significant adverse impact on market-price discovery or transparency. While respondents are responsible for the systems that they use and the third-party vendors that they employ, the appropriate level of sanctions will depend on whether the respondent diligently chose, installed and tested a system that nevertheless malfunctioned; the frequency and thoroughness with which the respondent ensured that the system was operating in compliance with applicable rules; and the care that the respondent exercised in undertaking all necessary steps to correct systems-related malfunctions. The same considerations apply to a respondent that has relied on a third-party vendor's products or services. 	<p>First Action² Fine of \$5,000 to \$15,000.</p> <p>Second Action Fine of \$10,000 to \$73,000.</p> <p>Subsequent Actions Fine of \$10,000 to \$146,000.³</p>	<p>In egregious cases, consider suspending the firm with respect to any or all activities or functions and/or suspending the responsible individual in any or all capacities for up to two years or expelling the firm and/or barring the responsible individual.</p>

1. In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second, or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent's compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range.

2. Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.

3. If respondent's second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

Limit Order Protection Rule—Failure to Comply With Rule Requirements

FINRA Rules 2010 and 5320

Principal Considerations in Determining Sanctions	Monetary Sanction ¹	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> Whether respondent traded ahead of and/or failed to execute a customer limit order. While respondents are responsible for the systems that they use and the third-party vendors that they employ, the appropriate level of sanctions will depend on whether the respondent diligently chose, installed and tested a system that nevertheless malfunctioned; the frequency and thoroughness with which the respondent ensured that the system was operating in compliance with applicable rules; and the care that the respondent exercised in undertaking all necessary steps to correct systems-related malfunctions. The same considerations apply to a respondent that has relied on a third-party vendor's products or services. 	<p>First Action² Fine of \$5,000 to \$15,000.</p> <p>Second Action Fine of \$10,000 to \$73,000.</p> <p>Subsequent Actions Fine of \$10,000 to \$146,000.³</p>	<p>In egregious cases, consider suspending the firm with respect to any or all activities or functions and/or suspending the responsible individual in any or all capacities for up to two years.</p>

1. In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second, or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent's compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range.

2. Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.

3. If respondent's second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

Locked/Crossed Market—Failure to Comply With Rule Requirements

FINRA Rules 2010, 6170 and 6272

Principal Considerations in Determining Sanctions	Monetary Sanction ¹	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> Whether the locked/crossed market affected the market at a particularly sensitive time, such as at the market open, at commencement of secondary trading or on an expiration date. While respondents are responsible for the systems that they use and the third-party vendors that they employ, the appropriate level of sanctions will depend on whether the respondent diligently chose, installed and tested a system that nevertheless malfunctioned; the frequency and thoroughness with which the respondent ensured that the system was operating in compliance with applicable rules; and the care that the respondent exercised in undertaking all necessary steps to correct systems-related malfunctions. The same considerations apply to a respondent that has relied on a third-party vendor's products or services. 	<p>First Action² Fine of \$5,000 to \$15,000.</p> <p>Second Action Fine of \$10,000 to \$73,000.</p> <p>Subsequent Actions Fine of \$10,000 to \$146,000.³</p>	<p>In egregious cases, consider suspending the firm with respect to any or all activities or functions and/or suspending the responsible individual in any or all capacities for up to two years or expelling the firm and/or barring the responsible individual.</p>

1. In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second, or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent's compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range.

2. Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.

3. If respondent's second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

Marking the Close or Open

FINRA Rules 2010 and 5210

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none">1. Whether the misconduct resulted in protecting a securities position or enhancing size.2. Whether the respondent received a benefit from the misconduct, including but not limited to increased valuation of inventory, avoidance of margin calls or affecting month-end performance.3. Whether the activity affected the market at a particularly sensitive time, such as on an expiration date.4. Whether the misconduct was an isolated incident involving one stock or a systemic pattern of behavior involving multiple stocks.	<p>Fine of \$25,000 to \$292,000.</p> <p>In egregious cases, consider a fine in excess of \$292,000.</p>	<p><i>Negligent Misconduct</i></p> <p>Suspend the individual in any or all capacities and/or suspend firm with respect to any or all activities or functions for up to 30 business days.</p> <p><i>Intentional or Reckless Misconduct</i></p> <p>Suspend the individual in any or all capacities and/or suspend firm with respect to any or all activities or functions for up to two years.</p> <p>In egregious cases, consider barring the individual and/or expelling the firm.</p>

Options Exercise and Positions Limits—Failure to Comply With Rule Requirements

FINRA Rules 2010 and 2360

Principal Considerations in Determining Sanctions	Monetary Sanction ¹	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p>	<p>First Action² Fine of \$5,000 to \$15,000.</p> <p>Second Action Fine of \$10,000 to \$73,000.</p> <p>Subsequent Actions Fine of \$10,000 to \$146,000.³</p>	<p>In egregious cases, consider suspending the firm with respect to any or all activities or functions and/or suspending the responsible individual in any or all capacities for up to two years or prohibiting the firm from conducting options transactions.</p>

1. In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second, or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent's compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range.

2. Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.

3. If respondent's second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

Options Positions Reporting—Late Reporting and Failing to Report

FINRA Rule 2010 and 2360(b)(5)

Principal Considerations in Determining Sanctions ¹	Monetary Sanction ²	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> Size of the positions not reported. Whether respondent violated rule requirements during an extended period of days. (Adjudicators should treat as aggravating the fact that a respondent’s failure to report or incorrect reporting occurred for more than one week. Adjudicators should treat as egregious misconduct a respondent’s failure to report for several weeks.) Evidence of respondent’s potential for benefit or monetary gain. 	<p><i>Late Reporting and Failing to Report</i></p> <p>First Action³ Fine of \$5,000 to \$15,000.</p> <p>Second Action Fine of \$10,000 to \$73,000.</p> <p>Subsequent Actions Fine of \$10,000 to \$146,000.⁴</p> <p>In all egregious cases, whether a first, second or subsequent action, consider a fine greater than or equal to the high end of the range for a first, second or subsequent action. Also consider imposing the fine on a “per violation” basis.</p>	<p><i>Failure to Report</i></p> <p>In egregious cases, consider suspending the responsible individual in any or all capacities for up to two years. Also consider suspending the firm from conducting options transactions for up to two years or barring the firm from conducting options transactions.</p>

1. A respondent’s delegation of its reporting responsibilities to a third party who caused or contributed to respondent’s violation is not an independent basis for mitigation.

2. In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second, or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent’s compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range.

3. Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.

4. If respondent’s second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

Order Audit Trail System (OATS)—Late Reporting; Failing to Report; False, Inaccurate or Misleading Reporting; and Clock Synchronization Failure

FINRA Rules 7400 through 7460

<u>Principal Considerations in Determining Sanctions²</u>	<u>Monetary Sanction¹</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> Nature of OATS reporting violation. Extent to which violative conduct affected the regulatory audit trail. Whether violation occurred over an extended period of days. Whether reporting violation was readily apparent from a review of FINRA’s OATS website.⁴ While respondents are responsible for the systems that they use and the third-party vendors that they employ, the appropriate level of sanctions will depend on whether the respondent diligently chose, installed, and tested a system that nevertheless malfunctioned; the frequency and thoroughness with which the respondent ensured that the system was operating in compliance with applicable rules; and the care that the respondent exercised in undertaking all necessary steps to correct systems-related malfunctions. The same considerations apply to a respondent that has relied on a third-party vendor’s products or services. 	<p><i>Late Reporting, Failing to Report, False, Inaccurate or Misleading Reporting</i></p> <p>First Action³ Fine of \$5,000 to \$15,000.</p> <p>Second Action Fine of \$10,000 to \$73,000.</p> <p>Subsequent Actions Fine of \$10,000 to \$146,000.⁵</p> <p>In all egregious cases, whether a first, second, or subsequent action, consider a fine greater than or equal to the high end of the range for a first, second, or subsequent action.</p> <p><i>Failure to Synchronize Clocks</i></p> <p>First Action Fine of \$5,000 to \$15,000.</p> <p>Subsequent Actions Fine of \$10,000 to \$73,000.⁵</p>	<p><i>For All Types of Violations</i></p> <p>Firm</p> <p>Subsequent Actions Consider suspending the firm with respect to any or all activities or functions for up to 30 business days.</p> <p>In egregious cases, consider a lengthier suspension (of up to two years) or expulsion of the firm.</p> <p>Individual</p> <p>Subsequent Actions Consider suspending the responsible individual in any or all capacities for up to 30 business days.</p> <p>In egregious cases, consider a lengthier suspension (of up to two years) or a bar.</p>

1. In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second, or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent’s compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range.

2. A respondent’s delegation of its reporting responsibilities to a third party who caused or contributed to respondent’s violation is not an independent basis for mitigation.

3. Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.

4. In cases in which the respondent fails for more than one week to detect a failure to report that would have been apparent from a review of data on the OATS website, Adjudicators should consider the respondent’s violations to be egregious.

5. If respondent’s second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

Passive Market Making Violations

FINRA Rule 2010 and Regulation M

Principal Considerations in Determining Sanctions	Monetary Sanction ¹	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p>	<p>First Action² Fine of \$5,000 to \$15,000.</p> <p>Second Action Fine of \$10,000 to \$73,000.</p> <p>Subsequent Actions Fine of \$10,000 to \$146,000.³</p>	<p>In egregious cases, consider suspending responsible individual in any or all capacities for up to two years or barring responsible individual. Also consider suspending the firm with respect to any or all activities or functions for up to two years.</p>

1. In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second, or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent's compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range.

2. Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.

3. If respondent's second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

Prohibition on Transactions, Publication of Quotations or Publication of Indications of Interest During a Trading Halt

FINRA Rules 2010 and 5260¹

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> Whether respondent knew of the trading halt. 	<p>Fine of \$5,000 to \$73,000.</p> <p>Adjudicators may consider ordering restitution or disgorgement in appropriate cases.</p> <p>In egregious cases, consider a fine in excess of \$73,000.</p>	<p>In egregious cases, consider suspending the firm with respect to any or all activities or functions and/or suspending the responsible individual in any or all capacities for up to two years or expelling the firm and/or barring the responsible individual.</p>

1. This guideline also is appropriate for violations of MSRB Rule G-13.

Reports of Execution Quality and Order Routing

Regulation NMS, Rules 605 & 606

Principal Considerations in Determining Sanctions	Monetary Sanction ¹	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section³</i></p> <ol style="list-style-type: none"> Whether respondent violated rule requirements during a period of months.⁴ While respondents are responsible for the systems that they use and the third-party vendors that they employ, the appropriate level of sanctions will depend on whether the respondent diligently chose, installed, and tested a system that nevertheless malfunctioned; the frequency and thoroughness with which the respondent ensured that the system was operating in compliance with applicable rules; and the care that the respondent exercised in undertaking all necessary steps to correct systems-related malfunctions. The same considerations apply to a respondent that has relied on a third-party vendor’s products or services. 	<p>First Action² Fine of \$10,000 to \$29,000.</p> <p>Second Action Fine of \$20,000 to \$73,000.</p> <p>Subsequent Actions Fine of \$20,000 to \$146,000.⁵</p> <p>In all egregious cases, whether a first, second or subsequent action, consider a fine greater than or equal to the high end of the range for a first, second or subsequent action. Also consider imposing the fine on a “per violation” basis.</p>	

1. In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second, or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent’s compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range.

2. Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time should be given more weight than less recent events.

3. A respondent’s delegation of its reporting responsibilities to a third party who caused or contributed to respondent’s violation is not an independent basis for mitigation.

4. Adjudicators should treat as aggravating the fact that a respondent’s failure to report or incorrect reporting occurred for more than one month.

5. If respondent’s second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

Short Interest Reporting

FINRA Rule 4560

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section¹</i></p> <ol style="list-style-type: none">1. The number of short interest reporting cycles for which the respondent failed to report short interest or reported short interest incorrectly.2. The number and size of positions that the respondent failed to report or reported incorrectly.3. Whether the firm failed to exercise reasonable supervision of its short interest reporting process or system.4. While respondents are responsible for the systems that they use and the third-party vendors that they employ, the appropriate level of sanctions will depend on whether the respondent diligently chose, installed, and tested a system that nevertheless malfunctioned; the frequency and thoroughness with which the respondent ensured that the system was operating in compliance with applicable rules; and the care that the respondent exercised in undertaking all necessary steps to correct systems-related malfunctions. The same considerations apply to a respondent that has relied on a third-party vendor's products or services.5. The extent to which the violations affected the public dissemination of short interest data.	<p>First Action Fine of \$5,000 to \$15,000.</p> <p>Second Action Fine of \$10,000 to \$73,000.</p> <p>Subsequent Actions Fine of \$10,000 to \$146,000.</p> <p>Where aggravating factors predominate, consider a higher fine.</p>	<p>Negligent Misconduct</p> <p>Consider suspending individual respondent in any or all capacities for a period of 10 to 30 business days.</p> <p>Intentional or Reckless Misconduct</p> <p>Consider suspending individual respondent in any or all capacities, or the firm with respect to any or all relevant activities or functions, for a period of 10 business days to two years.</p> <p>Where aggravating factors predominate, consider barring the individual or expelling the firm.</p>

1. A respondent's delegation of its reporting responsibilities to a third party who caused or contributed to respondent's violation is not a basis for mitigation.

Short Sale Violations

FINRA Rules 7230A and 7330, and Regulation SHO

Principal Considerations in Determining Sanctions	Monetary Sanction ¹	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> While respondents are responsible for the systems that they use and the third-party vendors that they employ, the appropriate level of sanctions will depend on whether the respondent diligently chose, installed, and tested a system that nevertheless malfunctioned; the frequency and thoroughness with which the respondent ensured that the system was operating in compliance with applicable rules; and the care that the respondent exercised in undertaking all necessary steps to correct systems-related malfunctions. The same considerations apply to a respondent that has relied on a third-party vendor's products or services. 	<p>First Action² Fine of \$5,000 to \$15,000.</p> <p>Second Action Fine of \$10,000 to \$73,000.</p> <p>Subsequent Actions Fine of \$10,000 to \$146,000.⁴</p> <p>In all egregious cases, whether a first, second or subsequent action, consider a fine greater than or equal to the high end of the range for a first, second or subsequent action. Also consider imposing the fine on a "per violation" basis.</p>	<p>If the short-selling customer is not subject to FINRA jurisdiction, in egregious cases or those with evidence of willful misconduct, consider adding the amount of the short-selling customer's "transaction profit"³ to the fine for the executing member or associated person. In egregious cases, consider suspending the firm with respect to any or all relevant activities or functions or suspending the responsible individual in any or all capacities for up to two years or expelling the firm or barring the responsible individual.</p>

- In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second, or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent's compliance rate is significantly lower than its peers, Adjudicators may impose a monetary sanction in excess of the recommended range.
- Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.

- "Transaction profit" means the profit that the short-selling customer realized. This amount is separate and distinct from the respondent's financial benefit, as described in General Principle No. 6.
- If respondent's second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

Trade Reporting and Compliance Engine (TRACE)—Late Reporting; Failing to Report; False, Inaccurate or Incomplete Reporting

FINRA Rules 2010 and 6730¹

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction²</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section³</i></p> <ol style="list-style-type: none"> 1. Extent to which violative conduct affected market transparency, the dissemination of trade information, or the regulatory audit trail. 2. While respondents are responsible for the systems that they use and the third-party vendors that they employ, the appropriate level of sanctions will depend on whether the respondent diligently chose, installed, and tested a system that nevertheless malfunctioned; the frequency and thoroughness with which the respondent ensured that the system was operating in compliance with applicable rules; and the care that the respondent exercised in undertaking all necessary steps to correct systems-related malfunctions. The same considerations apply to a respondent that has relied on a third-party vendor's products or services. 3. Whether respondent violated rule requirements during an extended period of days. (Adjudicators should treat as aggravating the fact that a respondent's failure to report or incorrect reporting occurred for more than one week. Adjudicators should treat as egregious misconduct a respondent's failing to report for several weeks.) 4. Whether a reporting violation was readily apparent from a review of FINRA's TRACE website (or MSRB's website for violations of MSRB Rule G-14).⁶ 	<p><i>For All Types of Violations</i></p> <p>First Action⁴ Fine of \$5,000 to \$15,000.</p> <p>Second Action Fine of \$10,000 to \$73,000.</p> <p>Subsequent Actions Fine of \$10,000 to \$146,000.⁵</p> <p>In all egregious cases, whether a first, second or subsequent action, consider a fine greater than or equal to the high end of the range for a first, second or subsequent action. Also consider imposing the fine on a "per violation" basis.</p>	<p><i>For All Types of Violations</i></p> <p>Firm</p> <p>In egregious cases, consider a suspension (of up to two years) or expulsion of the firm.</p> <p>Responsible Individual</p> <p>Consider suspending the responsible individual in any or all capacities for up to 30 business days.</p> <p>In egregious cases, consider a lengthier suspension (of up to two years) or a bar.</p>

(footnotes continue on next page)

Trade Reporting and Compliance Engine (TRACE)—Late Reporting; Failing to Report; False, Inaccurate or Incomplete Reporting—continued

FINRA Rules 2010 and 6730¹

1. This guideline also is appropriate for violations of MSRB Rule G-14 AND G-17.
2. In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second, or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent's compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range.
3. A respondent's delegation of its reporting responsibilities to a third party who caused or contributed to respondent's violation is not an independent basis for mitigation.
4. Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.
5. If respondent's second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.
6. In cases in which the respondent does not detect a reporting failure or violation that would have been apparent from a routine review of data such as, for example, transaction reporting cards on FINRA's TRACE website or MSRB's website, Adjudicators should consider the respondent's violations to be egregious.

Trade Reporting—Late Reporting; Failing to Report; False, Inaccurate or Misleading Reporting

FINRA Rule 2010 and Equity Trade Reporting Rules

Principal Considerations in Determining Sanctions	Monetary Sanction ¹	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> Nature of trade reporting violation. Whether violative conduct affected market-price discovery data. Whether operational problems caused delayed reports. Whether respondent violated rule requirements over an extended period of days. While respondents are responsible for the systems that they use and the third-party vendors that they employ, the appropriate level of sanctions will depend on whether the respondent diligently chose, installed, and tested a system that nevertheless malfunctioned; the frequency and thoroughness with which the respondent ensured that the system was operating in compliance with applicable rules; and the care that the respondent exercised in undertaking all necessary steps to correct systems-related malfunctions. The same considerations apply to a respondent that has relied on a third-party vendor's products or services. 	<p>First Action² Fine of \$5,000 to \$15,000.</p> <p>Second Action Fine of \$10,000 to \$73,000.</p> <p>Subsequent Actions Fine of \$10,000 to \$146,000.³</p> <p>In all egregious cases, whether a first, second or subsequent action, consider a fine greater than or equal to the high end of the range for a first, second, or subsequent action.</p>	<p>In egregious cases, consider suspending the firm with respect to any or all activities or functions and/or suspending responsible individual in any or all capacities for up to two years.</p> <p>Also consider expelling the firm and/or barring the responsible individual.</p>

1. In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second, or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent's compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range.

2. Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time should be given more weight than less recent events.

3. If respondent's second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

IX. Reporting/Provision of Information

- FOCUS Reports—Late Filing; Failing to File; Filing False or Misleading Reports
- Forms U4/U5—Late Filing of Forms or Amendments; Failing to File Forms or Amendments; Filing of False, Misleading or Inaccurate Forms or Amendments
- MSRB Rule G-37 Reporting—Late Filing; Failing to File; Filing False or Misleading Reports
- Regulation M Reports—Late Filing; Failing to File; False or Misleading Filing
- Reportable Events Under NASD Rule 3070—Late Reporting; Failing to Report; Filing False, Inaccurate or Misleading Reports
- Request for Automated Submission of Trading Data—Failure to Respond in a Timely and Accurate Manner



Forms U4/U5—Late Filing of Forms or Amendments; Failing to File Forms or Amendments; Filing of False, Misleading or Inaccurate Forms or Amendments

Article V of FINRA By-Laws and FINRA Rule 1122 and 2010¹

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> Nature and significance of information at issue. The number, nature, and dollar value of the disclosable events at issue. Whether the omission of information or the inclusion of false information was done in an intentional effort to conceal information or in an attempt to mislead. The duration of the delinquency. Whether the failure to disclose or timely to disclose delayed any regulatory investigation. Whether a lien or judgment that was not timely disclosed has been satisfied. Whether the failure resulted in a statutorily disqualified individual becoming or remaining associated with a firm. Whether the respondent’s misconduct resulted directly or indirectly in injury to other parties, including the investing public, and, if so, the nature and extent of the injury. 	<p>Individual Fine of \$2,500 to \$37,000.</p> <p>Firm or Responsible Principal Fine of \$5,000 to \$73,000.</p> <p>Where aggravating factors predominate, consider a higher fine.</p>	<p>Individual</p> <p>Where aggravating factors are present, consider suspending individual in any or all capacities for a period of 10 business days to six months.</p> <p>Where aggravating factors predominate, consider a longer suspension in any or all capacities (of up to two years) or, where the respondent intended to conceal information or mislead, a bar.</p> <p>Responsible Principal at the Firm</p> <p>Consider suspending responsible principal in all supervisory capacities for a period of 10 business days to six months.</p> <p>Where aggravating factors predominate, consider a longer suspension in any or all capacities (of up to two years) or, where the supervisor intended to conceal information or mislead, a bar in all supervisory capacities.</p> <p>Firm</p> <p>Where aggravating factors predominate, consider suspending firm with respect to any or all relevant activities or functions until the firm corrects the deficiency.</p>

1. This guideline also is appropriate for violations of MSRB Rule G-7 and for failures to report changes in ownership or control of member firms.

MSRB Rule G-37 Reporting—Late Filing; Failing to File; Filing False or Misleading Reports

MSRB Rule G-37

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> Whether the report is inaccurate, outdated or both. Whether respondent is active in the municipal underwriting business and generally makes political contributions. Whether respondent eventually filed report, albeit late. Whether violation involved failing to report political contributions or failing to report participation in an underwriting. Extent to which violative conduct deprived the investing public or other market participants of information regarding the issuer. With respect to false or misleading reports, whether misconduct was intentional or reckless. 	<p>Late Filing</p> <p>Fine of \$5,000 to \$15,000. Consider imposing a fine on a per violation basis.</p> <p>Failure to File</p> <p>Fine of \$5,000 to \$29,000. Consider imposing a fine on a per violation basis.</p> <p>Filing False or Misleading Reports</p> <p>Fine of \$10,000 to \$146,000 per violation.</p>	<p>Late Filing</p> <p>In egregious cases, consider suspending the firm from engaging in all municipal underwriting activities for up to 30 business days. Also consider suspending the responsible individual in any or all capacities for up to 30 business days.</p> <p>Failure to File</p> <p>In egregious cases, consider suspending the firm from engaging in all municipal underwriting activities for up to 30 business days and thereafter until the firm files accurate reports, as required by the rules. Also consider suspending the responsible individual in any or all capacities for up to 60 business days.</p> <p>Filing False or Misleading Reports</p> <p>Consider suspending the firm from engaging in all municipal underwriting activities for up to two years. Also consider suspending the responsible individual in any or all capacities for up to two years or barring the individual.</p>

Regulation M Reports—Late Filing; Failing to File; False or Misleading Filing

FINRA Rules 2010, 5110, 5190, 6275 and 6540

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> Number of days that report is late. Whether report contains a significant number of material inaccuracies. 	<p>Late Filing</p> <p>First Action¹ Fine of \$1,000 to \$3,000.</p> <p>Second Action Fine of \$2,000 to \$7,000.</p> <p>Subsequent Actions Fine of \$3,000 to \$15,000.</p> <p>Failure to File, or False or Misleading Filing</p> <p>First Action Fine of \$1,000 to \$15,000.</p> <p>Subsequent Actions Fine of \$10,000 to \$146,000.</p>	<p>Late Filing; Failure to File; False or Misleading Filing</p> <p>In egregious cases, consider suspending the responsible individual in any or all capacities for up to two years or barring the individual. Also consider suspending the firm with respect to any or all corporate financing and/or market-making activities for up to 15 days and thereafter until the firm accurately files the required reports.</p>

1. Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.

Reportable Events Under NASD Rule 3070—Late Reporting; Failing to Report; Filing False, Inaccurate or Misleading Reports

FINRA Rules 2010 and 4530

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <p>Late Reporting</p> <ol style="list-style-type: none"> Number and type of incidents not reported. Whether events reported in late reports established a pattern of potential misconduct. <p>Failure to Report or Filing False, Misleading, or Inaccurate Reports</p> <ol style="list-style-type: none"> Whether events not reported or reported inaccurately would have established a pattern of potential misconduct. In cases involving the failure to file or inaccurate filing of a quarterly report, the number and type of incidents not reported or reported inaccurately. 	<p>Late Reporting</p> <p>Fine of \$5,000 to \$73,000.</p> <p>Failure to Report or Filing False, Misleading, or Inaccurate Reports¹</p> <p>Fine of \$5,000 to \$146,000.</p>	<p>Late Reporting</p> <p>In egregious cases, consider suspending the responsible principal in any or all capacities for up to two years or barring the responsible principal in all supervisory capacities.</p> <p>Failure to Report or Filing False, Misleading or Inaccurate Reports</p> <p>Consider suspending responsible principal in all supervisory capacities for 10 to 30 business days.</p> <p>In egregious cases, consider suspending the responsible principal in any or all capacities for up to two years or barring the responsible principal in all supervisory capacities. Also consider suspending the firm with respect to any or all activities or functions until the firm corrects the deficiency.</p>

1. As set forth in General Principle No. 6, Adjudicators may also order disgorgement.

Request for Automated Submission of Trading Data—Failure to Respond in a Timely and Accurate Manner

FINRA Rules 2010, 8211 and 8213¹

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p>	<p>10 to 15 Days Late Fine of \$100 per day.</p> <p>16 to 30 Days Late Fine of \$500 per day.</p>	

1. Any automated submission submitted by a member firm more than 30 calendar days late generally is alleged to constitute a violation of Rule 8210. A firm with a history of more than four violations of Rules 8211 and 8213 may be alleged to have violated Rule 8210. The filing of incomplete or inaccurate automated submissions or the filing of manual submissions without prior exemptions may be alleged to constitute a violation of Rule 8210.

X. Sales Practices

- Borrowing From or Lending to Customers – Failure to Comply With Rule Requirements
- Churning or Excessive Trading
- Communications With the Public—Late Filing; Failing to File; Failing to Comply With Rule Standards or Use of Misleading Communications
- Customer Account Transfer Contracts—Failure to Comply With Rule Requirements
- Day-Trading Accounts—Failure to Comply With Risk Disclosure Requirements; Failure Appropriately to Approve an Account for Day Trading; Failure to Preserve Required Day-Trading Records
- Discretion—Exercise of Discretion Without Customer’s Written Authority
- Guaranteeing a Customer Against Loss
- Institutional Sales Material—Failing to Establish and Maintain Written Procedures in Compliance With Rule Standards; Failing to Comply With Rule Standards Regarding Recordkeeping
- Fraud, Misrepresentations or Material Omissions of Fact
- Penny Stock Rules—Failure to Comply With Rule Requirements
- Pricing—Excessive Markups/Markdowns and Excessive Commissions
- Research Analysts and Research Reports—Failing to Comply With Rule Requirements Regarding (1) Relationships Between Research Department and Investment Banking Department; (2) Compensation for Research Analysts; and (3) Relationships Between Research Analysts and Subject Companies
- Suitability—Unsuitable Recommendations
- Telemarketing—Failing to Comply With Time-of-Day Restrictions and Do-Not-Call Lists; Failing to Establish and Maintain Procedures to Comply With Rule 2212(a)
- Trading Ahead of Research Reports
- Unauthorized Transactions and Failures to Execute Buy and/or Sell Orders



Borrowing From or Lending to Customers – Failure to Comply With Rule Requirements

FINRA Rules 2010 and 3240

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none">1. The purpose of the loan.2. The number of loans at issue.3. The number of customers involved in the respondent's borrowing or lending arrangements.4. Whether the loan was documented through a loan agreement or other written instrument.5. The dollar amount, duration, interest rate, repayment schedule, and other terms of the loan and whether they are reasonable.6. Whether the respondent made payments in conformance with the loan agreement and has repaid, or attempted to repay, the loan.7. The age, financial condition, and financial sophistication of the customer.8. Whether the respondent made any misrepresentations to the customer.9. Whether the respondent misled his or her employer member firm about the existence of the loan or otherwise concealed the activity from the firm.	<p>Fine of \$2,500 to \$73,000.</p>	<p>Consider suspending the respondent for a period of 10 business days to three months.</p> <p>Where aggravating factors predominate, consider a longer suspension (of up to two years) or a bar.</p>

Churning or Excessive Trading¹

FINRA Rules 2010² and 2111

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p>	<p>Fine of \$5,000 to \$110,000³</p>	<p>Individual</p> <p>Consider suspending an individual respondent in any or all capacities for a period of one month to two years.</p> <p>Where aggravating factors predominate, consider a longer suspension (of up to two years) or a bar. Strongly consider barring an individual for reckless or intentional misconduct (<i>e.g.</i>, churning).</p> <p>Firm</p> <p>Consider suspending a firm with respect to a limited set of activities or functions for up to three months.</p> <p>Where aggravating factors predominate, consider suspending a firm with respect to any or all relevant activities or functions for longer than three months, or consider ordering expulsion of the firm.</p>

1. This guideline also is appropriate for annuity and mutual fund-related violations, including switching.
 2. This guideline also is appropriate for violations of MSRB Rule G-17.

3. As set forth in General Principle No. 6, Adjudicators should also order disgorgement.

Communications With the Public—Late Filing; Failing to File¹; Failing to Comply With Rule Standards or Use of Misleading Communications²

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

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <p>Failure to File</p> <ol style="list-style-type: none"> Whether failure to file was inadvertent. Whether communications with the public were circulated widely without having been filed with the Advertising Regulation Department. Whether an individual respondent failed to notify a supervisor of a communication with the public. <p>Late Filing</p> <ol style="list-style-type: none"> Whether late filing was inadvertent. Whether communications with the public were circulated widely before having been filed with the Advertising Regulation Department. Number of days late. 	<p>Failure to File</p> <p>Fine of \$1,000 to \$22,000.</p> <p>Late Filing</p> <p>Fine of \$1,000 to \$15,000.</p>	<p>Failure to File</p> <p>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.</p> <p>Also consider suspending the responsible individual in any or all capacities for up to five business days.</p> <p>Late Filing</p> <p>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.</p> <p>Also consider suspending the responsible individual in any or all capacities for up to 10 business days.</p>

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

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <p><i>Failure to Comply with Rule Standards/ Misleading</i></p> <ol style="list-style-type: none"> Whether violative communications with the public were circulated widely. 	<p><i>Failure to Comply/Misleading</i></p> <p><i>Failure to Comply with Rule Standards or Inadvertent Use of Misleading Communications</i></p> <p>Fine of \$1,000 to \$29,000.</p>	<p><i>Failure to Comply/Misleading</i></p> <p><i>Failure to Comply with Rule Standards</i></p> <p>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.</p> <p>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.</p>

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

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p>	<p><i>Intentional or Reckless Use of Misleading Communications</i></p> <p>Fine of \$10,000 to \$146,000.</p>	<p><i>Use of Misleading Communications with the Public</i></p> <p>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.</p> <p>Also consider suspending the responsible person in any or all capacities for up to two years.¹</p> <p>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.</p>

1. If an Adjudicator is considering suspending a firm's ability to execute transactions in the securities referenced in the violative communications, the Adjudicator should consider the potential ramifications to public investors of such a suspension.

Customer Account Transfer Contracts—Failure to Comply With Rule Requirements

FINRA Rule 11870¹

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none">1. Consider the nature of the violation—consider the respondent’s transfer pattern, the number of days late, and whether respondent was late with delivery or validation.	<p>Fine of \$1,000 to \$15,000.</p> <p>In egregious cases, consider a higher fine of up to \$73,000.</p>	<p><i>Individual</i></p> <p>Consider suspending the responsible individual in any or all capacities for up to 30 business days. In egregious cases, consider a lengthier suspension of up to two years.</p> <p><i>Firm</i></p> <p>In egregious cases, consider suspending the firm with respect to any or all activities or functions for a period of up to two years.</p>

1 This guideline also is appropriate for violations of MSRB G-26.

Day-Trading Accounts—Failure to Comply With Risk Disclosure Requirements; Failure Appropriately to Approve an Account for Day Trading; Failure to Preserve Required Day-Trading Records

FINRA Rules 2130 and 2270

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <p><i>Failure to Comply with Risk Disclosure Requirements</i></p> <ol style="list-style-type: none"> Whether the firm failed to provide customer(s) with a risk disclosure statement. Whether the firm provided its customer(s) with an inadequate risk disclosure statement, or furnished the risk disclosure statement to its customer(s) in an untimely manner or a manner not designed to provide actual notice. Whether the firm failed to obtain FINRA approval of an alternative disclosure statement or failed timely to seek FINRA approval. In all cases, consider the nature, quality, and timing of the risk disclosure actually provided to the customer(s). Whether day trading was appropriate for the affected customer(s). The number of affected customers. 	<p><i>Failure to Comply with Risk Disclosure Requirements</i></p> <p>Fine of \$5,000 to \$146,000.</p>	<p><i>Failure to Comply with Risk Disclosure Requirements</i></p> <p>Consider suspending the responsible individual in any or all capacities for a period of 10 business days to one year.</p> <p>In egregious cases, particularly cases involving numerous customers, consider suspending for a longer period (of up to two years) or barring the responsible individual and suspending the firm with respect to any or all activities or functions for a period of up to two years.</p>

Day-Trading Accounts—Failure to Comply With Risk Disclosure Requirements; Failure Appropriately to Approve an Account For Day Trading; Failure to Preserve Required Day-Trading Records—continued

FINRA Rules 2130 and 2270

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p> <p>Failure Appropriately to Approve an Account for Day Trading</p> <ol style="list-style-type: none"> Whether the firm permitted the customer(s) to engage in a day-trading strategy without the approval required by the rule. Whether the firm failed to conduct a meaningful review before approving the customer account(s) for a day-trading strategy. Whether the firm’s approval of the customer account(s) for a day-trading strategy was inappropriate based on the facts it knew or should have known. The timeliness of the approval of the customer account(s) for a day-trading strategy. Whether engaging in a day-trading strategy was appropriate for the affected customer(s). The number of affected customers. 	<p>Failure Appropriately to Approve an Account for Day Trading</p> <p>Fine of \$5,000 to \$146,000.¹</p>	<p>Failure Appropriately to Approve an Account for Day Trading</p> <p>Suspend responsible individual in any or all capacities for a period of 10 business days to one year. Consider suspending member firm with respect to any or all activities or functions for up to one year.</p> <p>In egregious cases, particularly cases involving numerous customers, consider suspending the responsible individual for a longer period (up to two years) or barring the individual.</p> <p>Also consider suspending the member firm for a longer period (of up to two years).</p>

1. As set forth in General Principle No. 6, Adjudicators should also order disgorgement.

Day-Trading Accounts—Failure to Comply With Risk Disclosure Requirements; Failure Appropriately to Approve an Account For Day Trading; Failure to Preserve Required Day-Trading Records—continued

FINRA Rules 2130 and 2270

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <p><i>Failure to Preserve Required Day-Trading Records</i></p> <ol style="list-style-type: none"> Whether the firm failed adequately to record its approval of the customer account(s) for day trading. Whether the firm failed adequately to preserve the written customer agreement(s) to refrain from engaging in a day-trading strategy. Whether the failure enabled problematic practices to occur and/or to escape detection. 	<p><i>Failure to Preserve Required Day-Trading Records</i></p> <p>Fine of \$1,000 to \$37,000.</p>	<p><i>Failure to Preserve Required Day-Trading Records</i></p> <p>In egregious cases, consider suspending the responsible individual in any or all capacities for up to 30 business days and suspending the firm in any or all activities or functions for up to 15 business days.</p>

Discretion—Exercise of Discretion Without Customer’s Written Authority

FINRA Rules 2010 and NASD Rule 2510¹

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> Whether customer’s grant of discretion was express or implied. Whether firm’s policies or procedures prohibited discretionary trading. Whether the firm prohibited the respondent from exercising discretion in customer accounts. Whether the respondent’s exercise of discretion went beyond time and price discretion. 	<p>Fine of \$2,500 to \$15,000.²</p>	<p>Where aggravating factors predominate, suspend an individual respondent in any or all capacities for at least 10 to 30 business days.</p>

1. This guideline also is appropriate for violations of MSRB Rules G-8(a)(xi)(I) and G-17.

2. As set forth in General Principle No. 6, Adjudicators may also order disgorgement.

Guaranteeing a Customer Against Loss

FINRA Rules 2010 and 2150¹

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> 1. Purpose and timing of the guarantee. 2. Whether respondent received a financial benefit from the guaranteed transactions. 	<p>Fine of \$2,500 to \$37,000.²</p>	<p>Consider suspending individual respondent in any or all capacities for up to 30 business days. In egregious cases, consider a longer suspension (of up to two years) or a bar.</p> <p>Consider suspending member firm with respect to any or all activities or functions for up to 30 business days. In egregious cases, consider a longer suspension (of up to two years) or expulsion.</p>

1. This guideline also is appropriate for violations of MSRB Rule G-25.
 2. As set forth in General Principle No. 6, Adjudicators may also order disgorgement.

Institutional Communications—Failing to Establish and Maintain Written Procedures in Compliance With Rule Standards; Failing to Comply With Rule Standards Regarding Recordkeeping

FINRA Rule 2210

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations In Introductory Section.</i></p> <p><i>Failure to Establish and Maintain Written Procedures in Compliance with Rule 2210(b)</i></p> <ol style="list-style-type: none"> Whether deficiencies enabled violations to occur and escape detection. Nature, extent, and character of underlying misconduct, if any. 	<p><i>Failure to Establish and Maintain Written Procedures in Compliance with Rule 2210(b)</i></p> <p>Fine of \$5,000 to \$29,000.</p>	<p><i>Failure to Establish and Maintain Written Procedures in Compliance with Rule 2210(b)</i></p> <p>In egregious cases, consider suspending the responsible individual(s) in any or all capacities for up to one year. In egregious cases, also consider imposing a pre-use filing requirement for institutional sales material and suspending the firm with respect to any or all activities or functions for up to 30 business days or until the firm’s written procedures are amended to conform to the requirements of Rule 2211(b).</p>
<p><i>Failure to Comply with Record-Keeping Requirements of Rule 2210(b)</i></p> <ol style="list-style-type: none"> Nature and materiality of inaccurate or missing information. 	<p><i>Failure to Comply with Record-Keeping Requirements of Rule 2210(b)</i></p> <p>Fine of \$1,000 to \$29,000. In egregious cases, consider a higher fine.</p>	<p><i>Failure to Comply with Record-Keeping Requirements of Rule 2210(b)</i></p> <p>In egregious cases, consider suspending the responsible individual for up to two years and consider suspending the firm in any or all activities or functions for up to 30 days.</p>

Fraud, Misrepresentations or Material Omissions of Fact

FINRA Rules 2010 and 2020¹

Principal Considerations in Determining Sanctions	Monetary Sanction ²	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p>	<p><i>Negligent Misconduct</i></p> <p>Fine of \$2,500 to \$73,000.</p> <p><i>Intentional or Reckless Misconduct</i></p> <p>Fine of \$10,000 to \$146,000.</p>	<p><i>Negligent Misconduct³</i></p> <p>Suspend individual in any or all capacities for 31 calendar days to two years. Consider suspending a firm with respect to a limited set of activities for up to 90 days.</p> <p><i>Intentional or Reckless Misconduct</i></p> <p>Strongly consider barring an individual. Where mitigating factors predominate, however, consider suspending an individual in any or all capacities for a period of six months to two years. Consider applicable Principal Considerations in determining the duration of a suspension or whether to impose a bar.</p> <p>Consider suspending a firm with respect to any or all activities for up to two years. Where aggravating factors predominate, strongly consider expelling the firm.</p>

1. This guideline also is appropriate for violations of Sections 10(b) and 15(c)(1) of the Securities Exchange Act of 1934, the applicable rules and regulations thereunder, and MSRB Rules G-17 and G-47.

2. In cases involving misrepresentations and/or omissions as to two or more customers, the Adjudicator may impose a set fine amount per investor rather than in the aggregate. As set forth in General Principle No. 6, Adjudicators may also order disgorgement.

3. This guideline should be applied in cases alleging only a violation of FINRA Rule 2010 or MSRB Rule G-17 if the cause of action in the complaint is based on negligent misrepresentations or negligent material omissions of fact.

Penny Stock Rules—Failure to Comply With Rule Requirements

FINRA Rule 2010 and SEC Rules 15g-1 through 15g-9

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction¹</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p>	<p><i>Negligent Misconduct</i></p> <p>Fine of \$5,000 to \$146,000.</p> <p><i>Willful Misconduct</i></p> <p>Fine of the greater of \$146,000 or \$5,000 per violative transaction.</p> <p>For egregious misconduct, require firm to offer rescission of violative trades to each customer.</p>	<p><i>Negligent Misconduct</i></p> <p>Consider suspending the firm with respect to any or all activities or functions and/or suspending the responsible individual in any or all capacities for up to two years.</p> <p><i>Willful Misconduct</i></p> <p>Consider suspending the firm with respect to any or all activities or functions and/or suspending the responsible individual in any or all capacities for up to two years.</p> <p>In egregious cases, bar the responsible individual and/or expel the firm.</p>

1. As set forth in General Principle No. 6, Adjudicators should also order disgorgement.

Pricing—Excessive Markups/Markdowns and Excessive Commissions

FINRA Rule 2121, 2121.01, 2121.02, and 2010¹

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction²</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> Whether respondent dominated and controlled the market in the subject security or securities. Whether respondent (registered representative) had discretion as to the amount of markups, markdowns or commissions on each trade. The number of harmed customers and the quantified customer harm. 	<p>First Action³</p> <p>Fine of \$5,000 to \$73,000 plus (if restitution is not ordered) the gross amount of the excessive markups, markdowns, or commissions.</p> <p>Second Action</p> <p>Fine of \$10,000 to \$146,000 plus (if restitution is not ordered) the gross amount of the excessive markups, markdowns, or commissions.</p> <p>Subsequent Actions⁴</p> <p>Fine of \$25,000 to \$292,000 plus (if restitution is not ordered) the gross amount of the excessive markups, markdowns, or commissions.</p>	<p>Negligent Misconduct</p> <p>Consider suspending individual respondent in any or all capacities for a period of 10 to 30 business days and requiring demonstrated corrective action with respect to the firm’s markup/markdown policy or commission policy.</p> <p>Intentional or Reckless Misconduct</p> <p>Consider suspending individual respondent in any or all capacities, or the firm with respect to any or all relevant activities or functions, for a period of 10 business days to two years.</p> <p>Where aggravating factors predominate, consider barring the individual or expelling the firm.</p>

1. This guideline also is appropriate for violations of MSRB Rule G-30.

2. In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent’s compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range. In cases involving violations that arose from intentional or reckless misconduct, Adjudicators may consider imposing a set fine amount per violation rather than in the aggregate.

3. Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.

4. If the respondent’s second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

Research Analysts and Research Reports—Failing to Comply With Rule Requirements Regarding (1) Relationships Between Research Department and Investment Banking Department; (2) Compensation for Research Analysts; and (3) Relationships Between Research Analysts and Subject Companies

FINRA Rule 2241

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section.</i></p> <ol style="list-style-type: none"> Whether misconduct resulted from negligence or intentional/reckless behavior. Whether misconduct also resulted in publication of research reports that omitted material information or contained misleading information. Whether evidence suggested systemic problems or widespread abuse in the firm. 	<p>Negligent Misconduct</p> <p>Fine of \$5,000 to \$146,000.</p> <p>Intentional/Reckless Misconduct</p> <p>Fine of \$10,000 to \$292,000. In egregious cases, consider a larger fine.</p>	<p>Negligent Misconduct</p> <p>Consider suspending the responsible individual(s) in any or all capacities for up to 30 business days.</p> <p>Intentional/Reckless Misconduct</p> <p>Responsible Individual – Suspend responsible individual(s) in any or all capacities for a period of 60 business days to two years. In egregious cases, suspend individual(s) for a longer period or bar individual(s).</p> <p>Firm – Consider suspending firm’s research activities for a period of one month to two years. Consider requiring firm to retain an independent consultant to review and make recommendations regarding the adequacy of the firm’s supervisory procedures regarding research activities. In cases involving violative relationships between a firm’s research department and investment banking department, consider suspending the firm’s investment banking activities for a period of three months to two years.</p> <p>In egregious cases, suspend firm in any or all activities or functions for up to two years or expel the firm.</p>

Research Analysts and Research Reports—Failing to Comply With Rule Requirements Regarding (1) Restrictions on Publishing Research Reports and Public Appearances of Research Analysts; (2) Restrictions on Personal Trading of Research Analysts; and (3) Disclosure Requirements for Research Reports and Public Appearances of Research Analysts¹
FINRA Rule 2241

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>For All Violations</i></p> <p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> Whether misconduct resulted from negligence or intentional/reckless behavior. Whether misconduct also resulted in publication of research reports that omitted material information or contained misleading information. Whether evidence suggested systemic problems or widespread abuse in the firm. 	<p><i>Failure to Comply With Restrictions on Personal Trading of Research Analysts (Rule 2241(b))</i></p> <p>Fine of \$5,000 to \$73,000.² In egregious cases, consider a higher fine.</p>	<p><i>Failure to Comply With Restrictions on Personal Trading of Research Analysts (Rule 2241(b))</i></p> <p>Suspend individual in any or all capacities for a period of 10 business days to one year. In egregious cases, consider a longer suspension or a bar.</p>

1. As set forth in General Principle No. 6, Adjudicators may also order disgorgement.

Research Analysts and Research Reports—Failing to Comply With Rule Requirements Regarding (1) Restrictions on Publishing Research Reports and Public Appearances of Research Analysts; (2) Restrictions on Personal Trading of Research Analysts; and (3) Disclosure Requirements for Research Reports and Public Appearances of Research Analysts¹
FINRA Rule 2241

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
	<p><i>Failure to Comply With Restrictions on Publishing Research Reports, Restrictions on Public Appearances of Research Analysts and Disclosure Requirements for Research Reports and Public Appearances (Rule 2241 (c) and (d)(f))</i></p> <p>Negligent Misconduct</p> <p>Fine of \$5,000 to \$146,000.</p> <p>Intentional/Reckless Misconduct</p> <p>Fine of \$10,000 to \$292,000. In egregious cases, consider a larger fine.</p>	<p><i>Failure to Comply With Restrictions on Publishing Research Reports, Restrictions on Public Appearances of Research Analysts and Disclosure Requirements for Research Reports and Public Appearances (Rule 2241 (c) and (d)(f))</i></p> <p>Negligent Misconduct</p> <p>Responsible Individual – Consider suspending responsible individual(s) in any or all capacities for up to 60 business days.</p> <p>Intentional/Reckless Misconduct</p> <p>Responsible Individual – Suspend responsible individual(s) in any or all capacities for a period of 60 business days to two years. In egregious cases, suspend individual(s) for a longer period or bar individual(s).</p> <p>Firm – Consider suspending firm’s research activities for a period of one month to two years. Consider requiring firm to retain an independent consultant to review and make recommendations regarding the adequacy of the firm’s supervisory procedures regarding research activities. Consider requiring firm, for a period of six months to two years, to certify monthly that a general securities principal has conducted a pre-distribution review of all research reports.</p> <p>In egregious cases, suspend firm in any or all activities or functions for up to two years or expel the firm.</p>

Suitability—Unsuitable Recommendations

FINRA Rule 2111¹

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p>	<p>Fine of \$2,500 to \$110,000.²</p>	<p>Suspend individual respondent in any or all capacities for a period of 10 business days to two years. Where aggravating factors predominate, strongly consider a bar for an individual respondent.</p> <p>Consider suspending a firm with respect to a limited set of activities for up to 90 days. In egregious cases, strongly consider suspending a firm for any or all activities for longer than 90 days or ordering expulsion.</p>

1. As set forth in General Principle No. 6, Adjudicators should also order disgorgement.
2. This guideline also is appropriate for violations of MSRB Rule G-19 and FINRA Rule 2114.

Telemarketing—Failing to Comply With Time-of-Day Restrictions and Do-Not-Call Lists; Failing to Establish and Maintain Procedures to Comply With Rule 3230(a)

FINRA Rule 3230

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations In Introductory Section.</i></p> <p><i>Failure to Comply with Time-of-Day Restrictions or Do-Not-Call Lists</i></p> <ol style="list-style-type: none">1. Whether violations were widespread within the firm.2. Number of calls that violated restrictions.3. Whether there are patterns of abuses relating to when telephone calls are placed or to the repeated contacting of persons who have previously requested to be placed on a do-not-call list.4. Whether firm made reasonable efforts to establish an effective call-blocking system for any members of the public requesting to be placed on a do-not-call list.	<p><i>Failure to Comply with Time-of-Day Restrictions or Do-Not-Call Lists</i></p> <p>Fine of \$5,000 to \$37,000.</p>	<p><i>Failure to Comply with Time-of-Day Restrictions or Do-Not-Call Lists</i></p> <p>Consider suspending responsible individual for up to 30 business days. In egregious cases, consider suspending the responsible individual in any or all capacities for up to two years. Also, consider suspending the firm with respect to any or all activities or functions, including telemarketing activities, for up to one year.</p>

Telemarketing—Failing to Comply With Time-of-Day Restrictions and Do-Not-Call Lists; Failing to Establish and Maintain Procedures to Comply With Rule 3230(a)—continued

FINRA Rule 3230

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
<p><i>Failure to Establish and Maintain Procedures to Comply With Rule 2212(a)</i></p> <ol style="list-style-type: none"> 1. Nature and extent of underlying misconduct that resulted from the deficient procedures, if any. 2. Whether firm made reasonable efforts to establish an effective call-blocking system for any members of the public requesting to be placed on a do-not-call list. 3. Whether there are patterns of abuses relating to when telephone calls are placed or to the repeated contacting of persons who have previously requested to be placed on a do-not-call list. 	<p><i>Failure to Establish and Maintain Procedures to Comply with Rule 3230(a)</i></p> <p>Fine of \$5,000 to \$73,000. In egregious cases, consider a higher fine.</p>	<p><i>Failure to Establish and Maintain Procedures to Comply with Rule 3230(a)</i></p> <p>Consider suspending responsible individual in any or all capacities for up to 30 business days. Consider limiting activities of appropriate branch office or department for up to 30 business days.</p> <p>In egregious cases, consider suspending the responsible individual for up to two years. In egregious cases, also consider limiting activities of appropriate branch office or department for more than 30 days or suspending the firm in any or all activities or functions, including telemarketing activities, for up to one year.</p>

Trading Ahead of Research Reports

FINRA Rules 2010 and 5280

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none">Whether the respondent member firm had developed “Chinese Wall” procedures to prevent the trading department from utilizing advance knowledge of the content and issuance of research reports in making trading decisions.	<p>Fine of \$5,000 to \$146,000.¹</p>	<p><i>Firm</i></p> <p>Consider suspending the firm with respect to any or all activities or functions and/or suspending the responsible individual for up to two years.</p> <p>In egregious cases, consider expelling the firm and/or barring the responsible individual.</p> <p><i>Individual</i></p> <p>Consider suspending the individual respondent in any or all capacities for up to two years.</p> <p>In egregious cases, consider barring the individual.</p>

1. As set forth in General Principle No. 6, Adjudicators may also order disgorgement.

Unauthorized Transactions and Failures to Execute Buy or Sell Orders

FINRA Rule 2111 and 2010¹

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> Whether the respondent reasonably misunderstood his or her authority or the terms of the customer's orders. Whether the respondent acted in bad faith – <i>i.e.</i>, whether the respondent knew he or she was acting without authorization or was acting as a result of a reasonable misunderstanding. The number of customers affected and the magnitude of the customers' losses, if any. The number and dollar value of unauthorized transactions or failures to execute buy or sell orders. Whether the respondent attempted to conceal the trading or to evade regulatory investigative efforts. Whether the unauthorized transactions were made in furtherance of or in connection with another violation (<i>e.g.</i>, conversion, improper use of funds, churning, etc.). 	<p>Fine of \$5,000 to \$110,000.²</p>	<p>Individual</p> <p>For failures to execute orders, consider suspending individual respondent in any or all capacities for a period of 10 business days to one year.</p> <p>For unauthorized transactions, consider suspending an individual respondent for a period of one month to two years. Where aggravating factors predominate, strongly consider barring an individual respondent.</p> <p>Firm</p> <p>Also consider suspending respondent member firm with respect to any or all relevant activities or functions for up to two years.</p>

1. This guideline also is appropriate for violations of MSRB Rules G-17 and G-19.
 2. As set forth in General Principle No. 6, Adjudicators should also order disgorgement.

XI. Supervision

- Disqualified Persons—Failure to Discharge Supervisory Obligations
- Supervision—Failure to Comply With Taping Rule Requirements
- Supervision—Failure to Supervise
- Supervision—Systemic Supervisory Failures
- Supervisory Procedures—Deficient Written Supervisory Procedures



Disqualified Persons—Failure to Discharge Supervisory Obligations

FINRA Rules 2010 and 3110

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none">1. Extent of disqualified person’s misconduct and the existence of “red flag” warnings.2. Whether disqualification resulted from financial and/or securities misconduct.	<p>Fine of \$10,000 to \$146,000.</p>	<p>Consider suspending responsible principal in any or all capacities for up to one year.</p> <p>If disqualified person is involved in egregious misconduct about which the supervisor knew or should have known, consider a longer suspension (of up to two years) or a bar.</p>

Supervision—Failure to Comply With Taping Rule Requirements

FINRA Rules 2010 and 3170

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> Whether respondents were responsible for an unjustified delay in complying with the requirements of the rule. The quality of the taping system that the firm installed. The degree of the firm’s implementation of follow-up and supervisory procedures. <p>In cases in which the failure to comply with tape recording requirements enabled problematic trading practices to occur, consider nature and extent of the underlying problematic conduct and the potential for resulting harm to the public or to a member firm.</p> <ol style="list-style-type: none"> In cases involving a failure to report to FINRA or the filing of an inaccurate, untimely or incomplete report, consider whether firm’s misconduct concealed from FINRA or other regulatory authorities potential wrongdoing. 	<p><i>Failure to Establish, Maintain or Enforce Tape Recording Procedures</i></p> <p>Fine of \$10,000 to \$110,000.</p>	<p><i>Failure to Establish, Maintain or Enforce Tape Recording Procedures</i></p> <p>Consider suspending responsible individual in all principal capacities for 30 business days and limiting the activities of the affected branch office for up to 30 business days. Also consider requiring the firm or affected branch office to comply with the tape recording and reporting requirements of FINRA Rule 3170 for an additional period equal to the time specified in Rule 3170.</p> <p>In egregious cases, consider suspending the responsible individual for a longer period in all principal capacities, suspending the responsible individual in all capacities or barring the responsible individual, and limiting the activities of the branch office for a longer period or suspending the firm with respect to any or all activities or functions for a period of up to 30 business days. Also consider requiring the firm or affected branch office to comply with the tape recording and reporting requirements of FINRA Rule 3170 for an additional period equal to the time specified in Rule 3170.</p> <p>In cases involving a firm’s steadfast refusal to implement, maintain or enforce tape recording procedures, consider barring the responsible individual and suspending the firm in all capacities for a longer period (of up to two years) or expelling the firm.</p>

Supervision—Failure to Supervise

FINRA Rules 2010 and 3110¹

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none">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.	<p>Fine of \$5,000 to \$73,000.²</p> <p>Consider independent (rather than joint and several) monetary sanctions for firm and responsible individual(s).</p>	<p>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.</p> <p>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.</p>

1. This guideline also is appropriate for violations of MSRB Rule G-27.

2. As set forth in General Principle No. 6, Adjudicators may also order disgorgement.

Supervision—Systemic Supervisory Failures

FINRA Rules 3110 and 2010¹

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.

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none"> Whether the deficiencies allowed violative conduct to occur or to escape detection. 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. Whether the firm appropriately allocated its resources to prevent or detect the supervisory failure, taking into account the potential impact on customers or markets. The number and type of customers, investors or market participants affected by the deficiencies. The number and dollar value of the transactions not adequately supervised as a result of the deficiencies. 	<p>Fine of \$10,000 to \$73,000 for the responsible individual(s).</p> <p>Fine of \$10,000 to \$292,000 for the firm.</p> <p>Where aggravating factors predominate, consider a higher fine.</p> <p>Adjudicators should consider ordering restitution or disgorgement in appropriate cases.</p>	<p><i>Individual</i></p> <p>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.</p> <p>Where aggravating factors predominate, consider suspending the responsible individual(s) in any or all capacities for a period of 10 business days to two years, or consider barring the responsible individual(s).</p>

1. This guideline also is appropriate for violations of MSRB Rule G-27.

Supervision—Systemic Supervisory Failures—continued

FINRA Rules 3110 and 2010¹

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<ul style="list-style-type: none">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.		<p><i>Firm</i></p> <p>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.</p> <p>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.</p>

Supervisory Procedures—Deficient Written Supervisory Procedures

FINRA Rules 2010 and 3110¹

<u>Principal Considerations in Determining Sanctions</u>	<u>Monetary Sanction</u>	<u>Suspension, Bar or Other Sanctions</u>
<p><i>See Principal Considerations in Introductory Section</i></p> <ol style="list-style-type: none">1. Whether deficiencies allowed violative conduct to occur or to escape detection.2. Whether the deficiencies made it difficult to determine the individual or individuals responsible for specific areas of supervision or compliance.	<p>Fine of \$1,000 to \$37,000.</p>	<p>In egregious cases, consider suspending the responsible individual(s) in any or all capacities for up to one year. Also consider suspending the firm with respect to any or all relevant activities or functions for up to 30 business days and thereafter until the supervisory procedures are amended to conform to rule requirements.</p>

1. This guideline also is appropriate for violations of MSRB Rule G-27.

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