SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 75838 / September 3, 2015

Admin. Proc. File No. 3-15916

In the Matter of the Application of

DENISE M. OLSON
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For Review of Disciplinary Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF DISCIPLINARY PROCEEDINGS

Conversion of firm funds

Associated person of member firm of registered securities association falsified an expense report and converted firm funds. *Held*, association's findings of violation and imposition of sanctions are sustained.

APPEARANCES:

Bruce M. Bettigole, Esq., of Sutherland Asbill & Brennan LLP, for Denise M. Olson.

Alan Lawhead, Esq., *Andrew Love, Esq.*, and *Gary Dernelle, Esq.*, for FINRA.

Appeal filed: June 9, 2014
Last brief received: September 9, 2014

Denise M. Olson, formerly a general securities representative and general securities sales supervisor associated with Wells Fargo Advisors, LLC ("Wells Fargo" or the "Firm"), a FINRA member, seeks review of FINRA disciplinary action based on findings that she violated FINRA Rule 2010. Rule 2010 requires that FINRA members and their associated persons "observe high standards of commercial honor and just and equitable principles of trade."[1] Olson admits that she violated the Rule by falsifying an expense report and converting Firm funds. But she challenges the bar imposed and seeks "a reduced sanction."[2] We sustain FINRA's findings of violation and the sanctions imposed based on our independent review of the record.

I. Background

Olson was associated with Wells Fargo from September 2004 to June 2010, serving as the branch manager of its Bloomington, Minnesota office. In that position, Olson was issued a corporate credit card through Wells Fargo. Under the Firm's expense allowance policy, Olson was permitted to use the corporate credit card for both business and personal expenses, but was wholly responsible for any personal expenses charged to the card.

It is undisputed that, on April 2, 2010, Olson used her corporate credit card to purchase two Apple iPods as gifts for her niece and nephew. The total charge for the iPods was $740.10. Although the charge was unquestionably personal, Olson accounted for it in Wells Fargo's expense management system as a business expense. She falsely claimed that it was incurred to purchase office equipment, entering the description "branch equip for new cof room" in the space provided to justify the outlay as a business expense. Consequently, the Firm paid the $740.10 charge.

As Olson later testified, her falsification of the expense report was "intentional," and done because she had a "fleeting thought" while completing the expense report that she had purchased two refrigerators a few months earlier for the Firm but had never sought reimbursement.[3] Olson felt that, if Wells Fargo paid for the iPods, it would compensate for the refrigerators.

Shortly thereafter, in May 2010, Wells Fargo's corporate security division began an investigation into Olson's use of the credit card when it noticed "discrepancies" in Olson's expense report. As a result, on June 2, 2010, a Firm auditor met with Olson to review the descriptions Olson had entered for each of her charges during an eight-month period (including the iPod purchase). Olson testified that when the auditor reached the $740.10 charge for the iPods, Olson read the description she had entered for it ("branch equip for new cof room"), and repeated that it was a business expense for branch office equipment that she had purchased for a

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

2 Olson does not challenge FINRA's order that she pay costs totaling $3,378.56, which we also sustain.

3 Olson testified that she bought the refrigerators as a way "of giving back to the branch" and that she never sought reimbursement because she "didn't have any intention of being reimbursed for them."

conference room. But, according to Olson, when the auditor then asked her which conference room, Olson "looked at the dollar amount and . . . realized that [it] was actually [her] iPod purchase." Olson testified that she then volunteered that the charge was actually for a personal expense and, at the auditor's request, wrote and signed a statement to that effect.[4] Wells Fargo then immediately terminated Olson. Olson also reimbursed the Firm, at the Firm's request, for the $740.10 charge.

The Firm reported Olson's termination to FINRA, which instituted its own investigation. On October 7, 2011, FINRA's Department of Enforcement filed a complaint alleging that Olson violated Rule 2010 by filing a false expense report and converting firm funds. Because Olson conceded that she violated Rule 2010 and largely admitted the facts alleged in the complaint, the subsequent disciplinary hearing was limited to the issue of sanctions.

On January 4, 2013, a FINRA hearing panel issued a decision finding that Olson had engaged in the alleged violation and barring Olson from further association with any FINRA member firm. Olson appealed and FINRA's Board of Governors affirmed the hearing panel decision.[5] This appeal followed.

II. Olson violated FINRA Rule 2010.

We base our findings on an independent review of the record and apply the preponderance of the evidence standard for self-regulatory organization disciplinary actions.[6] Pursuant to Section 19(e)(1) of the Securities Exchange Act of 1934, in reviewing an SRO disciplinary action, we determine whether the aggrieved person engaged in the conduct found by the SRO, whether such conduct violates the SRO's rules, and whether such SRO rules are, and were applied in a manner, consistent with the purposes of the Exchange Act.[7]

As noted, Rule 2010 requires that FINRA members and associated persons "observe high standards of commercial honor and just and equitable principles of trade."[8] Falsification of

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[4] Olson also wrote in her statement that she had paid for items "for the branch and not charged the office for them," including "two [n]ew [r]efrigerators at a [c]ost of [a]pproximately $2,000," and that she "felt that in the end it would have possibly balanced itself out."

[5] Olson's appeal of the hearing panel decision was to FINRA's National Adjudicatory Council, but the Board exercised its discretion to call the proceeding for review under FINRA Rule 9351(a).

[6] *See Gregory Evan Goldstein*, Exchange Act Release No. 71970, 2014 WL 1494527, at *3 (Apr. 17, 2014).

[7] 15 U.S.C. § 78s(e)(1). Olson does not argue, and the record does not support a finding, that Rule 2010 is, or FINRA's application of it was, inconsistent with the purposes of the Exchange Act.

[8] Rule 2010 encompasses "business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security," and misconduct that "reflects on the associated person's ability to comply with the regulatory requirements of the securities business and to fulfill his fiduciary duties in handling other people's money." *Daniel*

expense reports and conversion are inconsistent with those requirements.[9] Here, Olson admitted that she falsified an expense report and converted $740.10 from Wells Fargo in violation of Rule 2010, and her admission is supported by the record evidence. The record includes, among other things, Olson's testimony admitting that she intentionally caused Wells Fargo to pay for her purchase of iPods by falsifying an expense report, Olson's handwritten statement admitting the same to Wells Fargo, and a copy of the falsified expense report. Accordingly, we find that Olson engaged in the conduct found by FINRA, and that such conduct violates Rule 2010.

III. The bar imposed is neither excessive nor oppressive.

A. Standard of review

Olson does not dispute the relevant facts or, as mentioned, that she violated Rule 2010. Rather, she asserts that the sanction is too harsh for what she describes as a "single fleeting mistake." Pursuant to Exchange Act Section 19(e)(2), we will sustain a FINRA sanction unless we find it is "excessive or oppressive" or imposes an unnecessary or inappropriate burden on competition.[10] As part of this review, we consider any aggravating or mitigating factors[11] and whether the sanctions imposed by FINRA are remedial in nature and not punitive.[12]

B. A bar is a standard sanction for conversion under FINRA's Sanction Guidelines.

FINRA's Sanction Guidelines state that "a bar is standard" for conversion "regardless of [the] amount converted."[13] This approach reflects the judgment that, absent mitigating factors,[14]

D. Manoff, Exchange Act Release No. 46708, 2002 WL 31769236, at *4 (Oct. 23, 2002) (internal quotation omitted).

9 *E.g.*, *John M.E. Saad*, Exchange Act Release No. 62178, 2010 WL 2111287, at *4-5 (May 26, 2010), *rev'd on other grounds*, 718 F.3d 904 (D.C. Cir. 2013), *see also* Guidelines, at 36 (considering falsification of records and conversion to be Rule 2010 violations).

10 15 U.S.C. § 78s(e)(2). Olson does not claim, and the record does not show, that FINRA's action imposed an unnecessary or inappropriate burden on competition.

11 *Saad v. SEC*, 718 F.3d 904, 906 (D.C. Cir. 2013); *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1064-65 (D.C. Cir. 2007).

12 *Paz Sec., Inc.*, 494 F.3d at 1065; *see also* Guidelines, at 2 ("Disciplinary sanctions are remedial in nature and should be designed to deter future misconduct and to improve overall business standards in the securities industry.").

13 Although we are not bound by FINRA's Sanction Guidelines, we use them as a benchmark in conducting our review under Exchange Act Section 19(e)(2).[13] *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 WL 2898033, at *11 (June 14, 2013). In considering the Guidelines, we note that they "do not prescribe fixed sanctions for particular violations" and "are not intended to be absolute."

We further note that the Board applied the Guidelines issued in 2013, while the hearing panel applied the Guidelines issued in 2011. But that discrepancy presents no issue here because

conversion "poses so substantial a risk to investors and/or the markets as to render the violator unfit for employment in the securities industry."[15] Indeed, conversion is antithetical to the basic requirement that customers and firms must be able to trust securities professionals with their money.[16]

C. Aggravating factors

The Board identified four aggravating factors that further supported its determination to impose a bar: (i) Olson's misconduct was intentional; (ii) Olson attempted to conceal her misconduct and deceive the Firm; (iii) Olson's misconduct resulted in injury to the Firm; and (iv) Olson's misconduct resulted in her monetary gain.

First, Olson admits that her misconduct was intentional and that this factor is considered aggravating under Principal Consideration 13 of the Guidelines.[17] But Olson contends that her misconduct nevertheless was done in a "foolish, fleeting moment" and was "of far less consequence than circumstances involving careful pre-meditation and elaborate planning." While it is true that Olson's misconduct did not require elaborate planning, this does not diminish Olson's high level of scienter. We also reject Olson's characterization of her misconduct and mental state as "fleeting," considering that Olson allowed her deception to continue for over a month until she was caught. If Olson's intentional misconduct was "fleeting," she would have recognized her wrongdoing and corrected it. Instead, as Olson testified, she had no concerns about what she had done between the time she submitted the false expense report and her meeting with the Firm auditor.

Second, Olson admits that she attempted to conceal her misconduct and deceive Wells Fargo. She contends, however, that this should not be considered aggravating under Principal

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the sections applied from those versions are identical. For ease of reference, we cite to only the 2013 version of the Guidelines.

[14] The Guidelines include a list of non-exhaustive aggravating and mitigating factors (*i.e.*, "Principal Considerations"), and state that, "as appropriate, Adjudicators should consider case-specific factors in addition to those listed." Guidelines, at 6-7.

[15] *Charles C. Fawcett, IV*, Exchange Act Release No. 56770, 2007 WL 3306105, at *5 n.27 (Nov. 8, 2007).

[16] *See John Edward Mullins*, Exchange Act Release No. 66373, 2012 WL 423413, at *18 (Feb. 10, 2012) (Conversion "is extremely serious and patently antithetical to the high standards of commercial honor and just and equitable principles of trade that underpin the self-regulation of the securities markets." (internal quotation omitted)); *Joseph H. O'Brien II*, Exchange Act Release No. 34105, 1994 WL 234279, at *3 (May 25, 1994) ("In converting [customer] funds, O'Brien abused the trust that is the cornerstone of the relationship between a securities professional and his customer.").

[17] *See* Guidelines at 7 (listing as Principal Consideration 13, "Whether the respondent's misconduct was the result of an intentional act, recklessness or negligence"); *see also Mullins*, 2012 WL 423413, at *18 (finding that the seriousness of respondent's conversion was aggravated because he "acted with intent when he used the Foundation's property for himself").

Consideration 10 of the Guidelines[18] because deception is a component of conversion, not separate from it. Rather, Olson contends that the focus of Principal Consideration 10 is on attempts to mislead firm investigators and FINRA, and that "[f]ar from such evasion of responsibility, she cooperated with the investigations by Wells Fargo prior to detection. . . ." We reject these contentions.

Although deception is often present in conversion cases, it is not an element of conversion.[19] There is also no reason to believe that Principal Consideration 10 covers only concealment from firm investigators or FINRA because (i) it does not draw such a distinction; and (ii) a separate Principal Consideration—No. 12—covers attempts to conceal information from FINRA "in its examination and/or investigation of the underlying misconduct."[20] And we have previously found conversion to have been aggravated when respondents concealed it from their victims.[21] Accordingly, because Olson concealed her misconduct from the Firm for over a month, we find her deception to be a significant factor supporting a bar.[22]

Third, Olson admits that her misconduct resulted in harm to Wells Fargo and monetary gain to herself, and that these factors are considered aggravating under Principal Considerations 11 and 17.[23] But while Olson acknowledges that she was not entitled to convert Wells Fargo's money to receive reimbursement for her other purchases, she attempts to downplay the harm she caused by pointing out that she paid more for the two refrigerators and "many other purchases" for the Firm than the $740.10 that she converted from it. We do not dismiss the harm to Wells Fargo so easily.

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18 *See* Guidelines at 6 (listing as Principal Consideration 10, "Whether the respondent attempted to conceal his or her misconduct or to lull into inactivity, mislead, [or] deceive . . . the member firm with which he or she is/was associated").

19 Guidelines, at 36 ("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."); *see also O'Brien*, 1994 WL 234279, at *1-3 (finding that respondent converted funds from a customer's securities account where respondent informed his customer that he was taking the funds, against the customer's wishes, to cover a disputed fee for bookkeeping services).

20 Guidelines, at 7.

21 *See Mission Sec. Corp.*, Exchange Act Release No. 63453, 2010 WL 5092727, at *13 (Dec. 7, 2010).

22 Olson also contends that her submission of a false expense report was the only act of concealment, and that "[t]here was no prolonged, elaborate subterfuge." Even assuming that this is true, that one act is sufficient to bring Principal Consideration 10 into play.

23 *See* Guidelines at 6 (listing as Principal Consideration 11, "[W]hether the respondent's misconduct resulted directly or indirectly in injury to [the member firm], and . . . the nature and extent of the injury"); *see id.* at 7 (listing as Principal Consideration 17, "Whether the respondent's misconduct resulted in the potential for the respondent's monetary or other gain").

At no time in this proceeding has Olson established that she was entitled to reimbursement for any purchases she made for the Firm. As to the refrigerators, it appears from Olson's testimony that she made a unilateral decision to purchase them without seeking prior authorization.[24] And because Olson decided not to submit an expense report for the purchase, it is unclear whether Wells Fargo would have reimbursed her. Olson also has not introduced evidence to establish specific "other purchases" she made for the Firm or their dollar amounts. We therefore find no basis for offsetting the $740.10 that she converted by the cost of the refrigerators or any other purchases she may have made. Moreover, even if Olson had established that Wells Fargo owed her money, we would not offset such amounts against the $740.10 that she converted because, as we have held, securities professionals are not entitled to self-help in this manner.[25] To do so would be to countenance conversion under such circumstances. Thus, we consider as aggravating that Wells Fargo was harmed by, and Olson was enriched by, the misconduct.

D. Mitigating factors

Olson points to several mitigating factors and we find that four of them weigh in her favor.[26] But considering the severity of Olson's intentional misconduct, and the deception involved in carrying it out, the mitigating factors here taken together do not outweigh the continuing danger that Olson poses to investors. We discuss each of Olson's contentions concerning mitigation in turn, beginning with the four in her favor.

First, Olson contends, and we agree, that the Board erred when it declined to consider as mitigating that Wells Fargo terminated her prior to regulatory detection. Principal Consideration 14 of the Guidelines specifically states that, in imposing sanctions, adjudicators must consider "[w]hether the member firm . . . disciplined the respondent for the same misconduct at issue prior to regulatory detection." Principal Consideration 14 appears to apply here because Olson's termination occurred as a result of her misconduct and because FINRA opened its investigation subsequent to the termination.

In its opinion, the Board acknowledged Principal Consideration 14 but stated that, as a general matter, it "give[s] no weight to the fact that a respondent was terminated by a firm when

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[24] Olson testified that she "made a decision to go buy new refrigerators" on the last day of office renovations because the refrigerator in storage "was filled with mold," and that she had no intention of being reimbursed. Olson's supervisor testified that when the Firm remodels an office, they "have a division at the corporation that takes care of getting chairs and appliances and TVs and everything else." The supervisor further testified that he was unaware that Olson had purchased the refrigerators.

[25] *See O'Brien*, 1994 WL 234279, at *2 (finding that the president of a member firm did not have authority to remove funds from a customer's account simply because the customer owed him money).

[26] Olson contends that FINRA "effectively ignored any and all mitigating factors because of excessive focus on the fact that the Guideline for 'conversion' states that a bar is 'standard' regardless of the amount converted."

determining the appropriate sanction in a disciplinary case."[27] But because that general policy contradicts FINRA's published Guidelines, we find Olson's termination by Wells Fargo to be mitigating.[28] We also find, however, that the mitigating effect from Olson's termination is no guarantee of changed behavior, and it is not enough to overcome our concern that Olson poses a continuing danger to investors and other securities industry participants (including would-be employers) for the reasons discussed above.[29]

Second, we agree with Olson that she should have received credit under Principal Considerations 8 and 9 because her single act of misconduct "was of short duration" and "did not involve a pattern of wrongdoing."[30] The Board found that, while the presence of the factors in Principal Considerations 8 and 9 might be aggravating, "their absence does not draw an inference of mitigation."[31] But the Board's finding conflicts with precedent in which we sustained a decision of the NASD, FINRA's predecessor, that credited as mitigating misconduct that was

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[27] *Denise M. Olson*, Complaint No. 2010023349601, 2014 WL 1878984, at *7 n. 19 (FINRA Bd. of Governors May 9, 2014). The Board stated that it also gave Olson no credit for her termination because "Wells Fargo terminated Olson for what it termed a 'violation of company policy,'" whereas the Board was "imposing sanctions for conversion." *Olson*, 2014 WL 1878984, at *7 n. 19. But that is a distinction without a difference because conversion was the "violation of company policy" for which Olson was terminated. Thus, Wells Fargo disciplined Olson "for the same misconduct at issue" here as contemplated by Principal Consideration 14.

[28] *See Saad*, 718 F.3d at 913 (remanding in part because the Commission did not consider that "Saad's firm . . . disciplined him by terminating his employment in September of 2006, prior to regulatory detection").

[29] Olson also notes certain collateral consequences of her termination. In particular, Olson states that she "is a single mother whose ex-husband provides no financial support," and that after her termination "she was unemployed for nine months, depleted her 401(k) account to pay monthly expenses for her daughter and herself, and ultimately moved in with her parents." Olson also states that when she was eventually hired as a recruiter at Ameriprise Financial, she earned substantially less—"$70,000 plus the possibility of small bonuses"—than her approximately $200,000 annual income at Wells Fargo. But we agree with the Board that such collateral consequences are not mitigating "because they are a result of [her] misconduct." *Olson*, 2014 WL 1878984, at *7 n.19 (quoting *Jason A. Craig*, Exchange Act Release No. 59137, 2008 WL 5328784, at *7 (Dec. 22, 2008)); *see also Kent M. Houston*, Exchange Act Release No. 71589A, 2014 WL 936398, at *8 (Feb. 20, 2014) (finding that collateral consequences from respondent's misconduct were not mitigating factors).

[30] Guidelines, at 6 (listing as Principal Considerations 8, "Whether the respondent engaged in numerous acts and/or a pattern of misconduct"; and listing as Principal Consideration 9, "Whether the respondent engaged in the misconduct over an extended period of time"). In seeking mitigation under Principal Considerations 8 and 9, Olson also asserts that her misconduct "represented an aberrant lapse in judgment." We reject this characterization of Olson's misconduct considering that it was committed with scienter and deceit.

[31] *Olson*, 2014 WL 1878984, at *7 n.18 (quoting Guidelines, at 6).

"neither numerous nor made over an extended period of time."[32] That being said, we give little weight to the mitigating effect of these factors because we agree with the Board that "[t]he Guideline for conversion, which states that a bar is standard 'regardless of [the] amount converted,' obviously indicates that a single instance of theft provides ample justification to bar an individual from the securities industry, no matter the sum involved."[33] We also find that the mitigating effect of these factors does not outweigh our concern discussed above that Olson poses a continuing danger to investors.

Third, we agree with Olson that the Board should have considered as mitigating that she has repeatedly admitted her misconduct and expressed remorse from the time she was questioned by the Firm auditor through the present, and that she promises not to repeat her misconduct.[34] While the Guidelines do not address these factors,[35] we consistently have sustained FINRA's decision to consider them mitigating.[36] Nonetheless, given the circumstances of Olson's deceit for her own profit, we find that Olson's admissions, expressions of remorse, and assurances do not outweigh our concern that she presents a continuing threat to investors.

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[32] *Michael Frederick Siegel*, Exchange Act Release No. 58737, 2008 WL 4528192, at *12 (Oct. 6, 2008), *pet. granted in part on other grounds*, 592 F.3d 147, 157 (D.C. Cir. 2010) ("Siegel does point to a number of factors that the Commission concluded had some mitigating impact: that his acts of misconduct were neither numerous nor made over an extended period of time. . . ."). If FINRA has decided to change its approach to applying Principal Considerations 8 and 9, it will need to revise its Guidelines.

[33] *Olson*, 2014 WL 1878984, at *7 n.18.

[34] Olson contends that her genuine remorse is uncontested, that she "was in tears for most of the hearing," and that a dissenting hearing panelist "noted [that] Ms. Olson was 'extremely credible,' 'truly remorseful,' and 'genuinely ashamed of her behavior.'" The panel's majority, however, concluded that Olson's repayment of Wells Fargo for the iPods "was a result of being caught, not of being honest or remorseful." *Dep't of Enforcement v. Olson*, No. 2010023349601, 2013 WL 2146648 (FINRA Hearing Panel Jan. 4, 2013). In any event, as discussed above, we give Olson credit for expressing remorse.

[35] We consider these factors to be separate from Principal Consideration 2 concerning acceptance of responsibility. The latter concerns situations where a firm or regulator has not detected a person's misconduct, but the person nonetheless turns herself in. It generally demonstrates a much deeper understanding by the person of the wrongfulness of her conduct and ownership over it.

[36] *E.g.*, *Dante J. DiFrancesco*, Exchange Act Release No. 66113, 2012 WL 32128, at *9 (Jan. 6, 2012) (sustaining FINRA's sanctions assessment, including that "it provide[d] some measure of mitigation that DiFrancesco ha[d] been forthcoming in admitting throughout these proceedings that he" committed the alleged misconduct); *Alvin W. Gebhart, Jr.*, Exchange Act Release No. 58951, 2008 WL 4936788, at *12 (Nov. 14, 2008) ("NASD also gave only little mitigative value to the Gebharts' professed remorse, which NASD found to be 'dampened' by the Gebharts' attempts to shift blame to others involved . . . . We conclude that NASD appropriately weighed the aggravating and mitigating factors relevant to imposing sanctions for fraud under its Sanction Guidelines."), *pet. denied*, 595 F.3d 1034 (9th Cir. 2010).

Olson's remaining contentions concerning mitigation lack merit. Olson contends that she has accepted responsibility for and acknowledged her misconduct as contemplated by Principal Consideration 2, which considers acceptance of responsibility to be mitigating if made to the individual's firm or a regulator "prior to detection and intervention by the firm . . . or a regulator."[37] Olson contends that her admission came before the Firm detected her misconduct because, when the Firm auditor questioned her about the iPod charge, the auditor did not "indicat[e] any awareness that the $740.10 charge was really a personal expense" or "confront[] her with any accusation." Thus, Olson contends that she volunteered her wrongdoing without being confronted. We reject this contention.

At no point did Olson, realizing that what she had done was wrong, turn herself in to Wells Fargo in an attempt to rectify the situation and accept responsibility. To the contrary, Olson testified that between the time she submitted the false expense report and the time she was questioned by the Firm auditor, she was neither concerned nor bothered by her wrongdoing.[38] The record is also clear that Wells Fargo detected Olson's misconduct and intervened before Olson's admission. Indeed, the Firm's corporate security division contacted Olson's supervisor, Frank Mirabella, in May 2010 because it had identified "discrepancies" in Olson's expense report, and requested that Mirabella set up a meeting with Olson so that the auditor could question her. Olson testified that, when she arrived at Mirabella's office for the meeting on June 2, 2010, she did not know the purpose for the meeting and was diverted from Mirabella's office "into a room where there was an auditor and another person waiting for" her.[39] Olson testified that, after she admitted her misconduct, the auditor "left the room" and "a few moments later [Mirabella] came back and read . . . a prepared statement that [Olson] was being terminated."[40] The statement, which the Firm's human resources department apparently prepared in advance of the meeting, stated that the Firm had "been conducting an investigation into [Olson's] use of the Corporate Card" and "uncovered . . . certain personal expenses that make it clear that [Olson had] submitted a personal charge on the Corporate Card as a business expense."

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[37] Guidelines, at 6. Again, we consider Principal Consideration 2 to be separate from Olson's admissions, expressions of remorse, and assurances against future violations after she was caught. Acceptance of responsibility goes beyond these factors.

[38] Olson also testified: "[W]hile I'm being terminated I realized that [the Firm] took it much more serious[ly]. I mean, obviously, I was terminated for it, so, yes, I realized when I was terminated that I should never have marked it as a business expense, whether I had paid for refrigerators out of my own pocket or not."

[39] Olson testified that she arrived at Mirabella's office assuming that Mirabella wanted to discuss an upcoming meeting that Olson was hosting for advisors.

[40] Olson argues that Mirabella was given the statement only after Olson admitted her misconduct, thus demonstrating no detection or intervention by the Firm before Olson's admission. But the human resources department's very preparation of the statement in advance of the meeting is strong evidence that the Firm had detected the conversion and decided to terminate Olson for it.

Thus, we find that Olson's admission came too late to be mitigating under Principal Consideration 2 because the Firm had already detected the misconduct and intervened.[41] We also find that Principal Consideration 2 is unavailable to Olson to the extent she is arguing that, regardless of whether the Firm detected her misconduct, she should receive credit for confessing without being aware of the Firm's suspicions. Considering that Olson intentionally converted her Firm's money by filing a false expense report, it seems likely that she had her misconduct in mind, and the possibility that her Firm may be suspicious, when she was being questioned about that false expense report. There is also no reason to believe that Olson would have confessed her misconduct if she had not been questioned by the auditor.

Olson contends that we should consider as mitigating her voluntary repayment to Wells Fargo, even though Wells Fargo "should have viewed [her purchase of refrigerators] as a sufficient set off" against the iPod purchase. We reject this contention because voluntary repayment is only considered mitigating under the Guidelines when made "prior to detection and intervention."[42] Here, because Olson reimbursed Wells Fargo only after it detected her misconduct and intervened, and only because it requested that she do so, we find that such reimbursement does not mitigate her misconduct. Also, we have no reason to believe that Olson would have reimbursed Wells Fargo had it not detected her misconduct. To the contrary, Olson's assertion that Wells Fargo should not have sought reimbursement indicates that she only paid back the $740.10 because she got caught.[43]

Olson contends that we should consider as mitigating that she is not motivated by greed and therefore is not at risk of committing future violations. Olson contends this is demonstrated by her "generosity regarding the refrigerators, as well as the many other times that she paid out of her own pocket to benefit the firm."[44] We disagree. Even if Olson purchased the refrigerators

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41 Olson also disputes the Board's finding that, when questioned by the auditor, Olson "initially clung to the falsehood that the expense in question was a business expense," and that "[i]nstead of accepting responsibility, she resisted it until her lie became undeniable." Olson contends that she admitted her misconduct without evasion. But we need not decide this factual issue because we find that Olson's admission of wrongdoing came too late to be mitigating under Principal Consideration 2.

42 Guidelines, at 6 (Principal Consideration No. 4); *see, e.g.*, *Eliezer Gurfel*, Exchange Act Release No. 41229, 1999 WL 172666, at *4 (March 30, 1999) (sustaining bar for conversion and noting that the "NASD was unimpressed by Gurfel's repayment of funds to IMMG, since Gurfel gave back the money only after he was caught, and there was no evidence suggesting Gurfel otherwise would have repaid IMMG"), *pet. denied*, 205 F.3d 400 (D.C. Cir. 2000).

43 To the extent that Olson is arguing that she should receive credit for paying Wells Fargo substantially more than she owed it, as discussed above, Olson has not established that she was entitled to reimbursement for the refrigerators. And even if she had established that fact, we still would give her no mitigation credit by setting off those amounts. To do so would be akin to finding that Olson's conversion was to some degree justified.

44 Olson states that she also "paid out of her own pocket to buy decorative items and furniture for the office and meals for the staff" and "used her own money to pay bonuses to the staff."

because she wanted to be generous with her Firm, Olson clearly had a change of heart when she decided to submit a false expense report to recoup money that she thought the Firm owed her for the purchase. And as Olson's contention above makes clear, she still believes the Firm owes her money for the refrigerators. As a result, we give Olson no credit for her purported generosity.[45]

Olson contends that she should receive credit because she did not harm any investors. But we agree with the Board that "Olson's misconduct was no less serious because it did not involve customers."[46] Moreover, our assessment of the future threat Olson poses to customers does not turn on whether she converted funds from Wells Fargo or an investor.[47]

Finally, Olson contends that her lack of disciplinary history should be considered mitigating.[48] But the Guidelines reject this factor as mitigating[49] because an associated person should not be rewarded for acting in accordance with her duties as a securities professional.[50]

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[45] *Cf. Janet Gurley Katz*, Exchange Act Release No. 61449, 2010 WL 358737, at *26 (Feb. 1, 2010) ("Katz's assertion that she was a nice person who did a good job for her clients . . . do not warrant a lesser sanction, as her misconduct demonstrated a readiness to put her own interests ahead of her clients."), *aff'd*, 647 F.3d 1156 (D.C. Cir. 2011). In any event, to the extent that Olson is entitled to any credit for generosity she has shown her Firm, such credit does not outweigh our concern discussed above that she poses a risk of committing future violations.

[46] *Olson*, 2014 WL 1878984, at *7 n.17 (citing *Richard Dale Grafman*, Exchange Act Release No. 21648, 1985 WL 548687, at *2 n.2 (Jan. 14, 1985) ("[W]e do not agree with Grafman that his misconduct was somehow less serious because it did not involve public customers. The fact that he defrauded a brokerage firm instead is hardly a factor in his favor.").

[47] *Blair Alexander West*, Exchange Act Release No. 74030, 2015 WL 137266, at *13 (Jan. 9, 2015) ("The absence of . . . customer harm is not mitigating, as our public interest analysis focus[es] . . . on the welfare of investors generally."). Olson notes that, at the time of the hearing, she "was employed as a recruiter for Ameriprise Financial, where she had no client contact." To the extent Olson contends that this is mitigating, we find that Olson's current employment does not guarantee that she will not have client contact in the future.

[48] Olson made two additional contentions during oral argument before the NAC that she did not repeat in her briefing to us, and that are accordingly waived: (1) FINRA could have devised a sanction less than a bar, such as requiring "close heightened supervision," to ensure that Olson does not "steal money from customers"; and (2) two of Olson's supervisors (one at Wachovia Securities, Inc. before the events at issue and one at Ameriprise after) testified that Olson "is not the kind of person that . . . was ever going to do anything wrong again." Moreover, as to the former contention, Exchange Act Section 19(e)(2) requires that we determine whether the bar imposed is "excessive or oppressive," not whether a lesser sanction could have been imposed. 15 U.S.C. § 78s(e)(2); *see also PAZ Sec., Inc. v. SEC*, 566 F.3d 1172, 1176 (D.C. Cir. 2009) ("[T]he petitioners err in arguing the Commission must, in order to justify expulsion as remedial, state why a lesser sanction would be insufficient."). And as to the latter contention, we have considered the testimony from Olson's character witnesses, but find that it is outweighed by Olson's actions here, which convince us that she poses a continuing danger to investors.

E. Comparisons to other cases do not support a lesser sanction.

Olson argues that the bar imposed is more severe than the sanctions FINRA imposed for misconduct in three other cases that, while charged by FINRA as "falsification of records" rather than conversion, "easily could have been labeled [by FINRA as] 'conversion.'"[51] Olson also points to two cases in which FINRA specifically charged conversion but where, in one case, the decision to impose a bar was remanded for further consideration, and in the other case, the bar was reduced to a suspension.[52] Olson argues that the conduct in all of these cases was "considerably more egregious" and involved "less compelling" mitigating factors than here, thus demonstrating that Olson's bar was excessive, oppressive, and punitive.

The appropriate sanction, however, "depends on the facts and circumstances of each particular case and cannot be precisely determined by comparison with action take in other proceedings."[53] Moreover, the cases that Olson cites are distinguishable. As to the three cases

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[49] Guidelines, at 6 ("[W]hile the existence of a disciplinary history is an aggravating factor when determining the appropriate sanction, its absence is not mitigating.") (citing *Rooms v. SEC*, 444 F.3d 1208, 1214-15 (10th Cir. 2006)); Guidelines at 2 ("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. . . .").

[50] *E.g., Houston*, 2014 WL 936398, at *7; *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 WL 1697153, at *8 (Apr. 11, 2008), *pet. denied*, 566 F.3d 1172 (D.C. Cir. 2009). For the same reason, we give Olson no credit for being, as she claims, an "exemplary employee" for her post-termination employer, Ameriprise, with "no issues regarding her honesty or her expense reimbursements." *World Trade Fin. Corp.*, Exchange Act Release No. 66114, 2012 WL 32121, at *16 (Jan. 6, 2012) ("Applicants also assert that they 'have been operating World Trade without further problems . . . for the last 7 years.' We have repeatedly stated that a 'lack of disciplinary history is not a mitigating factor' because 'firms and their associated persons should not be rewarded for acting in accordance with their duties.'" (quoting *Rooms*, 444 F.3d at 1214)), *pet. denied*, 739 F.3d 1243 (9th Cir. 2014). Moreover, even if we gave Olson credit for her lack of disciplinary history before and after her conversion, such credit would not outweigh our concern that she poses a continuing danger to investors.

[51] *Department of Enforcement v. McCartney*, Complaint No. 2010023719601, 2012 WL 6969529 (FINRA NAC Dec. 10, 2012) (imposing six month suspension and $5,000 fine); *Department of Enforcement v. Leopold*, Complaint No. 2007011489301, 2012 WL 641038 (FINRA NAC Feb. 24, 2012) (imposing one year suspension and $25,000 fine); *Department of Enforcement v. Hunt*, Complaint No. 2009018068701, 2012 WL 6969528 (FINRA NAC Dec. 18, 2012) (imposing six month suspension and $10,000 fine).

[52] *Saad*, 718 F.3d at 907; *Department of Enforcement v. Foran*, Complaint No. C8A990017, 2000 WL 1299577 (NASD NAC Sept. 1, 2000) (imposing two year suspension with requirement to requalify and $35,000 fine).

[53] *Carl M. Birkelbach*, Exchange Act Release No. 69923, 2013 WL 3327752, at *28 (July 2, 2013) (quoting *PAZ Sec., Inc.*, 2008 WL 1697153, at *9), *pet. denied*, 751 F.3d 472 (7th Cir. 2014); *see also Butz v. Glover Livestock Comm'n Co.*, 411 U.S. 182, 187 (1973) ("The

that did not charge conversion—*McCartney*, *Leopold*, and *Hunt*—it is true that, like Olson, the respondents submitted false expense reports to their firms for a financial benefit to which they were not entitled. It is also true that in at least one of those cases, *McCartney*, the respondent could conceivably have been charged with conversion because, by submitting the false expense report, he obtained a $500 reimbursement from his firm for fabricated expenses from a seminar that did not occur.[54] But because FINRA only charged the respondents in these cases with "falsification of records," FINRA's National Adjudicatory Council ("NAC") was constrained to apply the more lenient Guidelines' recommendation for that charge.[55] To do otherwise might have raised fairness concerns under Exchange Act Section 15A(h)(1).[56] Here, Olson was charged with conversion and the Board therefore properly applied the Guidelines for conversion.[57]

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employment of a sanction within the authority of an administrative agency is . . . not rendered invalid in a particular case because it is more severe than sanctions imposed in other cases.").

[54] *McCartney*, 2012 WL 6969529, at *2-3. On the other hand, it appears that FINRA could not have charged the respondents in *Leopold* and *Hunt* with conversion. In *Leopold*, the parties "stipulated that Leopold did not convert [his firm's] funds or property." *Leopold*, 2012 WL 641038, at *1. This is likely because although the respondent submitted false expense reports to reduce his federal tax liability, the respondent did not receive a reimbursement from his firm. *Id.* at *3. In *Hunt*, the respondent submitted false expense reports to obtain unauthorized advance reimbursement from his firm "for real costs that he had incurred, but had not yet paid." *Hunt*, 2012 WL 6969528, at *2.

[55] *See McCartney*, 2012 WL 6969529, at *4 n.9 ("The complaint did not allege conversion, and we therefore do not find that McCartney 'converted' firm funds and have not imposed sanctions based on such a finding."); *Leopold*, 2012 WL 641038, at *7 ("Enforcement . . . stipulated that it does not contend that Leopold converted [the firm's] funds or property. The absence of th[is] factor[] colors our evaluation and further supports a reduction of Leopold's sanctions" from a bar.); *Hunt*, 2012 WL 6969528, at *4 (applying Guidelines for "falsification of records"). For "falsification of records," the Guidelines recommend "suspending respondent in any or all capacities for up to two years" where mitigating factors exist, and a bar in "egregious cases." Guidelines, at 37. The Guidelines also recommend a fine ranging from $5,000 to $100,000 for "falsification of records." *Id.*

[56] 15 U.S.C. § 78*o*-3(h)(1) (ensuring fairness in FINRA disciplinary proceedings by requiring that FINRA "bring specific charges, notify such member or person of, and give him an opportunity to defend against, such charges, and keep a record"); *see also id.* § 78*o*-3(b)(8) (requiring FINRA to "provide a fair procedure for the disciplining of members and persons associated with members").

[57] Olson notes another case, *James A. Goetz*, which also does not appear to involve a charge of conversion or an application of the Guidelines for conversion. *James A. Goetz*, Exchange Act Release No. 39796, 1998 WL 130849 (March 25, 1998) (finding that the respondent obtained a donation from his firm for his daughter's private school, for which he received a tuition offset, by misrepresenting to the firm's matching gifts program that he had contributed funds in the same amount). We also find *Goetz* distinguishable because we modified the NASD's bar upon finding

The two cases in which FINRA specifically charged conversion also are distinguishable. In *Saad v. SEC*, the D.C. Circuit remanded a decision in which we sustained a bar imposed by FINRA because the Court found that we did not "address all potentially mitigating factors."[58] But in remanding, the Court specifically took "no position on the proper outcome of th[e] case."[59] And in *Foran*, the NAC made a vague and conclusory decision to reduce the bar imposed by the hearing panel to a two-year suspension with a requirement to requalify "[b]ased on the unique facts and circumstances of th[e] case."[60] *Foran* therefore provides little guidance for our sanctions analysis.

In any event, if we were to look to other conversion cases for guidance on sanctions, we would find ample support for barring Olson. Indeed, we have consistently sustained FINRA's decision to impose a bar for conversion.[61]

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that it was imposed for "Goetz's 'fraudulent actions'" even though Goetz "was not charged with fraud." *Id.* at *4.

[58] *Saad*, 718 F.3d at 907.

[59] *Id.*

[60] *Foran*, 2000 WL 1299577, at *6. The respondent in *Foran* was found to have converted funds from his firm, of which he was a part owner, by misdirecting mutual fund trail commissions away from the firm's "house account" to his own commission account. *Id.* at 3.

[61] *See, e.g., Mullins*, 2012 WL 423413, at *19-20; *Mission Sec. Corp.*, 2010 WL 5092727, at *13-14; *Gurfel*, 1999 WL 172666, at *4; *Ernest A. Cipriani, Jr.*, Exchange Act Release No. 33675, 1994 WL 62106, at *3 (Feb. 24, 1994); *O'Brien*, 1994 WL 234279, at *3; *Joel Eugene Shaw*, Exchange Act Release No. 34509, 1994 WL 440927, at *2 (Aug. 10, 1994).

* * *

We agree with FINRA that Olson's conversion of Firm funds through deception and with a scienter raises significant doubts about her integrity and fitness to remain associated with any FINRA member firm. Her misconduct demonstrates that Olson cannot be entrusted with firm or customer money, and that she therefore poses a continuing threat to investors. Imposing a bar appropriately addresses that threat. The sanction also furthers the public interest by deterring other securities professionals from engaging in similar misconduct.[62]

An appropriate order will issue.[63]

By the Commission (Chair WHITE and Commissioners GALLAGHER, STEIN, and PIWOWAR; Commissioner AGUILAR not participating).

Brent J. Fields
Secretary

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[62] *See Mullins*, 2012 WL 423413, at *20 (finding that the bar imposed by FINRA for conversion was "necessary to deter [respondent] and others similarly situated from engaging in similar misconduct"); *see also Siegel*, 592 F.3d at 158 (noting that deterrence may be considered as part of the overall remedial inquiry in determining sanctions).

[63] We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75838 / September 3, 2015

Admin. Proc. File No. 3-15916

In the Matter of the Application of

DENISE M. OLSON
c/o Bruce M. Bettigole, Esq.
Sutherland Asbill & Brennan LLP
700 Sixth Street, NW, Suite 700
Washington, DC 20001-3980

For Review of Disciplinary Action Taken by

FINRA

ORDER SUSTAINING DISCIPLINARY ACTION TAKEN BY FINRA

On the basis of the Commission's opinion issued this day, it is

ORDERED that the findings by FINRA that Denise M. Olson violated FINRA Rule 2010 are SUSTAINED; and it is further

ORDERED that the sanction imposed by FINRA against Denise M. Olson, and its assessment of costs, is SUSTAINED.

By the Commission.

Brent J. Fields
Secretary