

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
Release No. 86193 / June 24, 2019

Admin. Proc. File No. 3-18350

In the Matter of the Application of  
  
MEYERS ASSOCIATES, L.P.  
  
For Review of Disciplinary Action Taken by  
  
FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY  
PROCEEDING

Former FINRA member firm appeals from FINRA disciplinary proceeding finding that the firm failed to adequately supervise its Chicago office and failed to establish and implement adequate anti-money laundering policies and procedures. FINRA also found that the firm is subject to a statutory disqualification because it failed reasonably to supervise an employee with a view to preventing his violations of antifraud provisions of the federal securities laws. FINRA imposed a \$500,000 fine and costs, and ordered the firm to hire an independent consultant. *Held*, FINRA's findings of violations, determination of a statutory disqualification, and imposition of a fine and costs are sustained, but the requirement that the firm hire an independent consultant is set aside.

APPEARANCES:

*Robert I. Rabinowitz and Sarah Klein*, of Becker & Poliakoff, LLP, for Meyers Associates, L.P.

*Alan Lawhead, Michael Garawski, and Colleen E. Durbin* for FINRA.

Appeal filed: January 23, 2018  
Last brief received: May 9, 2018

Meyers Associates, L.P. (“Meyers” or the “Firm”), a former FINRA member firm, seeks review of FINRA disciplinary action as a result of its conduct between 2011 and 2013.<sup>1</sup> FINRA found that Meyers violated NASD Rule 3010(a) and FINRA Rule 2010 by failing to adequately supervise its Chicago office and specifically George E. Johnson, a former registered representative who engaged in market manipulation and defrauded customers in violation of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010. FINRA found further that Meyers is subject to a statutory disqualification under FINRA’s By-Laws and Exchange Act Sections 3(a)(39)(F) and 15(b)(4)(E) because it failed reasonably to supervise Johnson with a view to preventing his violations of the Exchange Act.<sup>2</sup> FINRA also found that Meyers violated FINRA Rules 3310(a) and 2010 by failing to establish and implement adequate anti-money laundering (“AML”) policies and procedures. FINRA fined Meyers \$500,000, required it to retain an independent consultant to review and report on its policies, systems, and procedures, and assessed \$14,308.10 in costs.

Meyers does not dispute either the finding that it failed to reasonably supervise Johnson or that it failed to establish and implement an adequate AML program. Rather, it challenges FINRA’s finding that Johnson violated Exchange Act Section 10(b) and Rule 10b-5 thereunder, a necessary finding upon which FINRA relied to determine that Meyers is subject to a statutory disqualification.<sup>3</sup> We sustain FINRA’s findings of violations, determination of a statutory disqualification, and imposition of monetary sanctions, but set aside the requirement that Meyers retain an independent consultant.

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<sup>1</sup> *Meyers Assocs., L.P.*, Complaint No. 2013035533701, 2017 WL 6619343 (FINRA NAC Dec. 22, 2017), available at [http://www.finra.org/sites/default/files/fda\\_documents/2013035533701%20Meyers%20Associates%20LP%20CRD%2034171%20NAC%20Redacted%20sl.pdf](http://www.finra.org/sites/default/files/fda_documents/2013035533701%20Meyers%20Associates%20LP%20CRD%2034171%20NAC%20Redacted%20sl.pdf).

<sup>2</sup> 15 U.S.C. §§ 78c(a)(39)(F), 78o(b)(4)(E).

<sup>3</sup> 15 U.S.C. § 78c(a)(39)(F) (providing that a company is subject to a statutory disqualification if it commits any act described in Exchange Act Section 15(b)(4)(E)); Exchange Act Section 15(b)(4)(E); 15 U.S.C. § 78o(b)(4)(E) (authorizing sanctions for failing reasonably to supervise, “with a view to preventing violations of” the Exchange Act, “another person who commits such a violation, if such other person is subject to [its] supervision”).

## I. Background

### A. Meyers and the Chicago branch office

Meyers became a FINRA member in 1994.<sup>4</sup> It was headquartered in New York City and engaged in a general securities business. In 2011, Meyers opened a branch office in Chicago. Donald A. Wojnowski, Jr., its then-president, recruited several registered representatives to work in the Chicago office, including George E. Johnson and Christopher P. Wynne, in November 2011. In April 2013, Meyers closed the Chicago office when Johnson and Wynne left the Firm.

During his time at the Firm, Johnson was the Chicago office's highest producer. The bulk of his business consisted of sales of microcap securities through private offerings and over-the-counter transactions. Meyers paid Johnson 65% of the commissions and fees that he generated. Wynne, in addition to selling securities himself, was Johnson's sales assistant and entered all of Johnson's customers' trades into Meyers's order management system. Johnson and Wynne had a commission-sharing arrangement whereby Wynne received 15% of the commissions that Johnson earned. Meyers knew of this arrangement because the payments ran through the Firm; in 2012, Meyers paid Wynne \$77,196 as a result of the arrangement and Wojnowski testified that he knew about the arrangement. More than half of Wynne's compensation came from his share of Johnson's commissions; the rest was a small base salary and commissions on what Wynne testified was his own "relatively small" sales production.

### B. Johnson's activities in connection with IWEB stock

In 2011, Johnson recommended and solicited his customers to purchase the stock of IceWEB, Inc. ("IWEB"), a financially distressed microcap company whose stock traded on the OTC Bulletin Board. Johnson also purchased the stock for himself and his wife. At the time, IWEB's stock price was between \$0.25 and \$0.30 per share.

In early 2012, when Johnson and his customers owned millions of shares of IWEB stock and the price had fallen to \$0.12 per share, Johnson and IWEB began taking steps to increase the company's share price. Johnson and John F. Signorello, IWEB's then-president, targeted an increase to at least \$0.17 per share for two reasons: IWEB had outstanding warrants held by

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<sup>4</sup> FINRA's BrokerCheck report for Meyers states that FINRA expelled the firm in May 2018 and that the firm withdrew its broker-dealer registration in June 2018. *See* BrokerCheck, available at <https://brokercheck.finra.org/firm/summary/34171>. We take official notice of this information pursuant to Rule of Practice 323, 17 C.F.R. § 201.323. *Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 WL 1683914, at \*1 n.1 (Apr. 18, 2013), *petition denied*, 575 F. App'x 1 (D.C. Cir. 2014). We also take official notice of our order granting Meyers's request to withdraw its application for review of another proceeding based on it having ceased its broker-dealer business. *See Windsor St. Capital, L.P.*, Exchange Act Release No. 83734, 2018 WL 3618520, at \*1 (July 27, 2018).

hedge funds that were convertible at \$0.17 per share; and IWEB was considering a Private Investment in Public Equity (“PIPE”) offering with Meyers as the placement agent.<sup>5</sup> Johnson and Signorello believed that a price of \$0.17 to \$0.18 per share for IWEB’s stock would induce the hedge funds to exercise their warrants and increase demand for a PIPE offering. Johnson, through Meyers, stood to receive substantial fees in connection with the PIPE offering.

In January 2012, Johnson arranged for IWEB to retain John L. Faessel, a stock promoter, to generate interest in the company’s stock. Between February and May 2012, Faessel published seven reports that portrayed IWEB as a company experiencing an extraordinary “turnaround” with new orders “pouring in.” To bolster this claim, Faessel made misleading statements concerning IWEB’s quarterly growth.<sup>6</sup> Two of Faessel’s reports falsely claimed that IWEB won an industry award. None disclosed that IWEB was paying Faessel in stock and cash to write the reports. Johnson and Wynne disseminated Faessel’s reports to Meyers’s customers. By May 2012, IWEB’s stock price increased to \$0.15 per share.

In early May 2012, Johnson persuaded Signorello to retain Tobin Smith, a second promoter, for the purpose of generating increased trading volume for IWEB’s stock and increasing its share price to at least \$0.17 by May 24, 2012, when IWEB intended to begin preparations for the PIPE offering.<sup>7</sup> From May 22 through May 25, 2012, Smith conducted an “advertorial campaign” in which he published on his blog a research report touting IWEB that he prepared and emailed to approximately two million “opted in subscribers” obtained from various sources. Johnson and Wynne also disseminated Smith’s report to Meyers’s customers.<sup>8</sup>

During the same period, Johnson exchanged multiple emails with Signorello and Smith discussing their plan to increase IWEB’s stock price. On May 16, 2012, Johnson emailed Smith

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<sup>5</sup> “In a PIPE offering, investors commit to purchase a certain number of restricted shares from a company at a specified price” and the company agrees “to file a resale registration statement so that the investors can resell the shares to the public.” U.S. Securities and Exchange Commission, Fast Answers, PIPE offerings, *available at* <https://www.sec.gov/fast-answers/answerspipeofferingshtm.html>.

<sup>6</sup> The parties stipulated that Faessel’s reports did not comply with NASD Rule 2210(d)’s content standards for FINRA member firms’ public communications, and that Johnson and Wynne, by disseminating those reports to customers, violated NASD Rules 2210 and 2711 and FINRA Rule 2010. These violations are not at issue in this appeal.

<sup>7</sup> On April 21, 2016, Smith and his company settled charges brought by the Commission for their fraudulent promotion of IWEB stock to investors. *See SEC v. Smith*, Civil Action No. 1:16-CV-00587-TFH (D.D.C. Apr. 21, 2016), 2016 WL 2745926. We take official notice of the settlement pursuant to Rule of Practice 323, 17 C.F.R. § 201.323.

<sup>8</sup> The parties also stipulated that Smith’s report did not comply with NASD Rule 2210(d)(1), and that Johnson and Wynne violated NASD Rules 2210 and 2711 and FINRA Rule 2010 by disseminating Smith’s report. These violations are not at issue in this appeal.

confirming that IWEB's stock price needed to peak at \$0.17 on May 24, 2012 to induce the hedge funds to exercise their warrants:

Johnson: How confident are you on the webber?

Smith: Confident on the web campaign? It will be VERY intense 2 million high quality opted in subscribers and compounded with blog support[.] What is the day you need it to peak to convert the warrants at .17? I also have some other support coming in . . . Thursday is best for you to convert warrants . . . \$2 million right?

Johnson: Yep . . . let's go my friend.<sup>9</sup>

On May 18, 2012, Johnson emailed Smith again asking how confident he was about increasing IWEB's stock price. Smith responded that he was "110% confident . . . we added a \$100 million trading group to the mix . . . you WILL be where u want to be[.]"

On May 21, 2012, Johnson emailed Smith asking whether the results of his "advertorial campaign" were "better/worse or as expected." Smith replied, "We have not begun yet . . . we only put out simple message to our subs and social media guys as a warm up . . . the fireworks start tomorrow and climax on Thursday[.]" Smith continued:

We are getting the biggest bang for our buck with dedicated emails that crescendo with 1.5 million emails on Thursday morning . . . WITH some of the PIPE money you raise . . . we can expand our program . . . this campaign is short lived and its goal is to get stock into the 20 cent range so John [Signorello] can convert enough warrants to fill his war chest[.]

Later that day, Smith emailed: "We got 3.5 million shares today with a water pistol . . . The bazookas come out starting tomorrow . . . You close your PIPE deal for them at .17 on Thursday? Stock will be at .20 or more on Thursday . . . Bet you steak at Gibson's." Johnson responded: "If [IWEB's stock] closes in the 20s, I will buy you two steaks at Gibson's!"

On May 22, 2012, Smith emailed Johnson and Signorello stating that he was "building to bigger Wed[nesday] and then crescendo Thursday . . . that is what [IWEB] wanted and that is what [it] is getting[.]" In response, Johnson complained that "[b]uy volume has dried up . . . I've been supporting the .16 bid for the last two hours[.]" Signorello responded to Johnson that "[Smith] said [h]e doesn't start with the big [g]uns til tomorrow and then [T]hursday."

On May 24, 2012, Johnson and Smith emailed concerning the target price for IWEB's stock:

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<sup>9</sup> All ellipses in the quoted emails are in the original emails.

Smith: [M]y orders were to get huge volume and .17-.18 cents . . . for a pre holiday week this is about as good as we can do[.]

Johnson: .165 bid now . . . I need it at .17 to .18 for a couple of days at least.

Smith: We brought 9 million shares of volume . . . it's holiday weekend . . . if wew [sic] start again on Wed we can get it up there again but getting list rentals is difficult on short notice. . . Why not cut the PIPE to .15 and be done with it?

Johnson: You did a great job buddy . . . let's keep it going.

In conjunction with this “advertorial campaign,” Johnson engaged in manipulative trading in IWEB stock to increase its share price and trading volume. From May 15 through May 24, 2012, Johnson aggressively traded IWEB stock in his customers’ accounts through matched orders, cross trades, and wash sales.<sup>10</sup> In the two-and-a-half months prior to this period, Johnson made almost no trades in IWEB stock. But between May 15 and May 24, Johnson’s customers effected more than ninety transactions in IWEB’s stock accounting for between 16% and 70% of its daily trading volume. And Johnson’s trading volume in IWEB totaled approximately 7,328,089 shares, which equaled an average daily trading volume of approximately 916,011 shares. This was more than three times the entire market’s average daily trading volume of 272,862 shares during the preceding four months.

Approximately one-third of the trades were limit orders to buy that Johnson placed in a customer’s account at the same time that he placed limit orders to sell the same, or a similar, number of shares in another customer’s account. Johnson had a Nasdaq Level 2 screen, which enabled him to match customers’ orders by giving him access to price quotes and other trading information on IWEB on a real-time basis. Wynne testified that Johnson gave him matching orders to purchase IWEB stock for one customer and sell IWEB stock for another customer. Johnson induced these matching buy and sell orders from his customers by soliciting some customers to purchase IWEB stock at the same he was soliciting other customers to sell IWEB stock.

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<sup>10</sup> Matched orders are “orders for the purchase [or] sale of a security that are entered with the knowledge that orders of substantially the same size, at substantially the same time and price, have been or will be entered by the same or different persons for the sale [or] purchase of such security.” *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 205 n.25 (1976). Cross trades “occur[] when a security of one client is bought by another client,” and wash sales are “fictitious sale[s] where there is no change in beneficial ownership.” *Donald L. Koch*, Exchange Act Release No. 72179, 2014 WL 1998524, at \*14 n.149 (May 16, 2014), *petition denied in relevant part*, 793 F.3d 147 (D.C. Cir. 2015).

From May 15 to May 24, 2012, IWEB's stock price increased from \$0.12 to \$0.17 per share. After the market closed on May 24, Johnson told Meyers that IWEB wanted to retain it to conduct a PIPE offering. Meyers then placed IWEB on its restricted list, and Johnson stopped trading in the stock. The PIPE offering concluded in July 2012 and raised \$1,614,715. Meyers earned a placement fee of \$161,471, of which it paid \$104,956.15, or 65%, to Johnson. As a result of Johnson's scheme, at least one customer lost approximately \$200,000, and other market participants were induced to exercise warrants or participate in the PIPE offering based on inflated share prices and misleading stock reports. The investor who lost approximately \$200,000 testified that, as of the date of the hearing in 2016, his IWEB stock was worth "zero."

### **C. Johnson's activities in connection with STVI stock**

In May and June 2012, Johnson purchased 250,000 shares of Snap Interactive, Inc. ("STVI") stock through his and his wife's personal accounts at Meyers. STVI was another microcap company whose shares traded on the OTC Bulletin Board. Between July 12 and August 31, 2012, Johnson sold approximately half of his and his wife's STVI holdings to his own customers in 11 different transactions. In each transaction, Johnson, who knew that STVI stock was thinly traded, first placed a limit order to sell his or his wife's STVI shares followed by a market order to buy a somewhat larger number of STVI shares for the customer. By placing the orders in this manner, Johnson was able to ensure that his sell orders would be filled at the prices he wanted. The shares sold from Johnson's and his wife's accounts were the actual shares his customers bought in the open market at the prices set by Johnson in his limit orders.

Johnson did not inform his customers that he was selling his or his wife's STVI stock at the same time he was soliciting them to buy the stock. Johnson realized combined net profits of approximately \$18,535 from his and his wife's sales of STVI stock to his customers. Johnson also generated commissions on those transactions of approximately \$4,400.

### **D. Meyers's supervisory system**

In November 2011, Wojnowski appointed Wynne to serve as branch manager and supervisor of the Chicago office. But Wynne testified that Meyers did not provide him with any training on his supervisory responsibilities. Wynne also testified that he never read Meyers's written supervisory procedures ("WSPs") in their entirety; rather, he merely "glanced through" them.

No one supervised Wynne to ensure that he was discharging his supervisory responsibilities. Although Meyers's organizational chart showed that Wojnowski was responsible for supervising Wynne, Wojnowski denied that he was Wynne's supervisor. He testified that either Wayne A. Ellison, Meyers's Chief Compliance Officer and AML Compliance Person, or Brian F. Reschke, who supervised Meyers's Florida branch office, was responsible for Wynne's supervision. Ellison denied that he was Wynne's supervisor and maintained that Wojnowski was responsible for supervising Wynne. Reschke also denied that he supervised Wynne. In the end, no senior officer from Meyers ever visited the Chicago office,

and Meyers never conducted a branch office inspection of that office. Indeed, Wynne testified that nobody at the firm ever communicated with him at all to ensure that he was enforcing the WSPs.

**1. Meyers’s supervision of Johnson’s IWEB activities**

**a. Review of email correspondence**

Meyers’s WSPs required Wynne to review email correspondence and forward questionable correspondence to compliance for review. Meyers used Global Relay, an email review system, to retain and review email correspondence. On several occasions between December 2011 and March 2012, Wynne emailed Wojnowksi and Reschke requesting access through Global Relay to review the Chicago office’s email. But Meyers did not provide Wynne with Global Relay access; Wynne therefore was unable to, and did not, review the emails sent to or received by the registered representatives whom he supervised. As a result, Wynne never saw Johnson’s emails with Signorello and Smith discussed above.

**b. Review of third-party research reports**

Meyers’s WSPs required Wynne to review third-party research reports and other public communications that were sent to Meyers’s customers to ensure they complied with applicable FINRA rules and Meyers’s policies. Wynne testified that he read Faessel’s and Smith’s reports before they were disseminated to customers but that he did not review them to determine whether they “omitted material facts” or “made false or misleading claims”; he admitted that he did not determine if the reports “complied with any FINRA rules.” Wynne also testified that he understood that IWEB paid Faessel and Smith to write their reports and that those reports were designed to “generate interest” in IWEB stock and were not intended to be “independent.” Wynne took no steps to determine if this information was disclosed to customers.<sup>11</sup>

**c. Review of Johnson’s IWEB trading**

Meyers’s WSPs required Wynne to review orders on a daily basis for manipulative activity, including matched orders, wash sales, and prearranged trades. But Meyers did not provide Wynne with exception reports, which “are surveillance tools widely used in the broker-

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<sup>11</sup> See NASD Rule 2711(h)(1)(C), (h)(2)(A)(i), & (h)(13)(A) (requiring that if a member firm distributes a third-party research report, it disclose any “actual, material conflict of interest of the research analyst . . . of which the research analyst knows or has reason to know at the time of publication of the research report”; and disclose “if the research analyst received compensation . . . from the subject company in the past 12 months”). FINRA Rule 2241 superseded NASD Rule 2711 in 2015. FINRA Regulatory Notice 15-30 (August 2015).

dealer industry to review for unusual activity in customer accounts.”<sup>12</sup> Although Wynne reviewed the daily trade blotter each day, he did not specifically look for matched trades or wash sales. Wynne testified that he “reviewed the trades” but did not “really review for prearranged trading,” and that “[n]othing stuck out as a prearranged trade, so it was not high on the list.”

From May 15 to May 24, 2012, there were significant red flags that should have caused Wynne to investigate whether Johnson was manipulating IWEB’s stock. They include that: (i) Johnson was placing simultaneous, identical limit orders to buy and sell large blocks of a low-priced, thinly traded stock that had been performing poorly; (ii) Johnson was instructing Wynne to mark as unsolicited transactions in IWEB’s stock that were, in fact, solicited; (iii) the volume of Johnson’s customers’ trades in IWEB stock had increased significantly and constituted a substantial portion of IWEB’s daily trading volume; and (iv) the burst of trading in IWEB stock coincided with the distribution of Faessel’s and Smith’s reports, which Wynne testified were designed to “generate interest” in the stock. Despite these red flags, Wynne took no steps to investigate any of Johnson’s customers’ trades or question any instructions from Johnson.

Meyers’s senior management similarly disregarded red flags concerning Johnson’s trading in IWEB stock. For instance, Wojnowski testified that he knew Johnson’s microcap securities business was a “high risk” enterprise and expected additional scrutiny of that trading by compliance and additional support for the branch manager overseeing it. But Wojnowski did not implement heightened scrutiny of Johnson’s trading in microcap securities or provide Wynne with increased support. Wojnowski also testified that he considered the transactions for which Wynne received 15% of Johnson’s commissions to be part of Wynne’s own production and expected Wynne’s supervisor to review those transactions. Nevertheless, Wojnowski took no action to ensure that those transactions were reviewed by someone other than Wynne. Wynne’s repeated requests for Global Relay access, moreover, placed Wojnowski on notice that Wynne was not reviewing the Chicago office’s emails. Yet Wojnowski did not respond to Wynne’s requests and did nothing to ensure that Wynne was reviewing emails as the WSPs required.

Additionally, Wojnowski and Ellison received daily commission reports showing all trades placed by Meyers’s registered representatives. Wojnowski testified that “[m]ore than once” he “reached out” to Wynne because he saw that Johnson was actively trading low-priced securities in his wife’s account that his customers were also trading. According to Wojnowski, he told Wynne that Johnson should “slow down and not trade in his wife’s account” and that Wynne said he would talk to Johnson. But Wynne testified that he never asked Johnson why he was selling his and his wife’s shares of STVI stock at the same time he was soliciting his customers to purchase STVI stock. Wynne also testified that at the time he entered these trades he was not concerned with this activity. For his part, Wojnowski shared his concerns with Ellison but did not follow up with Wynne or pursue the matter further. Neither Wojnowski nor

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<sup>12</sup> *Lek Sec. Corp.*, Exchange Act Release No. 82981, 2018 WL 1602630, at \*3 (Apr. 2, 2018) (internal quotations and citation omitted).

Ellison spoke to Johnson about his trading or attempted to ascertain whether it was suspicious or illegal.

## **2. Meyers's supervision of Johnson's STVI activities**

Meyers's WSPs treated adverse interests as a conflict of interest, stating that "[w]hen an RR [registered representative] is on the opposite side of a transaction from a customer, the RR may be considered to have an 'adverse interest' in the transaction. The branch manager or other designated supervisor should require a disclosure on the customer's confirmation or a letter to the customer disclosing that an employee was on the opposite side of the transaction."

Wynne knew that Johnson was selling his and his wife's STVI stock from their personal accounts while simultaneously recommending that customers purchase the stock. Indeed, Wynne was the one who entered the trades. Nevertheless, Wynne did not require a disclosure on the customer's confirmation or a letter to the customer disclosing that an employee was on the opposite side of the transaction. Nor did he investigate whether Johnson disclosed his conflict of interest to his customers. At the hearing, Wynne acknowledged that Johnson's placement of limit orders to sell his or his wife's STVI shares contemporaneously with Johnson's placement of market orders for his customers to buy STVI shares "should have been a red flag" prompting Wynne to take action. Yet Wynne did nothing because he "didn't see a problem at the time" with the trading. In addition, Wojnowski and Ellison disregarded red flags in daily commission reports, which showed many instances of Johnson trading for his or his wife's accounts in a manner contrary to the recommendations he was making to his customers.

## **E. Meyers's AML program**

Meyers's Anti-Money Laundering Program Compliance and Supervisory Procedures ("AML Manual"), in effect from November 17, 2011 through November 30, 2012 (the "AML period"), set forth the AML program. It included the following provision:

### ***11. Monitoring Accounts for Suspicious Activity***

[Meyers] will monitor account activity for unusual size, volume, pattern or type of transactions, taking into account risk factors and red flags that are appropriate to our business. . . . Monitoring will be conducted through the review of daily trade reports, monthly active account reports, and the various AML reports provided by our clearing firms. The AML Compliance Person or his or her designee will be responsible for this monitoring, will review any activity that our monitoring system detects, will determine whether any additional steps are required, will document when and how this monitoring is carried out, and will report suspicious activities to the appropriate authorities.

The AML Manual listed 48 red flags indicative of potentially suspicious activity, including that a "[c]ustomer engages in prearranged or other noncompetitive trading, including

wash or cross trades of illiquid securities,” and “[t]wo or more accounts trade an illiquid stock suddenly and simultaneously.” The AML Manual further provided:

When an employee of the firm detects any red flag, or other activity that may be suspicious, he or she will notify the AML Compliance Person. Under the direction of the AML Compliance Person, the firm will determine whether or not and how to further investigate the matter. This may include gathering additional information internally or from third-party sources, contacting the government, freezing the account and/or filing a SAR-SF<sup>13</sup> [Suspicious Activity Report].

The AML Manual stated that the AML Compliance Person—Ellison—had “full responsibility and authority to enforce” Meyers’s AML program. But, as to the Chicago office, Ellison testified that he delegated to Wynne the responsibility for monitoring accounts for suspicious activity. No documentary evidence supports Ellison’s testimony. In addition, Wynne testified that he had “no idea” he was the AML designee, had never seen Meyers’s AML Manual, and did not receive any surveillance tools specific to AML review, such as exception reports, or training related to the duties of the AML designee. Further, Wynne testified that he understood he was required to report suspicious activity to an AML compliance officer, but he did not know who the AML Compliance Person was at the Firm.

During the AML period, Ellison was not otherwise monitoring the Chicago office for AML compliance. He received the daily trade reports and monthly active account reports, and these were the primary tools he used to conduct trade reviews. But he testified that those reports did not identify potential manipulative trading. Moreover, he testified that he did not otherwise monitor accounts in the Chicago office for such trading. Ellison conducted some reviews of specific trades, but he did not remember if he saw any trading activity with respect to the Chicago office. He also testified that he would not have detected manipulative trading by any of the brokers, based on the daily or monthly reports or trade reviews, because “it was a needle in a haystack” and he did not “scrutinize [the brokers’ trades] to that level.” Ellison testified: “[B]ased upon the scope and the tools that I had at my disposal, I couldn’t catch it. I would have a hard time catching stock manipulation in other words.”

Furthermore, during the AML period, Meyers received a report highlighting serious deficiencies with the Firm’s AML compliance program from a company it hired to test and review its compliance with FINRA Rule 3310 for the period September 2, 2011 to September 2, 2012.<sup>14</sup> The report stated that Ellison “was not able to identify a specific employee of the Firm that reviewed the AML exception reports provided by each clearing firm.” Consistent with the

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<sup>13</sup> The Form SAR-SF identifies 20 categories of suspicious activity that broker-dealers must report to the Financial Crimes Network (“FinCEN”), including market manipulation, pre-arranged or other non-competitive trading, securities fraud, and wash or other fictitious trading.

<sup>14</sup> FINRA Rule 3310(c) requires firms to “[p]rovide for annual . . . independent testing for compliance to be conducted . . . by a qualified outside party . . . .”

compliance report, Ellison testified that he did not review the AML exception reports, that no one at Meyers would sign off as having reviewed AML exception reports, and that he did not know if those reports were reviewed. The compliance report concluded that Meyers's AML policies and procedures failed to "adequately detect and prevent money laundering activities by the Firm's customers and associated persons." Ellison testified that the statements in the compliance report were factually correct and that he agreed with the conclusion reached therein.

## II. Violations

In April 2015, FINRA's Department of Enforcement ("FINRA Enforcement") filed a complaint against Meyers, Johnson, Wynne, and a third individual. The complaint charged that Johnson manipulated the market for IWEB stock and fraudulently omitted material facts in connection with his sales of STVI stock to customers in violation of Exchange Act Section 10(b), Rule 10b-5 thereunder, and FINRA Rules 2020 and 2010. The complaint charged Meyers, through Wynne and others, with failing to adequately supervise the Chicago office and Johnson in violation of NASD Rule 3010(a) and FINRA Rule 2010, and with failing to establish and implement an adequate AML program in violation of FINRA Rules 3310(a) and 2010.

FINRA settled with the individual respondents immediately prior to the hearing. Meyers moved for a three-week adjournment of the hearing on the ground that it had expected the individual respondents to take the lead in defending the charges against them and that, because those respondents settled, Meyers was not prepared to contest those charges and needed additional time to prepare. The Extended Hearing Panel found no good cause for a delay because it was foreseeable that the individual respondents would settle and denied the motion.

The Panel conducted a hearing beginning on February 24, 2016. Before the hearing, Johnson had refused a request by FINRA Enforcement to appear; Meyers did not make a similar request. In lieu of his in-person testimony, and over Meyers's objections, the Panel admitted into evidence Johnson's on-the-record ("OTR") testimony taken during FINRA's investigation.

On November 11, 2016, the Panel issued a decision finding that Meyers violated NASD and FINRA rules as alleged in the complaint, and that Meyers was subject to a statutory disqualification. The Panel imposed a single fine of \$350,000 for Meyers's violations, assessed hearing costs of \$12,802.72, and ordered that Meyers retain an independent consultant. On December 22, 2017, FINRA's National Adjudicatory Council ("NAC") affirmed the Panel's findings of violations and finding of a statutory disqualification, and the order that Meyers retain an independent consultant and pay hearing costs. The NAC increased the fine to \$500,000, and assessed appeal costs of \$1,505.38. The NAC stated that "a fine higher than that imposed by the Extended Hearing Panel [was] needed to adequately address Meyers' troubling and egregious violations." The NAC stated that the \$500,000 fine was warranted because many "aggravating factors predominate[d]," including that Meyers's supervisory deficiencies allowed "Johnson to engage in securities fraud that enriched Johnson, harmed customers, and compromised market integrity"; Meyers "failed reasonably to respond to numerous 'red flag' warnings"; and Meyers had "a lengthy and troubling disciplinary history." This appeal followed.

We review FINRA disciplinary action under Exchange Act Section 19(e)(1).<sup>15</sup> We determine whether Meyers engaged in the conduct FINRA found, whether that conduct violated the rules specified in FINRA’s determination, and whether those rules are, and were applied in a manner, consistent with the purposes of the Exchange Act.<sup>16</sup> We base our findings on an independent review of the record and apply a preponderance of the evidence standard.<sup>17</sup>

#### A. Meyers’s supervisory violations

We affirm the NAC’s finding, which Meyers does not challenge, that Meyers violated NASD Rule 3010(a) and FINRA Rule 2010. NASD Rule 3010(a) requires firms to establish and maintain a supervisory system “reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules.”<sup>18</sup> The “presence of procedures alone is not enough” because “[w]ithout sufficient implementation, guidelines and strictures do not assure compliance.”<sup>19</sup> “The duty of supervision includes the responsibility to investigate ‘red flags’ that suggest that misconduct may be occurring and to act upon the results of such investigation.”<sup>20</sup> “Final responsibility for proper supervision shall rest with the member,”<sup>21</sup> and a supervisor’s violation of a “duty to supervise may be imputed to the firm.”<sup>22</sup> A violation of NASD Rule 3010(a) also violates FINRA Rule 2010, which requires members to observe “high standards of commercial honor and just and equitable principles of trade.”<sup>23</sup>

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<sup>15</sup> 15 U.S.C. § 78s(e)(1).

<sup>16</sup> *Id.*

<sup>17</sup> *Richard G. Cody*, Exchange Act Release No. 64565, 2011 WL 2098202, at \*1, 9 (May 27, 2011), *aff’d*, 693 F.3d 251 (1st Cir. 2012).

<sup>18</sup> On December 1, 2014, FINRA Rule 3110(a) superseded NASD Rule 3010(a). *Consolidated Supervision Rules*, FINRA Notice to Members 14-10, 2014 WL 1133588 (Mar. 19, 2014). Because Meyers’s conduct occurred before December 2014, NASD Rule 3010(a) applies.

<sup>19</sup> *Rita H. Malm*, Exchange Act Release No. 35000, 1994 WL 665963, at \*4 n.17 (Nov. 23, 1994).

<sup>20</sup> *Michael T. Studer*, Exchange Act Release No. 50543A, 2004 WL 2735433, at \*6 (Nov. 30, 2004), *petition denied*, 260 F. App’x 342 (2d Cir. 2008).

<sup>21</sup> NASD Rule 3010(a).

<sup>22</sup> *World Trade Fin. Corp.*, Exchange Act Release No. 66114, 2012 WL 32121, at \*12 n.61 (Jan. 6, 2012) (imputing to a firm the supervisory violation of NASD Rule 3010 by its president and trade desk supervisor), *petition denied*, 739 F.3d 1243 (9th Cir. 2014).

<sup>23</sup> *Kenny Akindemowo*, Exchange Act Release No. 79007, 2016 WL 5571625, at \*5 n.3 (Sept. 30, 2016) (“[A] violation of an SRO rule is conduct inconsistent with just and equitable principles of trade and therefore is also a violation of FINRA Rule 2010.”).

Meyers violated these standards by failing to implement its supervisory procedures and ignoring red flags. Meyers's WSPs required that Wynne, as supervisor of the Chicago office, review the emails of registered representatives; review trades for potential manipulative activity; review third party research reports to ensure compliance with FINRA rules; and require customer disclosure if a registered representative is on the opposite side of a transaction from the customer. But Meyers did not implement these WSPs. Wynne did not review the emails of registered representatives because Meyers did not give him access to Global Relay. Wynne did not review the daily trade blotter for potential manipulative activity, and Meyers did not provide him with exception reports. Wynne did not review the promoters' reports touting IWEB stock for regulatory compliance. And Wynne did not require Johnson to disclose his adverse interest in STVI stock to customers. Despite Wojnowski characterizing Johnson's microcap securities business as a "high risk" enterprise that warranted heightened supervision, Meyers did not train Wynne regarding his supervisory responsibilities or review Wynne's performance to ensure that he was discharging those responsibilities.<sup>24</sup>

Also, Meyers and Wynne ignored red flags suggesting that Johnson was engaging in misconduct with respect to IWEB and STVI stock. As to IWEB, Meyers and Wynne ignored that Johnson was engaged in suspicious trading in his customers' accounts such as matched orders, cross trades, and wash sales; that Johnson's customers' trades in IWEB stock had increased significantly and constituted a substantial portion of IWEB's daily trading volume; and that such trading coincided with the distribution of the promoters' reports touting IWEB.<sup>25</sup> As to STVI, Meyers and Wynne ignored that Johnson was selling STVI stock in his and his wife's accounts at the same time that Johnson's customers were purchasing STVI stock.<sup>26</sup>

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<sup>24</sup> See *Richard F. Kresge*, Exchange Act Release No. 55988, 2007 WL 1892137, at \*7-9 (June 29, 2007) (finding violation of NASD Rule 3010(a) where firm's branch office manager with delegated supervisory responsibilities did not receive a compliance manual or training and the firm's president did not review the manager's "performance of his supervisory duties or review any of the . . . branch office records"); NASD Rule 3010(a)(6) ("A member's supervisory system shall provide . . . [r]easonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their assigned responsibilities.").

<sup>25</sup> See *William J. Murphy*, Exchange Act Release No. 69923, 2013 WL 3327752, at \*19 (July 2, 2013) (finding a failure to supervise in face of red flags, including a "dramatic increase" in broker's trading in customer's account), *aff'd sub nom. Birkelbach v. SEC*, 751 F.3d 472 (7th Cir. 2014); see also, e.g., *Ronald S. Bloomfield*, Exchange Act Release No. 71632, 2014 WL 768828, at \*16 (Feb. 27, 2014) (stating that red flags of a market manipulation include "purchases and sales made in large blocks of obscure stocks at increasing prices where no issuer developments explained those price increases, thereby creating the illusion of demand for the stocks"), *petition denied*, 649 F. App'x 546 (9th Cir. 2016).

<sup>26</sup> See, e.g., *Ronald Pellegrino*, Exchange Act Release No. 59125, 2008 WL 5328765, at \*10-14 (Dec. 19, 2008) (finding unreasonable supervision where supervisor recognized supervisory system deficiencies, including conflicts of interest, but failed to address them).

Accordingly, we find that Meyers engaged in the conduct FINRA found and that this conduct violated NASD Rule 3010(a) and FINRA Rule 2010. We also find that those rules are, and were applied in a manner, consistent with the purposes of the Exchange Act. We make that finding as to NASD Rule 3010(a) because “the responsibility of broker-dealers to supervise their employees is a critical component of the federal regulatory scheme,”<sup>27</sup> and because FINRA’s application of NASD Rule 3010(a) was appropriate given Meyers’s supervisory failures. We make that finding as to FINRA Rule 2010 because it reflects the mandate of Exchange Act Section 15A(b)(6) that FINRA’s rules “promote just and equitable principles of trade,”<sup>28</sup> and because Meyers’s misconduct was inconsistent with those principles.

**B. Meyers’s statutory disqualification.**

FINRA’s By-Laws state that no member firm shall continue in membership if such firm is or becomes subject to a “disqualification.”<sup>29</sup> The By-Laws define “disqualification” as “any ‘statutory disqualification’ as such term is defined in Section 3(a)(39) of the [Exchange] Act.”<sup>30</sup> Exchange Act Section 3(a)(39)(F) provides that a person—defined to include a company<sup>31</sup>—is subject to a statutory disqualification if the person has committed any act enumerated in Exchange Act Section 15(b)(4)(E).<sup>32</sup> Exchange Act Section 15(b)(4)(E) includes a failure reasonably to supervise “with a view to preventing violations of” the Exchange Act “another person who commits such a violation, if such other person is subject to [its] supervision.”<sup>33</sup>

We sustain FINRA’s finding that Meyers meets this standard. Meyers had an obligation to supervise Johnson and, as discussed above, failed to do so reasonably with a view to preventing violations of the Exchange Act. As discussed below, Johnson violated Exchange Act

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<sup>27</sup> *Robert Marcus Lane*, Exchange Act Release No. 74269, 2015 WL 627346, at \*14 (Feb. 13, 2015) (quoting *Order Granting Approval of a Proposed Rule Change to Adopt Rules Regarding Supervision in the Consolidated FINRA Rulebook, as Modified by Amendment No. 1*, Exchange Act Release No. 71179, 2013 WL 6794111, at \*31-32 & n.230 (Dec. 23, 2013)).

<sup>28</sup> *Rani T. Jarkas*, Exchange Act Release No. 77503, 2016 WL 1272876, at \*10 (Apr. 1, 2016) (quoting 15 U.S.C. § 78o-3(b)(6)).

<sup>29</sup> FINRA By-Laws, Article III, § 3(a).

<sup>30</sup> FINRA By-Laws, Article III, § 4.

<sup>31</sup> 15 U.S.C. § 78c(a)(9).

<sup>32</sup> 15 U.S.C. § 78c(a)(39)(F).

<sup>33</sup> 15 U.S.C. § 78o(b)(4)(E).

Section 10(b) and Rule 10b-5 thereunder with respect to the IWEB and STVI stock transactions.<sup>34</sup>

**1. Johnson violated the Exchange Act by manipulating the market for IWEB stock.**

Exchange Act Section 10(b) and Rule 10b-5 thereunder prohibit, through means of interstate commerce and in connection with the purchase or sale of securities, market manipulation.<sup>35</sup> Manipulation “refers generally to practices, such as wash sales, matched orders, or rigged prices, that are intended to mislead investors by artificially affecting market activity.”<sup>36</sup> Scierer is required to violate these provisions.<sup>37</sup> Scierer is an intent to deceive, manipulate, or defraud,<sup>38</sup> and includes recklessness—highly unreasonable conduct that is an “extreme departure from the standards of ordinary care, . . . which presents a danger of misleading buyers or sellers that is either known to the [actor] or is so obvious that the actor must have been aware of it.”<sup>39</sup>

We find that Johnson manipulated the market for IWEB stock. From May 15 to May 24, 2012, Johnson increased IWEB’s stock price and trading volume artificially by creating the appearance of market activity through matched orders, cross trades, and wash sales. Indeed, approximately one-third of the 90 trades that Johnson’s customers effected during that time were

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<sup>34</sup> See generally *Lek Secs. Corp.*, 2018 WL 1602630, at \*9 n.23 (stating that FINRA’s rules do “not require an underlying rule violation to find a supervisory violation” but that a supervisory violation “under Exchange Act Section 15(b)(4)(E)” requires “an underlying violation of the securities laws, rules, and regulations”).

<sup>35</sup> 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5; *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 476-77 (1977) (stating that with Exchange Act Section 10(b) “[n]o doubt Congress meant to prohibit the full range of ingenious devices that might be used to manipulate securities prices”). The record shows, and it is undisputed, that with respect to IWEB stock Johnson acted through interstate commerce and in connection with the purchase or sale of securities.

<sup>36</sup> *Santa Fe*, 430 U.S. at 476-77; accord *Koch v. SEC*, 793 F.3d 147, 155 (D.C. Cir. 2015); see also *Swartwood, Hesse*, Exchange Act Release No. 31212, 1992 WL 252184, at \*5 (Sept. 22, 1992) (“Manipulation is the creation of deceptive value or market activity for a security, accomplished by an intentional interference with the free forces of supply and demand.”).

<sup>37</sup> *Ernst & Ernst*, 425 U.S. at 214; see also *Koch*, 793 F.3d at 153-54 (“[I]ntent—not success—is all that must accompany manipulative conduct to prove a violation of the Exchange Act and its implementing regulations.”) (citing *Markowski v. SEC*, 274 F.3d 525, 529 (D.C. Cir. 2001) (stating that the Congress has “determin[ed] that manipulation can be illegal *solely* because of the actor’s purpose”) (emphasis and alterations in *Koch*)).

<sup>38</sup> See, e.g., *SEC v. Steadman*, 967 F.2d 636, 641-42 (D.C. Cir. 1992).

<sup>39</sup> *Id.* (quoting *Sundstrand Corp. v. Sun Chem. Corp.*, 553 F.2d 1033, 1045 (7th Cir. 1977)); *Rockies Fund, Inc. v. SEC*, 428 F.3d 1088, 1093 (D.C. Cir. 2005).

limit orders to buy that Johnson placed in a customer's account at the same time that he placed limit orders to sell the same, or a similar, number of shares in another customer's account.<sup>40</sup>

We also find that Johnson acted with scienter. Johnson repeatedly admitted his intent to increase IWEB's stock price in emails with a stock promoter and IWEB's president. Our scienter finding is supported by Johnson's voluminous manipulative trades that, in conjunction with the promotional scheme he orchestrated, increased IWEB's stock price from \$0.12 to \$0.17 per share from May 15 to May 24, 2012.<sup>41</sup> It also is supported by Johnson's personal financial interest in raising IWEB's stock price.<sup>42</sup> Thus, we conclude that Johnson manipulated IWEB stock with scienter in violation of Exchange Act Section 10(b) and Rule 10b-5 thereunder.

Meyers contends that the scienter standard that we need to apply is "specific intent." Specific intent is required under Exchange Act Section 9(a)(2). That provision prohibits "a series of transactions in a security . . . creating actual or apparent trading activity . . . or raising . . . the price of such security, for the purpose of inducing the purchase or sale of such security by others."<sup>43</sup> We have held that specific intent is not required to establish liability under Exchange Act Section 10(b) and Rule 10b-5.<sup>44</sup> In any case, the evidence establishes that it was Johnson's intent to manipulate the market because he effected the matched orders and cross trades at the same time that he engaged in a promotional campaign he designed to increase IWEB's price.

Meyers also contends that it is "virtually impossible to know what [Johnson's] intent was regarding his transactions in IWEB" because he did not testify at the hearing, and that "it was imprudent for [FINRA] to rely so heavily on the documentary evidence . . . in the absence of any

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<sup>40</sup> See *supra* notes 10 and 36 and accompanying text.

<sup>41</sup> See, e.g., *Pagel, Inc. v. SEC*, 803 F.2d 942, 946 (8th Cir. 1986) (finding that "the Commission could reasonably have inferred from the evidence of price movement, trading activity, and other factors that the manipulation was undertaken for the purpose of securing financial and tax benefits for petitioners and thus was intentional").

<sup>42</sup> See *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 325 (2007) (stating that "personal financial gain may weigh heavily in favor of a scienter inference"). Of course, "proof of motive is not required where there is direct evidence of manipulative intent." *Koch*, 2014 WL 1998524, at \*14. Here, Johnson's emails establish his manipulative intent.

<sup>43</sup> 15 U.S.C. § 78i(a)(2).

<sup>44</sup> See *Irfan Mohammed Amanat*, Exchange Act Release No. 54708, 2006 WL 3199181, at \*8 n.45 (Nov. 3, 2006) (finding that the ALJ erred in concluding that the specific intent standard under Exchange Act Section 9(a) applied to wash sales and matched orders under Exchange Act Section 10(b) and Rule 10b-5), *petition denied*, 269 F. App'x 217 (3d Cir. 2008); see also *Vernazza v. SEC*, 327 F.3d 851, 860 (9th Cir. 2003) (rejecting petitioners' suggestion that under Exchange Act Section 10(b) and Rule 10b-5 scienter "requires specific intent to defraud" because a finding of scienter may be supported by "knowing or reckless conduct").

context or explanation which Johnson could have provided.” We disagree. Meyers identifies no particular document that needed Johnson’s elucidation, and we are aware of none. Nor is there a requirement that scienter findings be based on testimonial evidence.<sup>45</sup> As discussed above, the documentary evidence that Johnson acted with scienter is overwhelming.

**2. Johnson violated the Exchange Act by not disclosing material information in connection with his sales of STVI stock to his customers.**

Exchange Act Section 10(b) and Rule 10b-5(b) thereunder also prohibit, through means of interstate commerce and in connection with the purchase or sale of securities, the omission, with scienter, of “a material fact despite [having] a duty to speak.”<sup>46</sup> “A broker who chooses which stocks to recommend to clients is required to disclose all material information that could affect his client’s purchase decision.”<sup>47</sup> A fact is material if there is a substantial likelihood a reasonable investor would consider the fact important in making an investment decision.<sup>48</sup> When

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<sup>45</sup> See, e.g., *Herman & MacLean v. Huddleston*, 459 U.S. 375, 390-91 n.30 (1983) (noting that “circumstantial evidence can be more than sufficient” to establish scienter); *Harris*, 712 F. App’x 46, 48 (2d Cir. 2017) (“Proof of scienter need not be direct, but may be a matter of inference from circumstantial evidence.”) (citation and internal quotation marks omitted); *ZPR Inv. Mgmt., Inc. v. SEC*, 861 F.3d 1239, 1252 (11th Cir. 2017) (same); *Gebhart v. SEC*, 595 F.3d 1034, 1041 (9th Cir. 2010) (same); *Pagel, Inc.*, 803 F.2d at 946 (same) (stating also that “the Commission could reasonably have inferred from the evidence of price movement, trading activity, and other factors that the manipulation was undertaken for the purpose of securing financial and tax benefits for petitioners and thus was intentional”).

<sup>46</sup> *Bernard G. McGee*, Exchange Act Release No. 80314, 2017 WL 1132115, at \*6 (Mar. 27, 2017) (citing *SEC v. First Jersey Sec., Inc.*, 101 F.3d 1450, 1467 (2d Cir. 1996)), *petition denied*, 733 F. App’x 571 (2d Cir. 2018); see also 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5. The record shows, and it is undisputed, that with respect to STVI stock Johnson acted through interstate commerce and in connection with the purchase or sale of securities.

<sup>47</sup> *Harris*, 712 F. App’x at 48; see also *RichMark Capital Corp.*, Exchange Act Release No. 48758, 2003 WL 22570712, at \*3 (Nov. 7, 2003) (stating that a registered representative must “disclose material adverse facts of which [he] is aware” when recommending securities to a customer), *aff’d*, 86 F. App’x 744 (5th Cir. 2004).

<sup>48</sup> *Basic, Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988); *TSC Indus., Inc. v. Northway, Inc.* 426 U.S. 438, 449 (1976).

a broker has an economic “self-interest (other than the regular expectation of a commission) . . . that could influence [his] recommendation, it is material and should be disclosed.”<sup>49</sup>

Johnson’s concurrent sales of STVI stock were material adverse facts that he had to disclose when recommending that his customers purchase STVI stock. Johnson admitted during his OTR testimony that he did not disclose these facts when recommending STVI stock to his customers, and several customers corroborated Johnson’s testimony. And there is no question that Johnson’s concurrent sales of STVI stock were “other than the regular expectation of a commission.” We find that a reasonable investor would have considered it important in deciding whether to purchase STVI stock that the registered representative recommending the stock was simultaneously selling his and his wife’s own shares of it.<sup>50</sup>

We also find that Johnson acted with scienter. Johnson knew that he was selling his and his wife’s shares of STVI stock at the same time he was soliciting his customers to purchase the stock because he orchestrated those transactions. Johnson knew or was reckless in not knowing of the risk that he was misleading his customers by not disclosing his personal sales.<sup>51</sup>

### **3. Meyers’s procedural arguments with respect to the statutory disqualification fail.**

Meyers argues that the Panel erred in using Johnson’s settlement as a basis for finding Meyers subject to a statutory disqualification. But “[i]t is the decision of the NAC, not the decision of the Panel, that is the final action of FINRA which is subject to Commission review.”<sup>52</sup> And the NAC did not rely on Johnson’s settlement agreement; rather, it concluded

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<sup>49</sup> *William Scholander*, Exchange Act Release No. 77492, 2016 WL 1255596, at \*5 (Mar. 31, 2016) (internal quotations omitted), *petition denied sub nom. Harris v. SEC*, 712 F. App’x 46 (2d Cir. 2017); *see also McGee v. SEC*, 733 F. App’x 571, 575 (2d Cir. 2018) (stating that a non-disclosure “related to economic self-interest and made in the course of an investment recommendation is a material omission under the securities laws”); *Chasins v. Smith, Barney & Co., Inc.*, 438 F.2d 1167, 1172 (2d Cir. 1970) (“The investor . . . must be permitted to evaluate overlapping motivations through appropriate disclosures, especially where one motivation is economic self-interest.”); *SEC v. Hasho*, 784 F. Supp. 1059, 1110 (S.D.N.Y. 1992) (“Misrepresenting or omitting to disclose a broker’s financial or economic incentive in connection with a stock recommendation constitutes a violation of the antifraud provisions.”).

<sup>50</sup> *RichMark Capital Corp.*, 2003 WL 22570712, at \*4 (“By recommending the purchase of PCCG stock without disclosing their own concurrent sales, Respondents omitted material information . . . Respondents had a clear obligation to disclose to investors that, in furtherance of their own self-interest, they were taking action contrary to their recommendation of PCCG.”).

<sup>51</sup> *See id.* (finding that respondents “were at least reckless” in recommending the purchase of stock to customers without disclosing their own concurrent sales of that stock).

<sup>52</sup> *Lane*, 2015 WL 627346, at \*17 n.89 (internal quotations and citations omitted).

that other evidence in the record—with respect to IWEB, Johnson’s communication of his intention to drive up the price of IWEB, dissemination of reports about IWEB containing misleading statements, and solicitation from his customers of matching buy and sell orders for IWEB; and with respect to STVI, his solicitation from his customers of orders to buy STVI while he was simultaneously selling STVI—established the predicates for a statutory disqualification. We also have not relied on Johnson’s settlement agreement in making our findings.<sup>53</sup>

Meyers also argues that it was “inappropriate and fundamentally unfair” to admit and base factual findings on Johnson’s OTR testimony, “particularly for purposes of the statutory disqualification issue,” because it did not have an opportunity to cross-examine Johnson since he did not testify at the hearing and because Johnson’s OTR testimony was unreliable. According to Meyers, FINRA Enforcement’s own investigator established the unreliability of Johnson’s OTR testimony by testifying that she felt “Johnson’s testimony at his OTR was false.” Although the investigator stated that she believed Johnson was not “being truthful” in testifying that he did not recall soliciting customers to buy IWEB stock, and that this made her question “whether the rest of his testimony was truthful as well,” she did not state that she thought Johnson testified falsely when he admitted he did not inform his customers about his sales of STVI stock while recommending STVI stock to his customers. We—like the Panel and the NAC—rely only on Johnson’s OTR testimony with respect to his sales and his customers’ purchases of STVI stock.

As Meyers acknowledges, hearsay generally “is admissible in administrative proceedings and can provide the basis for findings of violation, regardless of whether the declarants testify.”<sup>54</sup> We determine whether to rely on hearsay after evaluating “its probative value and reliability, and the fairness of its use.”<sup>55</sup> We consider “the possible bias of the declarant; whether or not the statements are contradicted by direct testimony; the type of hearsay at issue; whether the missing witness was available to testify; and whether or not the hearsay is corroborated.”<sup>56</sup>

These factors support relying on Johnson’s OTR testimony that he did not disclose his sales of STVI stock while recommending STVI stock to his customers.<sup>57</sup> This testimony was

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<sup>53</sup> *Id.*; *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 WL 5462896, at \*12 n.74 (Nov. 9, 2012) (“[D]e novo review by the NAC and the Commission dissipates any harm that may have resulted from any improper procedural decisions made at the hearing level.”).

<sup>54</sup> *Scott Epstein*, Exchange Act Release No. 59328, 2009 WL 223611, at \*14 (Jan. 30, 2009), *aff’d*, 416 F. App’x 142 (3d Cir. 2010).

<sup>55</sup> *Charles D. Tom*, Exchange Act Release No. 31081, 1992 WL 213845, at \*3 (Aug. 24, 1992).

<sup>56</sup> *Mark James Hankoff*, Exchange Act Release No. 30778, 1992 WL 129520, at \*3 (June 4, 1992).

<sup>57</sup> *See, e.g., John Montelbano*, Exchange Act Release No. 47227, 2003 WL 147562, at \*7 (Jan. 22, 2003) (upholding FINRA’s introduction into evidence of OTR testimony from witnesses who did not appear at the hearing).

probative of an essential element of the case—Johnson’s failure to disclose a material fact despite a duty to do so. This testimony was also reliable. There was no evidence that Johnson was biased, his statement was not contradicted by other evidence in the record and FINRA’s investigator did not say she thought this statement was false, and his customers corroborated this testimony. Johnson’s statements were also against his own interest.<sup>58</sup> Under the circumstances, we find that these factors outweigh any concerns that Meyers did not cross-examine Johnson or concerns that FINRA’s investigator had about Johnson’s OTR testimony generally, and conclude that the admission of Johnson’s OTR testimony with respect to STVI stock was proper.<sup>59</sup> In any event, we have not relied—nor did the Panel or the NAC rely—on Johnson’s OTR testimony in finding that he manipulated the market for IWEB stock. Instead, we have relied on other documentary evidence in the record for the findings with respect to IWEB.

Meyers contends further that “FINRA’s own procedures permit respondents to ‘. . . ask questions of claimant’s witnesses, too, during what is known as ‘cross-examination,’ . . . The respondents may use rebuttal evidence to contradict the claimant’s arguments or evidence.”” But Meyers had the opportunity to cross-examine all witnesses at the hearing and rebut FINRA Enforcement’s case; indeed, Meyers extensively cross-examined FINRA’s investigator at the hearing.

### C. Meyers’s AML violations

FINRA Rule 3310 requires each member firm to “develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the member’s compliance with the requirements of the Bank Secrecy Act” and its implementing regulations.<sup>60</sup> Rule 3310 enumerates minimum requirements for AML compliance programs, including that the firm “[e]stablish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of” suspicious transactions required under 31 U.S.C. § 5318(g)

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<sup>58</sup> Cf. Fed. R. Evid. 804(b)(3) (providing that a statement against interest by a declarant who is unavailable as a witness is “not excluded by the rule against hearsay”).

<sup>59</sup> See *SEC v. Sirianni*, 334 F. App’x 386, 389 (2d Cir. 2009) (finding hearsay statements made by co-defendant regarding the role of kickbacks in a scheme to pump and dump a stock were properly admitted into evidence under the “exception to the hearsay rule for statements against interest” in defendant’s trial for failing to disclose to his brokerage clients that he received kickbacks in exchange for recommending that his clients purchase the stock); see also *United States v. Gupta*, 747 F.3d 111, 128 (2d Cir. 2014) (finding hearsay statements made by co-conspirator in a securities fraud were admissible in criminal trial under the exception for statements against interest because the statements exposed co-conspirator to liability for trading on the basis of inside information and were corroborated by other evidence in the record).

<sup>60</sup> FINRA Rule 3310(a).

and the implementing regulations thereunder.<sup>61</sup> Suspicious transactions include “[p]rearranged or other non-competitive trading” and “[w]ash or other fictitious trading.”<sup>62</sup> A violation of FINRA Rule 3310 is also a violation of FINRA Rule 2010.<sup>63</sup>

We affirm FINRA’s finding, which Meyers does not dispute, that Meyers failed to implement policies and procedures that could reasonably be expected to detect and cause the reporting of suspicious transactions. Ellison testified that he made Wynne the AML designee for the Chicago office, but Wynne testified that he did not know of the designation. And Ellison did nothing to ensure that Wynne fulfilled his duties as designee. Furthermore, no one at Meyers reviewed Wynne’s own production, including the transactions for which he shared commissions with Johnson, for any purpose, much less with a view to AML compliance. Finally, Ellison testified that he could not detect manipulative trading through his own monitoring as the AML Compliance Person, that he did not know if anyone at the Firm reviewed the AML exception reports, and that no one at the Firm signed off as having reviewed them.<sup>64</sup>

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<sup>61</sup> *Id.*; see also 31 U.S.C. § 5318(g)(1) (authorizing the Secretary of the Treasury to “require any financial institution . . . to report any suspicious transaction relevant to a possible violation of law or regulation”); *id.* § 5312(a)(2)(H) (“financial institution” includes “a broker or dealer”).

<sup>62</sup> FinCEN Form SAR-SF; see also 31 C.F.R. § 1023.320(a)(1)-(2) (Bank Secrecy Act regulation requiring broker-dealers to file SARs with FinCEN to report “any suspicious transaction relevant to a possible violation of law or regulation” conducted by, at or through their firms, including a transaction that has “no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction”). Of course, under 31 C.F.R. § 1023.320(c), a broker-dealer “is not required to file a SAR to report,” among other things, a “violation[,] otherwise required to be reported under this section[,] of any of the Federal securities laws or rules of an SRO by the broker-dealer or any of its officers, directors, employees, or other registered representatives, other than a violation of 17 C.F.R. 240.17a-8 or 17 C.F.R. 405.4, so long as such violation is appropriately reported to the SEC or an SRO.” 31 C.F.R. § 1023.320(c)(1)(ii).

<sup>63</sup> *Akindemowo*, 2016 WL 5571625, at \*5 n.3 (stating that a “violation of an SRO rule is conduct inconsistent with just and equitable principles of trade” in violation of Rule 2010).

<sup>64</sup> See *Lek Sec. Corp.*, 2018 WL 1602630, at \*6 (finding FINRA Rule 3310 violation because, *inter alia*, the firm’s compliance officer testified that in manually monitoring order flow “neither she nor ‘anyone at the firm’ was ‘monitoring trading activity for AML purposes’”).

Accordingly, we find that Meyers engaged in the conduct FINRA found and that this conduct violated FINRA Rules 3310(a) and 2010. We also find that these rules are, and were applied in a manner, consistent with the purposes of the Exchange Act.<sup>65</sup>

#### **D. Meyers's remaining procedural arguments**

Meyers argues that the Hearing Officer erred in denying the Firm's request for a three-week adjournment of the hearing. After the individual respondents settled with FINRA just before the Firm's hearing was to commence, Meyers sought the adjournment so it could have more time to prepare since it had expected the individual respondents to defend certain of the charges. Meyers argues that the denial of its request was "improper and fundamentally unfair" because it was not seeking an unreasonable delay and no parties would have been prejudiced.

We reject this contention. In FINRA proceedings, "the trier of fact has broad discretion in determining whether a request for continuance should be granted, based upon the particular facts and circumstances presented."<sup>66</sup> In reviewing a denial of such a request, we determine only whether the denial constituted "an unreasoning and arbitrary insistence upon expeditiousness in the face of a justifiable request for delay."<sup>67</sup> We conclude that the Hearing Officer acted within the scope of his discretion. Meyers knew of the hearing dates for months and was on notice since the filing of the complaint that facts related to the charges against the individual respondents were also related to the charges against the Firm. Nor has Meyers shown any prejudice; it has not identified any defenses or facts it was prevented from presenting.<sup>68</sup>

Moreover, any prejudice would have arisen from Meyers's own lack of preparation and not from the denial of its adjournment request. Meyers contends that if it had more time "it could have approached Johnson, with whom it had been in communications, to request that he take a deposition or take a sworn statement clarifying his underlying actions in this case and putting in perspective certain statements he made in his OTR." But this contention is speculative. In any case, we rely on Johnson's OTR testimony only with respect to his admission that he failed to disclose his sales of STVI while recommending that customers

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<sup>65</sup> See *id.* at \*10 (finding that FINRA Rules 3310 and 2010 are consistent with the purpose of the Exchange Act and that FINRA's application of those rules was also consistent given the firm's "failure to establish and implement reasonable AML policies and procedures").

<sup>66</sup> *Falcon Trading Grp., Ltd.*, Exchange Act Release No. 36619, 1995 WL 757798, at \*5 (Dec. 21, 1995), *petition denied*, 102 F.3d 579 (D.C. Cir. 1996).

<sup>67</sup> *Id.* (internal quotations and citations omitted).

<sup>68</sup> *Harold B. Hayes*, Exchange Act Release No. 34662, 1994 WL 512480, at \*7 (Sept. 13, 1994) (finding that NASD acted "within its discretion in denying the continuances" because "Hayes has not demonstrated to us any additional facts, arguments, or assistance he could have provided that would have changed his defense to the charges against him").

purchase STVI, and that admission required no clarification or perspective. As discussed above, it was a statement against Johnson's own interest and was corroborated by his customers.<sup>69</sup>

Meyers also argues that the Panel "erroneously and unfairly denied" its motion to exclude evidence related to causes of action charged against only the individual respondents. According to Meyers, this evidence should have been excluded because the Firm was not charged with those causes of action and "they had been removed from the . . . Panel's jurisdiction based upon the settlements with the other respondents who were charged in those Causes of Action."

We reject this contention because, as stated above, the facts and evidence related to the charges against the individual respondents were necessary to establish the alleged violations against the Firm. And Meyers ignores that the "nature, extent, size, character, and complexity of" the individual respondents' underlying misconduct were directly relevant to sanctions.<sup>70</sup> In any event, Meyers identifies no evidence that was irrelevant, immaterial, or unduly prejudicial.<sup>71</sup>

### III. Sanctions

Exchange Act Section 19(e)(2) directs us to sustain FINRA's sanctions unless we find, having due regard for the public interest and the protection of investors, that the sanctions are "excessive or oppressive" or impose an unnecessary or inappropriate burden on competition.<sup>72</sup> In our review, we consider any aggravating or mitigating factors,<sup>73</sup> and whether the sanctions imposed are remedial or punitive.<sup>74</sup> In imposing sanctions, the NAC relied on FINRA's Sanction Guidelines.<sup>75</sup> Although not binding on us, we have used the Guidelines as a benchmark.<sup>76</sup>

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<sup>69</sup> See *supra* note 59.

<sup>70</sup> FINRA Sanction Guidelines at 107 (Mar. 2017).

<sup>71</sup> See FINRA Rule 9263(a) ("The Hearing Officer shall receive relevant evidence, and may exclude all evidence that is irrelevant, immaterial, unduly repetitious, or unduly prejudicial.").

<sup>72</sup> 15 U.S.C. § 78s(e)(2). The record does not show, nor does Meyers claim, that FINRA's sanctions impose an unnecessary or inappropriate burden on competition.

<sup>73</sup> *Saad v. SEC*, 718 F.3d 904, 906 (D.C. Cir. 2013).

<sup>74</sup> *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1065-66 (D.C. Cir. 2007).

<sup>75</sup> FINRA Sanction Guidelines (Mar. 2017). Meyers does not challenge the NAC's application of the 2017 Guidelines to this proceeding. We find that the NAC properly applied the 2017 Guidelines because those were the guidelines in effect while this matter was pending before it. See Guidelines at 8 ("These guidelines are effective as of the date of publication, and apply to all disciplinary matters, including pending matters.").

<sup>76</sup> See, e.g., *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 WL 2898033, at \*11 & n.68 (June 14, 2013) (citing cases).

The NAC imposed a \$500,000 fine as a unitary sanction for Meyers's supervisory and AML violations (an increase from the \$350,000 fine imposed by the Hearing Panel).<sup>77</sup> In doing so, the NAC applied the guideline for "systemic supervisory failures." The Guidelines instruct adjudicators to use that guideline "when a supervisory failure is significant and is widespread or occurs over an extended period of time."<sup>78</sup> We find that applying this guideline to the supervisory and AML violations was proper. Those violations were significant and widespread. And the AML violations, which are not addressed in the Guidelines specifically, can be considered as analogous to supervisory failures.<sup>79</sup>

The guideline for systematic supervisory failures recommends fining a firm \$10,000 to \$292,000, or higher "[w]here aggravating factors predominate."<sup>80</sup> We find, as did the NAC in increasing the fine to \$500,000, that aggravating factors predominate here and that it was reasonable for the NAC, in light of those aggravating factors, to impose the \$500,000 fine in order to "adequately address Meyers's troubling and egregious violations." In so finding, we have considered the Principal Considerations for imposing sanctions in the Guidelines.<sup>81</sup>

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<sup>77</sup> Meyers does not challenge the NAC's imposition of a unitary sanction. The Guidelines provide that the "[a]ggregation or 'batching' of violations may be appropriate for purposes of determining sanctions." Guidelines at 4 (General Principle 4). We find that it was appropriate for the NAC to impose a unitary sanction here. *See Blair C. Mielke*, Exchange Act Release No. 75981, 2015 WL 5608531, at \*18 (Sept. 24, 2015) (sustaining FINRA's decision to impose a unitary sanction for violations that "result[ed] from a single systemic problem or cause").

<sup>78</sup> Guidelines at 106.

<sup>79</sup> *See id.* at 1 ("For violations that are not addressed specifically, [a]djudicators are encouraged to look to the guidelines for analogous violations."); *see also, e.g., Howard Braff*, Exchange Act Release No. 66467, 2012 WL 601003, at \*8 (Feb. 24, 2012) ("FINRA reasonably determined that the falsification of records was the most analogous guideline and that its application to Braff's violation was appropriate."); *Wedbush Secs., Inc.*, Exchange Act Release No. 78568, 2016 WL 4258143, at \*12 (Aug. 12, 2016) ("FINRA's Sanction Guidelines do not specifically address Form RE-3 filing violations. In such cases, the Guidelines provide for the consideration of the most closely analogous Guidelines. We agree with FINRA that the Guidelines for late filing, failing to file, and filing false, misleading, or inaccurate Forms U4 or U5 are the most analogous."), *petition denied*, 719 F. App'x 724 (9th Cir. 2018).

<sup>80</sup> *Id.* at 106; *see also id.* at 4 ("Adjudicators may determine that egregious misconduct requires the imposition of sanctions above or otherwise outside of a recommended range.").

<sup>81</sup> *See id.* at 7-8 (Principal Considerations for all violations) & 106-107 (Principal Considerations for systemic supervisory failures).

**A. The egregiousness of Meyers’s misconduct, the harm its customers suffered, and its disciplinary history demonstrate that the sanction is not excessive or oppressive.**

We find aggravating that Meyers engaged in an egregious pattern of misconduct that occurred over a one-and-a-half-year period and allowed Johnson to engage in two separate fraudulent schemes without any investigation or intervention by the Firm.<sup>82</sup> Meyers failed to respond to many red flags;<sup>83</sup> did not allocate its resources to prevent or detect Johnson’s violations;<sup>84</sup> and failed to implement its WSPs or AML Manual.<sup>85</sup> The extent of Meyers’s supervisory failures also demonstrates that the Firm acted at least recklessly.<sup>86</sup>

Other aggravating factors include that the misconduct resulted in Meyers’s and Johnson’s monetary gain, in the form of fees and commissions, and harmed customers.<sup>87</sup> One customer lost \$200,000 from his trading in IWEB stock, and others were induced to exercise warrants or participate in IWEB’s PIPE offering based on inflated prices and misleading reports.<sup>88</sup>

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<sup>82</sup> *Id.* at 7 (Principal Considerations 8 & 9) (recommending that adjudicators consider for all violations “[w]hether the respondent engaged in numerous acts and/or a pattern of misconduct” and “[w]hether the respondent engaged in the misconduct over an extended period of time”); *id.* at 106 (recommending that adjudicators consider for systemic supervisory failures “[w]hether the deficiencies allowed violative conduct to occur or to escape detection”).

<sup>83</sup> *Id.* at 106 (recommending that adjudicators consider for systemic supervisory failures “[w]hether the firm . . . failed to respond reasonably to . . . ‘red flag’ warnings”).

<sup>84</sup> *Id.* (recommending that adjudicators consider for systemic supervisory failures “[w]hether the firm appropriately allocated its resources to prevent or detect the supervisory failure, taking into account the potential impact on customers or markets”).

<sup>85</sup> *Id.* at 107 (recommending that adjudicators consider for systemic supervisory failures “[t]he degree to which the supervisors implemented” the firm’s controls or procedures).

<sup>86</sup> *Id.* at 8 (Principal Consideration 13) (recommending that adjudicators consider for all violations “[w]hether the respondent’s misconduct was the result of an intentional act, recklessness or negligence”); *see also Murphy*, 2013 WL 3327752, at \*27 (“Given Birkelbach’s complete failure to take reasonable supervisory steps in the face of obvious red flags, we agree with FINRA that Birkelbach’s supervisory failures appear to involve some degree of intent.”).

<sup>87</sup> *Id.* at 7-8 (Principal Considerations 11 & 16) (recommending that adjudicators consider for all violations “whether the respondent’s misconduct resulted directly or indirectly in injury to” other parties and “the nature and extent of the injury” and “[w]hether the respondent’s misconduct resulted in the potential for the respondent’s monetary or other gain”).

<sup>88</sup> *Id.* at 107 (recommending that adjudicators consider for systemic supervisory failures “[t]he extent to which the deficiencies affected market integrity” or “market transparency”).

Meyers's disciplinary history is also a significant factor.<sup>89</sup> The Guidelines instruct that "[s]anctions imposed on recidivists should be more severe" and that adjudicators "should ordinarily impose progressively escalating sanctions on recidivists."<sup>90</sup> They also state that adjudicators "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."<sup>91</sup>

FINRA's BrokerCheck report shows that, at the time of the complaint in this action, Meyers had been the subject of 16 final regulatory and disciplinary actions, seven of which involved supervisory failures, since 2000.<sup>92</sup> The Firm had been fined a total of \$356,500 for its prior misconduct.<sup>93</sup> This history evidences a reckless disregard for regulatory and supervisory requirements that justifies heightened sanctions to attempt to prevent future misconduct.

We have stated that proper supervision serves "an important role in protecting investors."<sup>94</sup> In light of the egregiousness of Meyers's violations, the predominance of aggravating factors and absence of mitigating factors, and Meyers's recidivism and similar past misconduct, we conclude that a substantial fine in excess of the \$292,000 maximum guideline amount is justified to remediate the violations and attempt to prevent future misconduct; we also conclude in light of these factors that it was reasonable for the NAC to determine that "a fine higher than that imposed by the Extended Hearing Panel [was] needed to adequately address

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<sup>89</sup> See *Castle Sec. Corp.*, Exchange Act Release No. 52580, 2005 WL 2508169, at \*5 (Oct. 11, 2005) (finding a firm's disciplinary history to be "a significant aggravating factor and an important consideration in weighing the sanctions imposed").

<sup>90</sup> Guidelines at 2 (General Principle 2); see also *id.* at 7 (Principal Consideration 1) (recommending that adjudicators consider "[t]he respondent's relevant disciplinary history").

<sup>91</sup> *Id.* at 3.

<sup>92</sup> We take official notice of this information pursuant to Rule 323, 17 C.F.R. § 201.323.

<sup>93</sup> The NAC's decision stated that the Firm "has paid approximately \$390,000 in monetary sanctions as a result of" the 16 actions. It appears from BrokerCheck, however, that the 16 actions resulted in the Firm being ordered to pay fines of \$356,500 and restitution of \$5,819. The difference between these amounts does not affect our conclusions here.

<sup>94</sup> *Murphy*, 2013 WL 3327752, at \*27; see also *Dennis S. Kaminski*, Exchange Act Release No. 65347, 2011 WL 4336702, at \*11 (Sept. 16, 2011) ("Proper supervision is the touchstone to ensuring that broker-dealer operations comply with the securities laws and [FINRA] rules. It is also a critical component to ensuring investor protection.").

Meyers' troubling and egregious violations.”<sup>95</sup> Accordingly, we find the \$500,000 fine to be neither excessive nor oppressive and appropriately remedial.<sup>96</sup>

**B. Meyers's challenges to the sanction lack merit.**

Meyers does not dispute the NAC's conclusions regarding the egregiousness of its misconduct or the predominance of aggravating factors. Rather, Meyers argues that the \$500,000 fine should be reduced because in adopting its unitary sanction the NAC did not adhere to the discussion in the Guidelines regarding aggregating sanctions.<sup>97</sup> The NAC, in Meyers's view, was required to “fold the lesser offense into the greater offense” and limit the fine to the amount Enforcement recommended for the “greater offense”—in this case, \$250,000 for the supervisory violations. But the Guidelines do not include such a requirement; to the contrary, they state that “numerous, similar violations may warrant higher sanctions, since the existence of multiple violations may be treated as an aggravating factor.”<sup>98</sup> Such is the case here.

Meyers also argues that the NAC failed to consider that Johnson's efforts to conceal his misconduct from the Firm hindered its supervision of him. We reject this argument because, rather than concealing his fraud, Johnson committed it in plain sight of Wynne and others. Yet neither Wynne nor anyone else responded to obvious red flags.

Meyers argues further that “the record is devoid of any indication that any AML violations actually occurred.” But—without opining on whether the record contains evidence of

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<sup>95</sup> See generally, e.g., *Kevin M. Glodek*, Exchange Act Release No. 60937, 2009 WL 3652429, at \*6 (Nov. 4, 2009) (sustaining the NAC's decision to impose on the applicant a longer suspension than did the hearing panel because “it is the decision of the NAC, not the decision of the Hearing Panel, that is the final action of NASD which is subject to Commission review,” “the NAC reviews the Hearing Panel's decision de novo and has broad discretion to review the Hearing Panel's decisions and sanctions,” and NASD Rules 9348 and 9349 stated that on appeal from a Hearing Panel decision “the NAC ‘may affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction’”); see also FINRA Rule 9349 (successor to NASD Rules 9348 and 9349 and articulating the same standards).

<sup>96</sup> We also sustain, and Meyers does not challenge, FINRA's order to pay costs. See, e.g., *McGee*, 2017 WL 1132115, at \*14 n.58 (sustaining FINRA's imposition of costs because the sanctions FINRA imposed were appropriately tailored to the misconduct). We set aside FINRA's order that Meyers retain an independent consultant given that the firm has ceased its broker-dealer business. Cf. *Castle Sec. Corp.*, 2005 WL 2508169, at \*5 (setting aside suspension imposed by FINRA as “inappropriate and excessive” because applicant had withdrawn its broker-dealer registration and been expelled from NASD membership).

<sup>97</sup> See Guidelines at 4.

<sup>98</sup> *Id.*

actual AML violations—there need not be an underlying AML violation for a firm to violate FINRA Rule 3310.<sup>99</sup> And although such AML violations could be aggravating, the absence of AML violations despite Meyers’s failures would not be mitigating.<sup>100</sup>

An appropriate order will issue.<sup>101</sup>

By the Commission (Chairman CLAYTON and Commissioners JACKSON, PEIRCE and ROISMAN).

Vanessa A. Countryman  
Secretary

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<sup>99</sup> FINRA Rule 3310; *see also Lek Sec. Corp.*, 2018 WL 1602630, at \*9 (“[Lek] was not charged with failing to file a SAR as required, and a failure to do so is not an element of a violation of . . . FINRA Rule 3310(a.)”); *cf. Robert J. Prager*, Exchange Act Release No. 51974, 2005 WL 1584983, at \*12 & n.52 (July 6, 2005) (stating that a failure to supervise in violation of NASD Rule 3010 can occur in the absence of an underlying rule violation).

<sup>100</sup> *See Kaminski*, 2011 WL 4336702, at \*14 (“We find no merit to Kaminski's claim that the NASD’s failure to find that his supervisory failures caused customer harm was not a mitigating factor. . . . Kaminski's supervisory failure resulted in the [firm] not reviewing 597 variable annuity transactions . . . in a timely manner. As NASD found, the result of Kaminski's failure to supervise could have been devastating to the firm or its customers.”); *see also China-Biotics, Inc.*, Exchange Act Release No. 70800, 2013 WL 5883342, at \*11 n.72 (Nov. 4, 2013) (“While the presence of any . . . aggravating circumstances justify[] an increase in sanctions, their absence is not mitigating.”).

<sup>101</sup> 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. 86193 / June 24, 2019

Admin. Proc. File No. 3-18350

In the Matter of the Application of  
MEYERS ASSOCIATES, L.P.  
For Review of Disciplinary Action Taken by  
FINRA

ORDER MODIFYING DISCIPLINARY ACTION TAKEN BY FINRA

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

ORDERED that the findings that Meyers Associates, L.P. violated NASD Rule 3010(a) and FINRA Rules 3310(a) and 2010, be, and they hereby are, sustained, and it is further

ORDERED that the findings that Meyers Associates, L.P. is subject to a statutory disqualification, be, and they hereby are, sustained, and it is further

ORDERED that the fine assessed by FINRA against Meyers Associates, L.P., and FINRA's assessment of costs, be, and they hereby are, sustained, and it is further

ORDERED that requirement that Meyers Associates, L.P., retain an independent consultant be, and it hereby is, set aside.

By the Commission.

Vanessa A. Countryman  
Secretary