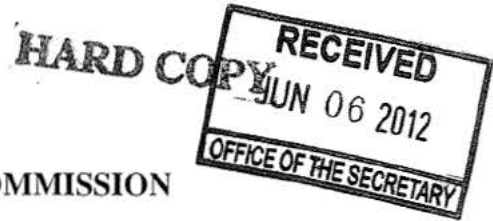


**BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC**



In the Matter of the Application of  
John Joseph Plunkett  
For Review of Disciplinary Action Taken by  
Financial Industry Regulatory Authority  
File No. 3-14810

**FINRA'S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW**

Alan Lawhead  
Vice President and  
Director – Appellate Group

Gary Dernelle  
Associate General Counsel

Jante C. Turner  
Counsel

FINRA – Office of General Counsel  
1735 K Street, NW  
Washington, DC 20006  
202-728-8317 – Telephone  
202-728-8264 – Facsimile

June 6, 2012

## TABLE OF CONTENTS

	<u>PAGE</u>
I. INTRODUCTION .....	1
II. FACTUAL BACKGROUND.....	3
A. Lempert Brothers Stops Paying Its Employees. ....	3
B. Plunkett Establishes Emerald Investments. ....	4
C. Plunkett Receives Reports That Lempert Brothers’ Owners Are Engaged in Fraud Abroad. ....	4
D. Plunkett Learns That Lempert Brothers’ Owners Intend to Fire Him.....	5
E. Plunkett Leaves Lempert Brothers. ....	6
1. Plunkett Removes Lempert Brothers’ Books and Records and Erases the Firm’s Electronic Files and Computer Servers. ....	7
2. Plunkett’s Actions Shut Down Lempert Brothers. ....	8
3. Plunkett Refuses to Return Lempert Brothers’ Books and Records Until He Receives Back Pay.....	8
F. Plunkett Fails to Respond to FINRA’s Requests for Information Until After Enforcement Files the Complaint and Does Not Respond to the Requests for Documents. ....	9
III. PROCEDURAL BACKGROUND .....	11
IV. ARGUMENT.....	13
A. Plunkett’s Removal of Lempert Brothers’ Books and Records and Erasure of the Electronic Files and Computer Servers Violated NASD Rule 2110. ....	14
1. The Hearing Panel Found That Plunkett Acted Out of His Own Financial Interests.....	16
2. Lempert Brothers’ Failure to Pay Plunkett’s Salary Does Not Justify His Removal of the Firm’s Books and Records. ....	17
3. Plunkett’s Removal of Lempert Brothers’ Books and Records Was Not Temporary.....	18
B. Plunkett’s Failure to Respond to FINRA’s Requests for Information and Documents Violated FINRA Rule 8210 and 2010. ....	19

C.	The NAC Imposed Sanctions That Are Neither Excessive nor Oppressive.....	22
1.	Plunkett’s Removal of Lempert Brothers’ Books and Records and Erasure of the Electronic Files and Computer Servers Constituted Egregious Conduct.....	23
2.	Plunkett’s Failure to Respond to FINRA’s Requests for Information and Documents Calls for the Standard Sanction. ....	27
3.	Plunkett Has Disciplinary History, Which Is an Aggravating Factor.....	31
V.	CONCLUSION.....	33

**TABLE OF AUTHORITIES**

**PAGES**

**FEDERAL CASES**

*Fog Cutter Capital Group, Inc. v. SEC*, 474 F.3d 822 (D.C. Cir. 2007)..... 16

**COMMISSION DECISIONS**

*Nicholas T. Avello*, Exchange Act Rel. No. 51633, 2005 SEC LEXIS 986 (Apr. 29, 2005) .....26

*Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141,  
(Nov. 14, 2008).....30, 31

*Michael David Borth*, 51 S.E.C. 178 (1992) .....20

*John B. Busacca, III*, Exchange Act Rel. No. 63312, 2010 SEC LEXIS 3787  
(Nov. 12, 2010).....20

*Joseph G. Chiulli*, 54 S.E.C. 515 (2000) .....21

*Richard G. Cody*, Exchange Act Rel. No. 64565, 2011 SEC LEXIS 1862 (May 27, 2011) ..... 17

*Dante J. DiFrancesco*, Exchange Act Rel. No. 66113, 2012 SEC LEXIS 54  
(Jan. 6, 2012) .....24

*Marc A. Ellis*, Exchange Act Rel. No. 64220, 2011 SEC LEXIS 1199 (Apr. 7, 2011) .....24

*Charles C. Fawcett, IV*, Exchange Act Rel. No. 56770, 2007 SEC LEXIS 2598  
(Nov. 8, 2007).....29

*First Heritage Inv. Co.*, 51 S.E.C. 953 (1994).....24

*Andrew P. Gonchar*, Exchange Act Rel. No. 60506, 2009 SEC LEXIS 2797  
(Aug. 14, 2009).....22

*Joseph Patrick Hannan*, 53 S.E.C. 854 (1998).....20

*Jay Frederick Keeton*, 50 S.E.C. 1128 (1992)..... 16, 18

*Daniel D. Manoff*, 55 S.E.C. 1155 (2002)..... 14

*Warren B. Minton, Jr.*, 55 S.E.C. 1170 (2002).....26

*Michael J. Markowski*, 54 S.E.C. 830 (2000).....20

<i>Geoffrey Ortiz</i> , Exchange Act Rel. No. 58416, 2008 SEC LEXIS 2401 (Aug. 22, 2008).....	17
<i>PAZ Secs., Inc.</i> , Exchange Act Rel. No. 52693, 2005 SEC LEXIS 2802 (Oct. 28, 2005).....	29
<i>PAZ Secs., Inc.</i> , Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820 (Apr. 11, 2008) .....	22, 30
<i>Joseph Ricupero</i> , Exchange Act Rel. No. 62891, 2010 SEC LEXIS 2988 (Sept. 10, 2010).....	19, 27, 28, 30, 32
<i>Robert M. Ryerson</i> , Exchange Act Rel. No. 57839, 2008 SEC LEXIS 1153 (May 20, 2008) .....	15, 26, 32
<i>Rooney A. Sahai</i> , Exchange Act Rel. No. 55056, 2007 SEC LEXIS 13 (Jan. 5, 2007) .....	21, 28
<i>Charles R. Stedman</i> , 51 S.E.C. 1228 (1994) .....	29
<i>Michael T. Studer</i> , Exchange Act Rel. No. 50543, 2004 SEC LEXIS 2347 (Oct. 14, 2004) .....	32
<i>Wedbush Secs., Inc.</i> , 48 S.E.C. 963 (1988) .....	30

**FINRA DECISIONS**

<i>Dep't of Mkt. Regulation v. Sciascia</i> , Complaint No. CMS040069, 2006 NASD Discip. LEXIS 22 (NASD NAC Aug. 7, 2006).....	29
---	----

**FEDERAL RULES AND STATUTES**

15 U.S.C. § 78s(e)(2) .....	22
-----------------------------	----

**FINRA RULES, NOTICES, AND GUIDELINES**

NASD Rule 2110 .....	11, 14, 15, 16, 18, 19, 20
FINRA Rule 8210 .....	10, 11, 13, 19, 20, 21, 22, 27, 30, 31
FINRA Rule 2010 .....	11, 19, 20
<i>FINRA Regulatory Notice 08-57</i> (Oct. 2008) .....	20
<i>FINRA Sanction Guidelines</i> (2011 ed.) .....	12, 13, 14, 23, 24, 25, 26, 27, 28, 30, 31, 32

**BEFORE THE  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC**

In the Matter of the Application of  
  
John Joseph Plunkett  
  
For Review of Disciplinary Action Taken by  
  
Financial Industry Regulatory Authority  
  
File No. 3-14810

**FINRA'S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW**

**I. INTRODUCTION**

When John Joseph Plunkett's employer, Lempert Brothers International USA, Inc., stopped paying salaries in March 2005, Plunkett decided to leave Lempert Brothers and establish his own broker-dealer, Emerald Investments, Inc.

Over the next year, Plunkett worked contemporaneously for Lempert Brothers and Emerald Investments, serving as the president and chief compliance officer of both firms. He admittedly remained employed with Lempert Brothers after they stopped paying him because he wanted to increase Lempert Brothers' customers in order to transfer those customers to Emerald Investments.

In March 2006, Plunkett's strategy to leave Lempert Brothers changed abruptly when he learned that Lempert Brothers' owners intended to fire him. Faced with his imminent termination, Plunkett hastened his plans to leave Lempert Brothers and launch Emerald Investments. He recruited several of Lempert Brothers' registered representatives, convinced them to join him at Emerald Investments, and initiated a plan for the group's transition to the new broker-dealer.

On April 3, 2006, Plunkett gathered the Lempert Brothers' employees who agreed to join him and tendered letters of resignation. Plunkett then directed the resigning employees to pack up virtually all of Lempert Brothers' books and records and remove the documents from Lempert Brothers' offices. Plunkett ordered the employees to store the books and records in a subleased office space that was located next door to Lempert Brothers' offices. Emerald Investments had subleased the office space just two weeks before Plunkett and the resigning employees raided Lempert Brothers' offices.

When Plunkett removed Lempert Brothers' books and records, he also took the firm's checkbook and check register, but did so only after he had written himself and the resigning employees checks for back pay. And finally, Plunkett directed the employees to erase all of Lempert Brothers' electronic files and computer servers.

Plunkett's conduct had devastating effects on Lempert Brothers and its customers, leaving the firm unable to comply with basic requirements necessary for customer protection, such as net capital compliance. The conduct also crippled Lempert Brothers' operations and limited the firm's business only to the execution of liquidating transactions for several months.

After a thorough review of the evidence in the record, the NAC barred Plunkett for his conduct involving Lempert Brothers' books and record and imposed an additional bar for his failure to respond to FINRA's requests for information and documents concerning that conduct.

Plunkett's conduct represented a gross deviation from the standards of commercial honor required of individuals employed in the securities industry, and his failure to respond to FINRA's requests for information and documents violated FINRA's rules. The bars that the NAC imposed for Plunkett's conduct are warranted, remedial, and neither excessive nor oppressive. The Commission should affirm the NAC's decision and dismiss Plunkett's application for review.

## **II. FACTUAL BACKGROUND**

Plunkett entered the securities industry in February 1993, when he joined FINRA firm Comprehensive Capital Corp. as a general securities representative.<sup>1</sup> CRD at 8-9. Between February 1993 and January 2010, Plunkett remained registered with FINRA continuously, associating with several current and former FINRA firms. CRD at 3-9. Plunkett's most recent registration was with Emerald Investments, the firm that he founded in 2006. CRD at 3. Plunkett has not registered with FINRA, or associated with another FINRA firm, since the termination of his registration in January 2010. CRD at 3.

Lempert Brothers was a limited liability company based in New York and a wholly-owned subsidiary of a holding company based in Liechtenstein. RP 1797-1798, 1860-1861. Roman and Eduard Orlov owned Lempert Brothers. RP 1859-1861, 2321. The Orlovs resided in Austria and operated several broker-dealers throughout Europe. RP 1407-1408. The Orlovs authorized their nephew, George Milter, to act as their representative in the United States. RP 1960, 2321.

### **A. Lempert Brothers Stops Paying Its Employees.**

In August 2003, Lempert Brothers hired Plunkett to assist the company in establishing its operations in the United States. RP 1355-1356. He served as the firm's president and chief compliance officer and registered through the firm as a general securities representative and principal. CRD at 10.

Lempert Brothers was never profitable, and by early 2005, there was not sufficient capital for the firm to satisfy its ongoing obligations and pay its employees. RP 1361-1362. In March

---

<sup>1</sup> Plunkett's CRD registration summary is attached as Appendix A.



2005, Lempert Brothers ceased funding salaries and expenses for all Lempert Brothers' personnel, including Plunkett. RP 1361-1362.

**B. Plunkett Establishes Emerald Investments.**

When Lempert Brothers stopped paying its employees, Plunkett and two other registered representatives of Lempert Brothers decided to establish Emerald Investments. RP 1365, 2151. Plunkett did not disclose his involvement with Emerald Investments to Lempert Brothers' owners. RP 1409.

Instead, as Plunkett stated, he intended to remain at Lempert Brothers for as long as possible to increase Lempert Brothers' base of customers and transfer those customers to Emerald Investments when he left the firm. RP 2156, 2527. Plunkett even projected that he and the other founding principals of Emerald Investments would have sufficient business from their existing base of customers at Lempert Brothers to fund Emerald Investments without additional cash infusions. RP 1380, 2527.

Throughout 2005 and early 2006, Plunkett continued his preparations to build Emerald Investments' business and leave Lempert Brothers. By the end of March 2006, Emerald Investments had secured office space, executed a service agreement with a clearing firm, and applied for FINRA membership. RP 2078, 2215, 2225, 2536.

**C. Plunkett Receives Reports That Lempert Brothers' Owners Are Engaged in Fraud Abroad.**

In March 2006, Plunkett began receiving reports that the Orlovs were engaged in securities fraud in their European operations. RP 2549-2563. For example, on March 8, 2006, Plunkett received a letter from a Latvian attorney, claiming that the Orlovs were the subject of criminal fraud proceedings in Austria. RP 1978, 2549-2563. Plunkett also received correspondence from a Latvian investor, which alleged that the Orlovs had converted funds from him. RP 1831-1832.

FINRA received similar correspondence claiming that the Orlovs' were involved in fraud from a second Latvian investor and forwarded the letter to Plunkett for his review.<sup>2</sup> RP 2574-2581. Plunkett wrote to the Orlovs concerning these allegations on March 23, 2006. RP 2567-2570. The Orlovs did not respond. RP 1507, 1961.

**D. Plunkett Learns That Lempert Brothers Owners' Intend to Fire Him.**

As Plunkett focused more attention on Emerald Investments, his relationship with the Orlovs began to deteriorate. In mid-March 2006, Plunkett learned that the Orlovs intended to fire him. RP 1426-1428, 1431-1434. With this information, Plunkett's plan to leave Lempert Brothers, with customers in tow, changed abruptly. RP 1426-1428, 1431-1434.

On or about March 16, 2006, an attorney representing the Orlovs and Milter prepared a draft resolution for approval by Lempert Brothers' board of directors. RP 1992. The attorney emailed the draft to Milter for his review. RP 1992. The resolution called for the immediate removal and dismissal of Plunkett as president of Lempert Brothers. RP 1993. Plunkett, as Lempert Brothers' president and chief compliance officer, reviewed all Lempert Brothers' email correspondence and saw this email.<sup>3</sup> RP 1426-1428.

On March 30, 2006, after the same attorney and Plunkett had a disagreement about the production of certain documents in preparation for a routine compliance examination, the

---

<sup>2</sup> After receiving reports concerning the Orlovs' alleged criminal activity, the Commission and FINRA each initiated investigations of the Orlovs' conduct abroad to determine whether it had any connection to Lempert Brothers' operations in the United States. RP 1568-1577, 1608-1609, 2583. The Commission and FINRA determined that there was no connection. RP 1568-1577, 2583.

<sup>3</sup> Plunkett admitted that he knew that the Orlovs were going to terminate him by late March 2006. RP 1431-1434.

attorney sent an email to the Orlovs and Milter, explaining the circumstances of the disagreement. RP 2571. As the attorney concluded the summary of what had transpired, he noted, “[t]his of course may all be academic as we will soon be relieving [Plunkett] of his position.” RP 2571.

**E. Plunkett Leaves Lempert Brothers.**

Faced with his imminent termination, Plunkett expedited his departure from Lempert Brothers. Plunkett initiated his exit strategy by recruiting all but two of the firm’s registered representatives to join him at Emerald Investments. RP 1445-1446.

On or about March 27, 2006, Plunkett met with Lempert Brothers’ sales supervisor and seven or eight of the firm’s registered representatives outside of the firm’s offices and explained his plan and timeframe to leave Lempert Brothers. RP 1445-1446, 1728. He also discussed his plan to launch Emerald Investments. RP 1445-1446, 1728. Everyone that Plunkett recruited agreed to join him and associate with Emerald Investments. RP 1728.

On March 31, 2006, Plunkett wrote 14 checks from Lempert Brothers’ bank account, totaling approximately \$28,000. RP 2053-2065. The checks were made payable to Plunkett, Emerald Investments’ vendors, and the employees of Lempert Brothers that planned to join Plunkett at Emerald Investments. RP 2053-2065.

On April 3, 2006, Plunkett and the other departing employees prepared and tendered letters of resignation to Lempert Brothers and the Orlovs.<sup>4</sup> RP 1445, 2539-2548.

---

<sup>4</sup> A Lempert Brothers’ employee also filed a Form U5 on behalf of Plunkett and each of the resigning registered representatives to terminate their registrations through the firm. RP 1736-1738.

**1. Plunkett Removes Lempert Brothers' Books and Records and Erases the Firm's Electronic Files and Computer Servers.**

That same evening, Plunkett and the resigning employees waited for Lempert Brothers' personnel to leave for the day. RP 1446-1447. After these individuals left, Plunkett and the other resigning personnel took all of Lempert Brothers' books and records, except for those documents that were located in the offices of Milter and two Lempert Brothers' employees that did not intend to join Plunkett at Emerald Investments. RP 1446-1448.

At Plunkett's direction, the departing employees took Lempert Brothers' accounting documents, bank and brokerage statements, compliance manuals, customer files, employee records, incorporation documents, order tickets, documents concerning pending investment deals, and all electronic records, including the firm's FOCUS Reports. RP 1447-1450. Plunkett also ordered the employees to take Lempert Brothers' checkbook and check register, and before departing, directed them to erase Lempert Brothers' electronic files and computer servers. RP 1448-1449, 1451.

Plunkett told the employees to store Lempert Brothers' books and records in Emerald Investments' subleased office space. RP 1457-1458. Emerald Investments signed the rental agreement for the office space on March 22, 2006, two weeks before Plunkett and the resigning employees took Lempert Brothers' books and records. RP 2078-2079. Emerald Investments' offices were located next door to Lempert Brothers' offices. RP 1457-1458, 2078-2079.

When the remaining Lempert Brothers employees arrived for work on April 4, 2006, they discovered the cleared-out offices. RP 1633. Lempert Brothers contacted the police to report the incident and stopped payment on the 14 checks that Plunkett had written on March 31, 2006. RP 1634-1635.

Within 24 hours, Plunkett and the resigning employees contacted all of Lempert Brothers' customers and sent follow-up letters to provide the customers with information concerning Emerald Investments. RP 1459-1464, 1857. Virtually all of Lempert Brothers' customers transferred their accounts to Emerald Investments. RP 1460.

**2. Plunkett's Actions Shut Down Lempert Brothers.**

Lempert Brothers was forced to hire a consultant to reconstruct the firm's missing books and records. RP 1636-1637. It took one week for Lempert Brothers to obtain customer account numbers to access the records maintained at its clearing firm. RP 1641. After working with the clearing firm for several weeks, Lempert Brothers obtained copies of trading records. RP 1640. Lempert Brothers did not resume full operations until August 2006.<sup>5</sup> RP 1657.

**3. Plunkett Refuses to Return Lempert Brothers' Books and Records Until He Receives Back Pay.**

Lempert Brothers also engaged the services of an attorney to negotiate the return of its books and records from Plunkett. RP 1636, 1642-1643. From April through June 2006, the attorney negotiated with Plunkett, but Plunkett refused to return the documents until Lempert Brothers agreed to provide each of the former employees with back pay. RP 1643, 2267.

In July 2006, Plunkett, Emerald Investments, and several of Lempert Brothers' former registered representatives filed arbitration claims against Lempert Brothers and its owners, seeking approximately \$300,000 in damages related to Lempert Brothers' failure to pay salaries

---

<sup>5</sup> Plunkett contacted the Commission and FINRA to explain what had transpired at Lempert Brothers and why he had taken the firm's books and records. RP 1475-1476. After Plunkett contacted FINRA, FINRA arranged meetings with Plunkett and representatives from Lempert Brothers. RP 1563-1565. The meetings occurred on April 11, 2006. RP 1563. When FINRA learned that Lempert Brothers no longer had access to its books and records, FINRA informed the firm that it could engage only in "liquidating transactions" until the firm could confirm its net capital compliance. RP 1563-1565.

in 2005 and 2006. RP 2280-2286. Lempert Brothers and its owners filed a counterclaim against Plunkett and the other claimants, alleging among other claims, that Plunkett and the former representatives stole Lempert Brothers' personal and intellectual property. RP 2287-2312.

During the arbitration proceedings, Lempert Brothers twice moved to compel the production of the books and records that Plunkett and the former employees removed from the firm's offices on April 3, 2006. RP 2367-2369, 2459-2472. Plunkett returned some of the documents in October 2006, after Lempert Brothers filed a motion to compel their production. RP 2367-2369, 2439. Additional records were produced to Lempert Brothers in December 2006, in response to a second motion to compel. RP 2513-2514. Plunkett produced these documents only after the arbitrators issued a production order. RP 2459-2472, 2513-2514. Some documents, however, were never returned. RP 1666-1667, 2068-2069.

The arbitration panel issued its decision in May 2007.<sup>6</sup> Arbitration Award at 1. The panel denied the claims that Plunkett, Emerald Investments, and the other claimants asserted during the arbitration proceedings and ordered them to pay fees and compensatory and punitive damages of approximately \$550,000 to Lempert Brothers and its owners. Arbitration Award at 4-7.

**F. Plunkett Fails to Respond to FINRA's Requests for Information Until After Enforcement Files the Complaint and Does Not Respond to the Requests for Documents.**

On May 8, 2009, FINRA's Department of Enforcement sent Plunkett and his attorney a Wells Notice, informing them that FINRA had made a preliminary determination to initiate formal disciplinary proceedings against Plunkett for his removal of Lempert Brothers' books and records. RP 1955-1956. Plunkett submitted a response to the Wells Notice on June 29, 2009.

---

<sup>6</sup> The award of the FINRA arbitration panel is attached as Appendix B.

RP 1959-1998. Plunkett's response explained the circumstances surrounding his departure from Lempert Brothers. RP 1960-1965. Although Plunkett's response attached some supporting documentation, the response referred to additional documents, which he did not provide, and certain individuals that he did not identify by name.<sup>7</sup> RP 1959-1998.

On July 15, 2009, FINRA sent Plunkett a request for information and documents made pursuant to FINRA Rule 8210. RP 1999-2002. The letter examined each paragraph and statement contained in Plunkett's response to the Wells Notice and asked Plunkett to provide copies of the referenced documents and identify the unnamed individuals. RP 1999-2002. The request specifically instructed Plunkett to state whether certain documents were unavailable, and if they were unavailable, to explain why. RP 1999-2002. The letter requested a response by July 27, 2009. RP 2002.

On July 27, 2009, Plunkett requested an extension of time to respond to the request. RP 2003. He stated that he required additional time to search for the documents. RP 2003. Plunkett explained, "[s]ome items are with previous counsel, some were in storage, some appear to be misfiled and have not been able to be found." RP 2003.

FINRA granted Plunkett an extension until August 10, 2009. RP 2003. Plunkett, however, did not respond to the request by August 10, 2009. RP 2005. On August 11, 2009,

---

<sup>7</sup> For example, Plunkett's response to the Wells Notice states that he met with an attorney from Europe. RP 1965. Plunkett explains that the attorney "informed [me] that Eduard Orlov, one of the [Lempert Brothers'] owners was in jail in Vienna, and that Interpol had an international arrest warrant out for Roman Orlov, the other [Lempert Brothers'] owner. The arrest was the result of charges brought against them by the European investors that had been swindled." RP 1965. Plunkett's response to the Wells Notice does not identify the "European attorney" and does not attach any documentary evidence to substantiate his allegations concerning Eduard Orlov's arrest, the issuance of an arrest warrant against Roman Orlov, or the charges or findings that the Orlovs had engaged in criminal activity abroad.

Plunkett requested additional time to respond. RP 2005. He stated that he could not respond at that time because he was ill. RP 2005.

On August 20, 2009, FINRA sent Plunkett a second request for information and documents made pursuant to FINRA Rule 8210. RP 2007. The second request enclosed a copy of the original request from July 15, 2009, and required Plunkett to respond no later than September 3, 2009. RP 2007-2011. The letter advised Plunkett that the “[f]ailure to comply with this request may subject you to disciplinary action.” RP 2007.

Plunkett submitted a written narrative response to the request for information and documents seven months later, on April 29, 2010, after Enforcement filed the complaint in this case. RP 2029-2033. Plunkett, however, did not provide any documents with his response. RP 2030-2031. Plunkett attributed his failure to provide the documents to his secretary’s departure from Emerald Investments, Emerald Investments’ eviction from its rented office space, the misfiling of some documents, the offsite storage of other documents, and the general disarray of his office. RP 2030-2031.

### **III. PROCEDURAL BACKGROUND**

FINRA initiated the investigation of this matter after Plunkett met with FINRA in April 2006, to explain his departure from Lempert Brothers and his rationale for taking the firm’s books and records. RP 1563-1568. Enforcement filed a two-cause complaint in December 2009. RP 1. Enforcement alleged that Plunkett’s removal of Lempert Brothers’ books and records, and his erasure of the firm’s electronic files and computer servers, violated NASD Rule 2110. Enforcement further alleged that Plunkett failed to respond to FINRA’s requests for information and documents, in violation of FINRA Rules 8210 and 2010. RP 1-13.

Following a two-day hearing that included testimony from Plunkett, a FINRA examiner, and a representative of Lempert Brothers, the Hearing Panel issued an amended decision in



January 2011, finding that Plunkett violated FINRA's rules as alleged in the complaint.<sup>8</sup> RP 2613-2635. The Hearing Panel fined Plunkett \$20,000 and suspended him in all capacities for two years for his conduct involving the firm's books and records and imposed an additional \$5,000 fine and consecutive six-month suspension for the failure to respond to the requests for information and documents. RP 2634-2635.

On February 17, 2011, a Review Subcommittee of the NAC called the Hearing Panel's decision for discretionary review, pursuant to FINRA Rule 9312(a)(1), to examine the sanctions that the Hearing Panel imposed for each cause of action for which the Hearing Panel held Plunkett liable. RP 2637-2638. FINRA provided Plunkett and Enforcement with notice of the call for review and afforded the parties the opportunity to request oral argument before a subcommittee of the NAC. RP 2637. Plunkett did not request oral argument.

On March 14, 2011, the parties were instructed to file briefs on the issue of the sanctions that the Hearing Panel imposed. RP 2663-2665. Plunkett did not file any briefs, seek an extension of the briefing schedule, or otherwise respond to the briefing order. Consequently, the NAC considered this matter on the basis of the written record developed before the Hearing Panel and a brief filed by Enforcement.

The NAC issued a decision, modifying the sanctions that the Hearing Panel imposed. RP 2721-2732. The NAC examined the evidence of aggravating and mitigating circumstances presented in the record, applied FINRA's Sanction Guidelines, and determined that the sanctions that the Hearing Panel imposed for each violation did not adequately address the gravity of Plunkett's conduct. RP 2727-2728.

---

<sup>8</sup> The Hearing Panel issued the original decision in December 2010. RP 2587. The amended decision was issued to correct the dates of Plunkett's suspension. RP 2613.

For example, the NAC considered the Hearing Panel's credibility determination, which found that Plunkett took Lempert Brothers' books and records to benefit himself and Emerald Investments. RP 2625, 2729-2730. The NAC also analyzed the effect of Plunkett's removal of Lempert Brothers' books and records on the firm's customers and Plunkett's disciplinary history, two aggravating factors that the Hearing Panel did not examine in its decision. RP 2728-2729. The NAC concluded that Plunkett's conduct was egregious and barred him. RP 2730.

Following the Sanction Guidelines' instruction that a bar is standard where there is a complete failure to respond to a request for information and documents, the NAC determined that Plunkett's submission of the narrative after the filing of the complaint constituted a complete failure to respond, that he failed to respond in any manner to the requests for documents, and that the standard sanction should apply. RP 2731-2732. The NAC barred Plunkett for violating FINRA Rule 8210. RP 2731-2732. In so holding, the NAC considered Plunkett's evidence of purported mitigation, but determined that evidence did not remedy Plunkett's wrongdoing. RP 2731-2732.

#### **IV. ARGUMENT**

The record in this case overwhelmingly supports the bar that the NAC imposed for Plunkett's removal and erasure of Lempert Brothers' books and records. Simply put, Plunkett's conduct was malicious. Plunkett took Lempert Brothers' books and records in retaliation for the Orlovs' decision to fire him, as leverage to obtain back pay from Lempert Brothers, and to obtain exclusive access to Lempert Brothers' customers to launch Emerald Investments. The NAC found that Plunkett's removal of Lempert Brothers' books and records was not a defensive maneuver to protect the firm's customers, but a premeditated strategy designed to benefit Plunkett and Emerald Investments at the expense of Lempert Brothers and its customers. There is no basis to overturn the NAC's credibility determination, which was based on the Hearing

Panel's credibility finding. The bar that the NAC imposed on Plunkett for his wanton misconduct is wholly justified.

The bar that the NAC imposed for Plunkett's failure to respond to FINRA's request for information and documents also is warranted. Despite receiving FINRA's requests for information and documents, Plunkett refused to respond and assist FINRA with its investigation of the Orlovs' purported criminal activities. Instead, Plunkett furnished a response nine months later, after FINRA filed the complaint in this case. In addition, Plunkett's response, a written narrative, did not provide any documents or explain the effort, if any, he undertook to locate documents. The Sanctions Guidelines state that a bar should be the standard sanction when an associated person does not respond to a request for information and documents until after a complaint is filed. There is no evidence of mitigation present in the record to support the imposition of anything less than the standard sanction.

The sanctions that the NAC crafted in this case are appropriate, reflect the gravity of Plunkett's conduct, and are neither excessive nor oppressive. The Commission accordingly should dismiss Plunkett's application for review.

**A. Plunkett's Removal of Lempert Brothers' Books and Records and Erasure of the Electronic Files and Computer Servers Violated NASD Rule 2110.**

NASD Rule 2110 requires that associated persons observe high standards of commercial honor and just and equitable principles of trade. NASD Rule 2110 is an ethical rule, which is violated when an associated person engages in unethical conduct. *See Daniel D. Manoff*, 55 S.E.C. 1155, 1162 (2002) (holding that NASD Rule 2110 applies, even if "activity does not involve a security," when violative conduct reflects on associated person's ability to comply with

business standards) (citation omitted). Plunkett's conduct involving Lempert Brothers' books and records was patently unethical and violated NASD Rule 2110.<sup>9</sup>

Plunkett admits that he engaged in the conduct that forms the basis of the NAC's findings for liability in this case. Plunkett acknowledges that, when he left Lempert Brothers, he took virtually all the firm's books and records and erased the firm's electronic files and computer servers. RP 1447-1450. Plunkett testified at the proceedings before the Hearing Panel:

Q: You packed up the Lempert [Brothers'] office?

A: Yes.

Q: You took all the books and records?

A: Yes. We packed up, yes.

Q: You took client files?

A: Yes.

Q: You took customer new account documents?

A: We took **everything** in the office except for computers to make it shorter for you, except for the computers which were not ours.

---

<sup>9</sup> Plunkett dedicates the overwhelming majority of his appellate brief discussing purported "irregularities and misstatements of fact" contained in the Hearing Panel's decision. *See* Plunkett Br. at 2-6. Plunkett, however, fails to understand that the Hearing Panel's decision has been completely replaced by the NAC's decision. *Robert M. Ryerson*, Exchange Act Rel. No. 57839, 2008 SEC LEXIS 1153, at \*8-9 (May 20, 2008) ("[I]t 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." (citation omitted); *see* FINRA Rule 9349(c) (providing that NAC decision constitutes final disciplinary action that is subject to Commission's review). Plunkett also states that FINRA placed him at a disadvantage in the appeal before the Commission because FINRA did not provide him with the "same material" that had been provided to the Commission. *See* Plunkett Br. at 1. Pursuant to Commission Rule of Practice 420(e), however, FINRA was required only to provide Plunkett with a copy of the index to the certified record for this case, not copies of the documents themselves. *See* Commission Rule of Practice 420(e) (stating that "self-regulatory organization shall serve upon each party one copy of index"). FINRA complied with the rule and provided Plunkett with an index to the certified record on April 3, 2012.

\* \* \*

A: Yes. I stated we took all the documents, **everything** except for what was in those [three offices]. I'll keep answering yes.

RP 1447, 1449, 1450. (emphasis added).

Plunkett's removal of Lempert Brothers' books and records, and erasure of the firm's electronic files and computer servers, trampled ethical boundaries and represented a gross deviation from the standards of commercial honor expected of those individuals employed in the securities industry. *See Jay Frederick Keeton*, 50 S.E.C. 1128, 1134 (1992) (finding that applicant's threats to issuer in context of dispute over commissions violated predecessor to NASD Rule 2110). Plunkett's conduct violated NASD Rule 2110.

**1. The Hearing Panel Found That Plunkett Acted Out of His Own Financial Interests.**

On appeal before the Commission, as he did before the Hearing Panel and the NAC, Plunkett asserts that he removed Lempert Brothers' books and records because he had concerns that Lempert Brothers' owners were engaged in criminal activities abroad, and he wanted to protect the firm's customers. *See Plunkett Br.* at 3. The Hearing Panel, however, found that Plunkett was not credible on this point.<sup>10</sup> RP 2625.

---

<sup>10</sup> Plunkett argues that FINRA initiated disciplinary proceedings against him to conceal the fact that it did not investigate an alleged Ponzi scheme involving the owners of Lempert Brothers. *See Plunkett Br.* at 9. Plunkett's argument is without merit. As an initial matter, the Commission and FINRA each initiated investigations of Lempert Brothers related to the firm's purported criminal activities abroad. RP 2583. The Commission and FINRA closed their respective investigations without making any findings of wrongdoing on the part of Lempert Brothers. RP 2583. Moreover, to the extent that Plunkett claims to be a victim of selective prosecution, he must establish that he was a member of a protected class, that "prosecutors acted with bad intent, [and] that similarly situated individuals outside the protected category were not prosecuted." *Fog Cutter Capital Group Inc. v. SEC*, 474 F.3d 822, 826 (D.C. Cir. 2007). Plunkett has made none of these required showings. Finally, to the extent that Plunkett argues that FINRA was motivated by bias or an improper desire to punish him, the record contains no

[Footnote Continued on Next Page]

In his appellate brief, Plunkett writes, “I stated . . . why we did what we did, and when we did what we did, and I stated these reasons to the [Hearing] Panel. If they did not believe me then they should state that . . . we removed the records in furtherance of [my] own economic interests.” Plunkett Br. at 3. The Hearing Panel did exactly that when it explicitly found that Plunkett removed Lempert Brothers’ books and records to obtain back pay and successfully launch Emerald Investments. RP 2625. The Hearing Panel states, “[Plunkett] and his group took the books and records in furtherance of their own economic interest.” RP 2625.

The Commission gives considerable weight to an initial fact-finder’s credibility determinations, and there is no basis to overturn the Hearing Panel’s credibility determinations in this instance. *See Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at \*18 (Aug. 22, 2008) (explaining that Hearing Panel’s credibility determinations may “only be overcome by substantial record evidence”). To the contrary, the record establishes that Plunkett took Lempert Brothers’ books and records as reprisal for his discharge, coercion for back pay, and support for the launch of Emerald Investments.

**2. Lempert Brothers’ Failure to Pay Plunkett’s Salary Does Not Justify His Removal of the Firm’s Books and Records.**

Plunkett also contends that his removal of Lempert Brothers’ books and records was justified because the firm failed to pay his salary for over one year, and consequently, breached the employment contract that it had with him. *See* Plunkett Br. at 2. Lempert Brothers’ failure to pay salaries does not excuse Plunkett’s conduct.

---

[cont’d]

evidence of bias or unfair treatment during FINRA’s disciplinary proceedings. *See generally Richard G. Cody*, Exchange Act Rel. No. 64565, 2011 SEC LEXIS 1862, at \*75-76 (May 27, 2011), *appeal docketed*, No. 11-2247 (1st Cir. Oct. 25, 2011).

In *Jay Frederick Keeton*, the Commission found that an applicant, who threatened negative publicity when an issuer refused to pay certain commissions, engaged in unethical conduct and violated the predecessor to NASD Rule 2110. *See Keeton*, 50 S.E.C. at 1134-1135. The Commission expressly condemned the applicant's threats as a means to obtain compensation. As the Commission explained, "[i]t is possible that [the applicant] deserved compensation. Nevertheless, in a dispute over a commission, it was hardly necessary to threaten to place a company's reputation and financial position at risk." *Id.* at 1135.

Likewise, in this case, Plunkett placed his own financial interests before those of Lempert Brothers and its customers. When Lempert Brothers ceased paying salaries, Plunkett engaged in a course of conduct that essentially guaranteed the firm's ruin. Plunkett removed Lempert Brothers' books and records not only to ensure the successful launch of Emerald Investments, but also to coerce Lempert Brothers to pay him the past compensation he was owed.

Even if Lempert Brothers owed Plunkett back pay, his response to the conduct – a midnight raid of Lempert Brothers' books and records and erasure of the firm's electronic files and computer servers – was patently unethical and violated NASD Rule 2110. *See Keeton*, 50 S.E.C. at 1137 (explaining that unwarranted lengths applicant undertook to collect commission were "type of behavior [that] cannot be tolerated in an industry that depends on high standards of professional conduct").

### **3. Plunkett's Removal of Lempert Brothers' Books and Records Was Not Temporary.**

Finally, Plunkett suggests that the removal of the books and records was a temporary act.<sup>11</sup> *See Plunkett Br.* at 3. The record in this case, however, belies this point.

---

<sup>11</sup> Plunkett also directed the erasure of Lempert Brothers' electronic files and computer servers. RP 1449. Once erased, it was impossible for Plunkett to return or retrieve the deleted

[Footnote Continued on Next Page]

Plunkett held Lempert Brothers' books and records hostage for over six months, while he negotiated their return in exchange for back pay. RP 1643, 2267. The record also demonstrates that, as that tactic failed, a FINRA arbitration panel compelled Plunkett to return the documents, and had to do so twice, when he did not comply fully with the first document production order. RP 2367-2369, 2439, 2513-2514. Although the record reflects that Plunkett returned some documents by December 2006, eight months after they had been removed, the record similarly supports that there were some documents that were never returned. RP 1666-1667, 2068-2069, 2513-2514. Plunkett's removal of Lempert Brothers' books and records was not temporary.

\* \* \*

The record in this case establishes that Plunkett removed Lempert Brothers' books and records and erased the firm's electronic files and computer servers, trampled ethical boundaries and standards of commercial honor, and violated NASD Rule 2110. The Commission should affirm the NAC's findings of violation.

**B. Plunkett's Failure to Respond to FINRA's Requests for Information and Documents Violated FINRA Rules 8210 and 2010.**

The Commission also should affirm the NAC's findings that Plunkett failed to respond to FINRA's requests for information and documents, and in so doing, violated FINRA Rule 8210 and 2010.<sup>12</sup>

---

[cont'd]

information and documents. Consequently, with regard to the electronic files and computer servers, Plunkett's conduct was undoubtedly permanent.

<sup>12</sup> A violation of FINRA Rule 8210 constitutes conduct inconsistent with just and equitable principles of trade and violates FINRA Rule 2010. *See Joseph Ricupero*, Exchange Act Rel. No 62891, 2010 SEC LEXIS 2988, at \*13 n.12 (Sept. 10, 2010), *appeal docketed*, No. 10-4566 (2d Cir. Nov. 15, 2010). NASD Rule 2110, the ethical rule discussed in the context of Plunkett's

[Footnote Continued on Next Page]



FINRA Rule 8210 requires associated persons “to provide information orally, in writing, or electronically . . . with respect to any matter involved in [an] investigation, complaint, examination, or proceeding . . . .” FINRA Rule 8210(a); *see also Michael J. Markowski*, 54 S.E.C. 830, 838 (2000) (“NASD has the right to request information and require cooperation from its members and persons associated with them.”), *aff’d*, 274 F.3d 525 (D.C. Cir. 2001).

FINRA Rule 8210 enables FINRA to conduct meaningful examinations and investigations. FINRA therefore relies heavily on the rule to discharge its obligations as a self-regulatory organization. *See Joseph Patrick Hannan*, 53 S.E.C. 854, 858 (1998) (stressing the importance of cooperation in FINRA’s investigations and emphasizing that “the failure to provide information undermines the NASD’s ability to carry out its self-regulatory functions”). Indeed, FINRA Rule 8210 is FINRA’s most important tool for investigating potential wrongdoing primarily because FINRA lacks subpoena authority and has limited power to compel the production of evidence from its members. *See John B. Busacca, III*, Exchange Act Rel. No. 63312, 2010 SEC LEXIS 3787, at \*57 n.67 (Nov. 12, 2010), *aff’d*, 2011 U.S. App. LEXIS 2593 (11th Cir. Feb. 9, 2011). The Commission therefore has stressed that FINRA is entitled to the “full and prompt cooperation” of all persons subject to its jurisdiction when investigative requests are made. *Michael David Borth*, 51 S.E.C. 178, 180 (1992).

---

[cont’d]

removal of Lempert Brothers’ books and records, was transferred without change to FINRA’s consolidated rulebook and codified as FINRA Rule 2010. *See FINRA Regulatory Notice 08-57*, 2008 FINRA LEXIS 50, at \*32-33 (Oct. 2008). The NAC applied the rule in effect when Plunkett’s misconduct occurred. Accordingly, Plunkett’s removal of Lempert Brothers’ books and records, which occurred in April 2006, violated NASD Rule 2110. His failure to respond to FINRA’s requests for information and documents, which took place between July 2009 and April 2010, violated FINRA Rules 8210 and 2010.

When Plunkett failed to respond to FINRA's requests for information and documents, he failed to comply with his unequivocal obligation to cooperate with FINRA's investigation of him and Lempert Brothers and violated FINRA Rule 8210. See FINRA Rule 8210(c) (requiring the cooperation of any member or associated person to provide information and documents requested by FINRA); see also *Joseph G. Chiulli*, 54 S.E.C. 515, 524 (2000) ("When [applicant] registered with NASD, he agreed to abide by its rules which are unequivocal with respect to an associated person's duty to cooperate with NASD investigations").

The material facts underlying the NAC's findings of violation are not in dispute. The record demonstrates that FINRA sent Plunkett requests for information and documents on July 15, 2009, and August 20, 2009. RP 1999-2002, 2007. The record also proves that Plunkett had actual notice of the requests.<sup>13</sup> RP 2003, 2005.

Finally, the record establishes that Plunkett did not respond to the requests until April 29, 2010, seven months after the response was originally due and after Enforcement filed the complaint in this matter. RP 2029-2033. And even then, Plunkett provided FINRA only with a written narrative. RP 2029-2033. Plunkett provided no documents and did not detail what effort, if any, he undertook to locate documents responsive to FINRA's requests. RP 2029-2033. See *Rooney A. Sahai*, Exchange Act Rel. No. 55046, 2007 SEC LEXIS 13, at \*13 (Jan. 5, 2007) (explaining that applicant must detail his efforts to locate document and identify the files reviewed, if he is unable to provide documents in response to requests for information and documents).

---

<sup>13</sup> Plunkett sought an extension of time to provide FINRA with a response to the first request. RP 2003, 2005. In addition, the first and second requests for information and documents were sent to the same address, Plunkett's residential address of record as listed in CRD. CRD at 1. RP 1999, 2007. The residential address is the same address from which Plunkett directed his response to FINRA in April 2010. RP 2030.

This un rebutted evidence establishes that Plunkett violated FINRA Rule 8210. *See PAZ Secs., Inc.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at \*13 (Apr. 11, 2008) (“The failure to respond to [FINRA] information requests frustrates [FINRA’s] ability to detect misconduct, and such inability in turn threatens investors and markets.”), *aff’d*, 566 F.3d 1172 (D.C. Cir. 2009). This is particularly true here, where FINRA sought information and documents related to allegations of fraud. The Commission should affirm the NAC’s findings of violation.

**C. The NAC Imposed Sanctions That Are Neither Excessive nor Oppressive.**

The sanctions that the NAC imposed – a bar for the violation involving Lempert Brothers’ books and records and a bar for the failure to respond to FINRA’s requests for information and documents – are fully supported by the record and the egregious nature of Plunkett’s conduct. RP 2727-2732.

The Commission expressly has stated that it will affirm the NAC’s sanctions *unless* the sanctions are excessive or oppressive, or impose an unnecessary or inappropriate burden on competition.<sup>14</sup> *See* 15 U.S.C. § 78s(e)(2); *see also Andrew P. Gonchar*, Exchange Act Rel. No. 60506, 2009 SEC LEXIS 2797, at \*51 (Aug. 14, 2009) (upholding FINRA-imposed sanctions, where Commission determined that sanctions were neither excessive nor oppressive, and imposed no undue burden on competition), *aff’d*, 2010 U.S. App. LEXIS 25763 (2d Cir. 2010).

---

<sup>14</sup> Plunkett does not contend, and the record does not support the conclusion, that the sanctions are an undue burden on competition.

In assessing sanctions in this case, the NAC consulted the Sanction Guidelines,<sup>15</sup> considered all relevant evidence of aggravating and mitigating circumstances present in the record, and carefully balanced these aggravating and mitigating factors to determine the appropriate sanctions. RP 2727-2732. The resulting sanctions are neither excessive nor oppressive. The Commission therefore should affirm the sanctions that the NAC imposed.

**1. Plunkett's Removal of Lempert Brothers' Books and Records and Erasure of the Electronic Files and Computer Servers Constituted Egregious Misconduct.**

As the NAC fashioned sanctions for Plunkett's conduct involving Lempert Brothers' books and records, it did not mechanically categorize Plunkett's conduct as a recordkeeping violation simply because the conduct involved the books and records of a firm. RP 2728. The NAC carefully evaluated the nature of Plunkett's conduct and concluded that the Sanction Guidelines for recordkeeping violations did not adequately capture what transpired when Plunkett removed Lempert Brothers' books and records and erased the firm's electronic files and computer servers. RP 2728. Therefore, as the NAC formulated sanctions for this violation, the NAC contemplated the general principles espoused in the Sanction Guidelines and applied these principles to determine the appropriate sanctions for Plunkett's misconduct.<sup>16</sup> RP 2728.

The NAC began its analysis by stressing that Plunkett's conduct placed Lempert Brothers' customers, their assets, and information at significant and unnecessary risk. RP 2729.

---

<sup>15</sup> See *FINRA Sanction Guidelines* (2011 ed.), <http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf>. The cited sections of the Sanction Guidelines are attached as Appendix C.

<sup>16</sup> The NAC relied upon the "General Principles Applicable to All Sanction Determinations" and the "Principal Considerations in Determining Sanctions," which are applied in every disciplinary case. See *Guidelines* at 2-5, 6-7.

*See Guidelines* at 6 (Principal Considerations in Determining Sanctions, No. 11) (considering injury to investing public). In examining this risk, and the fact that the Hearing Panel neglected to address it, the NAC concluded that the resulting sanctions should increase. *See First Heritage Inv. Co.*, 51 S.E.C. 953, 960 (1994) (“If the [NAC] determines that sanctions should have been more severe, it is the [NAC’s] duty to modify them appropriately”).

Plunkett’s conduct impeded the Lempert Brothers’ ability to comply with basic requirements necessary for customer protection and risked the customers’ financial assets. RP 2729. Specifically, without its books and records, Lempert Brothers was unable to ensure that it had sufficient funds to meet net capital requirements and could not conduct the due diligence necessary to provide customers with investment advice or respond to their requests. *See CMG Institutional Trading, LLC*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215, at \*32-33 (Jan. 30, 2009) (explaining that net capital rule is fundamental rule governing broker-dealer operations because the rule protects customers and other market participants from broker-dealer failures). RP 1563-1565.

Plunkett’s transfer of the customer files from Lempert Brothers to Emerald Investments, without notifying the customers of the transfer, also was improper and placed the customers’ private information at substantial risk.<sup>17</sup> *See generally Dante J. DiFrancesco*, Exchange Act Rel. No. 66113, 2012 SEC LEXIS 54, at \*1 (Jan. 6, 2012) (explaining that applicant’s transmission of nonpublic customer information to new firm was improper); *Marc A. Ellis*, Exchange Act Rel. No. 64220, 2011 SEC LEXIS 1199, at \*6 (Apr. 7, 2011) (explaining that removal of customer

---

<sup>17</sup>

On appeal, Plunkett states that he obtained customer approval *prior to* transferring the accounts to Emerald Investments. *See* Plunkett Br. at 7. The record, however, does not support Plunkett’s contention. The record demonstrates that Plunkett and the other resigning employees did not contact their customers until they already had removed the customers’ accounts and records from Lempert Brothers’ offices. RP 1459-1464, 1857.

information from firm via stolen laptops jeopardized confidentiality and integrity of customer information and placed information at risk of unauthorized use that could have resulted in substantial harm to customers).

After considering the effect of Plunkett's conduct on Lempert Brothers' customers, the NAC analyzed the disastrous effect that Plunkett's conduct had on the firm. RP 2729. *See Guidelines* at 6 (Principal Considerations in Determining Sanctions, No. 11) (considering injury to firm).

In determining the extent of the harm that Plunkett's conduct caused Lempert Brothers, the NAC considered the extraordinary and costly measures that the firm had to engage to regain possession of its books and records. *See Guidelines* at 6 (Principal Considerations in Determining Sanctions, No. 11) (considering extent of injury to firm). Lempert Brothers initially hired a consultant to attempt to reconstruct the books and records. RP 1636-1637. After working with the consultant to obtain basic information, such as customer account numbers, Lempert Brothers contacted its clearing firm and, using the customer accounts numbers assembled by the consultant, accessed the customer records maintained at the clearing firm. RP 1641. It took Lempert Brothers several weeks to obtain basic customer account information and trading records. RP 1640.

Lempert Brothers also hired an attorney to negotiate Plunkett's return of its books and records. RP 1636, 1642-1643. Plunkett, however, refused to return the documents until Lempert Brothers agreed to provide each of the former employees with back pay. RP 1643, 2267. Finally, Lempert Brothers had to participate in arbitration proceedings with Plunkett, and in the

context of the arbitration, twice file motions to compel Plunkett's return of the documents.<sup>18</sup> RP 2367-2369, 2439, 2513-2514. Despite Lempert Brothers' significant efforts, the firm never received some of the documents that Plunkett took. RP 1666-1667, 2068-2069.

The NAC examined Plunkett's financial gain from the conduct. *See Guidelines 7* (Principal Considerations in Determining Sanctions, No. 17) (considering respondent's monetary or other gain). Plunkett initially held the documents hostage for back pay. Thereafter, Plunkett utilized the books and records, including customer account records and histories, to give Emerald Investments a competitive advantage and provide the firm with an established base of customers. Plunkett's self-serving conduct sought to benefit him and Emerald Investments, at the expense of Lempert Brothers and its customers.

The NAC also considered Plunkett's evidence of mitigation and determined that it did not lessen the impact of the misconduct.<sup>19</sup> RP 2729-2730. The NAC revisited Plunkett's argument that he removed the books and records because he had concerns that the Orlovs were engaged in fraudulent activities abroad, and he wanted to protect the interests of his customers. RP 2729-2730. As discussed above, the NAC, supported by the Hearing Panel's credibility determination

---

<sup>18</sup> Plunkett collaterally attacks the FINRA arbitration panel's findings, and the award that the arbitration panel ordered against him. *See* Plunkett Br. at 5, 9. The Commission should reject Plunkett's collateral attacks on the FINRA arbitration proceedings and award. *See Ryerson*, 2008 SEC LEXIS 1153, at \*18 (rejecting applicant's collateral attack on underlying disciplinary action); *Warren B. Minton, Jr.*, 55 S.E.C. 1170, 1176 (2002) (same).

<sup>19</sup> Plunkett argues that the availability of copies of Lempert Brothers' documents at its clearing firm should mitigate his removal of the records. *See* Plunkett Br. at 8. Plunkett did not raise this argument in his appeal before the NAC, and accordingly, has waived his right to argue the issue before the Commission. *See Nicholas T. Avello*, Exchange Act Rel. No. 51633, 2005 SEC LEXIS 986, at \*8 (Apr. 29, 2005) (striking new arguments that applicant failed to raise in initial appeal), *aff'd*, 454 F.3d 619 (7th Cir. 2006). To the extent the Commission reaches the merits of Plunkett's argument, it is irrelevant because Plunkett should not have removed Lempert Brothers' books and records in the first place.

and the evidence in the record, found that Plunkett's motivation for the conduct was financial and concluded that Plunkett's supposed concern about the Orlovs' activities was nothing more than a self-serving justification for his prior economic decision. RP 2729-2731.

The NAC examined Plunkett's after-the-fact self-reporting of the conduct to the Commission and FINRA, although Plunkett states in his appeal before the Commission that the NAC did not do so. RP 2731. *See* Plunkett Br. at 8. The NAC acknowledged that Plunkett contacted the Commission and FINRA, after he took the books and records, to explain what had transpired at Lempert Brothers and why he removed the documents. The NAC, however, found that Plunkett's self-reporting of the incident was not mitigating. The NAC explained that Plunkett could have contacted the Commission and FINRA *prior to* removing the books and records to advise them of his concerns about the Orlovs' purported criminal activities. RP 2730. His after-the-fact explanation of the conduct is not mitigating.

The NAC carefully analyzed Plunkett's conduct and applied the Sanction Guidelines to identify evidence of aggravating and mitigating circumstances. The resulting sanctions, two bars, are warranted and appropriate, given the egregious nature of Plunkett's misconduct. The Commission should affirm the bar that the NAC imposed for Plunkett's removal of Lempert Brothers' books and records and erasure of the firm's electronic files and computer servers.

**2. Plunkett's Failure to Respond to FINRA's Requests for Information and Documents Calls for the Standard Sanction.**

The NAC gave equally careful consideration to the formulation of sanctions for Plunkett's failure to respond to FINRA's requests for information and documents. RP 2730-2731. Mindful that the Commission gives considerable weight to whether sanctions are consistent with the Sanction Guidelines, the NAC's analysis of sanctions for Plunkett's response began with the Sanction Guidelines concerning violations of FINRA Rule 8210. *See Ricupero,*



2010 SEC LEXIS 2988, at \*15 (noting that Sanction Guidelines serve as “benchmark” in Commission’s review of sanctions).

The NAC correctly applied the Sanction Guidelines, beginning with the Sanction Guidelines’ instruction concerning an associated person’s failure to respond to FINRA’s requests for information and documents until after Enforcement files a complaint. RP 2730. When an associated person does not respond to FINRA’s requests for information and documents until after Enforcement files a complaint, the Sanction Guidelines instruct adjudicators to apply the presumption that the associated person’s failure constitutes a complete failure to respond. *See Ricupero*, 2010 SEC LEXIS 2988, at \*12; *Guidelines* at 33 n.1.

In addition, where there is a complete failure to respond, the Sanction Guidelines state that *a bar should be standard*. *See Guidelines* at 33 (emphasis added). The written narrative that Plunkett provided in April 2010, four months after Enforcement filed the complaint, and his failure to provide any documents constitute a complete failure to respond, and the dearth of mitigation evidence in the record supports the imposition of the standard sanction.<sup>20</sup> RP 2029-2033, 2731.

The NAC adhered to the Sanction Guidelines and analyzed the importance of the requested information from Plunkett as viewed from FINRA’s perspective. RP 2731. *See Guidelines* at 33. The information and documents that FINRA requested not only were important to determine whether FINRA should proceed with formal disciplinary action against

---

<sup>20</sup> Plunkett provided FINRA only with a written narrative. RP 2029-2033. He did not respond in any manner to FINRA’s requests for documents. Plunkett provided no documents or explanation of his efforts to locate responsive documents. *See generally Sahai*, 2007 SEC LEXIS 13, at \*13 (explaining that applicant must detail search for documents in response to FINRA’s requests for documents). Plunkett’s written narrative did not satisfy his independent obligation to provide, or conduct a diligent search for, documents. *See id.*

Plunkett, but also to assist FINRA's investigation of the Orlovs' purported criminal activities. RP 2731.

When Plunkett provided FINRA with the response to his Wells Notice, he asserted that there were individuals and documents that substantiated his claims against the Orlovs and supported his rationale for leaving the firm and taking the firm's books and records with him. RP 1959-1998. Plunkett, not FINRA, initiated this line of inquiry, and his failure to provide FINRA with the requested information and documents curtailed FINRA's ability to verify Plunkett's claims and stonewalled FINRA's investigation of the Orlovs. *See PAZ Secs., Inc.*, Exchange Act Rel. No. 52693, 2005 SEC LEXIS 2802, at \*20 (Oct. 28, 2005) (explaining that applicant's failure to respond to FINRA's requests for information and documents impedes FINRA's ability "to conduct its investigation fully and expeditiously").

The NAC also gave full consideration to Plunkett's evidence of mitigating circumstances, but determined that the evidence had no bearing on Plunkett's conduct. For example, Plunkett states that his prior compliance with FINRA's requests for information and documents constitutes evidence of mitigation. *See Plunkett Br.* at 6. It does not. *See Charles C. Fawcett, IV*, Exchange Act Rel. No. 56770, 2007 SEC LEXIS 2598, at \*21-22 (Nov. 8, 2007) ("[A] complete failure to cooperate with NASD requests for information . . . is so fundamentally incompatible with NASD's self-regulatory function that the risk to the markets and investors posed by such misconduct is properly remedied by a bar"); *Dep't of Mkt. Regulation v. Sciascia*, Complaint No. CMS040069, 2006 NASD Discip. LEXIS 22, at \*20 (NASD NAC Aug. 7, 2006) (finding that prior responses to requests for information do not mitigate failure to respond).

Without Plunkett's timely and complete response to FINRA's requests for information and documents, FINRA was unable to make any findings with regard to Plunkett's claims about the Orlovs' conduct. *See Charles R. Stedman*, 51 S.E.C. 1228, 1232 (1994). This is the exact

type of conduct that FINRA Rule 8210 seeks to curtail. *See id.* (explaining that applicant's failure to comply with FINRA Rule 8210 subverts FINRA's "ability to carry out its regulatory responsibilities and must be viewed as a serious violation").

The NAC also contemplated the other explanations that Plunkett provided for his failure to respond. RP 2731. Plunkett noted that his secretary's departure from the firm, the misfiling of some documents, the offsite storage of other documents, and the general disarray of his office left him unable to comply with the requests for information and documents issued in this case. RP 2030-2031. The NAC properly found that these explanations are not mitigating and have no bearing on Plunkett's compliance obligations under FINRA Rule 8210. *See Ricupero*, 2010 SEC LEXIS 2988, at \*20 (rejecting applicant's claim that his inability to locate documents should lessen severity of his violation of FINRA Rule 8210); *Wedbush Secs., Inc.*, 48 S.E.C. 963, 971-972 (1988) (rejecting applicant's contention that personnel shortages and disarray of firm records mitigated delay in responding to FINRA's requests for information and documents).

After considering the nature of the information and documents FINRA requested from Plunkett and Plunkett's evidence of purported mitigation, the NAC reviewed the Sanction Guidelines, noting that the Sanction Guidelines provide for a standard sanction, a bar, in cases where there is a complete failure to respond to FINRA's requests for information and documents. *See Guidelines* at 33 (stating that standard sanction, bar, should apply when associated person does not respond in any manner to FINRA's requests for information and documents); *see also Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141, at \*51 (Nov. 14, 2008) (affirming bar of individual who failed to provide testimony); *PAZ Secs., Inc.*, 2008 SEC LEXIS 820, at \*31 (affirming bar for failure to respond in any manner to requests for information and documents).

The record in this case supports the imposition of the standard sanction. The written narrative that Plunkett provided to FINRA staff and his failure to provide documents constitute a complete failure to respond under the Sanction Guidelines. *Guidelines* at 33. Plunkett also obstructed FINRA's investigation of the Orlovs' purported criminal activities. Finally, there is no evidence of mitigation in the record to support the imposition of anything other than the standard sanction. The NAC accordingly barred Plunkett for the violation, and the Commission should affirm the NAC's sanctions. RP 2731-2732. *See Berger*, 2008 SEC LEXIS 3141, at \*24 (emphasizing that the "risks presented by persons who, in the absence of mitigating factors, completely fail to respond to Rule 8210 requests are appropriately remedied by a bar").

**3. Plunkett Has Disciplinary History, Which Is an Aggravating Factor.**

The NAC also identified Plunkett's disciplinary history as an aggravating factor that the Hearing Panel failed to consider in its decision. RP 2728. *See Guidelines* at 6 (Principal Considerations in Determining Sanctions, No. 1) (considering respondent's disciplinary history).

Plunkett experienced two disciplinary events, one in May 2000, and the other, more recently, in January 2010, which suggests that the conduct at issue in this case was not an aberration. In May 2000, Plunkett consented to a settlement with NASD for acting as a general securities principal without the proper qualifications and registrations. CRD at 20-21. For this violation, NASD fined Plunkett \$7,500 and suspended him in all principal capacities for 15 days. CRD at 20-21.

In January 2010, FINRA initiated proceedings against Plunkett because he failed to pay the arbitration award entered in favor of Lempert Brothers. CRD 25-28. As a result of the proceedings, Plunkett was suspended from associating with any FINRA firm. CRD at 25-28. Plunkett remains suspended until he pays the arbitration award. CRD 25-28.

Mindful that the Sanction Guidelines favor more severe disciplinary sanctions for recidivists, the NAC concluded that Plunkett's disciplinary history presented a significant aggravating factor for purposes of sanctions. RP 2728. *See Guidelines* at 2 (General Principles Applicable to All Sanction Determinations, No. 2) (explaining that "a[n] important objective of disciplinary process is to deter and prevent future misconduct by imposing progressively escalating sanctions on recidivists").

On appeal, Plunkett argues that the NAC's consideration of his disciplinary history demonstrates bias and prejudice.<sup>21</sup> *See* Plunkett Br. at 7. Plunkett, however, misunderstands the Commission's established precedent in this area. Disciplinary history is an aggravating factor in the assessment of sanctions because it demonstrates a pattern of disregard for regulatory requirements. *See Ricupero*, 2010 SEC LEXIS 2988, at \*8-9 (affirming bar and FINRA's consideration of applicant's disciplinary history in assessment of sanctions); *Perpetual Secs., Inc.*, Exchange Act Rel. No. 56613, 2007 SEC LEXIS 2353, at \*44-45 (Oct. 4, 2007) (finding that applicants' disciplinary history was a significant aggravating factor for purposes of sanctions); *Michael T. Studer*, Exchange Act Rel. No. 50543, 2004 SEC LEXIS 2347, at \*28 (Oct. 14, 2004) (finding that numerous regulatory actions is aggravating factor in assessing sanctions), *aff'd*, 260 F. App'x. 342 (2d Cir. 2008). The NAC properly considered Plunkett's disciplinary history as it formulated the appropriate sanctions for each violation at issue in this case.

\* \* \*

---

<sup>21</sup> Plunkett attempts to mount collateral attacks on the underlying events that form his disciplinary history. *See* Plunkett Br. at 7. The Commission should reject Plunkett's improper collateral attacks. *See Ryerson*, 2008 SEC LEXIS 1153, at \*18 (rejecting applicant's collateral attack).

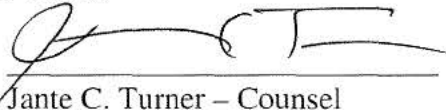
The NAC carefully crafted sanctions that were tailored to address the egregious nature of each violation at issue in this case. The resulting sanctions – the bar for Plunkett’s conduct involving Lempert Brothers’ books and records and the bar for his failure to respond to FINRA’s requests for information and documents – are appropriately remedial, commensurate with the gravity of the conduct presented, and warranted under the facts of this case. The sanctions that the NAC imposed are neither excessive nor oppressive. The Commission should affirm the NAC’s decision and dismiss Plunkett’s application for review.

**V. CONCLUSION**

FINRA’s decision should be affirmed in all respects. FINRA’s findings are based on Plunkett’s own admissions that he removed Lempert Brothers’ books and records, erased the firm’s electronic files and computer servers, and failed to respond to FINRA’s requests for information and documents. In so doing, Plunkett disregarded basic ethical principles and rules that govern the securities industry. Plunkett’s continuing employment in an industry that relies so heavily on personal integrity poses a great risk to the investing public. The Commission should affirm the NAC’s decision and dismiss Plunkett’s application for review.

Respectfully Submitted,

Alan Lawhead  
Gary Dernelle  
Jante C. Turner

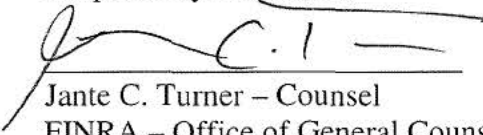
By:   
Jante C. Turner – Counsel  
FINRA – Office of General Counsel  
1735 K Street, NW  
Washington, DC 20006  
202-728-8317 – Telephone  
202-728-8264 – Facsimile

June 6, 2012

**CERTIFICATE OF COMPLIANCE**

I, Jante C. Turner, certify that this brief complies with the length limitation set forth in Commission Rule of Practice 154(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 9,735 words, exclusive of the pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions, or rules and exhibits.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "J.C. Turner", is written over a horizontal line. The signature is fluid and cursive.

Jante C. Turner – Counsel  
FINRA – Office of General Counsel  
1735 K Street, NW  
Washington, DC 20006  
202-728-8317 – Telephone  
202-728-8264 – Facsimile

# **APPENDIX A**



### Composite Information

**Individual CRD#:** [REDACTED] **Individual Name:** PLUNKETT, JOHN J

<b>Full Legal Name</b>	PLUNKETT, JOHN JOSEPH			
<b>Social Security Number</b>	[REDACTED]			
<b>Date Of Birth</b>	[REDACTED]			
<b>Residential Address</b>	[REDACTED]			
<b>Reportable Disclosures?</b>	Yes			
<b>Statutory Disqualification Status</b>	Requires Review	<b>Last Updated</b>	05/21/2010	
<b>Has Material Difference in Disclosure?</b>	No			
<b>Current CE Status</b>	2 Year Termed from Industry			
<b>Disclosure Counts - Current Disclosures</b>	<b>Criminal</b>	<b>Regulatory Action</b>	<b>Customer Complaint</b>	<b>Other</b>
	0	3	0	1
<b>Disclosure Counts - Historical Disclosures</b>	<b>Criminal</b>	<b>Regulatory Action</b>	<b>Customer Complaint</b>	<b>Other</b>
	0	0	0	0

Privacy Legal Use of Web CRD®, IARD™, or PFRD™ is governed by the Terms & Conditions.  
 ©2012 FINRA. All rights reserved. FINRA is a registered trademark of the Financial Industry Regulatory Authority, Inc.

## Notice

**CRD® or IARD(TM) Information:** This report contains information from the CRD (Central Registration Depository) system, or the IARD system (Investment Advisers Registration Depository), which are operated by FINRA, a national securities association registered under the Securities Exchange Act of 1934. The CRD system primarily contains information submitted on uniform broker-dealer and agent registration forms and certain other information related to registration and licensing. The IARD system primarily contains information submitted on uniform investment adviser and agent registration forms and certain other information related to registration and licensing. The information on Uniform Forms filed with the CRD or IARD is deemed to have been filed with each regulator with which the applicant seeks to be registered or licensed and shall be the joint property of the applicant and such regulators. The compilation constituting the CRD database as a whole is the property of FINRA. Neither FINRA nor a participating regulator warrants or guarantees the accuracy or the completeness of the CRD or IARD information. CRD information consists of reportable and non-reportable information.

FINRA operates the CRD system in its capacity as a registered national securities association and pursuant to an agreement with the North American Securities Administrators Association, Inc. (NASAA).

FINRA operates the IARD system as a vendor pursuant to a contract with the Securities and Exchange Commission and undertakings with NASAA and participating state regulators.

**Reportable Information:** Information that is required to be reported on the current version of the uniform registration forms.

**Non-Reportable Information:** Information that is not currently reportable on a uniform registration form. Information typically is not reportable because it is out-of-date; it was reported in error; or some change occurred either in the disposition of the underlying event after it was reported or in the question on the form that elicited the information. Although not currently reportable, this information was once reported on a uniform form and, consequently, may have become a state record. Users of this information should recognize that filers have no obligation to update non-reportable data; accordingly, it may not reflect changes that have occurred since it was reported.

Details for Request#: 10368636  
Report: Snapshot - Individual  
Requested By: DJB

<u>Parameter Name</u>	<u>Value</u>
Request by CRD# or SSN:	██████
Individual CRD# or SSN	██████████
Include Personal Information?	Yes
Include All Registrations with Employments:	Both Current and Previous Employments
Include All Registrations for Current and/or Previous Employments with:	All Regulators
Include Professional Designations?	Yes
Include Employment History?	Yes
Include Other Business?	Yes
Include Exam Information?	Yes
Include Continuing Education Information? (CRD Only)	Yes
Include Filing History? (CRD Only)	Yes
Include Current Reportable Disclosure Information?	Yes
Include Regulator Archive and Z Record Information? (CRD Only)	Yes

Individual [REDACTED] - PLUNKETT, JOHN JOSEPH

Administrative Information

Composite Information

Full Legal Name PLUNKETT, JOHN JOSEPH  
 State of Residence NY  
 Active Employments <<No Current Active Employments found for this Individual.>>  
 Reportable Disclosures? Yes  
 Statutory Disqualification? SDRQRSRVW  
 Registered With Multiple Firms? No  
 Material Difference in Disclosure? No

Personal Information

Individual CRD# [REDACTED]  
 Other Names Known By PLUNKETT, JOHN J  
 Year of Birth [REDACTED]

Registrations with Current Employer(s)

<<No Registrations with Current Employer(s) found for this Individual.>>

Registrations with Previous Employer(s)

From 10/04/2005 To 01/04/2010 EMERALD INVESTMENTS, INC.(139511)

Reason for Termination Voluntary

Termination Comment

Regulator	Registration Category	Status Date	Registration Status	Approval Date
CA	AG	12/31/2008	FTR	06/30/2006
CO	AG	01/04/2010	TERMED	07/25/2006
CO	AG	12/31/2008	FTR	07/25/2006
CT	AG	01/04/2010	TERMED	04/20/2009
CT	AG	12/31/2008	FTR	08/07/2006
DC	AG	12/31/2008	FTR	07/20/2006
FINRA	GP	01/04/2010	TERMED	06/30/2006
FINRA	GS	01/04/2010	TERMED	06/30/2006
FL	AG	01/04/2010	TERMED	08/02/2006
FL	AG	12/31/2008	FTR	08/02/2006
GA	AG	01/04/2010	TERMED	03/30/2009
GA	AG	12/31/2008	FTR	07/14/2006
HI	AG	07/28/2009	T_NOREG	
HI	AG	12/31/2008	FTR	08/14/2006
IA	AG	12/31/2008	FTR	07/25/2006
ID	AG	12/31/2008	FTR	10/06/2006
IL	AG	12/31/2008	FTR	07/19/2006
IN	AG	12/31/2008	FTR	07/18/2006
MA	AG	12/31/2008	FTR	07/11/2006
MD	AG	01/04/2010	TERMED	03/26/2009

Individual ████████ - PLUNKETT, JOHN JOSEPH

**Administrative Information****Registrations with Previous Employer(s)**

Regulator	Registration Category	Status Date	Registration Status	Approval Date
MD	AG	12/31/2008	FTR	07/19/2006
MI	AG	12/31/2008	FTR	08/15/2006
NH	AG	01/04/2010	T_NOREG	
NH	AG	12/31/2008	FTR	09/18/2006
NJ	AG	01/04/2010	TERMED	04/08/2009
NJ	AG	12/31/2008	FTR	08/17/2006
NY	AG	01/04/2010	TERMED	03/03/2009
NY	AG	12/31/2008	FTR	07/03/2006
OH	AG	01/04/2010	T_NOREG	
PA	AG	01/04/2010	TERMED	03/19/2009
PA	AG	12/31/2008	FTR	07/21/2006
TX	AG	01/04/2010	TERMED	03/24/2009
TX	AG	12/31/2008	FTR	08/01/2006
VA	AG	12/31/2008	FTR	07/21/2006
VT	AG	12/31/2008	FTR	07/21/2006
WI	AG	01/04/2010	TERMED	03/24/2009
WI	AG	12/31/2008	FTR	08/02/2006

From 04/17/2006 To 07/11/2006 SUCCESS TRADE SECURITIES, INC.(46027)

Reason for Termination Voluntary

**Termination Comment**

Regulator	Registration Category	Status Date	Registration Status	Approval Date
FINRA	GP	07/12/2006	TERMED	04/19/2006
FINRA	GS	07/12/2006	TERMED	04/19/2006
FL	AG	07/12/2006	TERMED	05/16/2006
NY	AG	07/12/2006	TERMED	06/22/2006
VT	AG	07/12/2006	TERMED	04/19/2006

From 08/13/2003 To 04/03/2006 LEMPert BROTHERS INTERNATIONAL USA, INC.(128241)

Reason for Termination Voluntary

**Termination Comment**

Regulator	Registration Category	Status Date	Registration Status	Approval Date
AL	AG	04/03/2006	TERMED	07/25/2005
CA	AG	04/03/2006	TERMED	11/01/2004
CT	AG	04/03/2006	TERMED	11/05/2004
FINRA	GP	04/03/2006	TERMED	02/19/2004
FINRA	GS	04/03/2006	TERMED	02/19/2004
FINRA	OP	02/22/2006	T_NOREG	
FL	AG	04/03/2006	TERMED	11/04/2004
GA	AG	04/03/2006	TERMED	11/03/2004
HI	AG	04/03/2006	TERMED	09/13/2005
HI	AG	08/01/2005	ABANDONED	
IA	AG	04/03/2006	TERMED	03/22/2005
IL	AG	04/03/2006	TERMED	04/25/2005

Individual ██████████ - PLUNKETT, JOHN JOSEPH

**Administrative Information**

**Registrations with Previous Employer(s)**

Regulator	Registration Category	Status Date	Registration Status	Approval Date
KS	AG	04/03/2006	TERMED	04/29/2005
LA	AG	04/03/2006	TERMED	05/03/2005
MA	AG	04/03/2006	TERMED	09/29/2004
ME	AG	04/03/2006	TERMED	01/09/2006
MI	AG	04/03/2006	TERMED	03/28/2005
MN	AG	04/03/2006	TERMED	09/21/2005
NC	AG	04/03/2006	TERMED	03/15/2005
NE	AG	04/11/2006	TERMED	01/06/2006
NJ	AG	04/03/2006	TERMED	11/08/2004
NY	AG	04/03/2006	TERMED	03/13/2004
OH	AG	04/03/2006	TERMED	04/25/2005
PA	AG	04/03/2006	TERMED	05/11/2005
TX	AG	04/03/2006	TERMED	05/09/2005
VA	AG	04/03/2006	TERMED	11/03/2005

From 09/04/2001 To 04/28/2003 U.S. SECURITIES & FUTURES CORP.(36045)

Reason for Termination Voluntary

**Termination Comment**

Regulator	Registration Category	Status Date	Registration Status	Approval Date
CA	AG	04/28/2003	TERMED	09/04/2001
CT	AG	04/28/2003	TERMED	05/21/2002
FINRA	GP	04/28/2003	TERMED	09/04/2001
FINRA	GS	04/28/2003	TERMED	09/04/2001
FL	AG	04/28/2003	TERMED	09/04/2001
IA	AG	04/28/2003	TERMED	09/05/2001
IL	AG	04/28/2003	TERMED	09/13/2001
MN	AG	04/28/2003	TERMED	11/27/2001
NJ	AG	04/28/2003	TERMED	09/04/2001
NY	AG	04/28/2003	TERMED	09/04/2001
OH	AG	04/28/2003	TERMED	01/23/2002
PA	AG	04/28/2003	TERMED	09/04/2001
SC	AG	04/28/2003	TERMED	11/01/2001
TX	AG	04/28/2003	TERMED	09/04/2001
WA	AG	04/28/2003	TERMED	09/04/2001

From 01/08/2001 To 06/27/2002 WESTOR ONLINE, INC.(103823)

Reason for Termination Voluntary

**Termination Comment**

Regulator	Registration Category	Status Date	Registration Status	Approval Date
AL	AG	10/31/2001	TERMED	03/20/2001
AZ	AG	10/31/2001	TERMED	02/07/2001
CA	AG	08/20/2001	T_NOU5	01/29/2001
CO	AG	10/31/2001	TERMED	02/02/2001
CT	AG	10/31/2001	TERMED	01/30/2001

Individual ████████ - PLUNKETT, JOHN JOSEPH

## Administrative Information

## Registrations with Previous Employer(s)

Regulator	Registration Category	Status Date	Registration Status	Approval Date
FINRA	GP	06/27/2002	TERMED	01/23/2001
FINRA	GS	06/27/2002	TERMED	01/23/2001
FL	AG	10/31/2001	TERMED	04/12/2001
GA	AG	10/31/2001	TERMED	02/05/2001
IA	AG	10/31/2001	TERMED	02/20/2001
IL	AG	10/31/2001	TERMED	04/30/2001
IN	AG	10/31/2001	TERMED	02/27/2001
KS	AG	10/31/2001	TERMED	03/06/2001
MA	AG	10/31/2001	TERMED	03/12/2001
MD	AG	10/31/2001	TERMED	02/02/2001
MI	AG	10/31/2001	TERMED	02/09/2001
MN	AG	10/31/2001	TERMED	03/08/2001
NC	AG	10/31/2001	TERMED	02/02/2001
NE	AG	04/23/2001	TERMED	03/26/2001
NJ	AG	10/31/2001	TERMED	02/05/2001
NV	AG	10/31/2001	TERMED	02/15/2001
NY	AG	06/27/2002	TERMED	01/23/2001
OH	AG	10/31/2001	TERMED	02/15/2001
OK	AG	10/31/2001	TERMED	02/02/2001
OR	AG	10/31/2001	TERMED	02/13/2001
PA	AG	10/31/2001	TERMED	02/05/2001
SC	AG	10/31/2001	TERMED	02/02/2001
TN	AG	10/31/2001	TERMED	05/01/2001
TX	AG	10/31/2001	TERMED	03/06/2001
UT	AG	10/31/2001	TERMED	02/02/2001
VA	AG	10/31/2001	TERMED	02/12/2001
WA	AG	10/31/2001	TERMED	02/02/2001
WI	AG	10/31/2001	TERMED	06/07/2001

From 09/10/1996 To 01/31/2001 SEABOARD SECURITIES, INC.(755)

Reason for Termination Discharged

Termination Comment FAILURE TO PAY OUTSTANDING DEBIT AND SOUGHT EMPLOYMENT WITH ANOTHER BROKER/DEALER. MATTER REFERRED TO COUNSEL TO COMMENCE LEGAL PROCEEDINGS TO COLLECT THE DEBIT.

Regulator	Registration Category	Status Date	Registration Status	Approval Date
AL	AG	12/20/2000	TERMED	02/18/1999
AZ	AG	06/13/1997	T_NOREG	
CA	AG	12/20/2000	TERMED	05/30/1997
CT	AG	12/20/2000	TERMED	09/27/1996
DC	AG	12/20/2000	TERMED	10/02/1996
FINRA	GP	02/05/2001	TERMED	04/20/2000
FINRA	GP	02/05/2001	T_NOREG	
FINRA	GS	02/05/2001	TERMED	09/27/1996
FINRA	OP	02/05/2001	T_NOREG	

Individual ██████████ - PLUNKETT, JOHN JOSEPH

**Administrative Information**

**Registrations with Previous Employer(s)**

Regulator	Registration Category	Status Date	Registration Status	Approval Date
FL	AG	12/20/2000	TERMED	10/01/1996
GA	AG	12/20/2000	TERMED	09/27/1996
HI	AG	12/20/2000	TERMED	09/22/1998
IA	AG	12/20/2000	TERMED	12/03/1998
IL	AG	12/20/2000	TERMED	09/27/1996
IN	AG	12/20/2000	TERMED	09/27/1996
KS	AG	12/20/2000	TERMED	07/16/1997
LA	AG	12/20/2000	TERMED	08/13/1998
MD	AG	12/20/2000	TERMED	01/19/1999
MI	AG	12/20/2000	TERMED	09/21/1998
MN	AG	12/20/2000	TERMED	09/21/1998
NC	AG	12/20/2000	TERMED	12/23/1998
NJ	AG	02/05/2001	TERMED	09/27/1996
NV	AG	12/20/2000	TERMED	12/03/1998
NY	AG	02/05/2001	TERMED	09/27/1996
OH	AG	12/20/2000	TERMED	03/23/1999
OK	AG	12/20/2000	TERMED	09/21/1998
PA	AG	02/05/2001	TERMED	09/27/1996
TX	AG	12/20/2000	TERMED	09/22/1998
VA	AG	12/20/2000	TERMED	09/27/1996
WI	AG	12/20/2000	TERMED	03/24/1999
WV	AG	12/20/2000	TERMED	11/17/1999

From 04/15/1996 To 09/06/1996 LT LAWRENCE & CO., INC.(31956)

Reason for Termination Voluntary

**Termination Comment**

Regulator	Registration Category	Status Date	Registration Status	Approval Date
CA	AG	09/06/1996	TERMED	04/23/1996
CT	AG	09/06/1996	TERMED	04/23/1996
DC	AG	09/06/1996	TERMED	04/25/1996
FINRA	GS	09/06/1996	TERMED	04/23/1996
GA	AG	09/06/1996	TERMED	06/24/1996
IL	AG	09/06/1996	TERMED	04/23/1996
IN	AG	09/06/1996	TERMED	07/11/1996
MA	AG	09/06/1996	TERMED	04/23/1996
MD	AG	09/06/1996	TERMED	04/23/1996
NC	AG	09/06/1996	TERMED	06/27/1996
NJ	AG	09/06/1996	TERMED	04/26/1996
NY	AG	09/06/1996	TERMED	04/23/1996
OH	AG	09/06/1996	TERMED	06/24/1996
PA	AG	09/06/1996	TERMED	04/23/1996
TX	AG	09/06/1996	TERMED	04/24/1996
VA	AG	09/06/1996	TERMED	04/24/1996



Individual ████████ - PLUNKETT, JOHN JOSEPH

**Administrative Information**

**Registrations with Previous Employer(s)**

From 03/20/1996 To 04/15/1996 MONITOR INVESTMENT GROUP, INC.(31007)

Reason for Termination Voluntary

Termination Comment Voluntary

Regulator	Registration Category	Status Date	Registration Status	Approval Date
CA	AG	04/23/1996	TERMED	03/28/1996
CT	AG	04/23/1996	TERMED	03/28/1996
DC	AG	04/23/1996	TERMED	03/29/1996
FINRA	GS	04/23/1996	TERMED	03/28/1996
FL	AG	04/23/1996	TERMED	03/29/1996
MA	AG	04/23/1996	TERMED	03/28/1996
MD	AG	04/23/1996	TERMED	03/28/1996
NJ	AG	04/23/1996	TERMED	04/02/1996
NY	AG	04/23/1996	TERMED	03/28/1996
PA	AG	04/23/1996	TERMED	03/28/1996
PHLX	GS	04/23/1996	TERMED	03/28/1996
UT	AG	04/23/1996	TERMED	03/28/1996
VA	AG	04/23/1996	TERMED	03/29/1996

From 06/13/1994 To 03/15/1996 GOLDIS FINANCIAL GROUP, INC.(16444)

Reason for Termination Voluntary

Termination Comment Voluntary

Regulator	Registration Category	Status Date	Registration Status	Approval Date
FINRA	GS	03/22/1996	TERMED	06/14/1994
FL	AG	03/22/1996	TERMED	06/14/1994
NY	AG	03/22/1996	TERMED	08/05/1994

From 12/12/1994 To 04/04/1995 GOLDIS - PITTSBURG INSTITUTIONAL SERVICES, INC.(36754)

Reason for Termination Voluntary

Termination Comment Voluntary

Regulator	Registration Category	Status Date	Registration Status	Approval Date
AMEX	GS	04/10/1995	TERMED	01/09/1995
FINRA	GS	04/10/1995	TERMED	01/09/1995
NY	AG	04/10/1995	TERMED	01/09/1995

From 03/17/1994 To 06/10/1994 DUNHILL EQUITIES, INC.(21822)

Reason for Termination Voluntary

Termination Comment

Regulator	Registration Category	Status Date	Registration Status	Approval Date
FINRA	GS	06/15/1994	TERMED	04/07/1994
FL	AG	06/15/1994	TERMED	04/12/1994
MA	AG	06/15/1994	T_NOREG	
NY	AG	06/15/1994	T_NOREG	

From 02/01/1993 To 02/25/1994 COMPREHENSIVE CAPITAL CORP.(6215)

Reason for Termination Voluntary

Termination Comment Voluntary

---

Individual ██████████ - PLUNKETT, JOHN JOSEPH

---

**Administrative Information**

**Registrations with Previous Employer(s)**

Regulator	Registration Category	Status Date	Registration Status	Approval Date
FINRA	GS	03/01/1994	TERMED	08/25/1993
FL	AG	03/01/1994	TERMED	08/26/1993
NY	AG	09/13/1993	PURGED	

---

Individual ██████████ - PLUNKETT, JOHN JOSEPH

**Administrative Information**

**Professional Designations**

<<No Professional Designations found for this Individual.>>

**Employment History**

From	04/2006	To	Present	<b>Name</b>	SUCCESS TRADE SECURITIES, INC.
				<b>Location</b>	WASHINGTON, DC, USA
				<b>Position</b>	BRANCH MANAGER
				<b>Investment Related</b>	Yes
From	10/2005	To	Present	<b>Name</b>	EMERALD INVESTMENTS, INC.
				<b>Location</b>	NEW YORK, NY, USA
				<b>Position</b>	PRESIDENT & CCO
				<b>Investment Related</b>	Yes
From	02/2003	To	04/2006	<b>Name</b>	LEMPERT BROTHERS INTERNATIONAL USA, INC
				<b>Location</b>	NEW YORK, NY, USA
				<b>Position</b>	PRESIDENT & CCO
				<b>Investment Related</b>	Yes
From	09/2001	To	01/2003	<b>Name</b>	US SECURITIES&FUTURES CORP
				<b>Location</b>	NEW YORK, NY, USA
				<b>Position</b>	REGISTERED REPRESENTATIVE
				<b>Investment Related</b>	Yes
From	01/2001	To	08/2001	<b>Name</b>	WESTOR ONLINE INC
				<b>Location</b>	NEW YORK, NY, USA
				<b>Position</b>	REGISTERED REPRESENTATIVE
				<b>Investment Related</b>	Yes
From	09/1996	To	01/2001	<b>Name</b>	SEABOARD SECURITIES, INC.
				<b>Location</b>	NY, NY, USA
				<b>Position</b>	NOT PROVIDED
				<b>Investment Related</b>	Yes
From	04/1996	To	09/1996	<b>Name</b>	LT LAWRENCE & CO., INC.
				<b>Location</b>	NEW YORK, NY
				<b>Position</b>	OTHER - REP / CORP FIN
				<b>Investment Related</b>	Yes
From	03/1996	To	04/1996	<b>Name</b>	MONITOR INVESTMENT GROUP, INC.
				<b>Location</b>	NEW YORK, NY
				<b>Position</b>	NOT PROVIDED

Individual ████████ - PLUNKETT, JOHN JOSEPH

**Administrative Information**

**Employment History**

			<b>Investment Related</b>	Yes
From	06/1994	To	03/1996	
		<b>Name</b>	GOLDIS FINANCIAL GROUP, INC.	
		<b>Location</b>	GARDEN CITY, NY	
		<b>Position</b>	OTHER - REP/CORP FIN	
		<b>Investment Related</b>	Yes	
From	03/1994	To	06/1994	
		<b>Name</b>	DUNHILL EQUITIES, INC.	
		<b>Location</b>	GARDEN CITY, NY	
		<b>Position</b>	OTHER - REP/VP CORP FIN	
		<b>Investment Related</b>	Yes	
From	02/1993	To	02/1994	
		<b>Name</b>	COMPREHENSIVE CAPITAL CORP.	
		<b>Location</b>	PLAINVIEW, NY	
		<b>Position</b>	OTHER - REP/VP FIN	
		<b>Investment Related</b>	Yes	
From	10/1989	To	02/1993	
		<b>Name</b>	B.P. CONSOLIDATED EQUITIES, INC	
		<b>Location</b>	NEW YORK, NY	
		<b>Position</b>	OTHER - PRESIDENT/SELF EMP.	
		<b>Investment Related</b>	No	
From	06/1979	To	10/1989	
		<b>Name</b>	CITIBANK	
		<b>Location</b>	NEW YORK, NY	
		<b>Position</b>	VICE_PRESIDENT - VICE PRESIDENT	
		<b>Investment Related</b>	No	

**Office of Employment History**

From 10/2005 To 01/2010  
 Name EMERALD INVESTMENTS, INC.(139511)

Independent Contractor No

**Office of Employment Address**

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
300018			Yes	No	08/21/2006	01/04/2010	Located At
	<b>Address</b> 33 WHITEHALL ST, 17 FL. NEW YORK, NY 10004 UNITED STATES						
BD Main			Yes	No	10/04/2005	01/04/2010	Located At
	<b>Address</b> 224 WEST 29TH ST, 12TH FLOOR NEW YORK, NY 10001 USA						
From	04/2006	To	07/2006				

Individual ██████████ - PLUNKETT, JOHN JOSEPH

**Administrative Information**

**Office of Employment History**

Name SUCCESS TRADE SECURITIES, INC.(46027)

Independent Contractor Yes

**Office of Employment Address**

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office	
			No	No	04/17/2006	07/11/2006	Located At	
			Address 1270 AVENUE OF THE AMERICAS, SUITE 2703 NEW YORK, NY 10020					
292371			Yes	No	04/17/2006	07/11/2006	Supervised From	
			Address 1900 L. STREET NW, SUITE 301 WASHINGTON, DC 20036 UNITED STATES					
BD Main			Yes	No	04/17/2006	04/17/2006	Supervised From	
			Address 1900 L. STREET NW, SUITE 301 WASHINGTON, DC 20036 UNITED STATES					

From 08/2003 To 04/2006

Name LEMPERT BROTHERS INTERNATIONAL USA, INC.(128241)

Independent Contractor

**Office of Employment Address**

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office	
BD Main			Yes	No	08/13/2003	04/03/2006	Located At	
			Address 375 SOUTH END AVEUNE SUITE 28-L NEW YORK, NY 10280 USA					

From 08/2003 To 09/2003

Name LEMPERT BROTHERS INTERNATIONAL USA, INC.(128241)

Independent Contractor No

**Office of Employment Address**

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office	
			No	No	08/13/2003	09/19/2003		
			Address 667 MADISON AVE NY, NY 10021					

From 09/2001 To 04/2003

Name U.S. SECURITIES & FUTURES CORP.(36045)

Independent Contractor No

**Office of Employment Address**

Individual ████████ B - PLUNKETT, JOHN JOSEPH

**Administrative Information**

**Office of Employment History**

**Office of Employment Address**

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
			No	No	09/04/2001	04/28/2003	Located At

Address 100 WALL STREET 22ND FLR.  
 NEW YORK, NY 10005 USA

From 01/2001 To 06/2002

Name WESTOR ONLINE, INC.(103823)

Independent Contractor No

**Office of Employment Address**

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
			No	No	01/08/2001	06/27/2002	Located At

Address 130 WILLIAM STREET, SUITE 608  
 NEW YORK, NY 10038 USA

From 09/1996 To 01/2001

Name SEABOARD SECURITIES, INC.(755)

Independent Contractor No

**Office of Employment Address**

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
			No	No	09/10/1996	01/31/2001	Located At

Address 500 FIFTH AVENUE  
 NY, NY 10110

From 04/1996 To 09/1996

Name LT LAWRENCE & CO., INC.(31956)

Independent Contractor No

**Office of Employment Address**

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
			No	No	04/15/1996	09/06/1996	Located At

Address 3 NEW YORK PLAZA  
 NEW YORK, NY 10004

From 03/1996 To 04/1996

Name MONITOR INVESTMENT GROUP, INC.(31007)

Independent Contractor No

**Office of Employment Address**

Individual ██████████ - PLUNKETT, JOHN JOSEPH

**Administrative Information**

**Office of Employment History**

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
		452	No	No	03/20/1996	04/15/1996	Located At
Address 20 EXCHANGE PL NEW YORK, NY 10005							

From 06/1994 To 03/1996

Name GOLDIS FINANCIAL GROUP, INC.(16444)

Independent Contractor No

**Office of Employment Address**

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
			No	No	06/13/1994	03/15/1996	Located At
Address 100 QUENTIN ROOSEVELT BLVD GARDEN CITY, NY 11530							

From 12/1994 To 04/1995

Name GOLDIS - PITTSBURG INSTITUTIONAL SERVICES, INC.(36754)

Independent Contractor No

**Office of Employment Address**

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
			No	No	12/12/1994	04/04/1995	Located At
Address 100 QUENTIN ROOSEVELT BLVD.-SUITE 404 GARDEN CITY, NY 11530							

From 03/1994 To 06/1994

Name DUNHILL EQUITIES, INC.(21822)

Independent Contractor No

**Office of Employment Address**

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
			No	No	03/17/1994	06/10/1994	Located At
Address 1415 KELLUM PLACE -STE 203 GARDEN CITY, NY 11530							

From 02/1993 To 02/1994

Name COMPREHENSIVE CAPITAL CORP.(6215)

Independent Contractor No

**Office of Employment Address**

Individual ████████ - PLUNKETT, JOHN JOSEPH

**Administrative Information**

**Office of Employment History**

**Office of Employment Address**

CRD Branch#	NYSE Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
		77B	No	No	02/01/1993	02/25/1994	Located At
Address ONE FAIRCHILD COURT PLAINVIEW, NY 11803							

**Other Business**

<<No Other Business found for this Individual.>>

**Examination Information**

Exam	Status	Status Date	Exam Date	Grade	Score	Window Dates
S4	EXPIRED	01/01/2006				08/30/2005-12/28/2005
S4	EXPIRED	02/10/2000				10/13/1999-02/10/2000
S7	OFFICIAL_RESULT	08/24/1993	08/24/1993	PASSED	82	-
S7	OFFICIAL_RESULT	05/05/1993	05/05/1993	FAILED	68	-
S24	OFFICIAL_RESULT	06/24/1999	06/24/1999	PASSED	84	-
S24	EXPIRED	10/21/1998			0	-
S24	EXPIRED	03/16/1998			0	-
S63	OFFICIAL_RESULT	08/04/1994	08/04/1994	PASSED	80	-
S63	WITHDRAW	06/15/1994				-
S63	EXPIRED	12/23/1993			0	-
S63	EXPIRED	05/11/1993			0	-

**CE Regulatory Element Status**

Current CE Status 2YEARTERMED

CE Base Date

**Current CE**

<<No Current CE found for this Individual.>>

**Next CE**

<<No Next CE found for this Individual.>>

**CE Directed Sequence History**

Source	Type of Penalty	Date of Action	Effective Date	Appeal Status	Decision Date
FINRA	SEQUENCE	01/04/2011		PENDING - 02/22/2011	
FINRA	SEQUENCE	05/06/2010	06/20/2010	-	
FINRA	SEQUENCE	05/01/2000	06/15/2000	-	

**Inactive CE History Dates**

From 10/18/2010 To 02/18/2011  
 From 02/22/2011 To 01/05/2012

**Previous CE Requirement Status**

Requirement Type	Status	Previous Window	Session	Status Date	Result
Anniversary		08/25/1995-12/22/1995	101	12/13/1995	12/13/1995 - CMPLT



Individual ██████████ - PLUNKETT, JOHN JOSEPH

**Administrative Information**

**Previous CE Requirement Status**

Requirement Type	Status	Previous Window	Session	Status Date	Result
Anniversary		08/25/1998-01/21/1999	101	12/10/1998	12/10/1998 -
Anniversary		08/25/1998-01/21/1999	101	12/19/1998	12/19/1998 - CMPLT
Anniversary	SATISFIED	08/25/1998-01/21/1999	101	12/19/1998	12/19/1998 -
Directed Sequence	SATISFIED	06/15/2000-10/12/2000	201	10/11/2000	10/11/2000 - CMPLT
Directed Sequence	REQUIRED	06/15/2000-10/12/2000	201	06/15/2000	06/15/2000 -
Anniversary	REQUIRED	06/15/2002-10/12/2002	201	06/17/2002	06/17/2002 -
Anniversary	SATISFIED	06/15/2002-10/12/2002	201	09/20/2002	09/20/2002 - CMPLT
Anniversary	SATISFIED	06/15/2008-10/12/2008	201	10/02/2008	10/02/2008 - CMPLT
Directed Sequence	REQUIRED	06/20/2010-10/17/2010	101	06/21/2010	06/21/2010 -
Directed Sequence	CEINACTIVE	06/20/2010-10/17/2010	101	10/18/2010	10/18/2010 -
Directed Sequence	REQUIRED	06/20/2010-10/17/2010	101	02/18/2011	02/18/2011 - SPNDD
Directed Sequence	CEINACTIVE	06/20/2010-10/17/2010	101	02/22/2011	02/22/2011 -
Anniversary	REQUIRED	06/15/2005-10/12/2005	201	06/15/2005	06/15/2005 -
Anniversary	SATISFIED	06/15/2005-10/12/2005	201	10/11/2005	10/11/2005 - CMPLT
Anniversary	REQUIRED	06/15/2008-10/12/2008	201	06/16/2008	06/16/2008 -

**Filing History**

Filing Date	Form Type	Filing type	Source
03/29/2012	U6	CRD Individual	FINRA
03/26/2012	U6	CRD Individual	FINRA
02/21/2012	U6	CRD Individual	FINRA
07/19/2011	U6	CRD Individual	FINRA
02/18/2011	U6	CRD Individual	FINRA
01/05/2011	U6	CRD Individual	FINRA
05/10/2010	U6	CRD Individual	FINRA
01/05/2010	U5	Amendment	EMERALD INVESTMENTS, INC. (139511)
01/04/2010	U5	Full	EMERALD INVESTMENTS, INC. (139511)
12/03/2009	U6	CRD Individual	FINRA
12/02/2009	U6	CRD Individual	FINRA
10/13/2009	U4	Amendment	EMERALD INVESTMENTS, INC. (139511)
03/19/2009	U4	Amendment	EMERALD INVESTMENTS, INC. (139511)
02/28/2009	U4	Amendment	EMERALD INVESTMENTS, INC. (139511)
02/28/2009	U4	Amendment	EMERALD INVESTMENTS, INC. (139511)
02/28/2009	U4	Amendment	EMERALD INVESTMENTS, INC. (139511)
02/27/2009	U4	Admin	CO
02/17/2009	U4	Admin	FL
10/15/2007	BR	Amendment	EMERALD INVESTMENTS, INC. (139511)
08/21/2006	BR	Initial	EMERALD INVESTMENTS, INC. (139511)

Individual ████████ B - PLUNKETT, JOHN JOSEPH

## Administrative Information

## Filing History

Filing Date	Form Type	Filing type	Source
07/17/2006	U4	Amendment	EMERALD INVESTMENTS, INC. (139511)
07/12/2006	U5	Full	SUCCESS TRADE SECURITIES, INC. (46027)
07/07/2006	U4	Amendment	EMERALD INVESTMENTS, INC. (139511)
07/03/2006	U4	Amendment	SUCCESS TRADE SECURITIES, INC. (46027)
07/03/2006	BR	Initial	SUCCESS TRADE SECURITIES, INC. (46027)
06/21/2006	U4	Amendment	SUCCESS TRADE SECURITIES, INC. (46027)
06/14/2006	U4	Amendment	EMERALD INVESTMENTS, INC. (139511)
05/26/2006	U5	Amendment	LEMPERT BROTHERS INTERNATIONAL USA, INC. (128241)
04/17/2006	U4	Dual	SUCCESS TRADE SECURITIES, INC. (46027)
04/03/2006	U5	Full	LEMPERT BROTHERS INTERNATIONAL USA, INC. (128241)
02/22/2006	U5	Partial	LEMPERT BROTHERS INTERNATIONAL USA, INC. (128241)
02/14/2006	U4	Dual	EMERALD INVESTMENTS, INC. (139511)
10/04/2005	U4	Amendment	LEMPERT BROTHERS INTERNATIONAL USA, INC. (128241)
09/13/2005	U4	Amendment	LEMPERT BROTHERS INTERNATIONAL USA, INC. (128241)
09/13/2005	U4	Amendment	LEMPERT BROTHERS INTERNATIONAL USA, INC. (128241)
08/29/2005	U4	Amendment	LEMPERT BROTHERS INTERNATIONAL USA, INC. (128241)
08/01/2005	U5	Admin	HI
04/22/2005	U4	Amendment	LEMPERT BROTHERS INTERNATIONAL USA, INC. (128241)
03/15/2005	U4	Amendment	LEMPERT BROTHERS INTERNATIONAL USA, INC. (128241)
09/27/2004	U4	Amendment	LEMPERT BROTHERS INTERNATIONAL USA, INC. (128241)
09/19/2003	U4	Initial	LEMPERT BROTHERS INTERNATIONAL USA, INC. (128241)
08/14/2003	NRF	Initial	LEMPERT BROTHERS INTERNATIONAL USA, INC. (128241)
06/18/2003	U6	CRD Individual	FINRA
04/28/2003	U5	Full	U.S. SECURITIES & FUTURES CORP. (36045)
06/27/2002	U5	Full	WESTOR CAPITAL GROUP, INC. (103823)
05/21/2002	U4	Amendment	U.S. SECURITIES & FUTURES CORP. (36045)
01/16/2002	U4	Amendment	U.S. SECURITIES & FUTURES CORP. (36045)
10/31/2001	U5	Partial	WESTOR CAPITAL GROUP, INC. (103823)
10/16/2001	U4	Amendment	U.S. SECURITIES & FUTURES CORP. (36045)
09/04/2001	U4	Relicense All	U.S. SECURITIES & FUTURES CORP. (36045)
04/23/2001	U5	Partial	WESTOR CAPITAL GROUP, INC. (103823)
02/05/2001	U4	Amendment	WESTOR CAPITAL GROUP, INC. (103823)

Individual [REDACTED] - PLUNKETT, JOHN JOSEPH

## Administrative Information

## Filing History

Filing Date	Form Type	Filing type	Source
02/05/2001	U5	Full	SEABOARD SECURITIES, INC. (755)
01/31/2001	U4	Amendment	WESTOR CAPITAL GROUP, INC. (103823)
01/09/2001	U4	Amendment	WESTOR CAPITAL GROUP, INC. (103823)
01/08/2001	U4	Relicense All	WESTOR CAPITAL GROUP, INC. (103823)
12/20/2000	U5	Partial	SEABOARD SECURITIES, INC. (755)
07/06/2000	U4	Amendment	SEABOARD SECURITIES, INC. (755)
07/03/2000	U4	Amendment	SEABOARD SECURITIES, INC. (755)
05/30/2000	U4	Amendment	SEABOARD SECURITIES, INC. (755)
05/24/2000	U4	Amendment	SEABOARD SECURITIES, INC. (755)
05/11/2000	U6	CRD Individual	FINRA
04/20/2000	U4	Amendment	SEABOARD SECURITIES, INC. (755)
11/16/1999	U4	Amendment	SEABOARD SECURITIES, INC. (755)
10/13/1999	U4	Amendment	SEABOARD SECURITIES, INC. (755)
07/05/1999	U5	Conversion	SEABOARD SECURITIES, INC. (755)
07/05/1999	U4	Conversion	SEABOARD SECURITIES, INC. (755)
07/05/1999	U5	Conversion	LT LAWRENCE & CO., INC. (31956)
07/05/1999	U4	Conversion	LT LAWRENCE & CO., INC. (31956)
07/05/1999	U5	Conversion	MONITOR INVESTMENT GROUP, INC. (31007)
07/05/1999	U4	Conversion	MONITOR INVESTMENT GROUP, INC. (31007)
07/05/1999	U5	Conversion	GOLDIS FINANCIAL GROUP, INC. (16444)
07/05/1999	U4	Conversion	GOLDIS FINANCIAL GROUP, INC. (16444)
07/05/1999	U5	Conversion	PITTSBURG INSTITUTIONAL INC. (36754)
07/05/1999	U4	Conversion	PITTSBURG INSTITUTIONAL INC. (36754)
07/05/1999	U5	Conversion	DUNHILL EQUITIES, INC. (21822)
07/05/1999	U4	Conversion	DUNHILL EQUITIES, INC. (21822)
07/05/1999	U5	Conversion	COMPREHENSIVE CAPITAL CORPORATION (6215)
07/05/1999	U4	Conversion	COMPREHENSIVE CAPITAL CORPORATION (6215)

Individual ████████ - PLUNKETT, JOHN JOSEPH

Reportable Events

Number of Reportable Events

Bankruptcy	0
Bond	0
Civil Judicial	0
Criminal	0
Customer Complaint	0
Internal Review	1
Investigation	0
Judgement/Lien	0
Regulatory Action	3
Termination	0

Occurrence#	779563	Disclosure Type	Regulatory Action
FINRA Public Disclosable	Yes	Reportable	Yes
Material Difference in Disclosure	No		

Filing ID	12399605	Form (Form Version)	U4 (06/2003)
Filing Date	09/19/2003		
Source	128241 - LEMPERT BROTHERS INTERNATIONAL USA, INC.		
Disclosure Questions Answered	14E(4),14E(2)		

Regulatory Action DRP DRP Version 10/2005

1. Regulatory action initiated by: NASD REGULATION, INC.
2. Principal sanction: Suspension  
Other sanction(s): CENSURE AND \$7500 FINE
3. Date Initiated/Explanation: 05/01/2000
4. Docket/Case#: C9B00009
5. Employing firm: SEABOARD SECURITIES, INC.
6. Principal product type: No Product  
Other product type(s):
7. Allegation(s): AS A RESULT OF A ROUTINE NASD REGULATION, INC. ("NASD") EXAMINATION IT WAS ALLEGED THAT JOHN PLUNKETT ACTED AS A GENERAL SECURITIES PRINCIPAL OF SEABOARD FROM JANUARY 1998 THROUGH JUNE 1999, WHILE FAILING TO PROPERLY QUALIFY OR REGISTER IN SUCH CAPACITY. IT WAS NOT ALLEGED THAT CUSTOMERS WERE EITHER MISLED OR INJURED AS A RESULT.
8. Current status: Final
9. Appealed to:
10. Resolution: Acceptance, Waiver & Consent(AWC)
11. Resolution date/Explanation: 05/01/2000

Individual ████████ - PLUNKETT, JOHN JOSEPH

Reportable Events

Regulatory Action DRP

DRP Version 10/2005

12. A. Resolution detail: Monetary/Fine Sanction (Amount: \$7,500.00), Suspension Sanction, Censure Sanction
- B. Other sanction(s) ordered:
- C. Sanction detail: WITHOUT ADMITTING OR DENYING THE ALLEGATIONS, JOHN PLUNKETT CONSENTED TO A SETTLEMENT IN WHICH HE RECEIVED A CENSURE, A FINE OF \$7500 AND A SUSPENSION FROM ASSOCIATION WITH ANY NASD MEMBER FIRM IN ANY PRINCIPAL CAPACITY FOR 15 DAYS. SUSPENSION IS SECHDULED TO BEGIN JUNE 5, 2000.
13. Comment: ON MAY 1, 2000, A SETTLEMENT WA APPROVED BETWEEN JOHN PLUNKETT AND NASD REGULATION, INC. ("NASD") WHEREIN, WITHOUT ADMITTING OR DENYING THE ALLEGATIONS, JOHN PLUNKETT AGREED TO A SETTLEMENT IN WHICH HE RECEIVED A CENSURE, FINE OF \$7,500 AND A SUSPENSION FROM ASSOCIATION WITH ANY NASD MEMBER IN ANY PRINCIPAL CAPACITY FOR 15 DAYS.

Filing ID 30544266  
Filing Date 07/19/2011  
Source FINRA  
Disclosure Questions Answered

Form (Form Version) U6 (05/2009)

Regulatory Action DRP

DRP Version 05/2009

1. Regulatory Action initiated by:
- A. Initiated by: Self Regulatory Organization
- B. Full name of regulator: NATIONAL ASSOCIATION OF SECURITIES DEALERS
2. Sanction(s) sought:
3. Date initiated/Explanation: 05/01/2000
4. Docket/Case#: C9B000009
5. Employing firm: SEABOARD SECURITIES, INC.
6. Product type(s): No Product
7. Allegation(s): NASD RULES 2110, 1021 AND 1022 - PLUNKETT ACTED AS AS A GENERAL SECURITIES PRINCIPAL OF THE FIRM WHILE FAILING TO PROPERLY QUALIFY AND/OR REGISTER IN SUCH CAPACITY.
8. Current status: Final
9. Limitations or restrictions while pending:
10. If on appeal:



Individual ████████ - PLUNKETT, JOHN JOSEPH

**Reportable Events**

Filing Date 05/26/2006  
Source 128241 - LEMPERT BROTHERS INTERNATIONAL USA, INC.  
Disclosure Questions Answered 7B

**Internal Review DRP**

**DRP Version** 10/2005

**Part I**

1. Notice received from: LEMPERT BROTHERS INTERNATIONAL USA, INC.
2. Date initiated/Explanation: 04/03/2006
3. Details: ON 04/03/06, REMAINING EMPLOYEES OF LEMPERT ENTERED THE OFFICE TO FIND IT EMPTY. ALL BOOKS, RECORDS, CHECK BOOKS, BACKUP TAPES WITH PROPRIETARY RECORDS GONE, COMPUTER SERVER ERASED. SOME OFFICE EQUIPEMENT AND SUPPLIES TAKEN. POLICE WERE CALLED AND INFORMED EMPLOYEES THAT IT WAS A CIVIL MATTER, NOT CRIMINAL. NASD WAS INFORMED IMMEDIATELY AND INVESTIGATIONS ARE STILL UNDERWAY. ESTIMATES OF DAMAGES IN EXCESS OF \$100,000.
4. Date concluded/ Explanation: STILL ONGOING, NEW INFORMATION COMES UP EVERYDAY WHILE RECORDS ARE STILL BE RECONSTRUCTED.

**Part II**

Summary:

<b>Occurrence#</b>	1479797	<b>Disclosure Type</b>	Regulatory Action
<b>FINRA Public Disclosable</b>	Yes	<b>Reportable</b>	Yes
<b>Material Difference in Disclosure</b>	No		
<b>Filing ID</b>	26687588	<b>Form (Form Version)</b>	U4 (05/2009)
<b>Filing Date</b>	10/13/2009		
<b>Source</b>	139511 - EMERALD INVESTMENTS, INC.		
<b>Disclosure Questions Answered</b>	14G(1)		

**Regulatory Action DRP**

**DRP Version** 05/2009

1. Regulatory Action initiated by:
  - A. Initiated by: Self Regulatory Organization
  - B. Full name of regulator: FINRA
2. Sanction(s) sought: Other: NOT STIPULATED
3. Date initiated/Explanation: 05/08/2009
4. Docket/Case#: 2006-005-2598
5. Employing firm: LEMPERT BROTHERS INTERNATIONAL USA
6. Product type(s): No Product
7. Allegation(s): PRINCIPALS OF BD DISCOVERED MASSIVE FRAUD VIA A PONZI SCHEME

---

Individual 2321368 - PLUNKETT, JOHN JOSEPH

---

Reportable Events

Regulatory Action **DRP**

**DRP Version** 05/2009

IN EUROPE BY THE FORIEGN OWNERS OF THE BD. THEY WERE PREPARING TRANSFER OF A/C'S WITH LOSSES OF HUNDREDS OF MILLIONS TO US BD & HAD ASSURED A/C'S IN WRITING THAT US BD WOULD MAKE THEM WHOLE. THE OWNERS REFUSED TO RESPOND TO OUR DISCOVERY. NOT WANTING ANYTHING TO DO WITH THIS THE REGISTERED PERSONNEL RESIGNED AT ONCE,AND IMMEDIATELY INFORMED THE REGULATORS. THE CRIMINAL PLOT TO MOVE THESE A/C'S TO THE BD & THEN WASH THEIR HANDS OF THE FRAUD AND HAVE THE A/C'S SUBMIT MASSIVE CLAIMS AGAINST SIPC WAS THWARTED.

8. Current status: Pending

9. Limitations or restrictions while pending: No

10. If on appeal:

A. Appealed to:

B. Date

appealed/Explanation:

C. Limitations or restrictions while on appeal:

11. Resolution details:

A. Resolution detail:

B. Resolution date/Explanation:

12. Final order:

13. Sanction detail:

A. Sanctions ordered:

B. Other sanctions:

C. Sanction type details:

D. Requalification type details:

E. Monetary related sanction type details:

14. Comment: WE WERE FORCED TO RESIGN AND LEAVE IMMEDIATELY DUE TO THE CRIMINAL ACTS & PLANNED ACTS OF THE OWNERS. WE HAD AN OBLIGATION TO PROTECT OUR CLIENTS AND OUR GOOD NAME AND THE URGENCY OF OUR LEAVING NECESSITATED OUR TEMPORARY REMOVAL OF RECORDS TO COPY THEN RETURN ORIGIANLS.WE INFORMED SEC, NASD,& CLEARING FIRM IMMEDIATELY. SEC STAFF STATED WE DID THE RIGHT THING. NASD STAFF TOLD US LEMPERT HAD ATTEMPTED TO FALSIFY INFORMATION ALREADY. OUR COUNSEL & US HAVE RECENTLY BEEN TOLD THE OWNERS HAVE BEEN JAILED IN



Individual ████████ - PLUNKETT, JOHN JOSEPH

Reportable Events

Regulatory Action DRP

DRP Version 05/2009

EUROPE.WE STOPPED THE CRIMMINALS BY ADHERING TO INVESTOR PROTECTION AND MARKET INTEGRITY.

Filing ID 32174150  
Filing Date 03/29/2012  
Source FINRA  
Disclosure Questions Answered

Form (Form Version) U6 (05/2009)

Regulatory Action DRP

DRP Version 05/2009

1. Regulatory Action initiated by:

- A. Initiated by: Self Regulatory Organization
- B. Full name of regulator: FINRA

2. Sanction(s) sought: Other: N/A

3. Date initiated/Explanation: 12/01/2009

4. Docket/Case#: 2006005259801

5. Employing firm: LEMPert BROTHERS INTERNATIONAL USA, INC.

6. Product type(s): No Product

7. Allegation(s): FINRA RULES 2010, 8210, NASD RULE 2110: WITHOUT AUTHORIZATION FROM THE OWNERS OF HIS FORMER MEMBER FIRM, PLUNKETT REMOVED, AND DIRECTED OTHERS TO REMOVE, ALMOST ALL OF THE FIRM'S DOCUMENTS AND SUPPLIES, INCLUDING BOOKS AND RECORDS, FROM THE FIRM'S OFFICES. PLUNKETT ALSO ERASED, AND/OR DIRECTED OTHERS, TO ERASE THE FIRM'S COMPUTERS AND COMPUTER SERVERS. IN ADDITION, PLUNKETT FAILED TO RESPOND TO FINRA REQUESTS FOR INFORMATION.

8. Current status: On Appeal

9. Limitations or restrictions while pending: No

10. If on appeal:

- A. Appealed to: SEC
- B. Date appealed/Explanation: 03/20/2012

- C. Limitations or restrictions while on appeal: Yes  
THE BAR, EFFECTIVE FEBRUARY 21, 2012, WAS NOT STAYED AND THEREFORE IS IN EFFECT.

11. Resolution details:

- A. Resolution detail: Other: ON APPEAL



Individual ██████████ - PLUNKETT, JOHN JOSEPH

## Reportable Events

## Regulatory Action DRP

DRP Version 05/2009

THE FINDINGS AND MODIFIED THE SANCTIONS IMPOSED BY THE HEARING PANEL. PLUNKETT IS BARRED FROM ASSOCIATION WITH ANY FINRA MEMBER IN ANY CAPACITY FOR REMOVING HIS FIRM'S BOOKS AND RECORDS AND ERASING THE FIRM'S ELECTRONIC FILES AND COMPUTER SERVERS, IN VIOLATION OF NASD RULE 2110; AND FOR FAILING TO RESPOND TO FINRA REQUESTS FOR INFORMATION AND DOCUMENTS, IN VIOLATION OF FINRA RULES 2010 AND 8210. THE NAC AFFIRMS THE HEARING PANEL'S ORDER THAT PLUNKETT PAY COSTS OF \$4,004.85. THE BAR IS EFFECTIVE FEBRUARY 21, 2012. ON MARCH 20, 2012, PLUNKETT FILED AN APPLICATION FOR REVIEW WITH THE SECURITIES AND EXCHANGE COMMISSION (SEC).

<b>Occurrence#</b>	1508912	<b>Disclosure Type</b>	Regulatory Action
<b>FINRA Public Disclosable</b>	Yes	<b>Reportable</b>	Yes
<b>Material Difference in Disclosure</b>	No		
<b>Filing ID</b>	28056388	<b>Form (Form Version)</b>	U6 (05/2009)
<b>Filing Date</b>	05/10/2010		
<b>Source</b>	FINRA		
<b>Disclosure Questions Answered</b>			

## Regulatory Action DRP

DRP Version 05/2009

1. Regulatory Action initiated by:
  - A. Initiated by: Self Regulatory Organization
  - B. Full name of regulator: FINRA
2. Sanction(s) sought: Suspension
3. Date initiated/Explanation: 01/28/2010
4. Docket/Case#: 06-03216
5. Employing firm: N/A
6. Product type(s): No Product
7. Allegation(s): RESPONDENT FAILED TO COMPLY WITH AN ARBITRATION AWARD OR SETTLEMENT AGREEMENT OR TO SATISFACTORILY RESPOND TO A FINRA REQUEST TO PROVIDE INFORMATION CONCERNING THE STATUS OF COMPLIANCE.
8. Current status: Final
9. Limitations or restrictions while pending:
10. If on appeal:
  - A. Appealed to:
  - B. Date appealed/Explanation:

Individual ██████████ B - PLUNKETT, JOHN JOSEPH

Reportable Events

Regulatory Action **DRP**      **DRP Version** 05/2009

C. Limitations or restrictions while on appeal:

11. Resolution details:

A. Resolution detail:      Other: LETTER

B. Resolution date/Explanation:      05/06/2010

12. Final order:      No

13. Sanction detail:

A. Sanctions ordered:      Suspension

B. Other sanctions:

C. Willful violation or failure to supervise:      No

i. Willfully violated:

ii. Willfully aided, abetted, counseled, commanded, induced, or procured:

iii. Failed reasonably to supervise another person:

D. Sanction type details:

Sanction type:      Suspension

Registration capacities affected:      ALL CAPACITIES

Duration (length of time)/Explanation:      N/A

Start date/Explanation:      05/06/2010

End date/Explanation:

E. Requalification type details:

F. Monetary related sanction type details:

14. Comment:      PURSUANT TO ARTICLE VI, SECTION 3 OF FINRA BY-LAWS, AND FINRA RULE 9554, RESPONDENT'S FINRA REGISTRATION IS SUSPENDED MAY 6, 2010 FOR FAILURE TO COMPLY WITH AN ARBITRATION AWARD OR SETTLEMENT AGREEMENT OR TO SATISFACTORILY RESPOND TO FINRA REQUESTS TO PROVIDE INFORMATION CONCERNING THE STATUS OF COMPLIANCE.

---

Individual [REDACTED] - PLUNKETT, JOHN JOSEPH

Reportable Events

Regulatory Action DRP

DRP Version 05/2009

ON FEBRUARY 17, 2010, RESPONDENT FILED A REQUEST FOR HEARING, AND FINRA ISSUED A SCHEDULING ORDER ON FEBRUARY 23, 2010, DIRECTING THE RESPONDENT TO FILE A STATEMENT OF DEFENSE AND TO DELIVER A FINANCIAL DISCLOSURE STATEMENT. RESPONDENT FILED A STATEMENT OF DEFENSE ON MARCH 1, 2010, ASSERTING A BONA FIDE INABILITY TO PAY THE AMOUNT REQUIRED BY THE SETTLEMENT AGREEMENT. ON MARCH 15, 2010, FINRA PROVIDE RESPONDENT WITH ITS FINANCIAL DISCLOSURE STATEMENT AND INFORMED HIM THAT FAILURE TO PROVIDE THE REQUIRED FINANCIAL INFORMATION MAY RESULT IN A FINDING THAT HE HAS ABANDONED HIS DEFENSE AND COULD RESULT IN A SUMMARY SUSPENSION OF HIS ASSOCIATION WITH ANY FINRA MEMBER FIRM. AT THE REQUEST OF THE PARTIES, ON MARCH 26, 2010, FINRA ISSUED AN ORDER GRANTING MOTION TO CONTINUE PRE-HEARING SUBMISSIONS DATE AND HEARING DATE REITERATING TO THE RESPONDENT THAT HE MUST EVIDENCE HIS INABILITY TO PAY DEFENSE BY SUBMITTING THE FINANCIAL INFORMATION REQUESTED FINRA. ON MAY 5, 2010, FINRA FILED A MOTION FOR ORDER PURSUANT TO RULE 9559(M) DEEMING NOTICE OF SUSPENSION TO BE FINAL FINRA ACTION. THE RESPONDENT FAILED TO PROVIDE ANY FINANCIAL INFORMATION AS REQUIRED TO SUPPORT HIS BONA FIDE INABILITY TO PAY AND OR THAT THE ARBITRATION CLAIM HAD BEEN SATISFIED. RESPONDENT HAS CEASED COMMUNICATION WITH FINRA. THUS, OHO MOTION IS GRANTED, THE INSTANT PROCEEDING IS HEREBY DISMISSED AND THE SUSPENSION NOTICE DATED JANUARY 28, 2010, IS DEEMED TO BE FINAL FINRA ACTION EFFECTIVE MAY 6, 2010.

---

Regulator Archive and Z Records

<<No Regulator Archive and Z Records found for this Individual.>>

---

# **APPENDIX B**



1 of 2 DOCUMENTS

AWARD  
NASD REGULATION, INC.

In the Matter of the Arbitration Between: Emerald Investments, Inc., John Plunkett, and  
Brian Coventry, Claimants

v.

Lempert Holding EST, George Milter, Eduard Orlov, Roman Orlov, Mitchell Borcherd-  
ing, and Lempert Brothers International USA, Inc. Respondents

v.

John Ince, Ross Rivard, Ray Thomas, and Wills Henriquez, Third Party Respondents

CASE NO. 06-03216

*2007 NASD Arb. LEXIS 531*

May 16, 2007

**COUNSEL:**

[\*1] Claimants Emerald Investments, Inc. ("Emerald"), John Plunkett ("Plunkett"), and Brian Coventry ("Coventry"), hereinafter collectively referred to as "Claimants": Dan A. Druz, Esq., Manasquan, NJ.

Respondent Lempert Holding EST hereinafter referred to as "Lempert Holding" did not enter an appearance in this matter.

Respondent George Milter hereinafter referred to as "Milter" did not enter an appearance in this matter.

Respondent Eduard Orlov hereinafter referred to as "E. Orlov" did not enter an appearance in this matter.

Respondent Roman Orlov hereinafter referred to as "R. Orlov" did not enter an appearance in this matter.

Respondent Mitchell Borcherding hereinafter referred to as "Borcherding": Amy Bard, Esq., Amy Bard Attorney-at-Law, Glen Ridge, NJ.

Respondent Lempert Brothers International USA, Inc. hereinafter referred to as "Lempert Brothers": Alan S. Brodher-son, Esq., New York, NY. Previously represented by Marlen Kruzchkov, Esq., Law Offices of Marlen Kruzchkov, P.L.L.C., New York, NY.

Third Party Respondents John Ince ("Ince"), Ross Rivard ("Rivard"), Ray Thomas ("Thomas"), and Wills Henriquez ("Henriquez") hereinafter referred to as "Third Party Respondents": [\*2] Dan A. Druz, Esq., Manasquan, NJ.

**CASE-INFORMATION:**

Statement of Claim filed on or about: July 10, 2006.

Claimants' Answer to Counterclaims filed on or about: January 19, 2007.

Emerald signed the Uniform Submission Agreement: July 10, 2006.

Plunkett signed the Uniform Submission Agreement: July 10, 2006.

Coventry signed the Uniform Submission Agreement: July 10, 2006.

Respondent Lempert Holding EST did not submit a Statement of Answer or Uniform Submission Agreement.

Respondent Milter did not submit a Statement of Answer or Uniform Submission Agreement.

Respondent E. Orlov did not submit a Statement of Answer or Uniform Submission Agreement.

Respondent R. Orlov did not submit a Statement of Answer or Uniform Submission Agreement.

Statement of Answer and Counterclaim filed by Respondent Borcharding on or about: August 17, 2006.  
Respondent Borcharding signed the Uniform Submission Agreement: September 12, 2006.

Statement of Answer, Counterclaim and Third Party Claim filed by Respondent Lempert Brothers on or about: August 17, 2006.  
Lempert Brothers signed the Uniform Submission Agreement: August 14, 2006.

Third Party Respondents' Answer to Respondent Lempert Brothers Third Party Claim filed [\*3] on or about: January 19, 2007.

Ince did not submit a Uniform Submission Agreement.

Rivard did not submit a Uniform Submission Agreement.

Thomas did not submit a Uniform Submission Agreement.

Henriquez did not submit a Uniform Submission Agreement.

**CASE-SUMMARY:**

Claimants asserted the following causes of action: conversion of salaries and commissions due, conversion, defamation, and interference with prospective economic advantage.

Unless specifically admitted in his Answer, Respondent Borcharding denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in its Answer, Respondent Lempert Brothers denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In his Counterclaim, Respondent Borcharding asserted the following cause of action: conversion.

In its Counterclaim and Third Party Claim, Respondent Lempert Brothers asserted the following causes of action: theft of personal and intellectual property, breach of fiduciary duty, unfair competition, tortious interference with existing and prospective contractual relations, and raiding.

Unless specifically admitted in their Response to [\*4] the Counterclaims and Third Party Claims, Claimants and Third Party Respondents denied the allegations made in the Counterclaims and Third Party Claims.

**RELIEF-REQUESTED:**

Claimants requested compensatory damages in an amount of approximately \$ 300,000.00, the exact amount to be proven at trial, a permanent injunction restraining Respondents from continuing to mark Claimants' U5s and other regulatory records with fraudulent/defamatory/untruthful statements, expungement of all improper markings to Claimants' regulatory records, attorneys' fees and costs, punitive damages, and such other and further relief as the Panel deems appropriate.

Respondent Borcharding requested the dismissal of the Statement of Claim in its entirety.

In his Counterclaim, Respondent Borcharding requested the return of proprietary quantitative trading model tapes and that all copies of the tapes be destroyed, that all damages incurred by Claimants' conversion of property be assessed against Claimants, that costs and expenses be assessed against Claimants and such other relief as the arbitration panel deems appropriate.



Respondent Lempert Brothers requested the dismissal of the Statement of Claim in its entirety.

In its Counterclaim [\*5] and Third Party Claim, Respondent Lempert Brothers requested unspecified compensatory damages, pre- and post-award interest, fees and expenses including reasonable attorneys' fees, punitive damages and that the Panel refers the wrongful conduct of Claimants to the appropriate regulatory authorities, and such other and further relief as the Panel deems appropriate.

**OTHER-ISSUES:**

By consent of the parties, a non-public panel of arbitrators was appointed to this case.

Respondent Lempert Holding EST is not a member of the NASD and did not voluntarily submit to the jurisdiction of the NASD.

Respondents Milter, E. Orlov, and R. Orlov, and Third Party Respondents Ince, Rivard, Thomas, and Henriquez did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

At the pre-hearing conference held on September 26, 2006, Claimants advised the Panel that Claimants withdrew their claim against Lempert Holdings EST.

By Order dated September 27, 2006, the Panel denied Claimants' Motion to Join Respondents Milter, E. Orlov and R. Orlov as parties [\*6] to this action and therefore, they were removed as parties.

During the hearing Respondent Borcharding withdrew his counterclaim for conversion.

Prior to the hearing, Respondent Lempert Brothers withdrew its Third Party Claims against Third Party Respondents Ince and Rivard.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

**AWARD:**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims against Respondents Lempert Brothers and Borcharding are denied in their entirety with prejudice.
2. Claimants Emerald, Plunkett, and Coventry are jointly and severally liable for and shall pay to Respondent Lempert Brothers compensatory damages in the amount of \$ 92,000.00.
3. Claimant Emerald is liable for and shall pay to Respondent Lempert Brothers compensatory damages in the amount of \$ 30,000.00.
4. Claimant Plunkett is liable for and shall pay to Respondent Lempert Brothers compensatory damages in the amount [\*7] of \$ 62,694.50.
5. Claimant Coventry is liable for and shall pay to Respondent Lempert Brothers compensatory damages in the amount of \$ 57,895.60.
6. Claimants are jointly and severally liable for and shall pay to Respondent Lempert Brothers attorneys' fees and disbursements in the amount of \$ 117,614.69 pursuant to Spector vs. Torenberg.
7. Claimants are jointly and severally liable for and shall pay to Respondent Lempert Brothers punitive damages in the amount of \$ 121,295.05 pursuant to Mastrobuono vs. Shearson, Giblin vs. Murphy, and Buchwald vs. Rich.

8. Respondent Lempert Brothers' claims against Third Party Respondents Thomas and Henriquez are denied in their entirety with prejudice.
9. Claimants are jointly and severally liable for and shall pay to Respondent Borcharding attorneys' fees and disbursements in the amount of \$ 35,451.16 pursuant to Spector vs. Torenberg.
10. Any and all relief not specifically addressed herein is denied.

**FORUM-FEES:**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

- Initial claim filing fee = \$ 1,000.00
- Respondent [\*8] Borcharding's Counterclaim filing fee = \$ 250.00
- Respondent Lempert Brothers' Third Party claim  
and Counterclaim filing fee = \$ 500.00

**Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Emerald Investments, Inc. and Lempert Brothers International USA, Inc. are parties.

- Member surcharge = \$ 1,700.00
- Pre-hearing process fee = \$ 750.00
- Hearing process fee = \$ 2,750.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

- August 2, 2006 adjournment by all parties = Waived
- November 27-December 1, 2006 adjournment by all parties Claimants' share = \$ 1,500.00
- December 14-15, 2006 adjournment by Respondent Borcharding Claimants' share = \$ 1,125.00
- January 16-17, 2007 adjournment by Claimants = Waived

**Three-Pay Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

- January 16-17, 2007 adjournment by Claimants = Waived

**Injunctive Relief Fees [\*9]**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

1. Emerald Investments, Inc., Plunkett, and Coventry are assessed:

Injunctive relief surcharge = \$ 2,500.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator @ \$ 450.00 = \$ 900.00

Pre-hearing conferences: September 26, 2006 1 session

November 13, 2006 1 session

Two (2) Pre-hearing sessions with Panel @ \$ 1,125.00 = \$ 2,250.00

[\*10] Pre-hearing conferences: August 2, 2006 1 session

December 13, 2006 1 session

Fourteen (14) Hearing sessions @ \$ 1,125.00 per session = \$ 15,750.00

Hearing Dates: January 24, 2007 \$2 sessions

January 25, 2007 \$2 sessions

January 26, 2007 \$2 sessions

January 30, 2007 \$2 sessions

April 9, 2007 \$2 sessions

April 10, 2007 \$2 sessions

April 11, 2007 \$2 sessions

Total Forum Fees = \$ 18,900.00

1. The Panel has assessed \$ 18,900.00 of the forum fees jointly and severally to Claimants.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Claimants requested copies of tapes = \$ 185.00

**Fee Summary**

1. Emerald is solely liable for:

Member Fees = \$ 5,200.00

Total Fees = \$ 5,200.00

Less payments = \$ 5,200.00

Balance Due NASD Dispute Resolution = \$ 0.00

2. Claimants are jointly and severally liable for:

Initial filing fee = \$ 1,000.00

Injunctive relief fees = \$ 2,500.00

Adjournment Fees [\*11] = \$ 2,625.00

Forum Fees = \$ 18,900.00

Administrative Costs = \$ 185.00

Total Fees = \$ 25,210.00

Less payments = \$ 5,795.00

Balance Due NASD Dispute Resolution = \$ 19,415.00

3. Lempert Brothers is solely liable for:

Member Fees = \$ 5,200.00

Counterclaim and Third Party Filing Fees = \$ 500.00

Total Fees = \$ 5,700.00

Less payments = \$ 6,900.00

Refund Due Respondent Lempert Brothers = \$ 1,200.00

4. Borcharding is solely liable for:

Counterclaim Filing Fee = \$ 250.00

Total Fees = \$ 250.00

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$ 250.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATORS:**

Concurring Arbitrators: Arthur D. Felsenfeld, Esq., Non-Public Arbitrator, Presiding Chairperson; Joseph A. Forgione, Non-Public Arbitrator; Frank Irizarry, Esq., Non-Public Arbitrator

# **APPENDIX C**

# Sanction Guidelines

## General Principles Applicable to All Sanction Determinations

1. **Disciplinary sanctions are remedial in nature and should be designed to deter future misconduct and to improve overall business standards in the securities industry.** The overall purposes of FINRA's disciplinary process and FINRA's responsibility in imposing sanctions are to remediate misconduct by preventing the recurrence of misconduct, improving overall standards in the industry, and protecting the investing public. Toward this end, Adjudicators should design sanctions that are significant enough to prevent and discourage future misconduct by a respondent, to deter others from engaging in similar misconduct, and to modify and improve business practices. Depending on the seriousness of the violations, Adjudicators should impose sanctions that are significant enough to ensure effective deterrence. When necessary to achieve this goal, Adjudicators should impose sanctions that exceed the range recommended in the applicable guideline.

When applying these principles and crafting appropriate remedial sanctions, Adjudicators also should consider firm size<sup>1</sup> with a view toward ensuring that the sanctions imposed are not punitive but are sufficiently remedial to achieve deterrence.<sup>2</sup> (Also see General Principle No. 8 regarding ability to pay.)

2. **Disciplinary sanctions should be more severe for recidivists.** An important objective of the disciplinary process is to deter and prevent future misconduct by imposing progressively escalating sanctions on recidivists beyond those outlined in these guidelines, up to and including barring registered persons and expelling firms. Adjudicators should always consider a respondent's disciplinary history in determining sanctions. Adjudicators should consider imposing more severe sanctions when a respondent's disciplinary history includes (a) past misconduct similar to that at issue; or (b) past misconduct that evidences disregard for regulatory requirements, investor protection or commercial integrity. Even if a respondent has no history of relevant misconduct, however, the misconduct at issue may be so serious as to justify sanctions beyond the range contemplated in the guidelines; *i.e.*, an isolated act of egregious misconduct could justify sanctions significantly above or different from those recommended in the guidelines.

Certain regulatory incidents are not relevant to the determination of sanctions. Arbitration proceedings, whether pending, settled or litigated to conclusion, are not "disciplinary" actions. Similarly, pending investigations or the existence of ongoing regulatory proceedings prior to a final decision are not relevant.

In certain cases, particularly those involving quality-of-markets issues, these guidelines recommend increasingly severe monetary sanctions for second and subsequent disciplinary actions. This escalation is consistent with the concept that repeated acts of misconduct call for increasingly severe sanctions.

---

<sup>1</sup> Factors to consider in connection with assessing firm size are: the firm's financial resources; the nature of the firm's business; the number of individuals associated with the firm; the level of trading activity at the firm; other entities that the firm controls, is controlled by, or is under common control with; and the firm's contractual relationships (such as introducing broker/clearing firm relationships). This list is included for illustrative purposes and is not exhaustive. Other factors also may be considered in connection with assessing firm size.

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

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

To address the misconduct effectively in any given case, Adjudicators may design sanctions other than those specified in these guidelines. For example, to achieve deterrence and remediate misconduct, Adjudicators may impose sanctions that: (a) require a respondent firm to retain a qualified independent consultant to design and/or implement procedures for improved future compliance with regulatory requirements; (b) suspend or bar a respondent firm from engaging in a particular line of business; (c) require an individual or member firm respondent, prior to conducting future business, to disclose certain information to new and/or existing clients, including disclosure of disciplinary history; (d) require a respondent firm to implement heightened supervision of certain individuals or departments in the firm; (e) require an individual or member firm respondent to obtain a FINRA staff

letter stating that a proposed communication with the public is consistent with FINRA standards prior to disseminating that communication to the public; (f) limit the number of securities in which a respondent firm may make a market; (g) limit the activities of a respondent firm; or (h) require a respondent firm to institute tape recording procedures. **This list is illustrative, not exhaustive, and is included to provide examples of the types of sanctions that Adjudicators may design to address specific misconduct and to achieve deterrence. Adjudicators may craft other sanctions specifically designed to prevent the recurrence of misconduct.**

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



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

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

5. **Where appropriate to remediate misconduct, Adjudicators should order restitution and/or rescission.** Restitution is a traditional remedy used to restore the status quo ante where a victim otherwise would unjustly suffer loss. Adjudicators may determine that restitution is an appropriate sanction where necessary to remediate misconduct. Adjudicators may order restitution when an identifiable person, member firm or other party has suffered a quantifiable loss proximately caused by a respondent’s misconduct.<sup>3</sup>

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

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

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

---

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

6. **To remediate misconduct, Adjudicators should consider a respondent's ill-gotten gain when determining an appropriate remedy.** In cases in which the record demonstrates that the respondent obtained a financial benefit from his or her misconduct, where appropriate to remediate misconduct, Adjudicators may require the disgorgement of such ill-gotten gain by fining away the amount of some or all of the financial benefit derived, directly or indirectly.<sup>4</sup> In appropriate cases, Adjudicators may order that the respondent's ill-gotten gain be disgorged and that the financial benefit, directly and indirectly, derived by the respondent be used to redress harms suffered by customers. "Financial benefit" includes any commissions, concessions, revenues, profits, gains, compensation, income, fees, other remuneration, or other benefits the respondent received, directly or indirectly, as a result of the misconduct.
7. **Where appropriate, Adjudicators should require a respondent to requalify in any or all capacities.** The remedial purpose of disciplinary sanctions may be served by requiring an individual respondent to requalify by examination as a condition of continued employment in the securities industry. Such a sanction may be imposed when Adjudicators find that a respondent's actions have demonstrated a lack of knowledge or familiarity with the rules and laws governing the securities industry.
8. **When raised by a respondent, Adjudicators are required to consider ability to pay in connection with the imposition, reduction or waiver of a fine or restitution.** Adjudicators are required to consider a respondent's *bona fide* inability to pay when imposing a fine or ordering restitution. The burden is on the respondent to raise the issue of inability to pay and to provide evidence thereof.<sup>5</sup> If a respondent does not raise the issue of inability to pay during the initial consideration of a matter before "trial-level" Adjudicators, Adjudicators considering the matter on appeal generally will presume the issue of inability to pay to have been waived (unless the inability to pay is alleged to have resulted from a subsequent change in circumstances). Adjudicators should require respondents who raise the issue of inability to pay to document their financial status through the use of standard documents that FINRA staff can provided. Proof of inability to pay need not result in a reduction or waiver of a fine, restitution or disgorgement order, but could instead result in the imposition of an installment payment plan or another alternate payment option. In cases in which Adjudicators modify a monetary sanction based on a *bona fide* inability to pay, the written decision should so indicate. Although Adjudicators must consider a respondent's *bona fide* inability to pay when the issue is raised by a respondent, monetary sanctions imposed on member firms need not be related to or limited by the firm's required minimum net capital.

---

<sup>4</sup> Certain guidelines specifically recommend that Adjudicators consider adding the amount of a respondent's financial benefit to the amount of the fine. These guidelines are singled out because they involve violations in which financial benefit occurs most frequently. These specific references should not be read to imply that it is less important or desirable to fine away ill-gotten gain in other instances. The concept of fining away ill-gotten gain is important and, if appropriate to remediate misconduct, may be considered in all cases whether or not the concept is specifically referenced in the applicable guideline.

<sup>5</sup> See *In re Toney L. Reed*, Exchange Act Rel. No. 37572 (August 14, 1996), wherein the Securities and Exchange Commission directed FINRA to consider financial ability to pay when ordering restitution. In these guidelines, the NAC has explained its understanding of the Commission's directives to FINRA based on the *Reed* decision and other Commission decisions.

## Principal Considerations in Determining Sanctions

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

Although many of the general and violation-specific considerations, when they apply in the case at hand, have the potential to be either aggravating or mitigating, some considerations have the potential to be only aggravating or only mitigating. For instance, the presence of certain factors may be aggravating, but their absence does not draw an inference of mitigation.<sup>1</sup> The relevancy and characterization of a factor depends on the facts and circumstances of a case and the type of violation. This list is illustrative, not exhaustive; as appropriate, Adjudicators should consider case-specific factors in addition to those listed here and in the individual guidelines.

1. The respondent's relevant disciplinary history (see General Principle No. 2).
2. Whether an individual or member firm respondent accepted responsibility for and acknowledged the misconduct to his or her employer (in the case of an individual) or a regulator prior to detection and intervention by the firm (in the case of an individual) or a regulator.
3. Whether an individual or member firm respondent voluntarily employed subsequent corrective measures, prior to detection or intervention by the firm (in the case of an individual) or by a regulator, to revise general and/or specific procedures to avoid recurrence of misconduct.
4. Whether the respondent voluntarily and reasonably attempted, prior to detection and intervention, to pay restitution or otherwise remedy the misconduct.
5. Whether, at the time of the violation, the respondent member firm had developed reasonable supervisory, operational and/or technical procedures or controls that were properly implemented.
6. Whether, at the time of the violation, the respondent member firm had developed adequate training and educational initiatives.
7. Whether the respondent demonstrated reasonable reliance on competent legal or accounting advice.
8. Whether the respondent engaged in numerous acts and/or a pattern of misconduct.
9. Whether the respondent engaged in the misconduct over an extended period of time.
10. Whether the respondent attempted to conceal his or her misconduct or to lull into inactivity, mislead, deceive or intimidate a customer, regulatory authorities or, in the case of an individual respondent, the member firm with which he or she is/was associated.
11. With respect to other parties, including the investing public, the member firm with which an individual respondent is associated, and/or other market participants, (a) whether the respondent's misconduct resulted directly or indirectly in injury to such other parties, and (b) the nature and extent of the injury.

---

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

12. Whether the respondent provided substantial assistance to FINRA in its examination and/or investigation of the underlying misconduct, or whether the respondent attempted to delay FINRA's investigation, to conceal information from FINRA, or to provide inaccurate or misleading testimony or documentary information to FINRA.
13. Whether the respondent's misconduct was the result of an intentional act, recklessness or negligence.
14. Whether the member firm with which an individual respondent is/ was associated disciplined the respondent for the same misconduct at issue prior to regulatory detection. Adjudicators may also consider whether another regulator sanctioned a respondent for the same misconduct at issue and whether that sanction provided substantial remediation.
15. Whether the respondent engaged in the misconduct at issue notwithstanding prior warnings from FINRA, another regulator or a supervisor (in the case of an individual respondent) that the conduct violated FINRA rules or applicable securities laws or regulations.
16. Whether the respondent member firm can demonstrate that the misconduct at issue was aberrant or not otherwise reflective of the firm's historical compliance record.
17. Whether the respondent's misconduct resulted in the potential for the respondent's monetary or other gain.
18. The number, size and character of the transactions at issue.
19. The level of sophistication of the injured or affected customer.

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

FINRA Rules 2010 and 8210

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
<p><i>See Principal Considerations in Introductory Section</i></p> <p><b>Failure to Respond or to Respond Truthfully</b></p> <ol style="list-style-type: none"> <li>Importance of the information requested as viewed from FINRA's perspective.</li> </ol> <p><b>Providing a Partial but Incomplete Response</b></p> <ol style="list-style-type: none"> <li>Importance of the information requested that was not provided as viewed from FINRA's perspective, and whether the information provided was relevant and responsive to the request.</li> <li>Number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response.</li> <li>Whether the respondent thoroughly explains valid reason(s) for the deficiencies in the response.</li> </ol> <p><b>Failure to Respond in a Timely Manner</b></p> <ol style="list-style-type: none"> <li>Importance of the information requested as viewed from FINRA's perspective.</li> <li>Number of requests made and the degree of regulatory pressure required to obtain a response.</li> <li>Length of time to respond.</li> </ol>	<p><b>Failure to Respond or to Respond Truthfully</b></p> <p>Fine of \$25,000 to \$50,000.</p> <p><b>Providing a Partial but Incomplete Response</b></p> <p>Fine of \$10,000 to \$50,000.</p> <p><b>Failure to Respond in a Timely Manner</b></p> <p>Fine of \$2,500 to \$25,000.</p>	<p><b>Individual</b></p> <p>If the individual did not respond in any manner, a bar should be standard.<sup>1</sup></p> <p>Where the individual provided a partial but incomplete response, a bar is standard unless the person can demonstrate that the information provided substantially complied with all aspects of the request.</p> <p>Where mitigation exists, or the person did not respond in a timely manner, consider suspending the individual in any or all capacities for up to two years.<sup>2</sup></p> <p><b>Firm</b></p> <p>In an egregious case, expel the firm. If mitigation exists, consider suspending the firm with respect to any or all activities or functions for up to two years.</p> <p>In cases involving failure to respond in a timely manner, consider suspending the responsible individual(s) in any or all capacities and/or suspending the firm with respect to any or all activities or functions for a period of up to 30 business days.</p>

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

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