Security and Exchange Commission

FINRA

Department of Enforcement,

Complainant

v.

Steven Robert Tomlinson,

(CRD No. 723330)

Respondent.

Administrative Proceeding

No. 3-15824

This letter is in response to the "OPINION OF THE COMMISSION" document dated December 11, 2014.

I know that this will not change the outcome, but I felt the need to write this response.

Some of my points in my appeal that were outlined in the OPINION as "lacking proof" or as "failed to prove my assertions" I feel could have been clarified. I would have liked to have seen them pursued by the SEC further to see if there is any validity to my claims. I had no "power" when requesting information and as such got nothing when I requested. Where the SEC has the "power" to request information that would have been beneficial to the decision making process. So my question is why these requests were not made? I felt that a "simple request for information" by the SEC would have shed light that could of (and I think would have) been helpful to the process and to the outcome. As a layman and acting "pro se" in this matter is a severe handicap to providing supporting evidence or documentation.

Here are just a couple of the points that could have been proven beneficial had the SEC requested information from the parties involved.

First - and probably foremost – was my request of FINRA to provide the written recommendation of the two panel members who heard my case on September 27, 2013. (Mr. Margolin and Mr., Mahon). In addition, the actual "presentment document" of my case to the NAC for the March 14, 2014 decision meeting.

> *I feel the SEC could have requested this information from FINRA to determine if any of my assertion had merit, after my requests were refused by FINRA. The refusal by FINRA raises questions in my mind, that there may be something in these documents that did not support their process.*

Second – is my claim that the testimony by the Corning Credit Union's CIO, Todd Dauchy during the September 27, 2013 hearing, was not "forthcoming" when asked about other "member data breaches" at the credit union. His testimony basically said there were none or that there were two minor breaches (as mentioned in your Opinion) with no supporting description to see if they matched my claims. I outlined 3 separate incidents that Mr. Dauchy would have known about, but failed to mention, when answering the question during his testimony.

> *If a "request for information" letter from the SEC to the Corning Credit Union and a corresponding request to the National Credit Union Administration (NCUA) for any member data breaches reported to the NCUA by the Corning Credit Union for the period of 1/1/08 to 9/27/13, were made, it would have provided information that would have been valuable to the process. Once responses received, then further requests from the Credit Union on the specific incidents would have shed light on the selective nature of their protecting member/client data.*

Third – my request for a copy of my son's UTMA account client agreement from Raymond James that was refused by Raymond James. A copy of the "client agreement" and "privacy statement' in force during the November 2008 would have been helpful.

> *A letter from the SEC or FINRA requesting this information from Raymond James may have been helpful regarding the claims that Raymond James provided notification to clients and allowed such information to be used when an advisor changes broker-dealer relationships.*

There are a number of "other" points that are in the opinion, that I feel were disputable, but I know that it is for naught.

- *Corning Credit Union settlement Agreement with Wachovia and myself that stated "no disclosure" took place, that no files were downloaded and that no client information was in danger, as well as all information was disgorged when requested by the Credit Union. This agreement signed Jan. 2009 released all parties, apparently carries no value or merit, as Don Rouse, CAO of the Corning Credit Union filed his complaint to FINRA in April 2009.*
- *Disclosure of client sensitive data never occurred – as testified by Lisa Dutcher.*
- *No files downloaded to Wachovia computer system took place – testified by Lawayne Kimbro of Wachovia's IT Department after his forensic analysis.*
- *Corning Credit Union knew full well of my use of the" thumb drive" to transport sensitive data to do work at home. This process was recommended by the Credit Union's IT Security Officer Michael Suarbaugh with authorization from Todd Dauchy. So testimony to the contrary is" omission" at best. Don Rouse, my supervisor, was fully aware of the practice as well.*
- *The "personal client information" in question, was utilized weekly, for years prior, for reports required by the Credit Union Management.*

I know that my case is very small and more of a nuisance for the SEC, but to me, it is the **world** at this point. I had hoped that the SEC would have done just a little more of its own investigation and realized what other agencies (not FINRA) realized, that this complaint was nothing more than retaliation on the part of a very vindictive previous employer.

I am not saying that I am completely without blame or that I have not learned anything, I share blame and have learned a lot over this 6 year nightmare. I am saying that I appealed to see if I could save my career. As it stands right now, I will have to completely change careers and at age 59 that is a very difficult task for a "one career" person. Even a reduction back to a 10 day suspension, would have allowed me the ability to rebuild the only career I know. I guess I was expecting more from the appeal process.

Thank you for taking the time to read my letter.

I have one question about procedure, as the Opinion Notice did not mention any Appeal potential. Is there the opportunity to appeal and what would need to be done to initiate an appeal? I would like the information sent to me and if time is of the essence, consider this a notice of appeal pending receipt of the proper procedures from your office. Today's date is 1/8/15.

Thank you

Steve Tomlinson

Steven R Tomlinson

[redacted]

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73825 / December 11, 2014

Admin. Proc. File No. 3-15824

In the Matter of the Application of

STEVEN ROBERT TOMLINSON

For Review of Disciplinary Action Taken By
FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY PROCEEDINGS

Conduct Inconsistent with Just and Equitable Principles of Trade

Registered securities association found that registered representative of member firm engaged in conduct inconsistent with just and equitable principles of trade when he downloaded confidential nonpublic information about more than 2,000 customers from his former firm's computer system onto a personal flash drive without the customers' consent and then shared that confidential information with his new firm. *Held*, association's findings of violation and sanction imposed are *sustained.*

APPEARANCES:

Steven Robert Tomlinson, pro se.

Alan Lawhead, *Michael J. Garawski*, and *Celia L. Passaro*, for the Financial Industry Regulatory Authority, Inc.

Appeal filed: April 4, 2014
Last brief received: July 18, 2014

Steven Robert Tomlinson, a registered representative with Wells Fargo Advisors, LLC ("Wells Fargo"), appeals from FINRA disciplinary action.[1] FINRA found that Tomlinson violated NASD Conduct Rule 2110 when he downloaded confidential nonpublic information concerning more than 2,000 customers from his former broker-dealer employer's computer system without authorization and then shared that information with Wells Fargo personnel.[2] FINRA suspended him for ninety days in all capacities. We base our findings on an independent review of the record.

I. Background

A. Tomlinson was associated with RJFS and subject to RJFS's privacy policies.

The facts are largely undisputed. Tomlinson entered the securities industry in 1981. In 2001, Tomlinson joined Corning Credit Union (the "Credit Union") as a financial advisor in its investment services group, and he later became a manager of the group.[3] Between June 2005 and November 2008, the Credit Union, which was not a FINRA member, was affiliated with Raymond James Financial Services, Inc. ("RJFS"), a FINRA member, and offered securities through RJFS. Tomlinson was dually employed by the Credit Union and RJFS and was registered with RJFS as a general securities representative, an investment company products/variable contracts limited representative, and a general securities sales supervisor. Tomlinson also served as a branch manager at RJFS.

As an "associate" affiliated with RJFS, Tomlinson was subject to RJFS's Compliance Manual (the "Manual"), dated July 2008, which set forth guidance to employees in handling confidential customer information.[4] The Manual provided, in relevant part, that:

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[1] We apply the conduct rules of NASD, FINRA's predecessor, because those were the rules in place at the time of the misconduct. *See Kent M. Houston*, Securities Exchange Act Release No. 66014, 2011 WL 6392264, at *1 n.2 (Dec. 20, 2011); *John B. Busacca, III*, Exchange Act Release No. 63312, 2010 WL 5092726, at *1 n.2 (Nov. 12, 2010), *petition denied*, 449 Fed. App'x 886 (11th Cir. 2011).

[2] NASD Conduct Rule 2110, now FINRA Rule 2010, states that "a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." Rule 2110 applies to Tomlinson through NASD General Rule 115 (now FINRA Rule 140), which provides that persons associated with a member have the same duties and obligations as a member.

[3] As a precondition to his employment, Tomlinson signed a Covenant Not to Compete in which he agreed that, in the event that he left his employment at the Credit Union, he would not solicit customers that he did not bring with him when he joined the Credit Union.

[4] According to the Manual, "associates" included branch managers, financial advisors, registered sales assistants, professional partners, non-registered support staff, and RJFS home

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> Associates . . . are responsible for protecting information used in company business from unauthorized access unless expressly approved for public disclosure or client use. Associates may not share customer information with third parties unless specifically authorized by the client. Customer and confidential information may not be removed from a Raymond James office without the branch manager's permission.
>
> It is not acceptable for associates . . . to e-mail, or otherwise transmit, non-public or personally identifiable information . . . to a third-party for any reason other than a bona fide business purpose with the client's consent. Additionally, if such data needs to be transmitted electronically, the RJFS sender has the obligation to ensure the communication is encrypted or password protected . . . .
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> * * *
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> Raymond James requires that all non-public, personally identifiable information or any other information related to Raymond James business on any computer or laptop hard drive be erased before disposal or donation (this is called wiping a hard drive).
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> * * *
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> The firm views the protection of confidential information as an important issue. . . . It is the responsibility of all financial advisors who disassociates [sic] with RJFS to ensure that they have obtained prior consent from each client prior to maintaining any client's personally identifiable information. [5]

The Manual also contained provisions that gave branch managers like Tomlinson heightened responsibilities regarding RJFS's data security policies. In particular, the Manual required branch managers to ensure that financial advisors under their supervision comply with RJFS policies and adequately safeguard customers' confidential information. Tomlinson testified that he was familiar with the Manual, understood his responsibilities set forth in the Manual, and was obligated to abide by the Manual's requirements.

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office personnel. Given his position as branch manager, Tomlinson was an "associate" affiliated with RJFS. The employment agreement that Tomlinson signed with RJFS and the Credit Union contained similar confidentiality provisions.

[5] The Manual defined "personally identifiable information" to include Social Security numbers, account numbers, net worth, income, tax bracket, and other nonpublic information unique to an individual or entity.

B. Tomlinson decided to leave RJFS and the Credit Union and join Wells Fargo.

In mid-2008, Tomlinson began exploring the possibility of becoming a branch manager at Wells Fargo in its Painted Post, New York, office. Tomlinson received a salary from RJFS and the Credit Union but no commissions. Wells Fargo offered him an opportunity to earn commissions and develop a book of business.

In October 2008, after attending a Wells Fargo recruiting meeting, Tomlinson decided to leave RJFS and the Credit Union and join Wells Fargo. In contemplation of his joining the firm, a Wells Fargo recruiter specifically instructed him about the types of customer information that he could and could not take with him when he left RJFS and the Credit Union.[6] The recruiter told him that, because RJFS was not a signatory to "The Protocol for Broker Recruiting" (the "Protocol"), the only information that he could take with him was in the nature of a "Christmas card list" consisting of customer names, addresses, and telephone numbers.[7] The recruiter gave Tomlinson a Wells Fargo flash drive to use in downloading this information.

C. Tomlinson downloaded onto his personal flash drive and personal laptop confidential nonpublic information relating to more than 2,000 Credit Union customers.

Before resigning from RJFS and the Credit Union, Tomlinson downloaded onto his personal flash drive, which was not encrypted or password-protected, and personal laptop confidential nonpublic information concerning more than 2,000 RJFS and Credit Union customers.[8] He downloaded the information from RJFS's and the Credit Union's computer systems and from third-party websites over the course of several days and nights. The information included customers' names, addresses, account numbers and balances, quarterly account statements, Social Security numbers, and birth dates. Tomlinson testified that he took this information so that he could contact his customers about his move and assist them if they transferred their accounts to Wells Fargo. Tomlinson admitted, however, that he did not need most of the information that he downloaded for this purpose. Approximately 160 of the affected

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6 The Wells Fargo recruiter also provided Tomlinson with a "Financial Advisor Integration Planner," which memorialized these instructions.

7 The Protocol is an agreement voluntarily entered into by over 400 brokerage firms, and is administered by the Securities Industry and Financial Markets Association. Firms that are signatories to the Protocol agree not to sue one another if registered representatives moving from one Protocol firm to another take with them client names, addresses, telephone numbers, e-mail addresses, and account title information, but no other documents or information. *See generally Dante J. DiFrancesco*, Exchange Act Release No. 66113, 2012 WL 32128, at *7 & nn.47-48 (Jan. 6, 2012).

8 Tomlinson testified that he could not get the Wells Fargo flash drive to work properly so he decided to use his personal flash drive instead.

customers were customers assigned to Tomlinson; the rest were customers assigned to other financial advisors at the Credit Union.[9] Tomlinson did not tell anyone at either RJFS or the Credit Union that he had downloaded customers' confidential nonpublic information to take with him to Wells Fargo; nor did he tell any RJFS or Credit Union customers or seek their permission to download and remove that information. He also did not tell anyone at Wells Fargo what he had done.

D. Tomlinson gave the flash drive to Wells Fargo personnel.

On November 24, 2008, Tomlinson resigned from RJFS and the Credit Union. During his exit interview, he returned his keys, badge, and other items belonging to the Credit Union. He also met with an Information Technology ("IT") employee who "wiped clean" his cell phone of all information related to the Credit Union and then returned the phone to him with only his personal information on it. Tomlinson did not mention to the IT employee or anyone else at the Credit Union that he had a substantial amount of confidential customer information saved on his personal flash drive and personal laptop.[10]

Tomlinson left the Credit Union shortly before 6:00 p.m. that day and went to his new Wells Fargo office. He met with a Wells Fargo administrative assistant who had been assigned to help him prepare announcements of his move. He gave the assistant his personal flash drive but, because it was late in the day and had started to snow, they agreed to wait until the next day to work on the announcements. He allowed the assistant to keep the flash drive in her possession overnight without informing her that it contained confidential nonpublic information and was not encrypted or password-protected.

On November 25, 2008, the Wells Fargo assistant used the information on the flash drive to create mailing labels for Tomlinson's announcements. She worked on a computer at the front reception desk where a receptionist was also working. Tomlinson did not supervise the assistant's work. At some point, the assistant had difficulty accessing the information on the flash drive and called IT personnel. She gave IT personnel permission to access remotely the computer to help her. The assistant eventually was able to create mailing labels and returned the

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[9] The Credit Union encouraged its financial advisors to service customer accounts regardless of whether the customer was assigned to the particular advisor. Tomlinson sometimes reassigned customers, including his own, to other advisors depending on their workloads. Tomlinson acknowledged that he had no previous business relationship with most of the customers that he had assigned to other advisors.

[10] The Credit Union's chief information officer ("CIO") testified that the Credit Union would not have known to ask about these personal devices because it was against policy for employees to save Credit Union data to a personal device, including a personal flash drive or personal laptop. According to the CIO, had Tomlinson used a company flash drive or laptop, as he was required to do, an IT employee would have taken back those devices when Tomlinson resigned.

flash drive to Tomlinson that afternoon. Wells Fargo sent Tomlinson's announcements to his 160 RJFS and Credit Union customers.

E. The Credit Union discovered Tomlinson's misconduct.

The Credit Union began investigating whether Tomlinson had violated his non-compete agreement after a customer reported receiving a mailing from him.[11] During the investigation, the Credit Union's CIO examined Tomlinson's desktop computer and discovered that Tomlinson had downloaded customer information onto a flash drive shortly before he resigned. The CIO also learned that some customer information had been placed into a directory that Tomlinson had labeled to denote a connection to Wells Fargo. The CIO requested that Wells Fargo check its computers for files that Tomlinson had taken from RJFS and the Credit Union. After checking, Wells Fargo informed the CIO that it had found one of Tomlinson's files on a secretary's computer.

On December 1, 2008, the Credit Union delivered a letter to Tomlinson demanding that he return the flash drive containing the confidential nonpublic information and destroy all other versions of the information in his possession. Tomlinson testified that he found the letter to be "scary" and panicked. He began deleting all of the files that he had downloaded onto the flash drive with the exception of one file containing data related solely to his own customers. He also deleted Credit Union files from his personal laptop. He stopped deleting files only after a Wells Fargo attorney told him to stop. Wells Fargo turned over to the Credit Union Tomlinson's personal flash drive, personal laptop, and cell phone. The Credit Union CIO reviewed those devices and determined that Tomlinson had downloaded and taken confidential nonpublic information concerning more than 2,000 RJFS and Credit Union customers.

F. FINRA Proceedings

In December 2011, FINRA's Department of Enforcement ("Enforcement") brought a complaint alleging that Tomlinson engaged in unethical conduct, in violation of NASD Conduct Rule 2110, by downloading confidential customer information protected as "nonpublic personal information" under Regulation S-P,[12] without authorization, and disclosing that information to

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11 *See supra* note 3.

12 17 C.F.R. Part 248, Subpart A. We adopted Regulation S-P pursuant to the financial privacy provisions of the Gramm-Leach Bliley Act ("GLBA"), Pub. L. No. 106-102, 113 Stat. 1338 (1999). The regulation generally prohibits broker-dealers from disclosing "nonpublic personal information" about their customers to nonaffiliated third parties unless they provide their customers with proper notice and a reasonable opportunity to opt out of the disclosure before it is made. 17 C.F.R. § 248.10(a)(1). "Nonpublic personal information means: (i) Personally identifiable financial information; and (ii) Any list, description, or other grouping of consumers . . . that is derived using any personally identifiable financial information that is not publicly available information." *Id.* § 248.3 (t)(1)(i)-(ii). "Personally identifiable financial information . . . means any information: (i) A consumer provides to you [a broker-dealer] to

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Wells Fargo. A FINRA Hearing Panel conducted a hearing at which Tomlinson, the Credit Union CIO, the Wells Fargo administrative assistant, the Wells Fargo recruiter, and a FINRA staff member testified. Enforcement introduced into evidence a detailed timeline of Tomlinson's computer activity, which was admitted without objection. Following the hearing, the Panel found that Tomlinson had violated Rule 2110, as alleged in the complaint, and imposed a $10,000 fine and ten business-day suspension in all capacities. It also ordered him to pay costs.

Tomlinson appealed the Panel's findings of violation and sanctions, and Enforcement cross-appealed the Panel's sanctions, to FINRA's National Adjudicatory Council ("NAC"). In March 2014, the NAC issued its decision, affirming the Panel's finding of a Rule 2110 violation and increasing the suspension to ninety days in all capacities.[13] The NAC identified various factors as justifying its decision to increase the suspension, including that Tomlinson was a supervisor and should have known that he could not take and disclose confidential customer information when moving between firms. The NAC affirmed the $10,000 fine but declined to impose it or order that Tomlinson pay costs based on his demonstrated bona fide inability to pay. This application for review followed.

II. Analysis

A. Standard of Review

We base our findings on an independent review of the record and apply the preponderance of the evidence standard for self-regulatory organization disciplinary actions.[14] Pursuant to Exchange Act Section 19(e)(1), in reviewing an SRO disciplinary sanction, we determine whether the aggrieved person engaged in the conduct found by the SRO, whether such

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obtain a financial product or service from you; (ii) About a consumer resulting from any transaction involving a financial product or service between you and a consumer; or (iii) You otherwise obtain about a consumer in connection with providing a financial product or service to that consumer." *Id.* § 248.3(u)(1)(i)-(iii). Whether a broker-dealer's disclosure violates Regulation S-P typically will depend on the particular facts and circumstances surrounding the isclosure.

[13] "[T]he NAC reviews the Hearing Panel's decision *de novo* and has broad discretion to modify the Hearing Panel's decisions and sanctions." *Harry Friedman*, Exchange Act Release No. 64486, 2011 WL 1825025, at *7 & n.22 (citing authority) (May 3, 2011). On appeal from a Hearing Panel decision, the NAC "may affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction." *Id.* & n.23.

[14] *See David M. Levine*, Exchange Act Release No. 48760, 2003 WL 22570694, at *9 n.42 (Nov. 7, 2003).

conduct violates the SRO's rules, and whether the SRO's rules are, and were applied in a manner, consistent with the purposes of the Exchange Act.[15]

B. Tomlinson violated NASD Conduct Rule 2110.

NASD Conduct Rule 2110 requires a member, "in the conduct of its business," to adhere to "high standards of commercial honor and just and equitable principles of trade."[16] Rule 2110 "state[s] 'broad ethical principles' and center[s] on the 'ethical implications' of . . . conduct."[17] The requirement that members adhere to just and equitable principles of trade serves as "'an industry backstop for the representation, inherent in the relationship between a securities professional and a customer, that the customer will be dealt with fairly and in accordance with the standards of the profession.'"[18] The requirement "set[s] forth a standard intended to encompass 'a wide variety of conduct that may operate as an injustice to investors or other participants in the marketplace.'"[19] As a result, Rule 2110 focuses on the conduct itself instead of the securities professional's intent or state of mind.[20] Thus, conduct alone, without scienter or bad faith, "can be sufficient to establish liability."[21]

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15 15 U.S.C. § 78s(e)(1). NASD Conduct Rule 2110 directly implements a mandate of Exchange Act Section 15A(b)(6), which requires, among other things, that FINRA design its rules to "promote just and equitable principles of trade." 15 U.S.C. § 78o-3(b)(6). As we have stated, "[t]his general ethical standard . . . is broader and provides more flexibility than prescriptive regulations and legal requirements. NASD Rule 2110 protects investors and the securities industry from dishonest practices that are unfair to investors or hinder the functioning of a free and open market, even though those practices may not be illegal or violate a specific rule or regulation. NASD Rule 2110 has proven effective through nearly 70 years of regulatory experience." *Notice of Filing of a Proposed Rule Change*, Exchange Act Release No. 58095, 2008 WL 2971979, at *2 (July 3, 2008), *Rule Change Approved Without Modification*, 2008 WL 4468749 (Sept. 25, 2008). We therefore find that Rule 2110 is consistent with the purposes of the Exchange Act.

16 NASD Conduct Rule 2110; *see supra* note 2.

17 *DiFrancesco*, 2012 WL 32128, at *5 (quoting *Thomas W. Heath, III*, Exchange Act Release No. 59223, 2009 WL 56755, at *4 (Jan. 9, 2009), *aff'd*, 586 F.3d 122 (2d Cir. 2009)).

18 *Id.* (quoting *Heath*, 2009 WL 56755, at *4).

19 *Id.* (quoting *Heath*, 2009 WL 56755, at *5).

20 *Id.*

21 *Id.*; *see also, e.g.*, *Keith Springer*, Exchange Act Release No. 45439, 55 SEC 632, 2002 WL 220611, at *7 (Feb. 13, 2002) (finding a violation of just and equitable principles of trade

(continued...)

Applying Rule 2110, we find that Tomlinson's actions arose "in the conduct of [his] business" and were inconsistent with "high standards of commercial honor and just and equitable principles of trade."[22] FINRA has broad disciplinary authority under Rule 2110 that encompasses "business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security."[23] An associated person's "business" includes his business relationship with his employers and his commercial relationships with his customers.[24] Tomlinson's "business" involved his relationship with RJFS and the Credit Union because his work for them was the reason that he had access to customers' confidential nonpublic information. His "business" also involved his commercial relationships with RJFS and Credit Union customers because he took their confidential nonpublic information for the purpose of transferring their accounts to Wells Fargo. Tomlinson does not dispute that his conduct was business-related.

In determining whether a securities professional's conduct is inconsistent with just and equitable principles of trade, we look to whether the conduct implicates a generally recognized duty owed to either customers or the firm.[25] Tomlinson's conduct implicated the duty, "grounded in fundamental fiduciary principles," to maintain the confidentiality of customers' nonpublic information.[26] Tomlinson breached this duty when he took customers' confidential nonpublic information from RJFS's and the Credit Union's computer systems without authorization and provided that information to the Wells Fargo assistant (who, in turn, gave IT employees access to

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based on improper post-execution allocation of trades, regardless of whether applicant had an improper intention or motive).

22 *See* NASD Conduct Rule 2110; s*ee also supra* note 2.

23 *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996) (per curiam).

24 *See DiFrancesco*, 2012 WL 32128, at *5 n.18 (finding that applicant's conduct in downloading and taking confidential nonpublic information relating to approximately 36,000 customers was business-related because it involved his business relationship with his former firm and commercial relationships with his customers); *see also John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 WL 2898033, at *7 & n.35 (June 14, 2013) (finding that applicant's conduct in moving confidential customer files to his new firm without first receiving the customers' consent was business-related because it included his relationship with his employer and commercial relationships with his customers).

25 *See Plunkett*, 2013 WL 2898033, at *7.

26 *Heath*, 2009 WL 56755, at *4 & n.5 (citing Restatement (Third) of Agency and Commission case law for the proposition that an agent has a duty not to use confidential information of the principal for his own, or a third-party's, interest, and is obligated to act in his customer's best interests).

it).[27] RJFS's privacy policies, which associates were required to follow, placed Tomlinson on notice of his obligation to maintain the confidentiality of customers' nonpublic information.[28] RJFS's Manual expressly instructed associates that they were responsible for protecting the confidentiality of customers' nonpublic information and were not allowed to share that information with third parties unless specifically authorized by the customer. Tomlinson acted in contravention of RJFS's policies.

We also find that Tomlinson's actions were "self-interested and for his own purposes."[29] Tomlinson favored his own financial interest in building a book of business over his customers' interests in the privacy of their confidential nonpublic information.[30] Moreover, the absence of

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[27] *See Plunkett*, 2013 WL 2898033, at *7 (finding that an individual serving as firm president, chief compliance officer, general securities principal, and general securities representative breached his duty of confidentiality when he moved confidential customer files, including nonpublic information such as Social Security numbers, from his old firm to his new firm without first receiving customers' consent); *DiFrancesco*, 2012 WL 32128, at *6 (finding that registered representative breached his duty of confidentiality when he downloaded customers' confidential nonpublic information, including account numbers and net worth figures, and transmitted that information to his future branch manager at a competing firm); *Louis Feldman*, Exchange Act Release No. 34933, 52 SEC 19, 1994 WL 615120, at *2 (Nov. 3, 1994) (finding that firm's part owner, vice president, director, and general securities principal was required "under fundamental principles of agency law" to obtain prior consent of customers before transferring mutual fund accounts to another firm with which he was associated); *cf. Heath*, 2009 WL 56755, at *4 (finding that registered representative breached his duty of confidentiality when he disclosed to a future colleague at a competing firm material nonpublic information regarding a pending merger).

[28] *See DiFrancesco*, 2012 WL 32128, at *6 (holding that applicant breached his duty of confidentiality, which was reflected in his firm's code of conduct); *Heath*, 2009 WL 56755 at *5 (stating that a firm's internal compliance policies inform a determination of whether conduct violates just and equitable principles of trade rules) & n.21 (citing authority).

[29] *DiFrancesco*, 2012 WL 32128, at *6.

[30] *See, e.g.*, *Plunkett*, 2013 WL 2898033, at *8 (finding that applicant acted out of self-interest and for his own personal gain when he transferred confidential client files to his new firm); *DiFrancesco*, 2012 WL 32128, at *6 (finding that applicant favored his own interest in maintaining his client base over customers' interest in the confidentiality of their nonpublic information); *Heath*, 2009 WL 56755, at *4 (finding that applicant's "disclosure was ultimately self-interested and for his, not his principal's, purposes," and concurring with the NYSE Hearing Panel's finding that the disclosure "was motivated by a desire to gain the trust of a future colleague").

demonstrable harm to customers does not excuse Tomlinson's actions.[31] Harm is not an element of a Rule 2110 violation.[32]

Tomlinson's hearing testimony demonstrates that he understood the types of customer information that were protected as "personally identifiable information," but that, as FINRA found, he "carelessly" granted Wells Fargo "unfettered" access to that information. Tomlinson's conduct compromised the privacy and security of RJFS and Credit Union customers' "nonpublic personal information" under Regulation S-P, prevented RJFS and the Credit Union from giving their customers reasonable notice and an opportunity to opt out of the disclosures, as required by Regulation S-P, and caused Wells Fargo, an unaffiliated third party, to receive confidential customer information improperly.

We find that Tomlinson's breach of customer confidentiality implicates quintessential ethical considerations and reflects negatively on his ability to comply with fundamental regulatory requirements and protect the privacy and security of customers' confidential information.[33] And in making this finding, we conclude that FINRA applied Rule 2110 in a manner consistent with the purposes of the Exchange Act. Accordingly, we sustain FINRA's findings that Tomlinson violated Rule 2110.

C. Tomlinson's arguments against liability lack merit.

Tomlinson argues that, as a branch manager and supervisor, he was authorized to download customers' confidential information. He also argues that he downloaded such information in an effort to "reach out" to customers whom he had assigned to other financial advisors.[34] But the fact that Tomlinson was authorized to download this information in the course of his employment with RJFS and the Credit Union did not mean that he was authorized to take it with him—and share it with third parties—when he left. To the contrary, RJFS's policies expressly prohibited him from sharing customers' confidential information with third

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31 *See DiFrancesco*, 2012 WL 32128, at *6 (stating that the absence of demonstrable customer harm does not excuse or mitigate the applicant's actions) & n.36 (citing *Heath*, 2009 WL 56755, at *9).

32 *See id.*

33 *See, e.g., Daniel D. Manoff*, Exchange Act Release No. 46708, 55 SEC 1155, 2002 WL 31769236, at *4 (Oct. 23, 2002) (finding that applicant breached his duty to safeguard clients' personal financial information when he misappropriated his customer's credit card numbers and made four charges to his customer's credit card; stating that applicant's use of the credit card numbers constituted unethical, business-related conduct and called into question his ability to fulfill his fiduciary duties in handling other people's money).

34 *See supra* note 9.

parties without the customers' prior consent. Those policies undermine any assertion that he was acting within the scope of his employment.

Tomlinson also argues that the Credit Union knew for years that he used his personal flash drive to work on Credit Union business at home. Even if true, Tomlinson had no right to take that information with him when he changed firms. Tomlinson acknowledged in his hearing testimony that, in hindsight, he should have deleted all of the customer information from the flash drive before he resigned.

Tomlinson further argues that "no client personal identifiable information was disclosed to a third party" because the Wells Fargo assistant testified that she used a single file that contained only the names and addresses of his 160 customers. Regardless of whether the Wells Fargo assistant used only the names and addresses for 160 customers, Tomlinson "disclosed" 2,000 customers' nonpublic personal information, including customers' names, addresses, account numbers and balances, quarterly account statements, Social Security numbers, and birth dates, when he provided his flash drive to Wells Fargo personnel, thereby giving them access to that information.[35]

D. There is no evidence to support Tomlinson's assertion that the FINRA proceedings were biased or unfair.

Tomlinson raises a number of objections regarding the fairness of the proceedings before FINRA. First, Tomlinson argues that the "NAC appeal hearing" was a "sham" and that the outcome was "shocking," "predetermined," and taken in retaliation for appealing. According to Tomlinson, he was surprised by FINRA's decision against him because he had a "sense" that the NAC subcommittee members who heard his appeal "understood [his] side of the story about the 'role' and 'intended harm' that the Credit Union wanted in pushing FINRA to pursue" this action.[36] We have carefully reviewed the record and find no evidence of bias or unfairness

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[35] *See Plunkett*, 2013 WL 2898033, at *8 (finding that applicant violated Rule 2110 by providing firm's competitor with access to firm's records; rejecting applicant's argument that he did not violate Rule 2110 because the information was never used by the competitor).

[36] Tomlinson also argues that FINRA overreached in its enforcement because it acted on the complaint of the Credit Union, a non-FINRA member. We have held that FINRA's authority to enforce its rules is independent of a complaint. *Maximo Justo Guevara*, Exchange Act Release No. 42793, 54 SEC 655, 2000 WL 679607, at *6 (May 18, 2000) (stating that "NASD's power to enforce its rules is independent of a customer's decision not to complain"), & n.18 (citing cases). Tomlinson was a registered representative during the misconduct at issue, and thus was subject to FINRA's rules and jurisdiction. *See Toni Valentino*, Exchange Act Release No. 4925, 54 SEC 330, 2004 WL 300098, at *5 (Feb. 13, 2004) (finding that a registered representative, by registering, "consent[s] to abide by [FINRA's] rules"). FINRA was authorized to investigate his activities and pursue an enforcement action against him, regardless of the source of the complaint.

during the proceedings below. The fact that Tomlinson did not obtain the result he wanted or expected does not alone support a finding of bias.[37] Our *de novo* review of the record, followed by our independent decision concerning the validity of FINRA's allegations and sanctions, cures any procedural errors that may have been committed during the FINRA proceedings.[38]

Tomlinson's specific complaint appears to be that FINRA refused to provide him with the written recommendations of NAC subcommittee members or the minutes of the NAC's meeting.[39] Tomlinson does not point to, and we are unaware of, any FINRA rule that requires FINRA to provide him with these documents. Further, NASD's Code of Procedure "cannot be read to grant respondents the right to wholesale discovery of the NASD's files."[40] A respondent is not entitled to obtain internal NASD staff memoranda.[41]

Second, Tomlinson argues that FINRA improperly excluded from evidence a Raymond James Privacy Notice dated July 2012, which he claims contemplated the kind of disclosure at issue here.[42] The Privacy Notice disseminated by RJFS stated, in part, that financial advisors "may change brokerage and/or advisory firms and nonpublic personal information collected by your FA may be provided to the new firm so your FA can continue to service your account(s) at the new firm. If you do not want your financial advisor to use this information, please call" a toll-free number to opt out. Tomlinson argues that the Privacy Notice "allowed Financial Advisors to 'use non-public personal information' when changing broker dealers," and that is

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37 *Scott Epstein*, Exchange Act Release No. 59238, 2009 WL 223611, at *18 (Jan. 30, 2009) (stating that "[a]dverse rulings, by themselves, generally do not establish improper bias"), *aff'd*, 416 Fed. App'x 142 (3d Cir. 2010).

38 *See, e.g.*, *Heath v. SEC*, 586 F.3d at 142 (stating that the Commission's *de novo* review of the record cures any procedural errors that may have been committed below).

39 The focus of Tomlinson's complaint about the fairness of his hearing before FINRA is somewhat ambiguous because he references both the Hearing Panel and NAC in his pleadings. But based on the context and names mentioned, it appears that Tomlinson is referring to the NAC.

40 *Michael Alan Leads*, Exchange Act Release No. 32437, 51 SEC 500, 1993 WL 204498, at *5 (June 9, 1993).

41 *David D. Esco, Jr.*, Exchange Act Release No. 14716, 46 SEC 1205, 1978 WL 207895, at *2 n.7 (Apr. 28, 1978). As noted above, our *de novo* review cures any prejudice that may have occurred before FINRA.

42 Tomlinson also complains about his "requests being denied to obtain a copy of the Privacy Statement for the period prior to 2008." Tomlinson does not indicate who denied his requests, nor does he indicate the relevancy of such a privacy notice to the finding that he breached his duty of client confidentiality.

what he did, using the "Christmas card list" (*i.e.*, customer names, addresses, and telephone numbers) to send announcements of his move to his 160 customers.

FINRA Rule 9263 allows the Hearing Officer to exclude evidence that is irrelevant or immaterial. The Hearing Panel found, and the NAC agreed, that the Raymond James Privacy Notice dated July 2012 was not relevant. We conclude that FINRA appropriately excluded the Privacy Notice on relevancy grounds because Tomlinson's conduct occurred in 2008.[43]

Tomlinson asserts that "[i]n the environment over the past few years it is hard to believe that Raymond James would relax [its] protection of personally identifiable information" and therefore the document should have been admitted. But Tomlinson overlooks that RJFS's Manual required that customers be given notice of and consent to a disclosure before the disclosure is made. In this case, there is no evidence that customers received notice of Tomlinson's actions. To the contrary, Tomlinson admitted that he did not notify anyone, including customers, that he would be disclosing their confidential nonpublic information to a third party.

Third, Tomlinson argues that FINRA admitted into evidence documents on his personal flash drive even though there was no proof of the dates on which he downloaded the documents. Tomlinson hypothesizes that some documents "could have come from the previous 3+ years of working at home with [the Credit Union's] 'full knowledge' of the information being transported." The download dates are not relevant—Tomlinson breached his duty of confidentiality by disclosing the protected information to his new firm. In any event, Tomlinson stipulated and admitted at the hearing that he downloaded the documents onto his personal flash drive in the days leading up to his resignation, the Credit Union's CIO testified about specific times when certain documents were downloaded, and a detailed timeline with dates and times was admitted into evidence without objection.

Finally, Tomlinson accuses the Credit Union of treating him unfairly in a variety of respects. For instance, he contends that the Credit Union tried to "paint as harmful a picture" of him as possible; retaliated against him by "pushing" FINRA to bring this proceeding; took "selective" action against him in "protecting' members' personally identifiable information";[44]

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[43] Pending before us is FINRA's motion to strike two documents attached to Tomlinson's reply brief. The first document is a portion of what appears to be a Raymond James Privacy Notice from June 2014. The second document consists of Tomlinson's opening statement to the NAC, which is already contained in the record. Tomlinson did not move to admit either document into evidence under Rule of Practice 452 or attempt to meet Rule 452's standards. *See* 17 C.F.R. § 201.452. We see no basis on which to admit these documents, and we therefore grant FINRA's motion to strike.

[44] Tomlinson argues that the Credit Union CIO knew of other security breaches that had occurred both before and after Tomlinson left the Credit Union, and that the CIO's "omission" of the breaches in his hearing testimony shows the "'selective nature' of the Corning Credit Union's action when it comes to 'protecting' members' personally identifiable information." Contrary to

(continued...)

and "engaged in tortious interference with his business relations in an effort to bring harm to [him] financially and to his career." Tomlinson offers no evidence to support those accusations. Nor does he explain how any such evidence would be relevant to the issues before us. It appears that Tomlinson is seeking to shift the focus away from his own violation, but his efforts in this regard only serve to cast doubt on his commitment to the high standards of conduct demanded of him and indicate an unwillingness to fully accept responsibility for his misconduct.

III. Sanctions

Pursuant to Section 19(e)(2) of the Securities Exchange Act of 1934, we will sustain a FINRA sanction unless we find, "having due regard for the public interest and protection of investors," that the sanction is excessive or oppressive or imposes an unnecessary or inappropriate burden on competition.[45] As part of this review, we must consider any aggravating or mitigating factors[46] and whether the sanctions imposed by FINRA are remedial and not punitive.[47]

We initially observe that the sanctions imposed by the NAC are consistent with the Sanction Guidelines (the "Guidelines").[48] The Guidelines do not contain recommended sanctions for the specific misconduct at issue. Accordingly, the NAC properly considered the

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(...continued)
Tomlinson's argument, the CIO did, in fact, testify about two other incidents at the Credit Union involving the compromise of customer data. Whether those incidents are the ones to which he refers is unclear. In addition, Tomlinson does not explain how this testimony would have been relevant to whether he breached his duty of client confidentiality. To the extent he contends that he is a victim of selective prosecution, he fails to establish a claim. *See Plunkett*, 2013 WL 2898033, at *10 (setting forth elements of a claim for selective prosecution and finding that applicant failed to establish such a claim) & n.61 (citing authority).

45 15 U.S.C. § 78s(e)(2). Tomlinson does not contend, and the record does not show, that FINRA's sanctions imposed an unnecessary or inappropriate burden on competition.

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

47 *Paz Sec.*, 494 F.3d at 1065 (stating that "[t]he purpose of the order [must be] remedial, not penal") (quoting *Wright v. SEC*, 112 F.2d 89, 94 (2d Cir. 1940)); *see also* FINRA Sanction Guidelines at 2 (stating that "[d]isciplinary sanctions are remedial in nature and should be designed to deter future misconduct and to improve overall business standards in the securities industry"), *available at* http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf.

48 Although we are not bound by the Guidelines, we use them as a benchmark in conducting our review under Exchange Act Section 19(e)(2). *Plunkett*, 2013 WL 2898033, at *11.

Principal Considerations in Determining Sanctions applicable to all disciplinary proceedings in setting remedial sanctions.[49] The Principal Considerations identify several factors to be weighed, including whether the respondent accepted responsibility and acknowledged the misconduct to his employer;[50] whether the respondent engaged in numerous acts and/or a pattern of misconduct;[51] whether the respondent engaged in the misconduct over an extended period of time;[52] whether the respondent attempted to conceal his misconduct;[53] whether the respondent's misconduct was the result of an intentional act, recklessness, or negligence;[54] and whether the respondent's misconduct resulted in the potential for monetary or other gain.[55] The NAC's decision to suspend Tomlinson for ninety days in all capacities is supported by the application of these considerations.

The NAC found, and we agree, that Tomlinson "should have known that he had an obligation to maintain and safeguard customer information," and that he "carelessly" placed more than 2,000 RJFS and Credit Union customers' confidential information at risk when he left RJFS and the Credit Union and moved to Wells Fargo. RJFS's and Wells Fargo's policies put Tomlinson on notice of his obligations, but he disregarded them.

Moreover, the NAC found, and we agree, that Tomlinson, by virtue of his role as a supervisor, should have known that taking customers' confidential nonpublic information and disclosing it to a third party without the customers' consent violated Rule 2110.[56] Under RJFS's Manual, Tomlinson, as a supervisor, was responsible for understanding his obligations regarding confidential client information and ensuring that advisors under his supervision also complied with their obligations. Rather than protect confidential client information, Tomlinson used the access he had as a supervisor to take it for his own purposes. As the NAC found, the Hearing Panel failed to consider this factor in assessing sanctions.

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49 *See* FINRA Sanctions Guidelines, *supra* note 47, at 6-7 (setting forth a nonexhaustive list of factors that should be considered).

50 *Id.* at 6 (Principal Consideration No. 2).

51 *Id.* (Principal Consideration No. 8).

52 *Id.* (Principal Consideration No. 9).

53 *Id.* (Principal Consideration No. 10).

54 *Id.* at 7 (Principal Consideration No. 13).

55 *Id.* (Principal Consideration No. 17).

56 *Cf. Friedman*, 2011 WL 1825025, at *9 (finding aggravating that applicant was responsible for regulatory compliance at his firm).

The NAC further found several additional aggravating factors to be present. Tomlinson's misconduct resulted in his potential for monetary gain with respect to the customers who decided to open an account with him at Wells Fargo; his misconduct occurred over several days and late at night, which indicated that he acted in a "surreptitious manner"; and he sought to conceal his misconduct after he received the Credit Union's December 2008 letter by deleting files from his personal flash drive and personal laptop.[57] At the same time, the NAC found "no evidence that Tomlinson intended to harm customers or place their confidential information at risk," and that he "now acknowledges the potential harm that his mishandling of confidential customer information could have caused customers." The NAC also found that, although the absence of customer harm is not a mitigating factor,[58] the record did not show that customer information was misused as a result of Tomlinson's misconduct.

Given these circumstances, we agree with the NAC's determination to impose on Tomlinson a ninety-day suspension in all capacities. As we have stated, "[t]he ability to credibly assure a client that [confidential] information will be used solely to advance the client's own interests is central to any securities professional's ability to provide informed advice to clients."[59] In fact, the "[d]isclosure of such information jeopardizes the foundation of trust and confidence crucial to any professional advising relationship."[60] Tomlinson's misconduct showed a "careless" breach of his duty of client confidentiality.

Tomlinson argues that the ninety-day suspension is "career ending" and should be "eliminated or reduced."[61] He explains that "Wells Fargo has a policy to 'terminate' any representative with a suspension. I want to be able to 'rebuild' . . . my career, but a 90-day suspension would 'absolutely' end it." He points to the ten-business day suspension imposed on

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57 We also find that Tomlinson attempted to conceal his misconduct by failing to mention during his exit interview that he had customer information on his personal flash drive and laptop. It had to have been apparent to Tomlinson that the Credit Union did not want him to have such information on his personal devices. That was the reason why the Credit Union "wiped" Tomlinson's cell phone before returning it to him.

58 *Edward S. Brokaw*, Exchange Act Release No. 70883, 2013 WL 6044123, at *18 & n.137 (Nov. 15, 2013) (citing cases).

59 *Heath*, 2009 WL 56755, at *10.

60 *Id.*

61 Tomlinson also requests that the monetary fine be "removed." As discussed, the NAC upheld the fine but declined to impose it or order costs based on Tomlinson's demonstrated inability to pay.

the applicant in *Dante J. DiFrancesco*,[62] a similar breach of client confidentiality case, to demonstrate the unfairness of his 90-day suspension.

It is well-settled that the appropriate sanction in any case "depends on the facts and circumstances of each case and cannot be precisely determined by comparison with action taken in other proceedings."[63] The facts and circumstances of this case fully support a ninety-day suspension. As FINRA found, Tomlinson "carelessly" placed more than 2,000 RJFS and Credit Union customers' confidential information at risk when he moved to Wells Fargo. Despite being instructed repeatedly by RJFS and Wells Fargo not to take or disclose customers' confidential nonpublic information, Tomlinson did so for his own financial purpose and benefit. Then, when the misconduct was discovered, he attempted to conceal it by deleting the information on his personal flash drive and personal laptop.

Tomlinson argues that the NAC increased the suspension to "offset" his inability to pay the fine and as "retribution" for his appeal. But the "mere fact that the NAC increased the sanctions . . .. does not render the [sanctions] invalid on fairness grounds."[64] Tomlinson states that the NAC's refusal to impose the fine is "extremely helpful," but contends that the suspension "is 'far more costly' . . . to a career that has lasted 32 years without a customer complaint."[65] Tomlinson asserts that "[a]lot has been learned over the past 5 1/2 years" and that he is "more than contrite and extremely remorseful for the impact [this action] has had on [his] family." While we acknowledge Tomlinson's concerns, we have stated previously that "[h]ow a

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62 Exchange Act Release No. 66113, 2012 WL 32128 (Jan. 6, 2012).

63 *Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *9 (Feb. 13, 2009), *petition denied*, 592 F.3d 173 (D.C. Cir. 2010); *see also Butz v. Glover Livestock Comm'n Co.*, 411 U.S. 182, 187 (1973) (holding that "employment of a sanction within the authority of an administrative agency is . . . not rendered invalid in a particular case because it is more severe than sanctions imposed in other cases"). In any event, there are aggravating facts in this case that justify greater sanctions. First, Tomlinson admitted that he downloaded confidential information concerning more than 2,000 customers, most of whom were assigned to other advisors and with whom he had no business relationship. In *DiFrancesco*, by contrast, the applicant intended to download information relating only to his customers, but inadvertently downloaded information pertaining to tens of thousands of other firm customers. Second, Tomlinson was a supervisor charged with responsibility for ensuring that associates safeguard customers' confidential information. In *DiFrancesco*, by contrast, the applicant had a non-supervisory role at his firm.

64 *Joseph Abbondante*, Exchange Act Release No. 53066, 58 SEC 1082, 2006 WL 42393, at *11 (Jan. 6, 2006), *petition denied*, 209 Fed. App'x 6 (2d Cir. 2006).

65 In his brief, Tomlinson states: "I want to make clear that there is 'no misunderstanding' on my part of the concern to customer privacy and keeping safe clients' personal information. Over my 32 year career, I never even told my wife 'who my clients were' . . . . So did I do something dumb, yes, but not with any 'malicious intent' or for a 'nefarious nature.'"

respondent collaterally suffers as a result of the violation, or from the disciplinary proceeding that followed (*e.g.*, that he lost money, the amount of time he was out of the industry, or the impact the disciplinary proceeding had on his reputation, career, or finances) is not a mitigating factor."[66]

* * *

We conclude that the ninety-day sanction imposed on Tomlinson serves a remedial purpose of protecting public investors and deterring future misconduct without being excessive or oppressive. This sanction reflects the importance of a security professional's obligation to safeguard confidential customer information, and is a measured response to Tomlinson's careless breach of that obligation.

An appropriate order will issue.

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

Brent J. Fields
Secretary

By: Lynn M. Powalski
Deputy Secretary

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66 *Johnny Clifton*, Securities Act Release No. 9417, 2013 WL 3487076, at *16 n.116 (July 12, 2013). In addition, FINRA has found that the lack of a disciplinary record is not mitigating for purposes of sanctions. *See Kent M. Houston*, Exchange Act Release No. 71589, 2014 WL 651953, at *7 (Feb. 20, 2014).

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 73825 / December 11, 2014

Admin. Proc. File No. 3-15824

In the Matter of the Application of

STEVEN ROBERT TOMLINSON

For Review of Disciplinary Action Taken By FINRA

ORDER SUSTAINING DISCIPLINARY ACTION

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

ORDERED that the disciplinary action taken and sanction imposed by FINRA against Steven Robert Tomlinson be, and they hereby are, sustained.

By the Commission.

Brent J. Fields
Secretary

By: Lynn M. Powalski
Deputy Secretary

May 15, 2014

FINRA

1735 K Street, NW

Washington, DC 20006

Attn: Andrew Love, Esq.

Re: In the Matter of the Application for Review of Steven R Tomlinson

Administrative Proceedings No. 3-15824

Dear Mr. Love,

I am writing in preparation for filing my brief by June 2, 2014. In my appeal I had requested copies of the two NAC panel members, Mr. Mahon and Mr. Margolin, for their written recommendation from my hearing dated 9/27/13. As of this date I have not received this material. Please provide these so I may finish preparing. Thanking you in advance for providing this information.

Sincerely

Steven Tomlinson

[redacted]

[redacted]

Cc:

Kevin O'Neill, Deputy Secretary

Securities and Exchange Commission

100 F Street, NE

Washington, DC 20549-1090