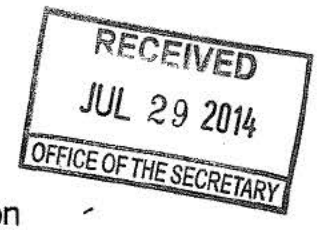
July 28, 2014

3-15990



Overview of Determination by Self-Regulatory Organization

The nondisclosure of tax liens on the Form U-4 was inadvertent. The liens were related to a Troszak CPA Group issue. Mr. Troszak did not know that penalties related to fully paid taxes could be attached to him personally once uncovered that he was personally liable all liens were paid in full. We are requesting not to be banned from the financial industry for a U-4 filing error.

The much larger issue of releasing to FINRA private client tax data related to preparation of one's tax return and disclosure of financial data to a non-governmental organization is very problematic to a CPA, governed by a "fiduciary standard", that FINRA does not recognize. This is a major industry issue that is related to this case.

We don't believe FINRA has jurisdiction over loans and are requesting a stay to assemble needed documents (Discharge of Mortgages from Emmet County) to produce, as they were not available prior to the determination, and be allowed to continue to conduct business.

We would like to have SEC review documents related to DC court case that was not allowed as evidence that FINRA is perceived as a bad actor in the financial industry and clients do not want information disclosed to an organization with connections to Bernie Madoff. We were denied calling Carla Romano as a witness to corroborate DC Court case assertions and find out what has happened to Mr. Shultz, no longer with FINRA, he acted on tip. (See Exhibit 4)

Without warning FINRA contacted our clearing firm First Southwest that North Woodward was banned. The clearing firm locked out North Woodward from its online status so that no access to any information was available. This action has caused considerable harm to all North Woodward clients and North Woodward respectfully requests "expedited consideration" related to this matter (Rule 401 d3).

It is now more difficult for our clients to manage their treasury functions and obtain cash to make tax payments to the IRS and make withholding payments related to DOL retirement plans, in some cases payroll related liabilities have been in jeopardy of not getting paid.

Since becoming a B/D in 2000, North Woodward Financial has not had one client complaint filed against the firm or Doug Troszak.

Our only real issue is FINRA regulation related to private client data requests that stem from a regulatory tip related to a vacation residence that a Chicago neighbor had an interest in, and I would not sell. The individual informed me that there was a "Chicago Way" of dealing with me. I have not been able to uncover the source of the tip and want to have this information.

July 28, 2014

Jurisdiction of FINRA over Loans

This transaction does not involve securities, nor is it the type of non-securities case that FINRA may regulate.

This transaction does not involve securities and the application of the Howey test would clearly show that, (1) an investment of money was not made with, (2) an expectation of profits from an appreciation of value arising from, (3) a common enterprise, (4) which depends solely on the efforts of a promoter or third party.

The conduct at issue in this case is not inconsistent with just and equitable principles of trade.

The conduct at issue here is a private loan transaction between friends.

The mortgages granted in exchange for loans were publicly recorded.

The transaction complied with the FINRA rule specifically intended to regulate similar transactions with clients that were also long time friends.

A letter affirming compliance with requirements of FINRA Rule 3240 (see Exhibit 1).

FINRA cannot be allowed to argue that these transactions are inconsistent with just and equitable principles of trade when the transactions comply with FINRA's rule that is specifically designed to regulate transactions of this nature.

Because the conduct at issue in this case is not inconsistent with just and equitable principles of trade, does not involve securities business-related conduct, and does not involve securities, FINRA may not discipline it.

Because FINRA cannot mete out discipline for the underlying transaction, FINRA should not be allowed to hand out discipline for a failure to provide information related to that transaction, otherwise, FINRA will continue to request information on matters outside the scope of its regulatory authority.

The need to rationally limit FINRA's overreaching discovery requests is especially prevalent in this case because of the reasons for withholding the requested information.

FINRA rule 8210 does not apply to the documents of Troszak CPA Group. (Jay Alan Ochanpaugh).

The requested documents cannot be disclosed under federal law 26 U.S.C. 6713 and 26 U.S.C. 7216, as FINRA is not a federal agency.

July 28, 2014

Mr. Troszak substantially complied with FINRA's Investigation

Mr. Troszak turned over thousands of documents, yet FINRA continued to request more documents.

Non-disclosure of Privileged accountant/tax information is mandated in the accounting industry in numerous ways at the State and federal levels, stay the expulsion and allow North Woodward and Douglas Troszak CPA an opportunity to Appeal.

Clients Objections to FINRA Disclosure and Engagement Letter. All our clients are tax clients, first and foremost, no client is only a securities account client. All clients annually sign an engagement letter allowing "**no disclosure** of any tax, financial or medical information will be made available to any third party, would include the IRS, Department of Labor or any other governmental or regulatory agency for any purpose or request, without written consent. This policy extends to all affiliates and vendors utilized by the Troszak CPA Group." See Exhibit

Problematic Access to Tax Information and Cash

Since 2000, when North Woodward began doing business, we have purchased mainly only mutual fund "C" shares, which have an one % 12b-1 trailer one year after the purchase. All clients are CPA firm finance, accounting, tax prep and planning clients, have bundled services and reduced accounting fees for large dollar mutual fund "C" shares, 12b-1 revenue allocated to recordkeeping and tax prep and planning costs.

In order to perform accurate financial projections, calculate capital gains/losses in order to harvest income, meet IRS RMD (Required Minimum Distribution) to avoid improper distributions and related penalties and do a host of other tax planning and preparation which include payroll related activities for retirement plans. All of which need access to the clearing firm (First Southwest) computer system for the data stored in client accounts. Access was denied to me on Mon. 7-21.

Currently, we cannot analyze the tax ramifications of any transaction request by a client related to there account since we do not have access to the cost basis now required by the IRS to be maintained by the clearing firm. We do not have current balances from IRA accounts in order to do accurate RMD calculations. Financial projections of cash flow virtually impossible. By failing to provide access to "cost basis" information FINRA and First Southwest have denied our clients tax representation, financial consulting and made them proceed with a sale at their own peril. For services they have already paid for.

I am failing to see how having someone's CPA and Financial Consultant banned from the securities industry has enhanced Investor Protection.

I have my accounts at First Southwest and it has become difficult accessing them to obtain cash please grant a stay so I can obtain cash to purchase legal representation.

EXHIBIT 1

North Woodward Financial Corporation
Investments--Insurance
690 East Maple
Birmingham, MI 48009-6353
Ph: 248/258-6575
Fax: 248/258-6424
Email: datcpa75@hotmail.com

[redacted]

November 16, 2009

First Southwest Company
325 N. Saint Paul Street
Suite 800
Dallas, TX 75201-3852
Attn: Laura Hilbun

RE: FINRA Rule 2370 VIA E-Mail (lhilbun@firstsw.com)

Dear Laura Hilbun,

Please be advised that regarding borrowing from customers, in all cases related to transactions involving North Woodward Financial Corporation and Douglas A. Troszak the following conditions are met:

- the lending arrangement is based on a personal relationship with the customer, such that the loan would not have been solicited, offered, or given had the customer and the associated person not maintained a relationship outside of the broker/customer relationship.

- The lending arrangement is based on a business relationship outside of the broker-customer relationship.

Procedures are in place to document borrowing arrangements.

Please call with any questions.

Sincerely,

Douglas A. Troszak

cc: John Muschalek (via e-mail – john.muschalek@firstsw.com)

Exhibit 4

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

AMERIVET SECURITIES, INC., P.O. Box 1074
Inglewood, C.A. 90308.

Plaintiff

v.

FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC., 1735 K Street, NW, Washington, D.C. 20006.

Defendant

Civil Action No. 0005767-09

COMPLAINT

Plaintiff Amerivet Securities, Inc. ("Plaintiff"), by its attorneys, for its complaint against defendant Financial Industry Regulatory Authority ("FINRA" or the "Company") seeking to obtain certain books and records from the Company and/or its subsidiaries pursuant to 8 Del. C. § 220 and the common law, alleges as follows.

PARTIES

1. Plaintiff, a corporation duly incorporated in the State of California, has, at all relevant times and for the last 10+ years, been a member of FINRA, formerly National Association of Securities Dealers ("NASD").

2. Defendant FINRA is a Delaware non-stock, not for profit corporation with its headquarters and principal place of business in Washington D.C. On or about July 27, 2008, NASD acquired certain assets of the regulatory arm of the New York Stock Exchange and was renamed FINRA. Before the regulatory merger, FINRA had approximately 5,100 members, of which about 200 were also members of the NYSE, and identified on its publicly disclosed balance sheets, "Members' Equity" in excess of $1.6 billion.

FINRA

Financial Industry Regulatory Authority

Jennifer C. Brooks
Associate General Counsel

Direct: (202) 728-8083
Fax: (202) 728-8264

July 21, 2014

VIA MESSENGER
Kevin O'Neill, Deputy Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Complaint No. 2010021303301: North Woodward Financial Corp. and Douglas A. Troszak

Dear Mr. O'Neill:

Enclosed please find the decision of the National Adjudicatory Council ("NAC") in the above-referenced matter. The FINRA Board of Governors did not call this matter for review, and the attached NAC decision is the final decision of FINRA.

Very truly yours,

Jennifer C. Brooks

Enclosure

Financial Industry Regulatory Authority

Marcia E. Asquith
Senior Vice President and Corporate Secretary
(202) 728-8831 - Direct
(202) 728-8300 - Fax

July 21, 2014

VIA ELECTRONIC AND CERTIFIED MAIL:
RETURN RECEIPT REQUESTED AND FIRST-CLASS MAIL

Douglas A. Troszak
Troszak CPA Group
690 East Maple Road, Suite 100
Birmingham, Michigan 48009

[redacted]

Re: Complaint No. 2010021303301: North Woodward Financial Corp. and Douglas A. Troszak

Dear Mr. Troszak:

Enclosed is the decision of the National Adjudicatory Council ("NAC") in the above-referenced matter. The FINRA Board of Governors did not call this matter for review, and the attached NAC decision is the final decision of FINRA.

In the enclosed decision, the NAC expelled North Woodward Financial Corp. ("North Woodward") and barred you.

Please note that under Rule 8311 ("Effect of a Suspension, Revocation, Cancellation or Bar"), since the NAC has imposed a bar on you, effective immediately you are not permitted to associate further with any FINRA member firm in any capacity, including a clerical or ministerial capacity.

Please note that under IM-2420-1(a)(2), a broker or dealer who has been expelled from FINRA membership ceases to be a member of FINRA from the effective date of the expulsion order. In this case, the effective date of the expulsion order is July 21, 2014. In addition, North Woodward is required under Securities and Exchange Commission ("SEC") Rule 17a-5(b) to file with the SEC's principal office in Washington, D.C., and with the appropriate SEC regional office, Part II or Part IIA of Form X-17A-5 within two business days of the date of expulsion.

Pursuant to Article V, Section 2 of the FINRA By-Laws, if you are currently employed with a member of FINRA, you are required immediately to update your Form U-4 to reflect this action.

You are also reminded that the failure to keep FINRA apprised of your most recent address may subject you to entry of a default decision. Article V, Section 2 of the FINRA By-Laws requires all persons who apply for registration with FINRA to submit a Form U-4 and to keep all information on the Form U-4 current and accurate. Accordingly, you must keep your member firm apprised of your current address.

In addition, FINRA may request information from, or file a formal disciplinary action against, persons who are no longer registered with a member for at least two years after their termination from the member. *See* Article V, Sections 3 and 4 of the FINRA's By-Laws. Requests for information and disciplinary complaints issued by FINRA during this two-year period will be mailed to such persons at their last known address as reflected in FINRA's records. Such individuals are deemed to have received correspondence sent to that address, whether or not the individuals have actually received them. Thus, individuals who are no longer associated with a FINRA member firm and who have failed to update their addresses during the two years after they end their association are subject to the entry of default decisions against them. *See Notice to Members 97-31.* Letters notifying FINRA of such address changes should be sent to:

CRD
P.O. Box 9495
Gaithersburg, MD 20898-9401

* * *

You may appeal this decision to the U.S. Securities and Exchange Commission ("SEC"). To do so, you must file an application with the SEC within 30 days of your receipt of this decision. A copy of this application must be sent to FINRA's Office of General Counsel for Regulatory Policy and Oversight, as must copies of all documents filed with the SEC. Any documents provided to the SEC via fax or overnight mail should also be provided to FINRA by similar means.

The SEC's address is:

Office of the Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

FINRA's address is:

Attn: Jennifer C. Brooks
Office of General Counsel
Regulatory Policy and Oversight
FINRA
1735 K Street, N.W., 7th Floor
Washington, DC 20006

If you file an application for review with the SEC, the application must identify the FINRA case number and set forth in summary form a brief statement of alleged errors in the NAC decision and supporting reasons therefor. You must include an address where you may be served and a phone number where you may be reached during business hours. If your address or phone number changes, you must advise the SEC and FINRA. Attorneys must file a notice of appearance.

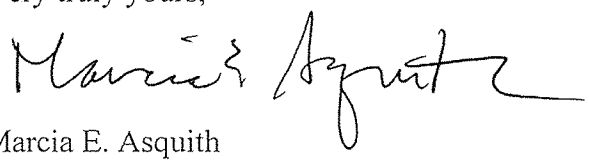
The filing with the SEC of an application for review shall stay the effectiveness of any sanction, other than a bar or an expulsion, imposed in a NAC decision. Thus, the bar and expulsion imposed by the NAC in the enclosed decision will not be stayed pending appeal to the SEC, unless the SEC orders a stay. Additionally, orders in the enclosed NAC decision to pay fines and/or costs will be stayed pending appeal.

Questions regarding the appeal process may be directed to the Office of the Secretary at the SEC. The phone number of that office is 202-551-5400.

* * *

If you do not appeal this NAC decision to the SEC and the decision orders you to pay fines and/or costs, you do not need to pay these amounts until after the 30-day period for appeal to the SEC has passed. Any fines and costs assessed should be paid to (via regular mail) FINRA, P.O. Box 418911, Boston, MA 02241-8911, or (via overnight delivery) to Bank of America Lockbox Services, FINRA 418911, MA5-527-02-07, 2 Morrissey Blvd., Dorchester, MA 02125.

Very truly yours,



Marcia E. Asquith
Senior Vice President and Corporate Secretary

Enclosure

cc: Natesha Cromwell
Nancy Espinosa
Dale Glanzman
Michelle Glunt
Leo Orenstein
Jeffrey Pariser

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of

Department of Enforcement,

Complainant,

vs.

North Woodward Financial Corp.
Birmingham, MI,

and

Douglas A. Troszak
Birmingham, MI,

Respondents.

DECISION

Complaint No. 2010021303301

Dated: July 21, 2014

Respondents failed to amend principal's Form U4 to disclose that he was subject to a federal tax lien and failed to respond completely to FINRA information requests. Held, findings affirmed and sanctions modified.

Appearances

For the Complainant: Dale A. Glanzman, Esq., and Mark A. Koerner, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondents: Douglas A. Troszak, Pro Se

Decision

Pursuant to FINRA Rule 9311, North Woodward Financial Corp. ("North Woodward") and its sole owner, Douglas A. Troszak ("Troszak"), appeal the Hearing Panel's decision in this matter. The Hearing Panel found that the respondents violated Article V, Section 2 of the FINRA By-Laws, FINRA Rule 2010, and NASD Rule 2110 by failing to amend Troszak's Uniform Application for Securities Industry Registration or Transfer ("Form U4") to disclose a

federal tax lien.[1] The Hearing Panel further found that the respondents violated FINRA Rules 8210 and 2010 by failing to respond to FINRA requests for information.

For the failure to respond to requests for information, the Hearing Panel expelled North Woodward, barred Troszak, and fined the respondents $50,000 jointly and severally. For the Form U4 violation, the Hearing Panel fined the respondents $10,000, jointly and severally, and suspended them for 30 business days. The Hearing Panel declined, however, to impose the sanctions for the Form U4 violation, as well as the $50,000 fine for the Rule 8210 violation, in light of the expulsion and bar. After a complete review of the record, we affirm the Hearing Panel's findings of violation but modify the sanctions it imposed.

I. Background

Troszak is North Woodward's president, chief financial officer, chief compliance officer, financial and operations principal ("FINOP"), and sole registered representative. Troszak entered the securities industry in 1992 when he was associated with another FINRA member firm as a general securities representative. Troszak left that firm in 2000 when he founded North Woodward. North Woodward conducts a general securities business. Troszak is currently registered as a general securities representative, principal, and FINOP with North Woodward.

Troszak is also a certified public accountant. Since the mid-1980s, Troszak has owned and operated Troszak, C.P.A. Troszak describes accounting as his primary business. All of North Woodward's customers are also Troszak's accounting clients.

II. Facts

A. Troszak's Federal Tax Lien

On October 6, 2008, the IRS filed a federal tax lien in the amount of $19,802.07 against Troszak individually and against his accounting business. Troszak admitted that he received notice of the tax lien from the IRS in October 2008, and he understood that he was personally subject to the lien. Question 14M on the Form U4 asked: "Do you have any unsatisfied judgments or liens against you?". The respondents failed to update Troszak's Form U4 to disclose the tax lien until October 2011.[2]

B. Troszak Obtained Loans from His Customers

In February 2010, FINRA began investigating respondents after receiving a regulatory tip that Troszak borrowed funds from his customers to pay for a mortgage on property that he

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[1] The conduct rules that apply are those that existed at the time of the conduct at issue.

[2] Troszak testified that he satisfied the lien in full in October 2010.

owned and issued promissory notes to customers.[3] The respondents, through their counsel at the time, provided information and documents on March 10, 2010, in response to FINRA's initial written inquiry.[4] Based on this response, FINRA learned the following facts:

Troszak owned several commercial condominiums in Michigan. In February 2009, he experienced financial difficulty and was unable to pay the mortgage on one of the units. On February 27, 2009, the mortgage holder gave notice of foreclosure. The mortgage holder purchased the property at a sheriff's sale on June 11, 2009.

Under Michigan law, the owner of foreclosed property may redeem his ownership by paying the sale price plus interest within six months of the sale. The redemption date for Troszak's property was December 11, 2009. In November 2009, Troszak structured a group of loans totaling $200,000 to redeem his property. Troszak obtained these loans from ten North Woodward customers. Seven of these customers withdrew funds from individual retirement accounts ("IRAs") in order to loan Troszak money.

Troszak executed a promissory note for each loan, which directed payment of 10% interest annually. The notes also directed Troszak to repay the note holders in six consecutive quarterly installments of principal and interest on the first day of each quarter, beginning on February 1, 2010, with the balance paid at the end of the sixth quarter, on May 1, 2011. Troszak redeemed his ownership in the property on December 8, 2009, by using $188,689.52 of the customers' funds that he obtained through the loans.[5]

C. FINRA Issued Successive FINRA Rule 8210 Requests to the Respondents

After receiving respondents' March 10, 2010 response, FINRA issued to the respondents three successive FINRA Rule 8210 requests for additional information and documents focusing on the details of the loan transactions, the customers' accounts, and any tax liens to which

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[3] The respondents argue that FINRA should reveal to them who filed the tip. FINRA's policy, however, is to treat tip information, and the source of such information, confidentially to the fullest extent possible. *See* http://www.finra.org/industry/tools/p006647. Accordingly, the record before us does not reveal the tipper's identity. The respondents, moreover, are not entitled to that information as reflected by FINRA's policy, and that information is not relevant to these proceedings.

[4] The respondents were represented by counsel throughout FINRA's investigation and until the day before commencement of the hearing below.

[5] Respondents' counsel provided copies of the notice of foreclosure sale on Troszak's property, the sheriff's deed on the foreclosure sale, an affidavit as to the redemption amount, a letter from Troszak to North Woodward's clearing firm related to the loans from customers, the promissory notes, a redemption certificate reflecting Troszak's payment of $188,689.52 to recover the property, a document giving the note holders a $200,000 mortgage as security, and a portion of North Woodward's supervisory procedures manual.

Troszak was subject. Troszak admitted that he received FINRA's written requests, and he authorized counsel to respond on respondents' behalf. Respondents' failure to supply requested information in response to these three requests is at the center of this matter.

1. April 22, 2010 Request

By letter dated April 22, 2010, FINRA requested additional documents and information related to the loans from customers and associated promissory notes. Among other things, FINRA requested whether any disclosures about the foreclosure were made to the customers who lent Troszak money. FINRA also asked whether the seven customers who withdrew funds from their IRAs to loan Troszak money were informed of potential tax consequences. FINRA asked whether the loans were reflected in the customers' North Woodward accounts and requested copies of new account forms, account amendments, and account statements for 2009 and 2010. FINRA requested that the respondents produce evidence showing that the customers were receiving payments as required by the terms of the promissory notes and to provide an accounting, with documentation, of the $11,310.48 difference between the amount that Troszak received in loans from the customers and the amount he paid to redeem the property. FINRA also asked about public records indicating that Troszak was subject to three tax liens (two federal and one state), requested an explanation of why the liens had not been disclosed on Troszak's Form U4, and directed the respondents to disclose them on Troszak's Form U4. FINRA, in addition, requested copies of all correspondence between the respondents and the IRS.

On May 20, 2010, respondents' counsel provided a written response but failed to provide any of the requested documents. The letter stated that:

- the customers' IRA withdrawals caused no taxable event and new account forms and monthly account statements could not be disclosed because the information was "personal and confidential to the customers," and advised FINRA to obtain that information from North Woodward's clearing firm;
- interest payments on the promissory notes were made according to the schedule;
- the customers were "verbally" told that the property was in foreclosure;
- the $11,310.48 difference between the loaned amount and the redemption payment was reserved for payment of taxes and interest, and this sum was not maintained in an account owned by North Woodward;
- Troszak was unaware of any state tax lien, and the federal tax liens originated in Troszak's CPA firm, and he did not have to disclose them on his Form U4; and
- the respondents were willing to produce documents regarding accounts owned by North Woodward, but they were "not willing to produce information regarding any other account, as such information is personal and confidential and is irrelevant to the subject matter of this examination."

2. May 25, 2010 Request

FINRA issued a second FINRA Rule 8210 request on May 25, 2010, informing the respondents that they had provided an incomplete response to the April 22, 2010 request. FINRA reiterated its request for, among other things, customer account statements for 2009 and

2010; documentation reflecting an accounting of the $11,310.48 in loan proceeds; copies of the principal and interest payments on the loans in February and May 2010; correspondence with the IRS; and bank and brokerage account statements in which Troszak had a beneficial interest for the period of January 2009 to April 2010. The May 25 letter also reiterated that Troszak's Form U4 should be amended to reflect any federal tax liens.

Respondents' counsel responded on June 8, 2010. The response provided none of the requested documents and stated:

> Mr. Troszak and North Woodward Financial Corp. have nothing additional to disclose to FINRA. . . . [M]uch of the information sought by FINRA is personal and confidential to the firm's clients, and to the extent any tax issues are implicated, Mr. Troszak and North Woodward Financial Corp. are prohibited by statute and relevant regulations from disclosing such information.[6]

3. June 10, 2010 Request

On June 10, 2010, FINRA issued a third, and final, FINRA Rule 8210 written request to the respondents. This request attached the April 22 and May 25, 2010 requests and cautioned the respondents that a failure to comply with the requests could result in disciplinary action against them. On that same day, FINRA staff spoke by telephone with respondents' counsel to stress the importance of responding in full to the FINRA Rule 8210 requests and warn counsel that, if the requested documents were not provided, FINRA would pursue formal action against the respondents.

Respondents' counsel responded by letter dated June 18, 2010. Again, the respondents provided none of the requested documents. The respondents claimed that no new account forms were created for the loan transactions and customer account statement information could not be disclosed because it was "personal and confidential" to the customers. The respondents directed FINRA to North Woodward's clearing firm to obtain customer account statements, but they noted that the statements would not reflect the amount of the loans or the outstanding balance. The respondents represented that the balance of the loans ($11,380.48) was in an account belonging to Troszak Capital Corp., the entity that issued the promissory notes to the customers.[7] They stated that they would not disclose information about this account because it was "personal and confidential to Troszak Capital Corp." The respondents further refused to provide documentary evidence that principal and interest payments were made on the promissory notes

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[6] Troszak in his on-the-record investigative testimony to FINRA and at the hearing below adopted counsel's response.

[7] The promissory notes, however, were signed by Troszak individually and as president of Troszak Capital Corp. Troszak testified in an on-the-record interview with FINRA staff that he created Troszak Capital Corp. for tax purposes and controlled the funds going into and out of the corporation's account.

in February and May 2010 because that information was "personal and confidential" to respondents' customers. The respondents represented that "interest payments have been made and the individual lenders are satisfied." They also refused to provide bank and brokerage account statements in which Troszak had a beneficial interest, characterizing the information as "personal and confidential" and "irrelevant" to FINRA's investigation.

With respect to the federal tax lien against Troszak, the respondents stated it was "an ongoing matter that does not involve the broker-dealer," was a "contingent liability," and "may ultimately be resolved in favor of" Troszak. Troszak did not update his Form U4 to reflect the tax lien until 16 months later, in October 2011.

D. FINRA Pursues Formal Action Against the Respondents

On February 15, 2011, FINRA notified the respondents that it intended to recommend formal disciplinary action against them and invited the respondents to make a Wells submission in response. Troszak, by a letter dated February 25, 2011, responded in relevant part that "North Woodward ha[d] supplied an inordinately large amount of information and documentation" and that FINRA was requesting "privileged documents" "not within the scope of the examination." The respondents produced no documents in response. Therefore, the only documents that the respondents produced during FINRA's investigation were those they provided with their March 10, 2010 letter.

Enforcement subsequently filed a two-cause complaint against the respondents on May 18, 2011. Cause one alleged that the respondents failed to disclose a federal tax lien against Troszak on his Form U4, in violation of Article V, Section 2 of the FINRA By-Laws, FINRA Rule 2010, and NASD Rule 2110.[8] Cause two alleged that the respondents failed to respond completely to requests for information and documents, in violation of FINRA Rules 8210 and 2010.

E. The Respondents Produce Some Information and Documents Post Complaint

From October 5, 2011, to November 23, 2011, the respondents produced to FINRA 5,601 pages of documents.[9] These documents included correspondence with the IRS, litigation records related to respondents' taxes and liens, various bank account statements belonging to Troszak and his business ventures, North Woodward securities account statements from January 2009 through October 2011 for three customers who were promissory note holders pursuant to the November 2009 loan to Troszak, and North Woodward securities account statements for 2009 and 2010 for the remaining customers who were note holders.

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[8] Enforcement did not allege in the complaint that respondents' failure to disclose was willful.

[9] An index of these documents was admitted into the record. The underlying documents were not offered into evidence.

These documents, however, were not entirely responsive to FINRA's earlier Rule 8210 requests. The respondents never produced an accounting of the $11,310.48 difference between the amount borrowed from the customers and the redemption payment; evidence of the interest and principal payments to the customers; or the 2009 and 2010 securities account statements for Troszak Capital Corp., which issued the promissory notes.[10]

On November 1, 2011, Troszak provided on-the-record testimony to FINRA staff.

III. Procedural History

After a one-day hearing, the Hearing Panel found North Woodward and Troszak liable for the two violations alleged in the complaint.[11] The Hearing Panel barred Troszak, expelled North Woodward, and fined the respondents $50,000 jointly and severally for failing to provide FINRA with requested information. The Hearing Panel also determined that suspending the

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[10] As part of their post-complaint production in November 2011, respondents produced Troszak Capital Corp.'s North Woodward securities account statements for January 2011 through October 2011.

[11] The respondents were represented by counsel during the investigation that gave rise to this proceeding up until a short time before the hearing. Troszak explained during his oral argument before the FINRA National Adjudicatory Council ("NAC") subcommittee ("Subcommittee") empanelled to consider this appeal that he "fired his attorneys because they disclosed . . . confidential client information" to FINRA. The respondents now argue that Enforcement "exclud[ed]" and "misclassified" "relevant information" at the hearing that the NAC should admit "as additional testimony." Pursuant to FINRA Rule 9346(b), a party seeking to introduce additional evidence on appeal must describe each item of new evidence proposed, demonstrate good cause excusing the failure to introduce the evidence below, and establish the materiality of the evidence to the issues before the NAC. It is unclear what additional testimony respondents seek to add, why respondents failed to introduce such testimony below, and whether that testimony is material. *See, e.g.*, *Timothy H. Emerson, Jr.*, Exchange Act Release No. 60328, 2009 SEC LEXIS 2417, *32 (July 17, 2009) (stating that an adjudicator "cannot manufacture arguments for an appellant"). We therefore reject respondents' request to admit "additional testimony." In any event, the record shows that respondents received a fair process in accordance with FINRA's Code of Procedure and the Securities Exchange Act of 1934 ("Exchange Act"). *See* 15 U.S.C. § 78o-3(b)(8), (h)(1) (requiring that self-regulatory organizations provide fair procedures); *Sundra Escott-Russell*, 54 S.E.C. 867, 873-74 (2000) (finding requirements of the Exchange Act met when FINRA brought specific charges, the respondent had notice of such charges, the respondent had an opportunity to defend against such charges, and FINRA kept a record of the proceedings). For example, the respondents were permitted to include exhibits in the record and the Hearing Officer gave Troszak great latitude in his questioning of witnesses and in his own testimony. The record reflects that respondents were afforded a full opportunity to litigate and defend themselves.

respondents for 30 business days and fining them $10,000 jointly and severally would be appropriate for respondents' failure to amend Troszak's Form U4. The Hearing Panel declined to impose the sanctions for the Form U4 violation, as well as the $50,000 fine, in light of the bar and expulsion for the Rule 8210 violation. This appeal followed.[12]

IV. Discussion

We affirm the Hearing Panel's findings that the respondents failed to amend Troszak's Form U4 to disclose a federal tax lien against Troszak, in violation of Article V, Section 2 of the FINRA By-Laws, FINRA Rule 2010, and NASD Rule 2110. We further affirm the Hearing Panel's findings that the respondents failed to provide requested information to FINRA, in violation of FINRA Rules 8210 and 2010. We discuss the violations in detail below.

A. The Respondents Failed to Amend Troszak's Form U4 to Disclose a Tax Lien

Article V, Section 2(c) of FINRA's By-Laws requires that "[e]very application for registration filed with [FINRA] shall be kept current at all times by supplementary amendments." In addition, the By-Laws require that any amendments be filed with FINRA "not later than 30 days after learning of the facts or circumstances giving rise to the amendment." *Id.* "The duty to provide accurate information and to amend the Form U4 to provide current information assures regulatory organizations, employers, and members of the public that they have all material, current information about the securities professional with whom they are dealing."[13] *Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *25-26 (Apr. 18, 2013) (internal quotation marks omitted); *see also Rosario R. Ruggiero*, 52 S.E.C. 725, 728 (1996) (explaining that the Form U4 is utilized to determine and monitor the fitness of securities professionals). Thus, the importance of the accuracy of an applicant's Form U4 "cannot be overstated." *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *26 (Nov. 9, 2012); *see also Guang Lu*, 58 S.E.C. 43, 55 (2005) (recognizing that "the candor and forthrightness of applicants is critical" to the usefulness of the Form U4), *aff'd*, 179 F. App'x 702 (D.C. Cir. 2006). FINRA Rule 2010 and NASD Rule 2110 require associated persons to observe the high standards of commercial honor and just and equitable principles of trade, which includes disclosing accurately and fully information required in the Form U4 such as a federal

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[12] The respondents attached several documents to their appellate brief. Three of these documents were already admitted into the record. The Subcommittee admitted into evidence the other attached documents and informed the parties that the weight to accord these documents would be determined during the appellate review of the complete record. The substance of these documents has been considered and does not excuse respondents' misconduct or mitigate the sanctions imposed in this matter.

[13] Information is material if it would have "significantly altered the total mix of information made available." *Mathis v. SEC*, 671 F.3d 210, 220 (2d Cir. 2012). A respondent's failure to disclose a tax lien on his Form U4 is material information that other regulators, employers, and investors would want to know because it may signals financial difficulty. *See id.*

tax lien.[14] *See Tucker*, 2012 SEC LEXIS 3496, at *30; *Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *8 (Dec. 22, 2008); *see also Scott Mathis*, Exchange Act Release No. 61120, 2009 SEC LEXIS 4376, at *18 (Dec. 7, 2009) (finding that the failure to file timely Form U4 amendments is a violation of NASD Rule 2110), *aff'd*, 671 F.3d 210.

Question 14M of the Form U4 requires registered representatives to disclose any unsatisfied judgments or liens against them. It is undisputed that the IRS filed a tax lien against Troszak on October 6, 2008. It is also undisputed that Troszak had timely notice of the lien. Troszak admitted that he received notice of the lien from the IRS in October 2008.[15] In addition, the April 22, May 25, and June 10, 2010 letters from FINRA staff instructed the respondents to disclose the lien on Troszak's Form U4. The respondents nonetheless failed to disclose the lien until October 2011, approximately three years after entry of the lien (and a year after Troszak had satisfied the lien). Accordingly, we affirm the Hearing Panel's findings that the respondents failed to amend Troszak's Form U4 to disclose the tax lien within 30 days of learning of the lien, in violation of Article V, Section 2 of the FINRA By-Laws, FINRA Rule 2010, and NASD Rule 2110.

B. The Respondents Failed to Provide Requested Information to FINRA

We affirm the Hearing Panel's findings that the respondents violated FINRA Rules 8210 and 2010 when they failed to provide information and documents responsive to FINRA's requests.

1. FINRA Rule 8210

FINRA Rule 8210 requires FINRA members and persons associated with a member to "provide information orally [or] in writing . . . with respect to any matter involved in [a FINRA] investigation." The language of Rule 8210—"No member or person shall fail to provide information or testimony or to permit an inspection and copying of books, records, or accounts pursuant to this Rule"—is "unequivocal" and "unqualified." *See Dep't of Enforcement v. Asensio Brokerage Servs., Inc.*, Complaint No. CAF030067, 2006 NASD Discip. LEXIS 20, at *44 (NASD NAC July 28, 2006), *aff'd*, Exchange Act Release No. 62315, 2010 SEC LEXIS 2014 (June 17, 2010); Rule 8210(c). Because FINRA lacks subpoena power, it must rely upon Rule 8210 "to police the activities of its members and associated persons." *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008) (citation omitted), *aff'd*, 347 F. App'x 692 (2d Cir. 2009). The Commission repeatedly has found that failure to provide information impedes FINRA's ability to carry out its self-regulatory

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[14] NASD Rule 2110 applied until December 15, 2008, when its identical successor, FINRA Rule 2010, became effective. FINRA Rule 0140 and NASD Rule 0115 make all FINRA and NASD rules applicable both to FINRA members and all persons associated with FINRA members.

[15] Troszak also had constructive notice of the lien when it was filed because the IRS sent the notice to respondents' CRD addresses.

functions and is a serious violation. *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *aff'd*, 566 F.3d 1172 (D.C. Cir. 2009); *Elliot M. Hershberg*, 58 S.E.C. 1184, 1190, *aff'd*, 210 F. App'x 125 (2d Cir. 2006).[16] Indeed, the failure to respond to FINRA's information requests "frustrates [its] ability to detect misconduct, and such inability in turn threatens investors and markets." *PAZ Sec., Inc.*, 2008 SEC LEXIS 820, at *13.

2. The Respondents Had Notice of the Information Requests

FINRA sent the requests for information to the respondents at North Woodward's business address, and Troszak admitted that he received FINRA's requests.[17] Thus, the respondents received actual notice of the April 22, May 25, and June 10, 2010 requests for information.

3. The Respondents Violated FINRA Rule 8210

FINRA requested that the respondents produce certain documents in response to the April 22, May 25, and June 10, 2010 information requests. Specifically, FINRA asked the respondents to provide copies of: customer new account forms, account amendments, and account statements for 2009 and 2010 for each customer from whom Troszak borrowed money; bank and brokerage account statements in which Troszak had a beneficial interest for the period of January 2009 to April 2010; and all correspondence between the respondents and the IRS. FINRA also asked the respondents to produce evidence showing that the customers were receiving payments as required by the terms of the promissory notes and to provide an accounting, with documentation, of the $11,310.48 difference between the amount that Troszak received in loans from the customers and the amount he paid to redeem the property. The respondents, however, refused to produce any of the requested documents prior to Enforcement filing its complaint in this matter in May 2011.

In October and November 2011, approximately five months after Enforcement filed its complaint, the respondents produced over 5,500 pages of documents. These documents included correspondence with the IRS; various bank account statements belonging to Troszak and his business ventures; statements for the period from January 2011 through October 2011 for Troszak Capital Corp.'s securities account at the Firm; and the North Woodward account statements from January 2009 through October 2011 for three customers who were promissory

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[16] A violation of Rule 8210 also constitutes a violation of the standard of just and equitable principles of trade embodied in FINRA Rule 2010. *See CMG Institutional Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *30 (Jan. 30, 2009).

[17] At the time of the misconduct, FINRA Rule 8210(d) stated that "[a] notice under this Rule shall be deemed received by the member or person to whom it is directed by mailing or otherwise transmitting the notice to the last known business address of the member or the last known residential address of the person as reflected in the [CRD]." FINRA also sent the April 22, May 25, and June 10, 2010 information requests to the respondents then-current counsel.

note holders pursuant to the loan to Troszak and the requested customer account statements for 2009 and 2010 for the remaining customers who were also note holders. In November 2011, Troszak also provided on-the-record testimony to FINRA staff.

Even after taking into account the post-complaint production, the respondents never provided three categories of information that FINRA requested. First, the FINRA examiner who testified at the hearing stated that the respondents never produced an accounting, with supporting documentation, of the $11,310.48 difference between the amount borrowed from the customers and the redemption payment. Troszak in comparison testified that FINRA had "all of the documents" necessary "to make that accounting." While Troszak acknowledged that FINRA "received piece-meal documents" and "did not have the full ability to put together that 11 grand," he asserted that it could now. Troszak, however, did not identify the documents that he believed accounted for these funds.[18]

The respondents also never produced proof that the interest and principal payments that were required by the promissory notes were made to the customers. The terms of the promissory notes stated that customers would receive quarterly interest and principal payments for six consecutive quarters, beginning in February 2010 and ending by May 1, 2011.[19] Troszak's responses with respect to the repayment shifted throughout these proceedings. Troszak initially claimed in a May 20, 2010 letter to FINRA staff that the payments were made "according to schedule," but included no documentary proof of that assertion. At the hearing, Troszak testified that he did not make some payments to customers because one or more of them did not want to be paid or had agreed to an extension.[20] Troszak, however, offered no documents to show that

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[18] In an effort to explain the $11,310.48 discrepancy, Troszak testified at the hearing as follows: "At the closing, we had the funds to go to a title company, and the title company handled the total transaction. I'm fairly positive . . . of that 11, there was a tax payment made for between 5 or 6 . . . . Then there were some interest payments made. And what happened is the Troszak Capital Corporation had that money, and then we would make journal entries into the IRA accounts." Troszak later explained that "the 11, some of it went to the taxes, and then over a period of time some of it was going out for interest. And then I funded it some more with my money to make it – to make the balance higher. . . . But the whole idea is that I think half of that went to a tax payment and the rest was dwindled down and then it, I don't [know], got to two or three and I funded it, I ponied up more money to make interest payments . . . ."

[19] The FINRA examiner testified that, in October 2011, she received from the respondents as part of their post-complaint production the requested customer account statements for the period from February 2010 through May 2011. The examiner explained that the customers' monthly account statements reflected the promissory notes but did not reflect principal and interest payments or repayment of the notes as of May 2011.

[20] With respect to his assertion that certain customers declined timely repayment, Troszak testified: "People have actually told me and written me, 'Oh, I don't want my interest payment this year. I want it next year.' . . . Well, these are people that are my friends. They said, 'Doug, don't give it to me this year. Give it to me next year because I don't want to pay the taxes on it

[Footnote continued on next page]

these customers had agreed to these purported extensions.[21] The Hearing Panel found Troszak's testimony that his customers did not want to be repaid according to the schedule in the promissory notes not credible. Because the respondents have not demonstrated the existence of substantial evidence sufficient to overturn the Hearing Panel's credibility determination, we affirm that finding. *See Dep't of Enforcement v. Mizenko*, Complaint No. C8B030012, 2004 NASD Discip. LEXIS 20, at *16 n.11 (NASD NAC Dec. 21, 2004), *aff'd*, 58 S.E.C. 846 (2005). Troszak admitted that FINRA would be unable to reconstruct the payments that he made on the loans because some customers were paid in cash[22] and evidence of payments was not recorded in one place.[23] Troszak ultimately admitted at the hearing that several of his customers had not been fully repaid.

With respect to the third category of information, respondents never produced the 2009 and 2010 securities account statements for Troszak Capital Corp., which is the entity that issued the promissory notes and that Troszak controlled.

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this year.' . . . So you want statements showing the payments when the people that actually loaned me the money don't want the money yet." Although Troszak testified that some of his clients had expressed in writing a desire not to be paid in accordance with the promissory note schedule, he offered no such documents into evidence.

[21] Troszak testified that he did not produce any documents reflecting the purported change in loan repayment terms because "FINRA has never requested any. FINRA has never requested an update on any of this. . . . I don't understand how it's my obligation to give private client information to FINRA."

[22] Troszak at the hearing provided an example of how he purportedly repaid an elderly customer her interest on the promissory note in cash. In an effort to substantiate the cash payments, Troszak testified that he had copies of $100 bills and other currency with the customer's purported initials. He testified that "somewhere" was "a sheet of paper" with her initials adjacent to some numbers which represented cash payments to her. He went on to state that, "[s]o when the group here is trying to match up what's going on, [the examiner may say] 'He's not paying her. I can't see payments,' well, you've got 16,000 sheets of paper there, and in there there's payments from [the customer] on sheets of paper with her initials. And then [the customer] says, 'Well, you know, I don't really want that money in December. You owe it to me. Give it to me in January.'" Troszak provided no documentary evidence to show that he had repaid this customer any money or that she agreed to delayed repayment.

[23] On this point, Troszak testified: "[H]ow we would disburse the money. We'd make journal entries, which is where [the examiner], because she doesn't have an accounting background, couldn't put it together. So that's why she sent that bullet saying, 'Provide an accounting.' Well, it's all over the place, including cash payments on notes that have been supplied but she's got to pull from other spots to put it together to make it work."

The FINRA examiner testified that the documents were requested in order to determine that respondents did not misuse customer funds, that the promissory notes were suitable investments for the customers, and that Troszak had the financial wherewithal to make the promised interest payments and return the customers' funds. Respondents' failure to provide these categories of information impeded FINRA's investigation. The examiner stated she was unable to determine whether the promissory notes were a legitimate investment, if the notes were suitable for customers, if there was a misuse of customer funds, and if any investors were harmed.

We determine that the respondents failed to provide requested information to FINRA and therefore violated FINRA Rules 8210 and 2010.

4. Respondents' Exculpatory Arguments Fail

The respondents make several arguments as to why they believe that FINRA has no authority to obtain information from them regarding the loans from Firm customers. For the reasons set forth below, we determine that none of these arguments diminish respondents' regulatory responsibility to comply with FINRA Rule 8210.

The respondents argue that because FINRA is not a governmental agency, FINRA's requests for "private client information" do not "carry the same status" as requests from the IRS or the U.S. Department of Labor, and they have complied to the extent required of them.[24] The respondents misunderstand their obligations as a FINRA member and person associated with a

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[24] The respondents further assert that SEC Regulation S-P prohibits disclosure to FINRA of certain customer information. Rule 10(a)(1) of Regulation S-P generally prohibits the disclosure of "nonpublic personal information" about a consumer to a nonaffiliated third party unless a broker-dealer has provided the consumer with proper notice and "a reasonable opportunity . . . to opt out." 17 C.F.R. § 248.10(a)(1). The application of Regulation S-P is limited to brokers, dealers, investment companies, and registered investment advisers. *Id.* § 248.1(b). Regulation S-P, however, does not exempt FINRA members and their associated persons from complying with information requests issued pursuant to FINRA Rule 8210, even if those information requests seek nonpublic personal information of broker-dealer customers. *See id.* § 248.15(a)(7)(iii) (excepting broker-dealers from Regulation S-P's notice and opt out requirement when providing nonpublic information to regulatory authorities having jurisdiction "for examination, compliance, or other purposes as authorized by law").

Respondents' concerns related to the release of "client data" through FINRA taking Troszak's on-the-record testimony and admitting the transcript as an exhibit in this case are equally without basis. As the Commission explained, "FINRA investigations are non-public and confidential" and "speculative concerns" that "the information FINRA seeks could be subpoenaed by some other party" are "not enough . . . to refuse to comply with Rule 8210." *Gregory Evan Goldstein*, Exchange Act Release No. 68904, 2013 SEC LEXIS 552, at *16-17 (Feb. 11, 2013) (order denying stay).

member. FINRA's authority to request documents pursuant to FINRA Rule 8210 stems from the contractual relationship entered into voluntarily by FINRA members and persons associated with those members. *See Kidder, Peabody & Co. v. Zinsmeyer Trusts P'ship*, 41 F.3d 861, 863 (2d Cir. 1994) ("The rules of a securities exchange are contractual in nature."). Upon joining FINRA, a member organization and its associated persons agree to comply with FINRA rules. *See* Article IV, Section 1 of the FINRA By-Laws. As FINRA members, respondents therefore are bound to comply with *all* FINRA rules, including FINRA Rule 8210. *See UBS Fin. Servs. Inc. v. W. Va. Univ. Hosps., Inc.*, 660 F.3d 643, 649 (2d Cir. 2011); *Berger*, 2008 SEC LEXIS 3141, at *10. Respondents' obligation to provide Enforcement with the requested information was unequivocal. *See Berger*, 2008 SEC LEXIS 3141, at *13.

The respondents contend that FINRA has no jurisdiction to investigate the promissory notes because they were loans from his customers and were not securities.[25] FINRA's investigative reach is broad and includes all business-related conduct, even if the activity does not involve a security. *See Dep't of Enforcement v. DiFrancesco*, Complaint No. 2007009848801, 2010 FINRA Discip. LEXIS 37, at *15-16 & n.11 (FINRA NAC Dec. 17, 2010) (collecting cases), *aff'd*, Exchange Act Release No. 66113, 2012 SEC LEXIS 54 (Jan. 6, 2012); *see, e.g., Dep't of Enforcement v. Taylor*, Complaint No. C8A050027, 2007 NASD Discip. LEXIS 11, at *45-47 (NASD NAC Feb. 27, 2007) (finding violation of Rule 8210 when respondent failed to provide accurate information related to her insurance licenses). Moreover, Rule 8210 requires persons subject to FINRA's jurisdiction to respond to requests for information from FINRA staff with respect to matters involved in an investigation, and provides FINRA the right to inspect and copy a member or associated person's "books, records, and accounts," without limiting FINRA's review to only those documents related to securities. *See* FINRA Rule 8210(a). It was entirely proper for Enforcement to investigate Troszak's loans from respondents' customers, and the information requests were directed at legitimate concerns about whether Troszak's activities violated FINRA rules. *See, e.g., Daniel C. Adams*, 47 S.E.C. 919, 921 (1983) (explaining FINRA's disciplinary authority encompasses nonsecurities related business activity and the investigation of respondent's solicitation and sale of a tax shelter was properly within FINRA's reach); *Dep't of Enforcement v. Gallagher*, Complaint No. 2008011701203, 2012 FINRA Discip. LEXIS 61, at *17 (FINRA NAC Dec. 12, 2012) (explaining Rule 8210 confers upon FINRA "broad discretion to inquire about any matter involved in a FINRA investigation, complaint, examination, or proceeding").

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[25] Troszak also repeatedly raised this point throughout his hearing testimony. For example, Troszak stated, "There's really problematic jurisdictional questions in my mind about what is a security and the security regulation and what is not." He reiterated, "I will tell you I don't believe this is a securities transaction. This is a private. This has nothing to do with a security. How did this become a security? And how does FINRA get to continue to ask for private documents from my clients? This isn't a security transaction. It's not a securities transaction in my mind . . . ." Troszak later explained the basis for his belief that FINRA was not entitled to information about the loans by stating, "I believe that my [other regulatory and contractual] responsibilities trump FINRA's request for documents in nonsecurities-related transactions."

The respondents assert that the Michigan Department of Licensing and Regulatory Affairs investigated the loans from North Woodward's customers and took no further action. Any investigation by the State of Michigan is immaterial to FINRA's independent investigation. "As a self-regulatory organization, [FINRA] has an independent obligation to investigate possible . . . violations" of FINRA rules. *Dep't of Enforcement v. Respondent Firm*, Complaint No. CAF000013, 2003 NASD Discip. LEXIS 40, at *35 (NASD NAC Nov. 14, 2003). FINRA's investigation of the respondents and the filing of disciplinary charges represent legitimate regulatory exercises in furtherance of investor protection. *See* 15 U.S.C. § 78o-3; *see also Schellenbach v. SEC*, 989 F.2d 907, 912 (7th Cir. 1993) ("NASD disciplinary proceedings are treated as an exercise of prosecutorial discretion."). FINRA's requests for information were "in accordance with its legitimate function of protecting the public." *See Adams*, 47 S.E.C. at 921 n.8.

The respondents further assert that pursuant to NASD Rule 2370 they "communicated" to North Woodward's clearing firm the loans from customers.[26] This fact is irrelevant to respondents' failure to supply FINRA with requested information. While the respondents were not charged with violating Rule 2370 in the matter before us, their borrowing from customers is within FINRA's authority to investigate. *Cf. Berger*, 2008 SEC LEXIS 3141, at *26 (explaining that "a request for information is no less serious because NASD issues the request in an effort to prevent or uncover misconduct rather than to unearth the details of misconduct of which it is already aware" (internal quotation marks omitted)).

We thus affirm the Hearing Panel's findings that Troszak and North Woodward violated FINRA Rules 8210 and 2010.

V. Sanctions

The Hearing Panel barred Troszak, expelled North Woodward, and fined them $50,000, jointly and severally, for the FINRA Rule 8210 violation. The Hearing Panel also fined the respondents $10,000, jointly and severally, and suspended them for 30 business days for the Form U4 violation, but it declined to impose these sanctions, as well as the $50,000 fine, in light of the bar and expulsion. For the reasons set forth below, we affirm the sanctions imposed by the Hearing Panel for the FINRA Rule 8210 violation. We nevertheless modify the sanctions imposed for the Form U4 violation.

A. Respondents' Disciplinary History

Before we apply the violation-specific Sanction Guidelines ("Guidelines"), we begin with a review of respondents' disciplinary history, which is relevant to the level of sanctions for both

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[26] NASD Rule 2370, which is now FINRA Rule 3240, prohibits an associated person from borrowing money from or lending money to any customer, subject to certain conditions.

causes of action.[27] *See Dep't of Enforcement v. N. Woodward Fin. Corp.*, Complaint No. E8A2005014902, 2008 FINRA Discip. LEXIS 47, at *28-29 (FINRA NAC Dec. 10, 2008) (applying disciplinary history as an aggravating factor when determining appropriate sanctions), *aff'd*, Exchange Act Release No. 60505, 2009 SEC LEXIS 2796, at *23 (Aug. 14, 2009). Most recently, on August 14, 2009, the Commission affirmed a FINRA disciplinary decision against the respondents. The Commission found that North Woodward violated Exchange Act Rule 17a-3, and NASD Rules 3110 and 2110, by failing to prepare and maintain a current general ledger and trial balance for two months and Troszak, who was responsible for North Woodward's violations, violated NASD Rules 3110 and 2110. *N. Woodward Fin. Corp.*, 2009 SEC LEXIS 2796, at *23. The respondents were jointly and severally fined $2,500. *Id.* at *25.

On January 6, 2005, the respondents also settled a FINRA disciplinary action by consenting to findings that North Woodward, acting through Troszak, engaged in securities-related activities without a FINOP for 13 months. *Id.* at *29. The respondents agreed to pay, jointly and severally, a $5,000 fine as part of that settlement.

Respondents' disciplinary history presents an aggravating factor in our assessment of sanctions and reflects a serial disregard of fundamental regulatory obligations, including requirements to keep accurate records and to operate with a necessary principal registration. *See John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at *47 (June 14, 2013) (explaining that "[r]elevant' disciplinary history includes past misconduct similar to that at issue or past misconduct that evidences disregard for regulatory requirements, investor protection, or commercial integrity" (internal quotation marks omitted)). The respondents are recidivists whose disregard for FINRA rules and regulatory requirements place the public interest at risk.[28] *See, e.g.*, *Joseph Ricupero*, Exchange Act Release No. 62891, 2010 SEC

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[27] *See FINRA Sanction Guidelines* 2 (General Principles Applicable to All Sanction Determinations, No. 2), 6 (Principal Considerations in Determining Sanctions, No. 1) (2013), http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf [hereinafter *Guidelines*].

[28] *See Guidelines*, at 2 (General Principles Applicable to All Sanction Determinations, No. 2), 6 (Principal Considerations in Determining Sanctions, No. 1). We also note that another FINRA Hearing Panel recently found in an unrelated disciplinary action that the respondents failed to (1) respond in a timely manner to FINRA requests for information and denied FINRA access to the firm's premises in connection with a scheduled cycle examination (and Troszak failed to respond completely to a separate request for information), in violation of FINRA Rules 8210 and 2010; (2) establish and maintain adequate written supervisory procedures, in violation of NASD Rule 3010 and FINRA Rule 2010; (3) prepare required reports and certifications, in violation of NASD Rule 3012, and FINRA Rules 3130 and 2010; (4) establish and implement appropriate AML procedures, in violation of NASD Rule 3011(b), and FINRA Rules 3310(b) and 2010; (5) conduct an independent AML test in a timely manner, in violation of FINRA Rules 3310(c) and 2010; (6) update timely Troszak's Form U4 to disclose a consent judgment, in violation of FINRA Rules 1122 and 2010, and Article V, Section 2 of FINRA's By-Laws; and (7) provide customers with an adequate privacy notice, in violation of Regulation S-P, NASD

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LEXIS 2988, at *24 (Sept. 10, 2010) (considering respondent's disciplinary history and finding that it was further evidence that he posed a risk to the investing public should he re-enter the securities industry), *aff'd*, 436 F. App'x 31 (2d Cir. 2011).

B. Failing to Respond Completely to FINRA Requests

The Guidelines provide that a bar should be the standard sanction when an associated person does not respond in any manner to a request made pursuant to FINRA Rule 8210 or when a respondent does not respond until after FINRA files a complaint.[29] The Hearing Panel considered that because the respondents failed to provide much of the requested information and any documents responsive to the April, May, and June 2010 requests until after the complaint was filed, the standard sanction of a bar was appropriate. The Hearing Panel's determination, however, fails to take into account respondents' full cooperation in response to FINRA's March 2010 request. That request and response were part of the same investigation in which FINRA staff issued the subsequent April, May, and June 2010 requests. *See Plunkett*, 2013 SEC LEXIS 1699, at *55-56; *Kent M. Houston*, Exchange Act Release No. 66014, 2011 SEC LEXIS 4491, at *24-26 (Dec. 20, 2011). Therefore, we determine that the Guidelines governing partial but incomplete responses apply to the facts of this case.

When an associated person provides a partial but incomplete response, the Guidelines state that "a bar is standard unless the person can demonstrate that the information provided substantially complied with all aspects of the request."[30] The Guidelines also recommend a fine of $10,000 to $50,000 for a partial but incomplete response.[31] In an egregious case, expulsion of the firm is appropriate.[32] If, however, mitigation exists, the Guidelines recommend suspending

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Rule 2110, and FINRA Rule 2010. *See Dep't of Enforcement v. N. Woodward Fin. Corp.*, Complaint No. 2011028502101, 2014 FINRA Discip. LEXIS 11 (FINRA OHO May 16, 2014). The Hearing Panel barred Troszak from associating with any member firm in all capacities for his failures to comply with the Rule 8210 requests. In addition, the Hearing Panel separately barred Troszak from associating with any member firm in any principal or supervisory capacity for his supervisory violations. The Hearing Panel suspended North Woodward from FINRA membership for one year for its failures to comply timely with the Rule 8210 requests; suspended the firm for 30 business days for its supervisory violations, and fined the firm a total of $25,000. That case is not final and is currently pending on appeal before the NAC, as of the date of this NAC decision.

29 *Guidelines*, at 33 & n.1.

30 *Guidelines*, at 33.

31 *Id.*

32 *Id.*

the firm with respect to any or all activities or functions for up to two years.[33] We determine that respondents' partial responses did not comply substantially with all aspects of the FINRA Rule 8210 requests and aggravating factors support barring Troszak and expelling North Woodward from FINRA membership.

1. FINRA Rule 8210 Guideline Specific Considerations

The Guidelines identify the following factors to consider when a respondent has provided a partial but incomplete response: (1) the 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; (2) the number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response; and (3) whether the respondent thoroughly explained valid reasons for the deficiencies in the response.[34]

We first consider the importance of the information requested that the respondents did not provide and the relevance and responsiveness of the information that they did provide.[35] Prior to the filing of the complaint in May 2011, FINRA issued four information requests. The respondents complied fully with the first request in March 2010 by providing responsive information and documents. The respondents, however, produced none of the documents asked for in the April, May, and June 2010 request letters, primarily claiming that these documents were "personal and confidential." FINRA moreover warned the respondents that their failure to provide requested information could have regulatory consequences and yet they ignored these warnings.

In October and November 2011, approximately five months after FINRA filed the complaint, the respondents produced partial information, providing some, but not all, of the requested documents. The respondents never provided three critical categories of information that FINRA requested. They never produced an accounting, with supporting documentation, of the $11,310.48 difference between the amount that Troszak borrowed from his customers and the redemption payment. They also never produced proof that the interest and principal payments that were required by the promissory notes were made to the customers. In addition, the respondents never produced the 2009 and 2010 securities account statements for the entity that issued the promissory notes, Troszak Capital Corp.

From FINRA's prospective, the missing documents were important because, without them, FINRA was impeded from determining whether the promissory notes were a legitimate investment, whether the notes were suitable for customers, and whether investors were harmed. Troszak's refusal to provide documentation and his provision of contradictory responses raise significant concerns that his customers were harmed. While claiming to FINRA staff that he

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33 *Id.*

34 *Id.*

35 *Id.*

provided adequate proof of interest and principal payments, he also stated that the relevant information is "all over the place," and that FINRA would have "to pull from other spots to put it together to make it work." Moreover, respondents' refusal to provide documents impeded Enforcement from determining whether Troszak engaged in other serious misconduct, such as the misappropriation or conversion of his customers' funds. "When an investigator seeks to verify the proper use of funds by an associated person, any missing documents can frustrate the investigation." *Dep't of Enforcement v. Eplboim*, Complaint No. 2011025674101, 2014 FINRA Discip. LEXIS 8, at *34 (FINRA NAC May 14, 2014); *see also PAZ*, 2008 SEC LEXIS 820, at *13 (explaining that a failure to respond to information requests frustrates FINRA's ability to detect misconduct and threatens investors).

Second, we determine that the number of Rule 8210 requests made, the length of time required to obtain respondents' response to the requests, and the degree of regulatory pressure FINRA applied are aggravating factors supportive of the bar and expulsion.[36] The respondents repeatedly frustrated FINRA's attempt to obtain documents and forced FINRA to make numerous requests for the information. FINRA staff made multiple requests for the documents over the course of three months and, although significant regulatory pressure was brought to bear, the majority of the documents were not provided until approximately 18 months after it was requested and five months after FINRA filed a complaint in this matter. Thus, the degree of regulatory pressure exerted by FINRA in its effort to obtain key documents from the respondents was significant and highly aggravating. *See, e.g., Dep't of Mkt. Regulation v. Lane*, Complaint No. 20070082049, 2013 FINRA Discip. LEXIS 34, at *98 (FINRA NAC Dec. 26, 2013) ("[T]he degree of regulatory pressure that [FINRA] had to bring to obtain [the] category of information was substantial and is a highly aggravating factor."), *appeal pending*, No. 3-15701. The Commission has long emphasized that FINRA "should not have to initiate a disciplinary action to elicit a response to its information requests made pursuant to Rule 8210." *Ricupero*, 2010 SEC LEXIS 2988, at *12. Moreover, even after the filing of the complaint, the respondents refused to provide several categories of documents to FINRA.

Third, we find that the respondents failed to provide valid reasons for failing to respond fully to the information requests.[37] In response to FINRA's repeated requests for an accounting of the $11,310.48 disparity between the loaned and redemption amounts, the respondents claimed that they could not produce records because they were "personal and confidential" to Troszak Capital Corp. They similarly cited "personal and confidential" as the reasons for refusing to produce records from accounts Troszak controlled to show a payment history on the loans. FINRA is not precluded from requesting confidential and private information, and the Commission has rejected assertions of privacy and confidentiality as justifiable reasons for failing to provide FINRA with that information.[38] *See Gregory Evan Goldstein*, Exchange Act

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36 *Guidelines*, at 33.

37 *Guidelines*, at 33.

38 Troszak likewise claimed that he could not produce customer account statements without his clients' written permission. There is no basis in Rule 8210 for such equivocations. Troszak

[Footnote continued on next page]

Release No. 71970, 2014 SEC LEXIS 1350, at *36 (Apr. 17, 2014). "FINRA investigations are non-public and confidential." *FINRA Regulatory Notice 09-17*, 2009 FINRA LEXIS 45, at *4 (Mar. 2009). As the Commission has emphasized, "[g]iven that so much of the securities industry involves non-public information, allowing such abstract worries about privacy to overcome the critical role of Rule 8210 would eviscerate FINRA's critical regulatory responsibilities." *Goldstein*, 2013 SEC LEXIS 552, at *17; *see Goldstein*, 2014 SEC LEXIS 1350, at *36; *see also CMG Institutional Trading, LLC*, 2009 SEC LEXIS 215, at *21 (rejecting applicant's argument that information request was immaterial and "none of your business" by explaining that associated persons may not ignore information requests or determine for themselves their materiality). Moreover, Troszak Capital Corp. is not some unrelated third party, but rather a company that Troszak formed for tax purposes and one that he controls.

At the time of respondents' misconduct here, FINRA's right to a copy of a member or associated person's documents under Rule 8210 extended to "books, records, and accounts of such member or person."[39] By serving as a member and an associated person, the respondents were "on notice that [they] consented to FINRA's ability under Rule 8210 to request . . . records such as those . . . [sought] here." *Goldstein*, 2013 SEC LEXIS 552, at *17; *see Goldstein*, 2014 SEC LEXIS 1350, at *36. FINRA Rule 8210 precedent makes abundantly clear that the respondents were obligated to cooperate and provide the requested information after FINRA's first request of them and that the respondents had no right to set conditions on their cooperation. *See Berger*, 2008 SEC LEXIS 3141, at *13 & n.20 (explaining that the obligation to cooperate after FINRA's first request for information is unequivocal); *Morton Bruce Erenstein*, Exchange Act Release No. 56768, 2007 SEC LEXIS 2596, at *13 (Nov. 8. 2007) (stating that a "member or an associated person may not second guess[ ] an NASD information request or set conditions on their compliance" and that a "belief that NASD does not need the requested information provides no excuse for a failure to provide it" (internal quotation marks omitted)), *aff'd*, 316 F. App'x 865 (11th Cir. 2008).

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testified that, "[a]s time went on, we supplied that information and took out the pieces that were the very onerous ones. And I did it without checking with every single person." He further testified that his concerns about providing the information to FINRA were lessened because he did not believe that his customers were "going to come back at [him] legally." Troszak eventually produced customer account statements without securing permission approximately five months after Enforcement filed its complaint.

[39] In December 2012, the Commission approved amendments to Rule 8210. *See Order Approving Proposed Rule Change*, Exchange Act Release No. 68386, 2012 SEC LEXIS 3798 (Dec. 7, 2012). The amendments clarified the scope of FINRA's regulatory reach under Rule 8210. The amended rule now specifies that FINRA has the right to inspect and copy information in the "possession, custody or control" of the member firm, associated person or person over whom FINRA has jurisdiction. *See* Rule 8210(a)(2); *FINRA Regulatory Notice 13-06*, 2013 FINRA LEXIS 8 (Jan. 2013).

In favor of mitigation, Troszak and North Woodward argue that they complied with the FINRA Rule 8210 requests because they provided "information relating to FINRA." Their impression of their compliance and FINRA Rule 8210's scope are impermissibly narrow. "[FINRA] Rule 8210 is an essential tool" for FINRA's enforcement responsibilities. *Rooney A. Sahai*, Exchange Act Release No. 55046, 2007 SEC LEXIS 13, at *10 (Jan. 5, 2007). Enforcement often commences an investigation in advance of having a clear picture of the nature and breadth of potential misconduct. In accord with FINRA Rule 8210's importance, the Commission has taken a "broad view" of the rule's scope and the requirement that member firms and associated persons respond to requests without placing conditions or limitations on their compliance. *See id.* As we discussed, "associated persons may not ignore [FINRA] inquiries; nor take it upon themselves to determine whether information is material to an . . . investigation of their conduct." *CMG Institutional Trading*, 2009 SEC LEXIS 215, at *21; *see also Erenstein*, 2007 SEC LEXIS 2596, at *13 (explaining that FINRA has no requirement to explain its information requests or demonstrate their materiality before an associated person is obligated to respond); *Michael J. Markowski*, 54 S.E.C. 830, 838 (2000) ("The determination of when it is appropriate for an investigation to proceed is a matter for the NASD to decide, not the respondent."). Enforcement's efforts to investigate Troszak's borrowing of funds from his customers are squarely within FINRA's regulatory mandate. Enforcement properly requested information and documents regarding Troszak's borrowing of funds from his customers, and the respondents refused to provide documents showing how Troszak used more than $11,000 of his customers' funds and whether he had repaid the customers' principal and the promised interest. Troszak's efforts to shield his activities from regulatory scrutiny by refusing to provide responsive documents warrant a stringent sanction.

2. Other Relevant Considerations Under the Guidelines

We also find that several other principal considerations under the Guidelines are relevant to respondents' misconduct and serve to aggravate sanctions. First, the respondents acted intentionally.[40] This is not a matter where a respondent failed to receive the Rule 8210 information requests, or there was a misunderstanding about a request. Rather, respondents deliberately refused to provide requested documents. Troszak testified that "when it comes down to a request for information, I just go down the totem pole and . . . FINRA isn't the IRS and [it] isn't the Department of Labor." Troszak's testimony illustrates his conscious disregard of FINRA requirements.

Second, Troszak and North Woodward have not accepted responsibility for their misconduct, blaming FINRA for "maliciously exert[ing] predatory regulation into affairs it has no jurisdiction over."[41] Their failure to appreciate the requirements of the securities business, the gravity of their misconduct, and the potential threat that their actions posed warrants significant

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40 *Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 13).

41 *Id.* at 6 (Principal Considerations in Determining Sanctions, No. 2).

sanctions.[42] *See, e.g.*, *Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *75 (Jan. 30, 2009) ("We agree with FINRA that Epstein's demonstrated insouciance and indifference towards his responsibilities under NASD rules poses a serious risk to the investing public." (internal quotation marks omitted)), *aff'd*, 416 F. App'x 142 (3d Cir. 2010); *Berger*, 2008 SEC LEXIS 3141, at *26-27 ("To allow Berger to justify his refusal to testify by using an after-the-fact assessment of the results of NASD's investigation would shift the focus from NASD's perspective at the time it seeks the information and disregard intervening events."); *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *28 (Aug. 22, 2008) (finding that the fact that respondent never accepted responsibility for his misconduct and blamed others for what occurred were factors that supported a bar). Moreover, Troszak was not forthcoming at the hearing. As the Hearing Panel found, Troszak's testimony was "evasive, obfuscatory, and lacked credibility," a finding that Troszak has not overcome before us.[43] *See, e.g.*, *Jay Houston Meadows*, 52 S.E.C. 778, 784 (1996), *aff'd*, 119 F.3d 1219 (5th Cir. 1997). Troszak's actions and his low regard for his responsibilities under FINRA rules cast serious doubt upon his commitment to the standards demanded of registered persons in the securities industry.[44]

Respondents' partial response fell far short of substantial compliance. Instead, the respondents endeavored to prevent FINRA from ascertaining whether Troszak complied with the terms of the loan with his customers and whether customers were harmed. Respondents' actions demonstrate a fundamental unwillingness to comply with FINRA rules. "In a business that depends so heavily on the integrity of its participants, such behavior cannot be countenanced." *Rita Delaney*, 48 S.E.C. 886, 890 (1987). Under the totality of the circumstances considered, we conclude that a bar is appropriate for Troszak's failure to provide FINRA with complete responses to its requests. We also determine that, in the absence of mitigating factors, this is an egregious case, and accordingly expel North Woodward from FINRA membership.[45]

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[42] Troszak's disregard for professional requirements is further evidenced by a troubling story that he recounted before the Hearing Panel. Troszak testified that he assisted a client, who was going through a divorce proceeding, conceal assets by not paying the client interest on the loan to Troszak until the divorce proceeding was completed.

[43] *Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 12).

[44] Troszak continues his attempts to evade FINRA's review of his activities with customers. One of the exhibits that the respondents attached to their appellate brief is a June 2012 letter signed by two of Troszak's customers stating that they did not wish to have their accounts reviewed by FINRA and that they were "opting-out" of FINRA regulatory oversight. The respondents state in their brief that, through this letter, they "have started to offer clients the ability to Opt-out of FINRA regulation."

[45] *Guidelines*, at 33. We also determine it would be appropriate to fine the respondents $50,000 jointly and severally, but decline to do so in light of the bar and expulsion.

C. Failure to Amend Troszak's Form U4

The Guidelines provide for a range of sanctions for the violations related to Forms U4.[46] Because respondents never filed an amended Form U4 for Troszak while the tax lien was outstanding, we consider the provisions of the Guidelines for the failure to file an amendment. For the failure to file an amendment, the Guidelines recommend fining the responsible individual $2,500 to $50,000 and the responsible firm $5,000 to $100,000.[47] The Guidelines also recommend suspending the responsible individual for five to 30 business days.[48] In egregious cases, such as those involving repeated failures to file, an adjudicator may consider suspending the responsible individual for up to two years or imposing a bar and suspending a firm with respect to any or all activities until the filing deficiency is corrected.[49] We conclude that respondents' failure to amend Troszak's Form U4 to disclose a federal tax lien was egregious based on the respondents' disciplinary history and the aggravating factors discussed below, and modify the Hearing Panel's sanctions.

The Guidelines for violations related to the filing of a Form U4 provide principal considerations specific to Form U4 violations. One of these considerations is relevant here: whether the information at issue was significant and the nature of that information.[50] The Commission and FINRA have consistently held that an undisclosed tax lien is significant information. *See Tucker*, 2012 SEC LEXIS 3496, at *63; *Dep't of Enforcement v. Mathis*, Complaint No. C10040052, 2008 FINRA Discip. LEXIS 49, at *35 (FINRA NAC Dec. 18, 2008). The undisclosed tax lien that the IRS had filed against Troszak was a material reflection of the state of his finances and reflected the financial pressure he faced while acting as a registered representative. *See Tucker*, 2012 SEC LEXIS 3496, at *63. Moreover, regulators were deprived of information that was relevant to their oversight of Troszak and the Firm. *See Amundsen*, 2013 SEC LEXIS 1148, at *52. Even after FINRA learned of the tax lien and directed the respondents to disclose it on Troszak's Form U4 in 2010, respondents did not disclose it until a year after the lien was satisfied and five months after Enforcement filed its complaint against the respondents. The respondents frustrated the effectiveness of the Form U4

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46 *Id.* at 69-70.

47 *Id.*

48 *Id.* at 69.

49 *Id.* at 70.

50 *Id.* at 69. The other two principal considerations set forth by the Guidelines for Form U4 violations (whether the failure resulted in a statutorily disqualified individual becoming or remaining associated with a firm; and whether the misconduct resulted in harm to a registered person, another member firm, or any person or entity) do not apply to respondents' failure to disclose a tax lien here. *See id.* Because these considerations do not apply, we do not consider them either aggravating or mitigating.

by failing to disclose timely that Troszak was subject to a tax lien. *See Craig*, 2008 SEC LEXIS 2844, at *15 (explaining that the effectiveness of the Form U4 is dependent upon candid disclosure).

It also is relevant to our determination of the appropriate sanctions that Troszak attempted to trivialize his failure to disclose the tax lien. At the hearing below, Troszak stated the following: "I want to establish the fact of who's been harmed here. Eight of my personal friends didn't get a chance to see that I didn't have an exactly correct U4." Troszak's statement is a further illustration of his low regard for his obligations as a registered representative. As the Commission has made clear, "failures to make truthful disclosures on Form U4 are not harmless," and accurate and timely disclosures provide material information to existing and potential customers. *Amundsen*, 2013 SEC LEXIS 1148, at *52. The record in this case shows the potential harm that could have befallen Troszak's customers because the tax lien would have had a preference in repayment over the monies that Troszak owed to his customers who entered into the promissory notes. Troszak, however, did not disclose the tax lien to the promissory note holders. Respondents' actions deprived the customers who lent Troszak money an opportunity to assess for themselves the true risks of the loans had they known that he was subject to a tax lien. In addition, the availability of this information may have affected the decision of existing or potential customers to invest their funds with Troszak.

In favor of mitigation, the respondents argue that their misconduct was not intentional. We disagree and determine that the facts support a finding of respondents' intentionality.[51] Beginning in April 2010, FINRA reminded the respondents three times in Rule 8210 requests that Troszak's Form U4 required an amendment to disclose the tax lien, but they chose not to comply. Troszak only amended his Form U4 to disclose the lien after his attorney at the time "convinced" him that he "had to do it." In addition, respondents' violations extended over a substantial period of time because respondents failed to amend Troszak's Form U4 to disclose the tax lien for three years after Troszak had notice of it.[52]

Respondents argue that they should not be "barred" for the Form U4 violation and rely on several settled cases for support. The Hearing Panel, however, did not bar or expel the respondents for their misconduct related to Troszak's Form U4. Moreover, the sanctions imposed in a settled matter are irrelevant to the sanctions imposed upon the respondents in this case. *See, e.g.*, *Dep't of Enforcement v. Neaton*, Complaint No. 2007009082902, 2011 FINRA Discip. LEXIS 13, *27 (FINRA NAC Jan. 7, 2011) (explaining that settlements "generally are not relevant to the issues litigated in FINRA disciplinary proceedings"); *see also Michael C. Pattison*, Exchange Act Release No. 67900, 2012 SEC LEXIS 2973, at *49 (Sept. 20, 2012) ("Litigated cases typically present a fuller, more developed record of facts and circumstances for purposes of assessing appropriate sanctions than do settled matters."). "It is well recognized that the appropriate sanction depends upon the facts and circumstances of each particular case and

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51 *Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 13).

52 *Id.* at 6 (Principal Considerations in Determining Sanctions, No. 9).

cannot be determined precisely by comparison with actions taken in other proceedings or against other individuals in the same proceeding." *Christopher J. Benz*, 52 S.E.C. 1280, 1285 (1997). The respondents also exercised their right to a hearing. In settled cases, the parties forgo the cost of litigation and often agree to lesser sanctions. *See Dep't of Enforcement v. Belden*, Complaint No. C05010012, 2002 NASD Discip. LEXIS 12, at *27 (NASD NAC Aug. 13, 2002), *aff'd*, 56 S.E.C. 496 (2003); *see also Howard R. Perles*, 55 S.E.C. 686, 710 (2002) (noting that "pragmatic considerations justify lesser sanctions in negotiated settlements"). We reject respondents' argument as not relevant and without merit. *See, e.g.*, *Kent M. Houston*, Exchange Act Release No. 71589A, 2014 SEC LEXIS 863, at *33 (Feb. 20, 2014) (rejecting as "inappropriate" respondent's comparisons to sanctions in settled cases); *Tucker*, 2012 SEC LEXIS 3496, at *66 n.92 (rejecting as inapposite respondent's reliance on sanctions imposed in other Form U4 cases).

The Hearing Panel suspended Troszak and the Firm for 30 business days and fined respondents $10,000, jointly and severally. In light of the aggravating circumstances that we discussed above, we determine it appropriate to increase Troszak's suspension to 60 days. We affirm the $10,000 fine (joint and several). Because the respondents ultimately amended Troszak's Form U4 to disclose the tax lien, we eliminate the Firm's suspension.[53]

VI. Conclusion

We affirm the Hearing Panel's findings that the respondents failed to amend Troszak's Form U4 to disclose a tax lien within 30 days of learning of the lien, in violation of Article V, Section 2 of the FINRA By-Laws, FINRA Rule 2010, and NASD Rule 2110. We also affirm the findings that the respondents failed to respond completely to FINRA information requests, in violation of FINRA Rules 8210 and 2010. Accordingly, for the failure to respond, we bar Troszak and expel North Woodward, effective upon service of this decision. We also determine it would be appropriate to fine the respondents $50,000, jointly and severally, but decline to do so in light of the bar and expulsion. For the Form U4 violation, we determine that suspending Troszak for 60 days and fining the respondents $10,000, jointly and severally, would be appropriate, but also decline to impose these sanctions in light of the bar and expulsion. We affirm the Hearing Panel's order that the respondents pay $2,712 in hearing costs and order the respondents to pay $1,368.79 in appeal costs.[54]

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[53] *See Guidelines*, at 70 (recommending firm suspension until the firm corrects the filing deficiency).

[54] The respondents object to the Hearing Panel's assessment of hearing costs and request that "reasonable costs related to the U-4 issue be assessed and that all other costs incurred by respondents be reimbursed by FINRA." We reject respondents' request. FINRA Rule 8330 provides that a member or person associated with a member who FINRA has disciplined shall bear the costs of the proceedings as deemed appropriate by the adjudicator. The respondents have not shown that the $2,712 in costs, consisting of a $750 administrative fee and the cost of the hearing transcript, was unreasonable. *See, e.g.*, *Lu*, 58 S.E.C. at 62 n.45 (sustaining hearing and appellate costs in NASD disciplinary matter). In addition, Enforcement was justified in

[Footnote continued on next page]

On Behalf of the National Adjudicatory Council,

Marcia E. Asquith
Senior Vice President and Corporate Secretary

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bringing this action against the respondents, and as the Commission recognized in FINRA's prior action against these same respondents, there is "no basis" for awarding costs to FINRA member firms or their associated persons related to such actions. *See N. Woodward*, 2009 SEC LEXIS 2796, at *22 n.29.

We also have considered and reject without discussion all other arguments of the parties.