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BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC

In the Matter of the Application of

North Woodward Financial Corp. and Douglas A. Troszak

For Review of Disciplinary Action Taken by

FINRA

File No. 3-15990

FINRA'S BRIEF IN OPPOSITION TO APPLICATION FOR REVIEW

Alan Lawhead
Vice President and
Director – Appellate Group

Jennifer C. Brooks
Associate General Counsel

FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8083

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I. INTRODUCTION

Applicants Douglas A. Troszak and his firm, North Woodward Financial Corp., refused to cooperate fully with FINRA's investigation into Troszak's borrowing of funds from his and North Woodward's customers. They now appeal to the Commission to set aside the findings and sanctions imposed in a July 21, 2014 decision of FINRA's National Adjudicatory Council ("NAC"). In that decision, the NAC found that Troszak and North Woodward violated FINRA Rules 8210 and 2010 by failing to provide requested information to FINRA and barred Troszak and expelled North Woodward to remedy the egregious flouting of FINRA rules.[1] (RP 4958-62, 4964-71.)

[1] The NAC also found that the applicants failed to amend Troszak's Form U4 to disclose a federal tax lien. (RP 4957-58.) "RP" refers to the page numbers in the certified record of this case filed with the Commission.

This case stems from FINRA's concern that Troszak was taking advantage of his broker-dealer customers by persuading them to loan money to him to address his financial difficulties instead of recommending investments that would further their financial goals. Troszak was experiencing financial difficulty and needed $188,689.52 to redeem his ownership of a condominium that had been foreclosed upon. Troszak convinced ten North Woodward customers to loan $200,000 to a company he controlled and issued promissory notes to them in an effort to save his distressed property. FINRA's examiners were alarmed by Troszak's self-interested dealings with his firm's customers and began an investigation. Despite multiple requests, Troszak and North Woodward refused to provide FINRA with critical information related to the specifics of these transactions, including an accounting of the $11,310.48 difference between the amount Troszak borrowed and the condominium redemption payment and documentation showing whether these customers were being repaid timely with interest. Troszak and North Woodward instead claimed this information was "personal and confidential" and "irrelevant" to FINRA's investigation. Troszak and North Woodward flagrantly disregarded their unequivocal obligation to comply fully with FINRA Rule 8210 by refusing to provide information central to FINRA's investigation into whether the applicants harmed customers.

The NAC found that this was an egregious case with no mitigating factors and several aggravating factors, including Troszak's and North Woodward's prior disciplinary histories. In harmony with FINRA's Sanction Guidelines ("Guidelines"), the NAC barred Troszak and expelled North Woodward.[2]

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[2] In light of the bar and expulsion for applicants' failure to provide information, the NAC declined to impose a sanction for the Form U4 violation. (RP 4974.)

Troszak and North Woodward placed a roadblock in the path of FINRA's investigation, precluding the Department of Enforcement from determining whether the promissory notes were a legitimate and suitable investment and whether investors were harmed. The facts supporting the NAC's findings of violations and those related to the bar and expulsion are well-supported, and the imposition of stringent sanctions are necessary for the protection of the public interest. Applicants' disciplinary histories demonstrate that they are unrepentant recidivists who fail to recognize their basic obligations as FINRA members. Neither Troszak nor North Woodward has put forth any reasonable basis for setting aside the NAC's findings or reducing the sanctions. Instead, the applicants continue to hide behind the guise of purported customer privacy to rationalize their misconduct and to evade regulatory requirements. FINRA urges the Commission to dismiss the application for review.

II. FACTUAL BACKGROUND

A. Applicants' Background and Their Failure to Disclose a Federal Tax Lien

Troszak is North Woodward's president, chief financial officer, chief compliance officer, financial and operations principal, and sole registered representative. (RP 3684-85.) Troszak is also a certified public accountant, and accounting is Troszak's primary business. (RP 4329.) North Woodward conducted a general securities business. All ten of North Woodward's customers who loaned money to Troszak, and the company he controlled, have brokerage accounts at North Woodward. (RP 4109, 4329.)

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. (RP 4295-96.) Troszak admitted that he received notice of the tax lien from the IRS in October 2008, and he ultimately understood

that he was personally subject to the lien. (RP 4236, 4476-78.) The Form U4 requires timely disclosure of a tax lien, and question 14M on the Form U4 specifically asks, "Do you have any unsatisfied judgments or liens against you?". (RP 4310.) Despite notice of the tax lien years earlier, and FINRA's multiple warnings to applicants of their obligation to disclose it on Troszak's Form U4, the applicants failed to update Troszak's Form U4 to disclose the tax lien for three years, until October 2011.[3] (RP 3686, 4080-81, 4133, 4387, 4402, 4411, 4413, 4416.)

B. Troszak Obtained Loans from Customers

Troszak experienced financial difficulty in February 2009 and was unable to pay the mortgage on a commercial condominium unit that he owned in Michigan. (RP 4329.) In November 2009, Troszak compiled a group of loans totaling $200,000 in order to redeem his ownership in the property after it had fallen into foreclosure. (RP 4330.) Troszak obtained these loans from ten North Woodward customers, seven of whom withdrew funds from individual retirement accounts ("IRAs") in order to loan Troszak money. (RP 4330-31.)

Troszak, individually and as president of Troszak Capital Corp. (a company that he formed for tax purposes), executed a promissory note for each loan with the customers, which directed payment of 10% interest annually to the note holders. (RP 4347-67, 4481-85.) 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. (RP 4031, 4224.) Troszak

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[3] Troszak testified that he satisfied the lien in full in October 2010. (RP 4236.)

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. (RP 4369.)

C. FINRA's Requests for Information

In February 2010, FINRA began investigating the applicants after receiving a regulatory tip that Troszak borrowed funds from his customers and issued promissory notes to these customers. (RP 4317-19.) FINRA subsequently issued to the applicants four successive information requests pursuant to FINRA Rule 8210. (RP 4317-19, 4385-88, 4401-06, 4411-17.) After responding to the first of these requests in March 2010,[4] the applicants failed to produce documents in response to the subsequent information requests issued on April 22, May 25, and June 10, 2010. (RP 4327-84, 4395-4400, 4409-10, 4421-23.)

Beginning with the April 2010 information request, FINRA asked the applicants 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 for accounts in which Troszak had a beneficial interest for the period of January 2009 to April 2010, including the account statements for Troszak Capital Corp.; and all correspondence between the applicants and the IRS. (RP 4385-88, 4401-06, 4411-17.) FINRA also asked the applicants 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

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[4] In response to the first Rule 8210 request, applicants' counsel at the time 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. (RP 4328-4384.)

documentation, of the $11,310.48 difference between the amount that Troszak received in loans from the customers ($200,000) and the amount he paid to redeem the property ($188,689.52). (RP 4385-88, 4401-06, 4411-17.) The applicants, however, refused to produce any of these requested documents prior to FINRA filing the complaint in this matter in May 2011. (RP 4396-4400, 4409-10, 4421-23.) In refusing to supply the information, the applicants claimed that the information was "personal and confidential" to either the customers or Troszak Capital Corp., the entity that issued the promissory notes and that Troszak controlled, and "irrelevant" to FINRA's investigation. (RP 4396-4400, 4409-10, 4421-23.)

On February 15, 2011, FINRA notified the applicants that it intended to recommend formal disciplinary action against them and invited the applicants to make a Wells submission in response. (RP 4425-26.) 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." (RP 4429.) The applicants produced no documents in response. Therefore, the only documents that the applicants produced during FINRA's investigation were those they provided with their March 10, 2010 letter.

D. Applicants' Post-Complaint Production Was Incomplete

More than a year after FINRA requested the information, and approximately five months after Enforcement filed its complaint in this matter, the applicants produced to FINRA more than 5,500 pages of documents.[5] (RP 4027-30, 4431.) Notwithstanding the belated document

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[5] These documents included correspondence with the IRS, litigation records related to applicants' taxes and liens, various bank account statements belonging to Troszak and his

[Footnote continued on next page]

production, the applicants never fully responded to FINRA's Rule 8210 requests. The applicants refused to produce an accounting, with documentation, 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., the entity through which Troszak issued the promissory notes.[6] (RP 4031-33.)

III. PROCEDURAL HISTORY

After a hearing, the Hearing Panel found that Troszak and North Woodward engaged in the misconduct as alleged in the complaint, including failing 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 and to respond completely to requests for information and documents, in violation of FINRA Rules 8210 and 2010. (RP 4537-39, 4540-43.) The Hearing Panel barred Troszak and expelled North Woodward for failing to provide FINRA with requested information. (RP 4543-4549.)

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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, North Woodward securities account statements for 2009 and 2010 for the remaining customers who were note holders, and Troszak Capital Corp.'s North Woodward securities account statements for January 2011 through October 2011. (RP 4028-29, 4064-65, 4431.) Troszak also provided on-the-record testimony to FINRA staff in November 2011. (RP 4433-89.)

[6] The promissory notes were signed by Troszak individually and as president of Troszak Capital Corp. (RP 4347, 4349, 4351, 4353, 4355, 4357, 4359, 4361, 4363, 4365, 4367.) 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. (RP 4481-85.)

On appeal, the NAC affirmed the Hearing Panel's findings of liability in totality. (RP 4957-64.) Finding that applicants' violations of Rule 8210 were egregious and without mitigation, the NAC affirmed the bar and expulsion imposed for the failures to provide requested information.[7] (RP 4964-71.) The NAC found that applicants' disciplinary histories served to aggravate sanctions and reflected a serial disregard of basic regulatory requirements. (RP 4964-66.)

The NAC also found the information that the applicants never provided was important and that applicants' failure to provide it curtailed FINRA's ability to determine the extent of applicants' misconduct and whether investors were harmed. (RP 4967.) The NAC found it highly aggravating that the applicants repeatedly frustrated FINRA's attempts to obtain documents, causing FINRA to issue multiple requests and exert significant regulatory pressure. (RP 4967.) Indeed, even with mounting pressure from FINRA, the majority of the requested documents were not provided until five months after FINRA filed its complaint and the applicants never provided several key categories of documents. (RP 4967-68.) The NAC concluded that applicants' actions "demonstrate a fundamental unwillingness to comply with FINRA rules," necessitating a bar and expulsion. (RP 4971.)

On July 29, 2014, the applicants filed this appeal with the Commission.[8] (RP 5105-06.)

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[7] In contrast to the Hearing Panel's approach to determining the appropriate sanctions, the NAC applied the Rule 8210 Guidelines governing "partial but incomplete" responses. (RP 4966-67); *FINRA Sanction Guidelines* 33 (2013), http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf. The NAC determined that a bar and expulsion remained appropriate after applying this Guidelines' provision. (RP 4966-67.)

[8] The applicants also moved the Commission to stay the sanctions imposed in the NAC's decision while their appeal is pending. (RP 5007-15.) FINRA opposed applicants' request to stay the effectiveness of the bar and expulsion, the only sanctions in effect. (RP 5029-5101.)

[Footnote continued on next page]

IV. ARGUMENT

The Commission should dismiss Troszak's and North Woodward's application for review. The basic facts upon which FINRA based its action are without dispute. The record overwhelmingly supports the NAC's findings that the applicants failed to provide certain key categories of requested documents even after FINRA exerted significant regulatory pressure by filing a complaint and failed to disclose timely that Troszak was subject to a federal tax lien. (RP 4957-64.) Troszak and North Woodward failed to abide by their unequivocal duty to cooperate with a FINRA investigation and keep up to date the required disclosures on Troszak's Form U4. This matter represents a textbook violation of FINRA Rules. *See, e.g.*, *Gregory Evan Goldstein*, Exchange Act Release No. 71970, 2014 SEC LEXIS 1350, at *12-19 (Apr. 17, 2014) (finding violation of Rule 8210 where respondent failed to respond to certain document requests); *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at *35-36 (June 14, 2013) (affirming violation of Rule 8210 when respondent provided some responsive information but failed to provide requested documents); *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *25-40 (Nov. 9, 2012) (affirming violation of NASD Rules for failing to make required disclosures, including tax liens, on Forms U4).

On appeal, the applicants do not deny that they failed to produce requested documents or to disclose timely Troszak's tax lien, but offer excuses and strained arguments that lack factual and legal merit seeking to set aside FINRA's findings and sanctions. These are nothing more

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The Commission denied applicants' motion for stay on August 12, 2014. *N. Woodward Fin. Corp.*, Exchange Act Release No. 72828, 2014 SEC LEXIS 2894 (Aug. 12, 2014). The applicants also moved the Commission to consolidate the current appeal before the Commission with a separate disciplinary matter that remains pending before the NAC. *See N. Woodward Fin. Corp.*, Exchange Act Release No. 73380, 2014 SEC LEXIS 3939, at *2-4 (Oct. 16, 2014). FINRA also opposed this motion, and the Commission denied it on October 16, 2014. *See id.*

than threadbare attempts to evade their fundamental duties to supply FINRA with requested information and to disclose material information. Applicants' stubborn refusals to respond to the information requests further evidences the risk that they will engage in future misconduct.

With respect to the Rule 8210 violations, Troszak and North Woodward repudiated over and over FINRA's requests for information and documents, thereby hindering FINRA's investigative efforts. In harmony with FINRA's Guidelines, and in response to the numerous aggravating factors present, including applicants' disciplinary histories, and the seriousness of the violations, the NAC barred Troszak and expelled North Woodward for the violations of Rule 8210. The Commission should affirm FINRA's findings, sustain the bar and expulsion imposed, and dismiss Troszak's and North Woodward's application for review. *See* 15 U.S.C. § 78s(e).[9]

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[9] The standards articulated in Section 19(e) of the Securities Exchange Act of 1934 ("Exchange Act") provide that the Commission must dismiss the application for review if it finds that the applicants engaged in conduct that violated FINRA rules, FINRA applied its rules in a manner consistent with the purposes of the Exchange Act, and FINRA imposed sanctions that are neither excessive nor oppressive and that do not impose an unnecessary or inappropriate burden on competition. 15 U.S.C. § 78s(e). The Commission previously found that Rule 8210 "is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association." *Order Approving Amendments to Rule 8210*, Exchange Act Release No. 68386, 2012 SEC LEXIS 3798, at *26, 77 Fed. Reg. 74,253 (Dec. 7, 2012); *see Order Approving Amendments to Disciplinary Proceedings, Investigations and Sanction Procedures*, Exchange Act Release No. 38908, 1997 SEC LEXIS 1617, at *111-18, 62 Fed. Reg. 43,385 (Aug. 7, 1997).

The applicants do not dispute the underlying facts that they received the FINRA Rule 8210 requests and did not supply certain requested documents and information to FINRA. Indeed, Troszak admitted that he received the Rule 8210 requests and argues that he was justified in not responding in full. (RP 4449, 4453, 4454-55; Br. at 12-19.) The applicants do not contend that FINRA's sanctions impose an undue burden on competition. Furthermore, as argued in more detail below, the specific grounds on which FINRA based its action exist in fact, FINRA applied its rules in a manner consistent with the purposes of the Exchange Act, and FINRA's determination to bar Troszak and expel North Woodward is in accordance with its rules.

A. Troszak and North Woodward Failed to Produce Information in Violation of FINRA Rule 8210

The record overwhelmingly shows that Troszak and North Woodward failed to abide by their unyielding obligation imposed upon them as members of the securities industry and FINRA to cooperate fully and promptly with a FINRA investigation. Applicants' purported justifications for their failures—that FINRA lacks authority to obtain information related to Troszak's borrowing of customer funds and federal law prevents applicants' disclosure of customer information to FINRA—are meritless. The applicants are subject to FINRA jurisdiction as a member firm and registered person and officer of such member firm, and FINRA sought information within applicants' possession and control.

As reflected in the NAC's decision, FINRA engaged in a detailed review of the evidence and found that the applicants failed to provide requested documents in response to three requests for information issued pursuant to FINRA Rule 8210. (RP 4958-64.) Based on this, the NAC correctly found that the applicants violated FINRA Rules 8210 and 2010. (RP 4958-64.) The Commission should affirm FINRA's action.

1. FINRA Rule 8210 Authorized FINRA to Require the Applicants to Provide Information

FINRA Rule 8210 authorizes FINRA staff, for the purposes of an investigation, to require members and associated persons to provide information or testimony and to permit the inspection and copying of books, records or accounts, with respect to any matter involved in an

investigation. *See* FINRA Rule 8210(a)(1), (2).[10] Rule 8210 further states that "[n]o . . . person shall fail to provide information . . . pursuant to this Rule."

"Rule 8210 provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations" and "to police" their activities. *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *12 (Apr. 11, 2008), *aff'd*, 566 F.3d 1172 (D.C. Cir. 2009); *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008), *aff'd*, 347 F. App'x 692 (2d Cir. 2009). "[T]he rule is at the heart of the self-regulatory system for the securities industry" and unequivocally obligates members and their associated persons, such as the applicants, to comply with FINRA information requests. *Berger*, 2008 SEC LEXIS 3141, at *13.

2. The Applicants Violated Rule 8210 by Failing to Respond Fully

FINRA properly requested information and documents regarding Troszak's loans from his and North Woodward's customers. Troszak and North Woodward nonetheless showed repeated unwillingness to respond fully to FINRA's inquiries. Their failure to do so violated FINRA Rules 8210 and 2010.[11]

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[10] FINRA, in December 2012, amended Rule 8210. *Order Approving Amendments to Rule 8210*, 2012 SEC LEXIS 3798; *see also FINRA Regulatory Notice 13-06*, 2013 FINRA LEXIS 8 (Jan. 2013) (providing notice that the Commission approved FINRA's proposed amendments to Rule 8210). The NAC applied the version of Rule 8210 that existed at the time of the conduct at issue. (RP 4951 n.1, 4958-64.)

[11] Applicants' 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).

A violation of Rule 8210 occurs when an associated person, like Troszak, or a member firm, like North Woodward, fails to provide full and prompt cooperation to FINRA in response to a FINRA request for information. *See Brian L. Gibbons*, 52 S.E.C. 791 (1996), *aff'd*, 112 F.3d 516 (9th Cir. 1997). Members and their "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*, 2009 SEC LEXIS 215, at *21 (internal quotation marks and citations omitted). Rather, they have an obligation to respond fully to FINRA's inquiries, including those focusing on loans arranged with customers. *See id.*

It is undisputed that the applicants provided none of the requested documents in response to the April 22, May 25, and June 10, 2010 information requests until after FINRA filed its complaint in this matter. (RP 4396, 4409-10, 4421; *see* Br. at 16, 17.) As a result, the applicants shirked their unequivocal obligation to comply with FINRA Rule 8210. *See Manuel P. Asensio*, Exchange Act Release No. 62315, 2010 SEC LEXIS 2014, at *14 (June 17, 2010). The Commission has emphasized repeatedly that FINRA "should not have to initiate a disciplinary action to elicit a response to its information requests made pursuant to Rule 8210." *See Joseph Ricupero*, Exchange Act Release No. 62891, 2010 SEC LEXIS 2988, at *12 (Sept. 10, 2010). A failure to comply with FINRA's requests for information "frustrates [FINRA's] ability to detect misconduct, and such inability in turn threatens investors and markets." *PAZ*, 2008 SEC LEXIS 820, at *13. Given the importance of Rule 8210 to FINRA's mission to protect investors, applicants' failures to provide responsive documents standing alone are sufficient to justify the NAC's findings that the applicants violated Rules 8210 and 2010. *See Goldstein*, 2014 SEC LEXIS 1350, at *12-19; *Plunkett*, 2013 SEC LEXIS 1699, at *35-36.

Even after taking into account applicants' post-complaint document production, the applicants steadfastly refused to provide multiple categories of requested documents. The applicants never produced an accounting, with supporting documentation, of the $11,310.48 difference between the amount borrowed from the customers and the redemption payment, or the 2009 and 2010 securities account statements for Troszak Capital Corp., which is the entity that issued the promissory notes and that Troszak controlled. (RP 4031-33, 4049, 4070, 4481-85, 4960-61.) The applicants also never produced proof that the customers were receiving the quarterly interest and principal payments for the six consecutive quarters, beginning in February 2010 and ending by May 1, 2011, as set forth by the terms of the promissory notes. (RP 4031-32, 4960.)

The NAC's findings that the applicants failed to supply requested documents are further substantiated by Troszak's own testimony. Troszak acknowledged at the hearing that FINRA received "piece-meal documents" and "did not have the full ability to put together that 11 grand." (RP 4175.) And despite testifying that FINRA now had all the necessary documents to make that accounting, Troszak identified no such documents. (RP 4175.)

Troszak also provided a shifting narrative related to the repayment of the customers, and ultimately admitted that several of his and North Woodward's customers who lent Troszak funds had not been fully repaid. (RP 4224-25; Br. at 2.) Troszak initially claimed in a May 20, 2010 letter to FINRA that the payments were made "according to schedule," but included no documentary proof of that assertion. (RP 4398.) At the hearing, Troszak reversed course and admitted that he did not make some payments to customers, contending he withheld payment because one or more of them did not want to be paid or had agreed to an extension. (RP 4173, 4180, 4203). Troszak, however, offered no documents to show that these customers had agreed

to these purported extensions. (*See, e.g.*, RP 4181, 4203.) Instead, Troszak provided testimony that illustrates his repudiation of his obligations as a FINRA member to provide requested information related to his customers. 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." (RP 4241.) Indeed. The Hearing Panel and the NAC, however, rejected his assertion of a modification of the repayment schedule as not credible, a finding that the applicants have not overcome. (RP 4545, 4961); *see Mark F. Mizenko*, 58 S.E.C. 846, 851 n.10 (2005).

The evidence conclusively shows that the applicants failed to provide information in violation of Rule 8210.

3. Applicants' Objection to FINRA's Jurisdiction Is Meritless

FINRA's efforts to investigate Troszak's borrowing from his and North Woodward's customers are squarely within FINRA's regulatory mandate. In an effort to excuse their refusal to supply requested information, the applicants contend that FINRA has no jurisdiction to investigate the promissory notes because they were loans from Troszak's friends, not securities, and that FINRA never alleged that the loans or any aspect of the transactions violated FINRA Rule 2010 and therefore cannot be regulated by FINRA. (Br. at 8-12.) Applicants' challenge to the breadth of FINRA's jurisdiction must fail. The Commission, in denying applicants' motion to stay, preliminarily rejected applicants' contention that these loans from Troszak's and North Woodward's customers were beyond FINRA's jurisdiction to investigate. *See N. Woodward*, 2014 SEC LEXIS 2894, at *9-10. The Commission stated "it appears that . . . FINRA's requests

for information were well within the scope of Rule 8210" and agreed with FINRA that "borrowing money from customers is within FINRA's authority to investigate." *Id.* (internal quotation marks omitted).

The applicants misunderstand that they are contractually bound as members to provide requested information to FINRA irrespective of whether that investigation results in a violation of other FINRA rules, including Rule 2010.[12] 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 with FINRA.[13] *See Kidder, Peabody & Co. v. Zinsmeyer Trusts P'ship*, 41 F.3d 861, 863 (2d Cir. 1994). Upon joining FINRA, North Woodward and Troszak agreed to comply with *all* FINRA rules, including Rule 8210. *See* Article IV, Section 1 of FINRA By-Laws; *UBS Fin. Servs., Inc. v. W. Va. Univ. Hosps., Inc.*, 660

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12 The applicants stress that FINRA did not find that they violated FINRA Rule 3240 by borrowing money from their customers and therefore their conduct was "consistent with just and equitable principles of trade." (Br. at 10-11.) That argument is nothing more than a strawman that the Commission knocked down in applicants' motion for stay. *See N. Woodward*, 2014 SEC LEXIS 2894, at *10. While the applicants were not charged with violating Rule 3240 in this matter, their borrowing from customers is specifically regulated by that rule and is within FINRA's authority to investigate. *Id.*; *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)).

13 The applicants alternatively argue that their contract with FINRA is void because the production of certain documents would cause Troszak to violate federal tax law by disclosing customers' confidential tax information. (Br. at 16-17.) This argument is fundamentally flawed. As discussed in detail below, FINRA requested that the applicants produce document, such as broker-dealer customer account statements, which are North Woodward's records, and account statements of Troszak Capital Corp., which are records that belonged to Troszak personally or that he controlled. *See infra* Part IV.A.4; *see also* 17 C.F.R. § 240.17a-3(a)(3), (a)(6)(i) (requiring broker-dealers to keep current records, including customer account statements). That Troszak may also use the same information and documents to prepare his customers' tax returns is of no moment and does not thereby shield the information from FINRA's purview.

F.3d 643, 649 (2d Cir. 2011); *Berger*, 2008 SEC LEXIS 3141, at *10. Rule 8210 expressly states that its scope applies to "an investigation . . . authorized by the FINRA By-Laws or rules." In turn, FINRA's By-Laws authorize FINRA to impose sanctions for, among other things, violation by a member or an associated person of FINRA rules or the federal securities laws. Article XIII, Section 1 of FINRA By-Laws. And FINRA rules contain requirements and prohibitions that reach 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). 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). Rule 8210 thus confers upon FINRA broad discretion to inquire about any matter involved in a FINRA investigation, complaint, examination, or proceeding.[14] *See, e.g.*, *Daniel C. Adams*, 47 S.E.C.

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[14] Applicants' assertion that the information provided in response to the first Rule 8210 request was "sufficient" for FINRA to conclude that applicants' conduct was "consistent" with Rule 2010 is flat wrong. (Br. at 11.) FINRA made no such findings. Rather, applicants' response caused FINRA to delve further into applicants' transactions with their customers by propounding three additional information requests and demanding Troszak's on-the-record testimony. (RP 4385-88, 4401-02, 4411, 4433-90.) FINRA expressly stated in its April 22, 2010 request that, after reviewing applicants' March 2010 response, "additional information is needed in order to fully understand this matter." (RP 4385.) Applicants' subsequent refusal to supply the remainder of the requested information in its totality stifled FINRA's investigation and precluded FINRA from determining the full extent of applicants' misconduct. (RP 4020-24, 4031-33.) Far from providing a defense to this violation, applicants' second guessing of the importance of FINRA's requests reinforces the concern that they are engaged in misconduct. *Cf. Morton Bruce Erenstein*, Exchange Act Release No. 56768, 2007 SEC LEXIS 2596, at *13 (Nov. 8, 2007) (stating that a "member or associated person may not second guess . . .

[Footnote continued on next page]

919, 921 (1983) (investigation of respondent's solicitation and sale of a tax shelter was properly within FINRA's reach).

The record shows that the information and documents that FINRA requested from the applicants fell squarely within the four corners of Rule 8210. As a result of FINRA's initial inquiry into whether Troszak had borrowed customer funds to pay the lender of his condominium unit in foreclosure, FINRA's subsequent Rule 8210 requests focused more sharply on the details of the loan transactions; the customers' accounts; repayment of the customers; and any tax liens to which Troszak was subject. (RP 4385-88, 4401-02, 4411-17.) Among other things, FINRA requested any disclosures about the foreclosure that Troszak had provided to the customers who lent him money. (RP 4385, 4401-02, 4411-17.) FINRA also asked whether the seven customers who withdrew funds from their IRAs to loan Troszak money were informed of potential tax consequences. (RP 4385, 4401-02, 4411-17.) 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. (RP 4385, 4401-02, 4411-17.) FINRA requested that the applicants 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. (RP 4385, 4401-02, 4411-17.)

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information requests 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).

FINRA has compelling enforcement objectives at stake in this case targeted at customer protection, which underscores the importance of robust compliance with Rule 8210. *See Plunkett*, 2013 SEC LEXIS 1699, at *34. FINRA had reason to question whether Troszak had the financial wherewithal to repay the loans and if the customers were being repaid according to the terms of the promissory notes. FINRA also was entitled to investigate whether these loans were suitable investments for these customers, many of whom had withdrawn funds from IRAs to loan Troszak money. (RP 4331.) The FINRA examiner specifically testified about why she requested the information that she did from the applicants. FINRA requested North Woodward and Troszak's customer information because FINRA, to fulfill its regulatory responsibilities, needed to know who the customers were. All the customers who lent Troszak money were customers of North Woodward and had brokerage account statements. (RP 4021.) The examiner stated that she requested the new account forms to review the customers' investment objectives, risk tolerances, and financial circumstances. She requested account statements to review activity in the customers' and Troszak's accounts. She needed to review the customer new account forms and account statements to determine if the notes were suitable. (RP 4019-20.) Also, because many of the customers purchased the promissory notes in their IRA accounts, the examiner was concerned that the customers may have taken a distribution and caused a taxable event. (RP 4020.) The examiner requested an accounting of the $11,310.48 because FINRA was concerned about a misuse of customer funds. Moreover, she sought to determine if the customers were aware of the accounting of the funds. (RP 4021-22.) The examiner further needed proof of principal and interest payments also to determine whether there was a misuse of customer funds. (RP 4022-23.) The examiner asked for bank and brokerage statements for all accounts in which Troszak had a beneficial or ownership interest to determine whether he had

the financial wherewithal to make the principal and interest payments and to ensure that customers were protected and repaid. (RP 4024.)

FINRA requested information "with respect to any matter involved in the investigation," and applicants' violated FINRA rules by failing to produce it. *See* FINRA Rule 8210(a).

4. Rule 8210 Required the Applicants to Produce Documents Which Were North Woodward's and Troszak's Books, Records and Accounts

Rule 8210 expressly permits FINRA to inspect and copy "books, records and accounts of" members and their associated persons. As described above, the documents that FINRA sought were "of" North Woodward or Troszak, including those documents that belonged to Troszak personally. In an attempt to justify their failure to respond fully, the applicants contend that the withheld documents belonged to their customers and could not be produced without violating federal law or that they were outside of applicants' "possession, custody or control." (Br. at 12-19.) These contentions are nothing more than a logical fallacy intended to distract from the relevant issue—applicants shielded from regulatory scrutiny the complete picture of their borrowing from customers by refusing to produce relevant documents. The Commission should not be misled.

In asserting that the documents requested are "of" North Woodward and Troszak's customers, who are not a member or person associated with a member, and are not applicants' documents to provide, the applicants misconstrue FINRA's requests. Without question, FINRA's requests fall within the scope of Rule 8210 because the documents are "of" North Woodward or Troszak. FINRA sought from Troszak and North Woodward an accounting, with supporting documentation, of the $11,310.48 difference between the amount borrowed from the

customers and the redemption payment; proof that the interest and principal payments due under the promissory notes were made to the customers; and 2009 and 2010 securities account statements for Troszak Capital Corp., which is the entity that issued the promissory notes and that Troszak controlled. As the Commission emphasized in denying applicants' motion for stay, "the documents FINRA sought were within applicants' possession and control and concerned customers of a regulated firm rather than a third party." *N. Woodward*, 2014 SEC LEXIS 2894, at *12.

Moreover, North Woodward and Troszak Capital Corp. are under Troszak's control. He is North Woodward's owner, president, chief financial officer, chief compliance officer, FINOP, and sole registered representative. (RP 3684-85, 4267.) Thus, Troszak's ownership interest in the information and documents is established through his ownership of and control over North Woodward. *See, e.g.*, *CMG*, 2009 SEC LEXIS 215, at *25 ("Baldwin failed to establish that he did not have access to and control over responsive documents in possession of CMG Securities since he was that firm's CEO and president."). With respect to Troszak Capital Corp., Troszak admitted 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. (RP 4481-85.) In addition, Troszak signed the promissory notes individually and as president of Troszak Capital Corp. (RP 4347, 4349, 4351, 4353, 4355, 4357, 4359, 4361, 4363, 4365, 4367.) "That [Troszak Capital Corp.] is not itself a FINRA member or associated person is immaterial to the conclusion that documents in which [Troszak] has a majority ownership interest and over which he has sole possession and control are within the scope of Rule 8210's requirement that the documents be 'of such member or person.'" *Goldstein*, 2014 SEC LEXIS 1350, at *18.

Applicants' reliance upon sections in the Internal Revenue Code and Regulation S-P as rationales to withhold the requested information likewise fails.[15] (Br. at 12-17.) The applicants contend that compliance with FINRA's request for evidence of principal and interest payments to customers would violate federal law because evidence of those payments was information that Troszak relied upon in preparing customers' tax returns. (Br. at 14.) The applicants, however, refused to provide information and documents related to *Troszak's* use and repayment of his and North Woodward's customer funds. Federal law does not preclude applicants' provision of these documents to FINRA, which are documents "of" a FINRA member and person associated with a member irrespective of whether Troszak may also have used the same information and documents to prepare his customers' tax returns.[16] Rule 8210 mandated applicants' compliance to produce Troszak's and North Woodward's documents.

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[15] The applicants mistakenly assert that the NAC failed to address these arguments below. (Br. at 14, 23.) The NAC addressed what the applicants argued. *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" (internal quotation marks omitted)). In their brief to the NAC, applicants' asserted, without specificity, that they objected to FINRA "characterizing conflicting regulatory demands between [the] IRS, DOL, and FTC as a lack for [sic] FINRA compliance," that "numerous conflicting regulations make it difficult to adhere to FINRA requests for 'private client information,'" and that "Regulation[] S-P a[n] SEC regulation prohibits disclosure of consumer information." (RP 4619.) The NAC properly rejected that other regulatory demands, including Regulation S-P, excused or in any way mitigated applicants' noncompliance with FINRA's requests under Rule 8210. (RP 4962 & n.24, 4963 & n.25, 4970.)

[16] Applicants' purported concerns for their customers' privacy and confidentiality are not a valid reason for failing to comply with FINRA's requests. *See Goldstein*, 2014 SEC LEXIS 1350, at *36 (rejecting assertions of privacy and confidentiality as justifiable reasons for failing to provide FINRA with information). "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." *Gregory Evan Goldstein*, Exchange Act Release No. 68904, 2013 SEC LEXIS 552, at *17 (Feb. 11, 2013)

[Footnote continued on next page]

The applicants, in an effort to inoculate them from failing to supply documentation of the unaccounted for $11,310.48 in customer funds, now contend that Troszak CPA Group provided $14,000 of the $200,000 in borrowed funds and that the documentation was "possessed and controlled" by the title company handling the redemption transaction. (Br. at 1, 18.) This assertion, made for the first time on appeal, is without factual basis and directly contradicted by the applicants' own statement in their brief that "Troszak obtained loans totaling $200,000 from his personal friends." (Br. at 1.) Moreover, the uncontroverted record evidence belies this assertion. In their response to FINRA's first Rule 8210 request, the applicants' counsel stated, "Mr. Troszak's Customers agreed to loan him $200,000 under the terms that he had proposed, to be secured by promissory notes and a mortgage." The response further provided copies of the promissory notes, signed by Troszak, individually and as president of Troszak Capital Corp., and the customers, showing that Troszak borrowed the full $200,000 from his customers. (RP 4330-31, 4347-67.)

Irrespective of applicants' attempt at unmerited distraction, the facts make clear that Troszak borrowed $200,000 from his and North Woodward's customers and the applicants refused to provide an accounting, with supporting documentation, to FINRA of the $11,310.48 balance of customer funds that remained after Troszak redeemed his foreclosed property. As discussed above, any documents of Troszak Capital Corp. were documents of Troszak personally

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(order denying stay); *see Goldstein*, 2014 SEC LEXIS 1350, at *36; *see also CMG*, 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). These concerns, moreover, are disingenuous at best when the applicants selectively produced information, long after FINRA filed its complaint, that applicants viewed as private and confidential information belonging to their customers. *See infra* note 20.

and thus Troszak was required as an associated person to produce them to FINRA. *See Goldstein*, 2013 SEC LEXIS 552, at *14 ("As an associated person, Goldstein is thus required to provide [FINRA] with any documents that belong to him personally." (Internal quotation marks omitted)).

Equally specious is applicants' contention that Troszak had no control over Troszak Capital Corp.'s securities account statements that they refused to provide for 2009 and 2010. (Br. at 19.) The applicants assert that either no such account statements exist or, if they do, FINRA "should have already received copies of them" from First Southwest, North Woodward's clearing firm or applicants' former attorney. (Br. at 19.) Once again, the applicants demonstrate their misunderstanding of their obligations to respond to FINRA's requests. The Commission has held that the person to whom an information request is directed, in this case Troszak and North Woodward, "ha[s] a duty to respond himself or to supervise others diligently with adequate follow-up to ensure a prompt response to [FINRA]." *Richard J. Rouse*, 51 S.E.C. 581, 585 (1993); *see Dennis A. Pearson, Jr.*, Exchange Act Release No. 54913, 2006 SEC LEXIS 2871, at *14 (Dec. 11, 2006). The Commission has further explained that the person to whom such a request is made "is responsible for responding directly to [FINRA's] requests for information and cannot shift responsibility to [another] for his own failure to provide requested information in a timely fashion." *Ashton Noshir Gowadia*, 53 S.E.C. 786, 792 (1998); *see also Michael David Borth*, 51 S.E.C. 178, 181 (1992) (rejecting registered representative's attempt to shift his responsibility to provide NASD with requested information to his firm's legal counsel). Thus, Troszak and North Woodward cannot satisfy their obligation to respond to an information request now by simply referring FINRA to North Woodward's clearing firm or their former legal counsel. *See Joseph G. Chiulli*, 54 S.E.C. 515, 523 (2000). Because these account statements

were inarguably Troszak's, as an associated person, there is no question as to FINRA's right to demand their production from *him* pursuant to Rule 8210. Troszak's failure to provide them violated Rule 8210.

Because the securities industry provides ample opportunity for abuse, it is imperative that members and their associated persons not be allowed to operate without regulatory scrutiny. *See Rita Delaney*, 48 S.E.C. 886, 890 (1987). FINRA investigators often commence investigations before they have a clear picture as to the nature and breadth of the potential misconduct. As the Commission has held, FINRA should not be required to explain the materiality of its requests or justify the relevance of its investigations before receiving cooperation from associated persons. *CMG*, 2009 SEC LEXIS 215, at *21. Rather, FINRA members have an obligation to respond fully to FINRA's inquiries, including those that are related to members' activities with their customers. As the NAC held, FINRA's requests for information did not seek information of an unrelated third party but, rather, information of a member, North Woodward, and an associated person, Troszak. It was not within applicants' discretion to "take it upon themselves to determine" whether the information that FINRA requested was "material to" the investigation. *See id.* The relevant inquiry here is whether the applicants provided documents or information fully responsive to FINRA's requests at issue, to which the answer is, undeniably, they did not. However the applicants choose to characterize the withheld information, it was either "information . . . with respect to any matter involved in an investigation" or records "of" the applicants regarding a matter involved in the investigation, and required to be produced. *See* Rule 8210(a). Based on these principles, the Commission should sustain the NAC's findings that the applicants failed to respond completely to FINRA's requests, in violation of FINRA Rules 8210 and 2010.

B. The Applicants Failed to Disclose a Tax Lien on Troszak's Form U4

The Commission also should affirm the NAC's findings that the applicants, in violation of FINRA By-Laws and FINRA and NASD rules, failed to amend timely Troszak's Form U4 to disclose a federal tax lien totaling $19,802.07 that the IRS filed against Troszak in October 2008. The record evidence overwhelmingly supports these findings.

The unequivocal requirement for all participants in the securities industry is that "[e]very person submitting registration documents has the obligation to ensure that the information printed therein is true and accurate." *Robert E. Kauffman*, 51 S.E.C. 838, 840 (1993), *aff'd*, 40 F.3d 1240 (3d Cir. 1994). This requirement applies to the Form U4, which is used to screen applicants for employment within the securities industry and determine their fitness for registration. *See Richard A. Neaton*, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719, at *16 (Oct. 20, 2011); *see also Tucker*, 2012 SEC LEXIS 3496, at *26 ("[The Form U4] is critical to the effectiveness of the screening process used to determine who may enter (and remain in) the industry."). In keeping with the importance of the information contained within the Form U4 and to ensure accuracy, 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." *See also Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *25-26 (Apr. 18, 2013) ("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." (Internal quotation marks omitted)). The By-Laws further mandate that any amendments be filed with FINRA "not later than 30 days after learning of the facts or circumstances giving rise to the amendment." Article V, Section 2(c) of

FINRA's By-Laws. 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, including a federal tax lien.[17] *See Tucker*, 2012 SEC LEXIS 3496, at *30; *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 (2d Cir. 2012).

Applying these principles to the straightforward facts here readily demonstrates that the applicants failed to update Troszak's Form U4 as they were required to do by FINRA's By-Laws and FINRA and NASD rules. The IRS filed a tax lien against Troszak on October 6, 2008. (RP 4295.) Troszak admitted that he received timely notice of the lien in October 2008.[18] (RP 4476, 4478.) Question 14M of the Form U4 required Troszak to disclose any unsatisfied judgments or liens against him. (RP 4310.) The applicants therefore should have updated Troszak's Form U4 to disclose the tax lien within 30 days of learning of it, sometime in November 2008. The applicants 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). (RP 4133, 4236, 4301, 4480.) This represents a prima facie violation of FINRA's disclosure requirements.

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[17] NASD Rule 2110 applied until December 15, 2008, when its identical successor, FINRA Rule 2010, became effective. *See FINRA Regulatory Notice 08-57*, 2008 FINRA LEXIS 50 (Oct. 2008). 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.

[18] Troszak also had constructive notice of the lien when it was filed because the IRS sent the notice to applicants' CRD addresses. (RP 4275, 4295-97.)

On appeal to the Commission, the applicants state that their failure to update Troszak's Form U4 should be excused because they were "not aware" that the tax lien needed to be disclosed. (Br. at 20.) To that end, the applicants state that they were unaware that the IRS sought to hold Troszak personally liable for back taxes and did not have "knowledge of any lien against him personally." (Br. at 20.) The applicants again shade the truth. The IRS's notice of the lien, that Troszak admitted that he received in October 2008, listed Troszak individually as one of the affected taxpayers. (RP 4295, 4297, 4476, 4478.) The notice plainly stated that the IRS had assessed unpaid taxes against Troszak and that there was a lien, in the amount of $19,802.07, in favor of the United States on all property belonging to Troszak. (RP 4295, 4297.) Further, as the applicants concede, FINRA directed them in the April 22, May 25, and June 10, 2010 Rule 8210 requests to disclose the lien on Troszak's Form U4. (Br. at 20; RP 3686, 4080-81, 4133, 4236, 4387, 4402, 4411, 4413, 4416.) The applicants nonetheless ignored that directive until October 2011—three years after they had notice of the lien and five months after Enforcement filed its complaint in this matter alleging the violations related to the Form U4. (RP 3686, 4080-81, 4133, 4236, 4387, 4402, 4411, 4413, 4416.) Even when Troszak concedes that he ultimately understood that he was personally responsible for the lien, he notably states that he paid off the lien—not that he disclosed it as he should have. (Br. at 20.)

The applicants contend that their attorney's position at the time was that disclosure of the lien was not necessary because Troszak was not personally subject to the lien. (Br. at 20.) This is a new argument on appeal and, even if considered, is wholly untenable. A cursory review of the IRS's notice of the lien shows that Troszak is one of the affected taxpayers. (RP 4295, 4297); *cf. Mathis*, 2009 SEC LEXIS 4376, at *21 (rejecting applicant's claim that the question was ambiguous, noting that it "contains no limitations on the kind of liens required to be

disclosed"). Moreover, applicants' unsupported statement does not establish reliance on counsel. And, in any event, because intent is not an element of these violations, any purported reliance on counsel would not negate liability. *See Falcon Trading Group, Ltd.*, 52 S.E.C. 554, 558 n.17 (1995), *aff'd*, 102 F.3d 579 (D.C. Cir. 1996); *Dep't of Enforcement v. Am. First Assoc. Corp.*, Complaint No. E1020040926-01, 2008 FINRA Discip. LEXIS 27, at *17, n.20 (FINRA NAC Aug. 15, 2008) (stating that the defense of reliance on counsel is not available where intent is not an element of the violations), *aff'd*, *Ricupero*, 2010 SEC LEXIS 2988. The applicants, as FINRA members, are responsible to know what is required of them under FINRA rules, including what is required to be disclosed timely on the Form U4. *See Carter v. SEC*, 726 F.2d 472, 474 (9th Cir. 1983).

Over a period of several years, the applicants refused to update Question 14M on Troszak's Form U4 despite knowing that he was subject to a federal tax lien. An associated person's failure, like Troszak's, to disclose a tax lien is particularly material information that other regulators, employers, and investors would want to know because it may signal financial difficulty. *See Mathis v. SEC*, 671 F.3d 210, 220 (2d Cir. 2012); *Tucker*, 2012 SEC LEXIS 3496, at *63. This is certainly true here where Troszak was not only subject to a tax lien, but he also owned property that was in foreclosure. And Troszak admitted that he did not inform the customers from whom he borrowed money to redeem that property that he had unpaid taxes that resulted in the IRS's lien against him. (RP 4242-43, 4479-80.) The Commission should affirm the NAC's findings that applicants' failure to keep the disclosures on Troszak's Form U4 current is in direct contravention of FINRA By-Laws and the high standards of commercial honor and just and equitable principles of trade demanded by FINRA Rule 2010 and NASD Rule 2110.

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The record provides ample evidentiary support for the NAC's findings of violations, and applicants' application for review points to nothing to undo those findings. The Commission should sustain the NAC's findings in their totality.

C. The Sanctions Imposed for Applicants' Failures to Respond Completely Are Appropriate and Neither Excessive Nor Oppressive

After a comprehensive review of the facts, the law, and numerous aggravating factors present, including applicants' disciplinary histories, the NAC, consistent with FINRA's Guidelines, barred Troszak and expelled North Woodward for their violations of FINRA Rule 8210. Both the Hearing Panel and the NAC determined that there were no factors that mitigated applicants' misconduct and that applicants' failures to provide key information to FINRA warranted barring Troszak and expelling North Woodward. (RP 4543-48, 4956-57, 4964-71.) The record fully supports this conclusion. The bar and expulsion are not excessive or oppressive, and should be sustained.

1. The NAC Correctly Applied the Rule 8210 Guidelines for Applicants' Incomplete Responses

A partial, but incomplete, response to FINRA's request for information, documents, or testimony presents the functional equivalent of a failure to respond in any manner because individuals have selectively kept certain information from FINRA. *See Dep't of Enforcement v. Gallagher*, Complaint No. 2008011701203, 2012 FINRA Discip. LEXIS 61, at *48 (FINRA NAC Dec. 12, 2012). Under such circumstances, FINRA's Guidelines state that "a bar is standard unless the person can demonstrate that the information provided substantially complied with all aspects of the request." *Guidelines*, at 33. The NAC correctly concluded that

applicants' partial responses did not comply substantially with all aspects of the FINRA Rule 8210 requests, that there were no mitigating factors in this case, and that aggravating factors supported barring Troszak and expelling North Woodward from FINRA membership. (RP 4960, 4964-71.) In an egregious case like this one, expulsion of the firm is appropriate. *See id.*

Applicants' violations were accompanied by numerous aggravating factors. At the outset, the NAC found that Troszak's and North Woodward's disciplinary histories aggravated their misconduct significantly and reflected a serial disregard of fundamental regulatory obligations. (RP 4964-66); *Guidelines*, at 2 ("Disciplinary sanctions should be more severe for recidivists"—particularly in cases where "past misconduct [is] similar to that at issue" or "evidences a disregard for regulatory requirements, investor protection, or commercial integrity."); *see Midas Sec., LLC*, Exchange Act Release No. 66200, 2012 SEC LEXIS 199, at *66-67 (Jan. 20, 2012). Applicants' disciplinary histories include the Commission's findings that North Woodward failed to prepare and maintain a current general ledger and trial balance for two months and that Troszak was responsible for North Woodward's violations. *N. Woodward Fin. Corp.*, Exchange Act Release No. 60505, 2009 SEC LEXIS 2796, at *23 (Aug. 14, 2009). North Woodward, acting through Troszak, also engaged in securities-related activities without a FINOP for 13 months.[19] *Id.* at *29. As the NAC correctly determined, the

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[19] The NAC discussed in a footnote that, in May 2014, FINRA found in an unrelated matter that Troszak and North Woodward engaged in other misconduct, including additional failures to provide FINRA with requested information pursuant to Rule 8210. *Dep't of Enforcement v. N. Woodward Fin. Corp.*, Complaint No. 2011028502101, 2014 FINRA Discip. LEXIS 11 (FINRA OHO May 16, 2014) (NAC appeal pending). The applicants argue that the NAC impermissibly considered the May 2014 Hearing Panel decision as disciplinary history and "may have led to an increased sanction." (Br. at 21.) The applicants are incorrect that the NAC considered a nonfinal action to bolster sanctions in this case. Rather, in harmony with Commission precedent, the NAC acknowledged the existence of this decision, but made clear that it was not a final action of FINRA while it is on appeal to the NAC. (RP 4965-66 n.28); *see The Dratel Group,*

[Footnote continued on next page]

applicants are recidivists whose disregard for FINRA rules and regulatory requirements place the public interest at risk thereby necessitating the stringent sanctions imposed. *See Ricupero*, 2010 SEC LEXIS 2988, at *24.

The NAC also correctly analyzed and applied the three principal considerations articulated in the Guidelines in determining the proper remedial sanctions. As to the first of these considerations, the NAC considered that the information sought through these requests was essential to FINRA's investigation of Troszak's borrowing from customers. (RP 4967-68.) 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, whether Troszak had the financial ability to repay the customers, and whether investors were harmed. *See CMG*, 2009 SEC LEXIS 215, at *35 (finding it aggravating that respondent's failure to give complete and timely responses prevented NASD's efforts to determine the firm's financial stability and if misconduct had occurred); *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); *Erenstein*, 2007 SEC LEXIS 2596, at *31-32 (failing to "provide information fully and promptly undermines the NASD's ability to carry out its regulatory mandate"). Moreover, the matter that FINRA was investigating—the legitimacy and suitability of the promissory notes and the possible misappropriation of customer funds—was of a very serious nature. "When an investigator seeks to verify the proper use of funds by an associated person, any missing

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Inc., Exchange Act Release No. 72293, 2014 SEC LEXIS 1875, at *19 n.22 (June 2, 2014) ("Although not cited by the NAC, we note that another FINRA hearing panel recently found, in an unrelated case, that applicants engaged in numerous rule violations . . . ." (Internal quotation marks omitted)).

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). That is exactly what occurred here through applicants' intentional refusals to provide documentation vital to FINRA' investigation.

Next, the NAC determined that FINRA had to exert the highest degree of regulatory pressure by filing numerous requests for information over the course of three months, ultimately culminating in the filing of a complaint before the applicants provided any requested documents responsive to the April, May, and June 2010 requests. (RP 4968); *Guidelines*, at 33. Even the complaint filed against them did not cause the applicants to readily produce documents. They failed to produce the documents for another five months after FINRA filed its complaint and three categories of important documents were never provided. (RP 4031-33, 4968.) In weighing these factors, the NAC determined applicants' extended delays and the amount of regulatory effort and resources exerted by FINRA to compel the production of documents served to aggravate the level of sanctions. *See Ricupero*, 2010 SEC LEXIS 2988, at *12. This determination was correct.

Finally, the NAC found that the applicants offered no valid explanation for failing to respond fully to the information requests. (RP 4968-69); *Guidelines*, at 33; *see, e.g.*, *Rooney A. Sahai*, Exchange Act Release No. 55046, 2007 SEC LEXIS 13, at *13 (Jan. 5, 2007) ("We have long said that if a respondent is unable to provide the information requested, there remains a duty to explain that inability."). In response to FINRA's repeated requests for an accounting of the $11,310.48 disparity between the loaned and redemption amounts, the applicants 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. (RP 4968.) The NAC, relying on Commission precedent, correctly rejected the assertions of privacy and confidentiality as justifiable reasons for failing to provide FINRA with information. (RP 4968-69.) "Given 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.

In addition, the NAC determined that the applicants acted intentionally—a level of intent to which the applicants accede—and blamed FINRA for applicants' own failures to comply by "maliciously exert[ing] 'predatory regulation' into affairs it has no jurisdiction over." (RP 4618, 4970; Br. at 22 ("Troszak has not accepted responsibility for [his] misconduct only because he has legitimate legal concerns given the fact that federal law prohibits him from disclosing documents [to] FINRA. . . . He had no choice but to act intentionally . . . .")); *Guidelines*, at 6, 7. Troszak's own testimony illustrates his low regard for his responsibilities under FINRA rules, which continues to this day as reflected in applicants' brief. (*See, e.g.*, Br. at 12 ("FINRA should not be allowed to hand out discipline . . . related to transactions which FINRA does not have the authority to regulate." "The need to limit FINRA's overreaching 8210 requests is especially prevalent in this case . . . .").) 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." (RP 4103.)

The NAC also noted Troszak's changing explanations regarding repayment of his customers and that he was not forthcoming at the hearing where the Hearing Panel found that his testimony was "evasive, obfuscatory, and lacked credibility." (RP 4960-61 & n.22, 4971.) The applicants actively attempted to delay FINRA's investigation by refusing to provide key

documents and demonstrate a fundamental unwillingness to comply with FINRA rules. The NAC concluded that Troszak's actions and attitude demonstrated applicants' failure to appreciate the unequivocal obligations under Rule 8210 and the requirements of the securities business. (RP 4971.)

Based upon all of the forgoing, the NAC properly concluded that applicants' egregious misconduct made them a danger to the investing public, and that a bar of Troszak in all capacities and expulsion of North Woodward were the only effective remedies. (RP 4971.) Troszak's continued assertion that he can shield his activities from FINRA under the guise of conflicting regulatory demands and privacy concerns is perilous to investors. (Br. at 8-10, 11, 12-15, 17, 22-24); *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). Applicants' misconduct was egregious, and the sanctions imposed are necessary to protect the public by preventing Troszak and North Woodward from again obstructing FINRA's regulatory authority to investigate its members and associated persons. These appropriately remedial sanctions will encourage others to respond to FINRA Rule 8210 requests timely and completely. *See Siegel v. SEC*, 592 F.3d

147, 158 (D.C. Cir. 2010) (considering deterrence as part of the remedial inquiry when determining sanctions). The Commission should affirm these sanctions.

2. The Applicants Fail to Demonstrate Mitigating Factors

The applicants contend that the NAC erroneously ignored mitigating factors. (Br. at 22-24.) There is, however, no basis to support applicants' claims of mitigation as these claims are factually and legally unsubstantiated.

The applicants assert that they were advised by legal counsel as to "relevant federal laws which prohibited disclosure of the requested documents" and refused to provide responsive documents based on this advice. (Br. at 22.) To the extent that the applicants claim this excused their violations, such an argument is unavailing. While reasonable reliance on counsel may, in certain circumstances, mitigate the severity of a failure to respond, the Commission has repeatedly held "that reliance on counsel does not excuse an associated person's obligation to supply information or testimony or otherwise cooperate with NASD investigations." *See Toni Valentino*, Exchange Act Release No. 49255, 2004 SEC LEXIS 330, at *13 (Feb. 13, 2004).

With respect to any mitigation of sanctions, "a respondent must show that he made complete disclosure to counsel, sought advice on the legality of the intended conduct, received advice that the intended conduct was legal, and relied in good faith on counsel's advice." *Howard Brett Berger*, Exchange Act Release No. 55706, 2007 SEC LEXIS 895, at *36 (May 4, 2007), *reconsideration in part on other grounds*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141 (Nov. 14, 2008), *aff'd*, 347 F. App'x 692 (2d Cir. 2009). The applicants have made no such showing here. The applicants have not shown that their counsel advised them that noncompliance with FINRA's requests for information was legal. Indeed, Troszak admits as

much in applicants' brief to the Commission. Applicants' brief states merely that "Troszak was advised about the relevant federal laws which prohibited disclosure of the requested documents," not that they would escape liability under FINRA rules by withholding those documents from FINRA. (Br. at 22.) Moreover, the applicants raise this argument for the first time on appeal to the Commission. The record is devoid of the evidence necessary to mitigate applicants' misconduct to any degree.

The claims that applicants did not engage in fraud or harm customers by failing to respond likewise do not qualify as mitigating circumstances.[20] (Br. at 23-24.) Investor harm is not a potential direct result from a failure to respond violation. Rather, Troszak's and North Woodward's intentional misconduct directly impaired FINRA's ability to investigate Troszak's borrowing from customers. Because the applicants effectively circumscribed FINRA from conducting a complete investigation, FINRA was hindered in its efforts to uncover potential underlying misconduct and evaluate if applicants had caused investor harm, including the misappropriation of customer funds.

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[20] The applicants state that if they violated FINRA rules, it was because "they tried too hard to protect their clients' confidential information." (Br. at 23-24.) Setting aside that applicants were primarily pursuing a goal of stopping FINRA's investigation, applicants' purported concerns for customer privacy ring hollow. Throughout these proceedings, Troszak claimed that he could not produce customer account statements without his clients' written permission. (RP 4099-4100, 4103-04, 4410-11, 4122, 4169, 4207, 4241.) When Troszak was asked at the hearing whether he could provide any documentation to show that he attempted to secure such written permission from his customers to overcome his concerns about customers' privacy and his perceived conflict, he could not. (RP 4207-4210.) Troszak testified on this point 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." (RP 4149-50.) 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." (RP 4213.) After the complaint was filed, Troszak eventually produced customer account statements without securing the customers' permission. (RP 4028-29, 4064-65, 4149-50, 4213, 4431.)

These claims of mitigation are irrelevant to cases such as this where applicants fail to supply information that is central to FINRA's investigation because the failure to respond violation is a uniquely virulent form of misconduct. As the Commission acknowledged, a violation of Rule 8210 will never involve direct injury to the investing public from not responding. *PAZ*, 2008 SEC LEXIS 820, at *17. The harm involves crippling the self-regulatory process because FINRA has no alternative method for compelling member firms and associated persons to cooperate with investigations. *See id.* at *17-18.

Significant misconduct can be hidden and evidence destroyed if FINRA's authority under Rule 8210 is compromised by the recipient's attempts to categorize information requests as unimportant because they do not ask directly about fraud or similar serious misconduct. The question in Rule 8210 cases is not whether the information requested related to fraud, but whether the recipient responded fully to the request. Here, the answer is unmistakable: No. Moreover, the information that FINRA was seeking in this case concerned potentially serious rule violations with potentially harmful consequences to customers.

The applicants argue that they have substantially complied with FINRA's requests by providing "the information and documents that [they] could legally provide." (Br. at 23.) This excuse has no basis in law or fact and provides the applicants no respite from their compliance obligations under Rule 8210. As discussed previously, the requests did not seek confidential tax information of customers, and the information that applicants withheld relates to Troszak and his company through which he issued the promissory notes. Similar assertions have been consistently rejected by the Commission, and for the same reasons, they fail here as well. *See Goldstein*, 2014 SEC LEXIS 1350, at*35-38, 42; *Erenstein*, 2007 SEC LEXIS 2596, at *17-19. Troszak's and North Woodward's violations are a far cry from the extraordinary circumstances

under which a partial failure to respond would qualify for mitigation. The information requested was not, for example, unavailable due to independent circumstances beyond applicants' control. The applicants instead purposefully withheld documents and endeavored to prevent FINRA from ascertaining whether Troszak complied with the terms of the loan with his customers and whether customers were harmed.

Nor are there any other valid excuses for the applicants' failure to comply with FINRA's requests. In sum, the applicants were required to respond fully to FINRA's requests, and their repeated failures to do so violated FINRA rules and jeopardized FINRA's ability to investigate possible misconduct. Applicants' failure to provide documents harmed the regulatory process by undermining FINRA's investigation into the appropriateness of Troszak's borrowing from his customers and the potential misappropriation of those customer funds. *See PAZ*, 2008 SEC LEXIS 820, at *18. Under the facts of this case, the applicants have demonstrated no mitigation.

3. Other Recommended Sanctions

The applicants argue that the other sanctions that the NAC found appropriate for the Form U4 violations and the Rule 8210 violations were excessive. (Br. at 23, 24-26.) These arguments are misplaced because the NAC imposed no other sanctions other than the bar and expulsion for the Rule 8210 violation. (RP 4971 n.45, 4974.) Thus, the Commission has no sanctions other than the bar and expulsion before it to review.

Nevertheless with respect to the Form U4 violation, the NAC found that applicants' failure to disclose the tax lien was egregious and, based on the applicants' disciplinary histories and other aggravating factors under the Guidelines, determined suspending Troszak for 60 days

and fining the applicants jointly and severally $10,000 would be appropriate.[21] (RP 4964-66, 4972-74.) The NAC concluded, however, that it "decline[d] to impose these sanctions in light of the bar and expulsion." (RP 4974.)

Applicants' contention that the $50,000 fine for the Rule 8210 violation is excessive is equally erroneous because that fine also was not imposed. (Br. at 23; RP 4971 n.45, 4974.) Where an individual has provided a partial but incomplete response to Rule 8210 requests, the Guidelines state that a fine of $10,000 to $50,000 is standard. *Guidelines*, at 33. But the Guidelines further provide that "[a]djudicators generally should not impose a fine if an individual is barred and there is no customer loss in cases involving . . . failure to respond under FINRA Rule 8210." *Id.* at 10. The NAC, consistent with the Guidelines, stated that a $50,000 fine would be appropriate but declined to impose it in light of the bar and expulsion. (RP 4971 n.45, 4974.) The applicants are therefore incorrect that the NAC "upheld the Hearing Panel's decision to *impose* a $50,000 fine" for the Rule 8210 violations. (Br. at 23 (emphasis added).)

V. CONCLUSION

Applicants' misconduct goes to the very heart of FINRA's investor protection mission. By failing to provide information critical to Enforcement's investigation into whether investors were harmed by loaning money to Troszak, the applicants demonstrated a dangerous disregard toward complying with a FINRA investigation. Indeed, as the NAC found, the applicants did not

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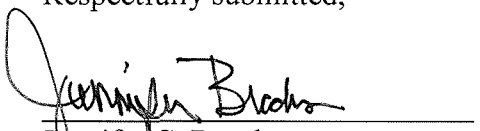
[21] In the proceedings below, the NAC thoroughly evaluated the question of the appropriate sanctions for applicants' failure to amend timely Troszak's Form U4 to disclose a federal tax lien in violation of Article V, Section 2 of the FINRA By-Laws, FINRA Rule 2010, and NASD Rule 2110. When the Commission considers this aspect of Troszak's and North Woodward's application for review, we also direct the Commission to the NAC's analysis. (RP 4951, 4957-58, 4964-66, 4972-74.)

simply fail to provide information and documents to FINRA; they actively blamed FINRA for investigating the loans and failed to understand their unequivocal obligation to provide FINRA with requested documents. (RP 4970-71.) Troszak revealed his attitude towards FINRA regulatory requirements by stating that FINRA is "down the totem pole" and not as important to him as the IRS or the Department of Labor. (RP 4970.) The applicants fail to recognize the importance of complying with FINRA information requests, failures that continue to this day.

By refusing to provide information and documents related to an important investigation, and failing to disclose timely that Troszak was subject to a federal tax lien, Troszak and North Woodward disregarded their obligations to comply with FINRA rules. The bar and expulsion that the NAC imposed are fully warranted by the facts of this case and are consistent with FINRA's Guidelines and the public interest. The Commission should sustain FINRA's action in all respects and dismiss the application for review.

Respectfully submitted,



Jennifer C. Brooks
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8083

November 17, 2014

CERTIFICATE OF SERVICE

I, Jennifer Brooks, certify that on this 17th day of November 2014, I caused a copy of the foregoing Brief of FINRA in Opposition to Application for Review, In the Matter of the Application of North Woodward Financial Corp. and Douglas A. Troszak, Administrative Proceeding File No. 3-15990 to be served by messenger and fax on:

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Fax: (202) 772-9324

and via FedEx and fax on:

Douglas A. Troszak
[redacted]

and via FedEx on:

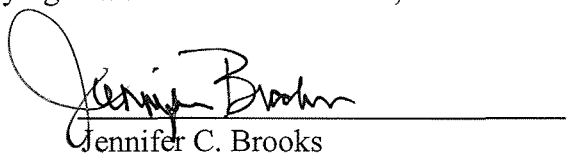
Douglas A. Troszak
Troszak CPA Group
1210 Oxford Road
Bloomfield Hills, Michigan 48304

Service was made on the Commission by messenger and on the applicants by overnight delivery service due to the distance between FINRA's offices and the applicants.

Jennifer C. Brooks
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8083

CERTIFICATE OF COMPLIANCE

I, Jennifer Brooks, certify that this brief complies with the Commission's Rules of Practice by filing a brief in opposition not to exceed 14,000 words. I have relied on the word count feature of Microsoft Word in verifying that this brief contains 12,662 words.



Jennifer C. Brooks
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8083

Financial Industry Regulatory Authority

Jennifer C. Brooks
Associate General Counsel

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

November 17, 2014

VIA MESSENGER AND FACSIMILE

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Fax: (202) 772-9324

RE: North Woodward Financial Corp. & Douglas A. Troszak
Administrative Proceeding No. 3-15990

Dear Mr. Fields:

Enclosed please find the original and three (3) copies of FINRA's Brief in Opposition to Application for Review in the above-captioned matter.

Please contact me at (202) 728-8083 if you have any questions.

Very truly yours,

Jennifer C. Brooks

Enclosures

cc: Douglas Troszak (via FedEx and fax)
[redacted]
Troszak CPA Group (via FedEx)
1210 Oxford Road
Bloomfield Hills, Michigan 48304