BEFORE THE U.S. SECURITIES AND EXCHANGE COMMISSION

DEPARTMENT OF ENFORCEMENT, Complainant, v. SPARTAN CAPITAL SECURITIES, LLC BD No. 146251 JOHN D. LOWRY CRD No. 4336146 KIM M. MONCHIK CRD No. 2528972 Respondents.	:	Disciplinary Proceeding No. 2019061528001 **RESPONDENTS' APPLICATION FOR REVIEW OF FINAL DISCIPLINARY SANCTIONS BY THE FINANCIAL INDUSTRY REGULATORY AUTHORITY**

Pursuant to 17 C.F.R. § 201.420, Respondents Spartan Capital Securities, LLC, John D. Lowry, and Kim M. Monchik (collectively, "Respondents") appeal the Decision of the National Adjudicatory Counsel ("NAC") of the Financial Industry Authority ("FINRA") dated October 9, 2024 wherein the NAC found that Respondents had willfully violated Article V, Section 2(c) and 3(b) of FINRA's By-Laws and FINRA Rules 1122 and 2010 when they purportedly failed to file or timely file Form U-4 and U-5 Disclosures, including Officer Disclosures (the "Decision"). A copy of the Decision is attached hereto. For their summary statement of the alleged errors and supporting reasons thereof, Respondents state, *inter alia:* in a case of first impression, the NAC erroneously interpreted the plain language of FINRA's Interpretative Guidance for Form U-4 Question 14I(1) (the "FINRA Guidance ") concerning the reporting of an event for a Member's Officers, who were not the supervisor of the representative involved in the alleged sales practice violation. In applying its erroneous interpretation, the NAC errored when it found that Respondents failed to report Officer-related disclosures on their Form U-4s. Further, the NAC's

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interpretation of the FINRA Guidance is against the weight of the evidence including the testimony of Bernard Howard, the Director of FINRA's Regulatory Review and Disclosure Unit. The NAC committed further error when, applying its erroneous interpretation, it found that the underlying Statements of Claims alleged that Respondents' Chief Executive Officer and other Officers – rather than the direct supervisor of the registered representative who engaged in the alleged sales practice violation – failed to supervise the firm's representatives and should have been reported on each Officers' Form U-4. The NAC also errored when it found that Respondents had not acted in good faith when they made the determination that an event was not disclosable under the Interpretative Guidance. The NAC erroneous found that Respondents acted with intent – *i.e.*, "intentionally committed" the violation, which conflicts with its finding that "intent is not an element of the violation" when it rejected Respondent's good faith, reliance of counsel defense. Further, the NAC errored when it rejected Respondents' constitutional arguments including: i) FINRA's denial of Respondents' Seventh Amendment right to a jury trial; and ii) FINRA's use of non-governmental appointed Hearing Officers – the later argument of which is fully briefed, argued, and awaiting decision before the U.S. Court of Appeals for the District of Columbia Circuit in *Alpine Securities Corp. v. FINRA* (Case No. 23-5129).[1]

Respondents may be served at the address of their undersigned counsel.

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[1] Indeed, the Decision was not issued by the appointed Subcommittee Members (Patricia Louie and Karen Wood, but rather, by a FINRA Vice President and Deputy Corporate Secretary.

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CERTIFICATION

The undersigned hereby certifies, pursuant to 17 C.F.R. § 201.151(e)(3), that this filing does not include any information required to be redacted by 17 C.F.R. § 201.151(e).

/s *Richard J. Babnick Jr., Esq.*
Richard J. Babnick Jr., Esq.

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Spartan Capital Securities, LLC, John D. Lowry, and Kim M. Monchik New York, NY, Respondents.	DECISION Complaint No. 2019061528001 Dated: October 9, 2024

Member firm failed to amend, or timely amend, on 220 occasions, the Forms U4 and Forms U5 of its registered representatives to disclose the filing or disposition of customer arbitrations, the receipt or disposition of written customer complaints, and reportable financial events. Member firm's failure to disclose the filings or dispositions of customer arbitrations naming firm officers was willful. Member firm's Chief Executive Officer willfully failed to amend his Form U4 38 times to disclose, or timely disclose, the filing and disposition of customer arbitrations in which he was a named respondent. Member firm's Chief Administrative Officer willfully failed to amend her Form U4 15 times to disclose, or timely disclose, the filing and disposition of customer arbitrations in which she was a named respondent. Held, findings of violations affirmed, and sanctions modified.

Appearances

For the Complainant: Jennifer Crawford, Esq., Loyd Gattis, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondents: David A. Schrader, Esq., Michael H. Ference, Esq., Richard J. Babnick Jr., Esq., Irwin Weltz, Esq.

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Decision

John D. Lowry, Kim M. Monchik, and Spartan Capital Securities, LLC ("Spartan") (collectively, "Respondents") appeal an Extended Hearing Panel decision finding they violated FINRA's By-Laws and rules. After a de novo review, we affirm the Hearing Panel's findings of violation and modify the sanctions it imposed.

I. Introduction

This matter involves numerous instances of Spartan's failures to amend or timely amend the Uniform Application for Securities Industry Registration or Transfer ("Form U4") and Uniform Termination Notice for Securities Industry Registration ("Form U5") for dozens of Spartan's registered representatives, their supervisors, and firm executives. From January 2015 through December 2020 (the "Relevant Period"), Spartan customers initiated 49 investment-related arbitrations against 65 Spartan registered representatives alleging sales practice violations. Many of those arbitrations named multiple Spartan representatives. Of those, 29 arbitration claims named one or more of Spartan's officers, including Lowry and Monchik. Spartan also learned of, but failed to report on Forms U4, 51 reportable financial events for its registered representatives, including 50 unsatisfied liens and judgments and one bankruptcy petition. Finally, during the Relevant Period, Spartan received nine investment-related written customer complaints and one related settlement that it was required, but failed to, disclose on its representatives' Forms U4.

The disclosure violations at issue in this case are not limited to Spartan. As registered representatives themselves, Lowry and Monchik had an obligation to disclose the arbitration claims in which they were named as respondents and, when applicable, the arbitration dispositions, on their Forms U4. Despite their knowledge of these reportable events and their obligation to disclose them, Lowry and Monchik did not disclose them at all or did not timely do so.

Respondents assert several constitutional arguments in an attempt to nullify the proceedings. Notwithstanding these preliminary challenges, Respondents concede that Spartan failed to amend or timely amend the Forms U4 and U5 of some of their registered representatives and blame a series of ineffectual compliance officers for these failures. Respondents also argue that they were not required to disclose the arbitration claims against Lowry, Monchik, and other Spartan officers, maintaining that they consulted securities lawyers and compliance consultants and made a good faith determination that such disclosure was not required. Similarly, Respondents contend that the Hearing Panel erred when it held that Spartan had an obligation to submit Form U4 financial disclosure updates for its registered representatives based on unverified and incomplete third-party summary information. Finally, Respondents contend that they should not be subjected to statutory disqualification and that the sanctions imposed are inappropriate.

As discussed in detail below, we are unpersuaded by Respondents' arguments on appeal, and we affirm the Hearing Panel's findings of violations.

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II. Respondents' Background

A. Spartan Capital Securities, LLC

Spartan has been a FINRA member since July 2008. Lowry is the firm's sole owner. Spartan's primary business involves servicing approximately 5,000 retail customer accounts. During the Relevant Period, it had fewer than 150 registered representatives, with a main office in New York City and two branch offices on Long Island. Its 2020 total revenues were approximately $25-30 million. Spartan had six different Chief Compliance Officers ("CCOs") during the nearly six-year Relevant Period, none lasting more than 18 months, with Monchik serving as interim CCO on three separate occasions.

B John D. Lowry

Lowry is Spartan's Chief Executive Officer ("CEO"). He first entered the securities industry in September 2000 and is registered as a general securities representative, general securities principal, and investment banking representative. Prior to co-founding Spartan in 2007, Lowry was associated with two other member firms, where he maintained a book of business as a registered representative. While at Spartan, he continued to maintain a book of business which, by 2022, had decreased in number to approximately 20 accounts. Lowry supervised the firm's CCO, Chief Financial Officer ("CFO"), and Chief Administrative Officer ("CAO"). He also supervised Spartan's investment banking business until August 2021.

C. Kim M. Monchik

Monchik entered the securities industry in August 1994 and first became registered with FINRA in April 2000. Monchik is registered with FINRA as a general securities representative, general securities principal, equity trader limited representative, investment banking principal, and operations professional. From the outset of her career, Monchik was involved in compliance work, including tasks related to making disclosures on Forms U4 and Forms U5. Monchik first became associated with Spartan in 2008 and is the firm's CAO. At various times during the Relevant Period, she also served as the firm's CCO.

When not serving in that role herself, Monchik supervised the firm's CCOs. The CCO was in charge of the firm's and its associated persons' electronic filings on the Central Registration Depository ("CRD"®),[1] with designated responsibility to decide whether and when to amend Forms U4 and U5 to disclose reportable events. During the Relevant Period, she was regularly involved in the decision-making process for compliance issues, regardless of whether she was serving as the CCO or the CAO.

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[1] Among other things, the CRD program includes the registration records of broker-dealer firms, branch offices, and their associated individuals, including their qualifications, and employment and disclosure histories. *See* https://www.finra.org/registration-exams-ce/classic-crd.

III. Factual Background

A. Overview of Forms U4 and U5

Member firms use the Form U4 to register and update the registration information for their registered representatives. The Form U5 is filed with FINRA by member firms when they terminate the registrations of their registered representatives. Forms U4 and U5 are submitted electronically to CRD where the information is then available to regulators and authorized industry members. Both Forms U4 and U5 require firms and registered representatives to disclose information deemed important to regulators, FINRA members, and investors, such as criminal proceedings, regulatory actions, and customer disputes. Registration information reported on Forms U4 and U5 appears in CRD and is available to the investing public through BrokerCheck©, an online system where members of the public can search for a registered person by name or CRD number and find information about that person, including most of the information provided through the person's Forms U4 and U5.

Regulators, member firms, and the investing public rely on the completeness and accuracy of the information reported on Forms U4 and U5. *See Scott Mathis*, Exchange Act Release No. 61120, 2009 SEC LEXIS 4376, at *16, 29 (Dec. 7, 2009), *aff'd*, 671 F.3d 210 (2d Cir. 2012); *Dep't of Enf't v. Elgart*, Complaint No. 2013035211801, 2017 FINRA Discip. LEXIS 9, at *14 (FINRA NAC Mar. 16, 2017), *aff'd*, Exchange Act Release No. 81779, 2017 SEC LEXIS 3097 (Sept. 29, 2017), *aff'd*, 750 F. App'x 821 (11th Cir. 2018). "Because '[r]egistration of broker-dealers is a means of protecting the public,' every person submitting a Form U4 has the obligation to ensure that the information provided on the form is true and accurate." *Richard A. Neaton*, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719, at *16 (Oct. 20, 2011). "FINRA 'cannot investigate the veracity of every detail in each document filed with it, [and] must depend on its members to report to it accurately and clearly in a manner that is not misleading.'" *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *19 (Nov. 9, 2012). Furthermore, "[a] registered representative has a continuing obligation to timely update information required by Form U4 as changes occur." *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *10-12 (Mar. 15, 2016), *aff'd*, 672 F. App'x 865 (10th Cir. 2016).

FINRA By-Laws Article V, Section 2(c) provides that "[e]very application for registration filed with [FINRA] shall be kept current at all times by supplementary amendments" which "shall be filed with [FINRA] not later than 30 days after learning of the facts or circumstances giving rise to the amendment." Article V, Section 3(b) requires firms to amend a Form U5 "in the event that the member learns of facts or circumstances causing any information set forth in [the] notice to become inaccurate or incomplete" and to file those amendments "not later than 30 days after the member learns of the facts or circumstances giving rise to the amendment."

The onus for these disclosures rests on individuals and firms—both have an obligation to report the required information and to do so accurately. Member firms designate persons with authority to amend their registered representatives' Forms U4 and Forms U5 by filing amendments that update existing information and add new information. Member firms also have

a duty to maintain accurate Forms U4 on behalf of their registered persons and can be held liable for failing to do so. *See Dep't of Enf't v. Wedbush Sec., Inc*., Complaint No. 20070094044, 2014 FINRA Discip. LEXIS 40, at *56-59 (FINRA NAC Dec. 11, 2014) (finding that member firm failed to file, late filed, and filed inaccurate Forms U4 and Forms U5 to disclose arbitration filings, customer complaints, settlements with customers, and financial events, in violation of FINRA By-Laws and FINRA Rule 2010), *aff'd*, Exchange Act Release No. 78568, 2016 SEC LEXIS 2794 (Aug. 12, 2016), *aff'd*, 719 F. App'x 724 (9th Cir. 2018).

The Disclosure Question sections of the Forms U4 and U5 ask a series of "Yes" or "No" questions regarding certain types of events, including arbitration claims, written customer complaints, unsatisfied judgments and liens, and bankruptcies, among others. A "Yes' answer to any of the Disclosure Questions requires the applicant to provide additional details on the Form's Disclosure Reporting Pages ("DRPs").

B. Respondents Fail to Disclose Arbitrations and Arbitration Dispositions

1. Relevant Disclosure Questions

An associated person must disclose an arbitration by filing a Forms U4 or U5 if it (1) is "investment-related" and "consumer-initiated"; (2) names the individual "as a respondent"; (3) "alleged that [the individual] w[as] involved[2] in one or more sales practice violations"[3]; and (4) is pending, resulted in an award against the individual, or was settled for $15,000 or more.

Question 14I(1) on the Form U4 asks:

> (1) Have you ever been named as a respondent/defendant in an investment-related, consumer-initiated arbitration or civil litigation which alleged that you were involved in one or more sales practice violations and which:
>
> (a) is still pending, or;

[2] The Form U4 Explanation of Terms and the Form U5 Explanation of Terms (together "Explanation of Terms") defines "involved" as "doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with ***or failing reasonably to supervise another*** in doing an act." *See* https://www.finra.org/sites/default/files/AppSupportDoc/p468051.pdf (emphasis added).

[3] The Explanation of Terms defines a "sales practice violation" as including "any conduct directed at or involving a customer which would constitute a violation of: any rules for which a person could be disciplined by any self-regulatory organization; any provision of the Securities Exchange Act of 1934; or any state statute prohibiting fraudulent conduct in connection with the offer, sale or purchase of a security or in connection with the rendering of investment advice." *Id*.

(b) resulted in an arbitration award or civil judgment against you, regardless of amount, or;

(c) was settled, prior to 05/18/2009, for an amount of $10,000 or more, or;

(d) was settled, on or after 05/18/2009, for an amount of $15,000 or more?

Form U5 requires the same disclosures for arbitrations. Question 7E(1) on Form U5 asks:

(1) In connection with events that occurred while the individual was employed by or associated with your firm, was the individual named as a respondent/defendant in an investment-related, consumer-initiated arbitration or civil litigation which alleged that the individual was involved in one or more sales practice violations and which:

(a) is still pending, or;

(b) resulted in an arbitration award or civil judgment against the individual, regardless of amount, or;

(c) was settled, prior to 05/18/2009, for an amount of $10,000 or more, or;

(d) was settled, on or after 05/18/2009, for an amount of $15,000 or more?

An affirmative answer to any of these questions requires the individual to provide details on Forms U4's and U5's DRPs. The corresponding DRPs ask 24 different questions, seeking details about the arbitration. This section includes a place for the individual to describe the allegations made in the statement of claim and to comment generally on the arbitration.

2. Relevant Interpretive Guidance

FINRA has published interpretive guidance to assist individuals and firms in determining whether arbitrations must be disclosed. ("Interpretive Questions and Answers").[4] Central to this appeal is an FAQ for Question 14I(1) addressing when a supervisor or executive officer is required to report an arbitration:

Q4: If an arbitration claim names several registered persons as respondents, and the statement of claim contains allegations of sales practice violations, but does not specifically allege that each respondent was involved in a violation, which respondents should answer "Yes" to Question 14I(1)(a)? For example, if the statement of claim alleges that a broker engaged in churning and that his office manager should have been overseeing the broker's activities, and

[4] *See* https://www.finra.org/sites/default/files/Interpretive-Guidance-final-03.05.15.pdf.

> the persons named as respondents are the broker and his branch manager, as well as the compliance director and the president of the broker/dealer, who should report?
>
> A: The broker and his branch manager should answer "Yes" to Question 14I(1)(a), but the compliance director and the president may answer "No." A registered person must report an arbitration under Question 14I(1)(a) if he is named as a respondent and the statement of claim alleges that he was involved in one or more sales practice violations. Because the statement of claim alleges no sales practice violation by the compliance director or the president, they are not required to report the arbitration, even though they are named as respondents.
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> The terms "involved" and "sales practice violations" are defined to clarify reporting obligations. The term "involved" includes both doing an act and failing reasonably to supervise another in doing an act. The term "sales practice violations" includes any conduct directed at or involving a customer that would constitute a violation of an SRO rule for which a person could be disciplined; any provision of the Securities and Exchange Act of 1934; or any state statute prohibiting fraudulent conduct in connection with the offer, sale or purchase of a security or in connection with the rendering of investment advice, and thus includes churning. Thus, the broker and the branch manager must report the arbitration.
>
> It is not necessary that a statement of claim use precise legal terminology. The fact that the claim does not use the legal term "failing reasonably to supervise" does not alleviate the branch manager's obligation to report. The allegation that the manager should have been overseeing a broker's activities is sufficient to trigger reporting. Firms and registered persons should review each claim on a case-by-case basis and make a good faith determination as to whether reporting is required.

As this FAQ makes clear, an officer who is alleged in a statement of claim to have failed to supervise is required to report the arbitration. However, an officer who is named as a respondent, but not otherwise alleged to have supervised or failed to supervise a broker who engaged in a sales practice violation, is not required to report the arbitration.

3. Spartan Fails to Disclose Arbitrations and Dispositions

As a result of 49 arbitrations filed during the Relevant Period, Spartan was required to file 152 amendments to Forms U4 or U5 for its current and former registered representatives. Spartan, however, failed to file or timely file 115 of the 152 required amendments. All the arbitrations at issue named the firm as a respondent and at least one registered representative—typically the broker assigned to the customer's account. Most of the arbitrations named more than one individual as a respondent, with some registered representatives named in multiple arbitrations. Specifically, Spartan did not file 60 Form U4 or U5 amendments at all, and also

filed 55 amendments late, i.e., more than 30 days after learning of the arbitration. The untimeliness of these amendments ranged from five days late to over 1,100 days late.

In addition, Spartan was required to disclose the disposition of arbitrations in 69 instances, including when a customer arbitration against a Spartan representative was settled for $15,000 or more, or when a customer arbitration resulted in an award against a named respondent (either a Spartan registered representative or officer) thus requiring an amendment to that representative's Form U4 or U5. Spartan, however, failed to file any Form U4 or U5 amendments to disclose the resolution of 19 of those arbitrations and filed 25 amendments disclosing such dispositions late.

a. Arbitration Claims and Dispositions Against Registered Representatives[5]

In 50 instances, Spartan failed to amend, or timely amend, the Forms U4 and Forms U5 for multiple registered representatives—who were not Spartan officers—to disclose the filing of an arbitration. In each of these instances, the customer alleged that the broker committed a sales practice violation. In 20 instances, Spartan untimely disclosed the disposition of customer arbitrations on its brokers' Forms U4 and U5. Below are several examples of Spartan's untimely disclosures of arbitrations and dispositions:

- In February 2015, customer JR filed a statement of claim alleging that two Spartan brokers made unauthorized and unsuitable trades and churned his accounts, among other things. Spartan ultimately amended untimely the two brokers' Forms U4 and U5 to disclose the arbitration—272 and 553 days late, respectively. The parties settled for $50,000.[6]

- In December 2015, customer WC filed a statement of claim alleging that a Spartan broker made unsuitable recommendations.[7] In April 2019, Spartan finally updated the broker's Form U5 to disclose not only the filing of the arbitration but its settlement—1,121 days late.

- In December 2016, customers TW and KW filed an arbitration claim alleging, among other things, that two Spartan brokers charged excessive commissions, made unsuitable

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[5] Most of the referenced statements of claim also alleged that Spartan officers, including Lowry and Monchik, failed to supervise their brokers.

[6] Lowry was also alleged in the statement of claim to have failed to supervise these brokers. While the settlement was timely disclosed for the registered representatives, neither the filing nor the disposition was disclosed for Lowry.

[7] Spartan became aware of the arbitration's filing on February 15, 2016.

recommendations, and engaged in excessive trading. Spartan did not disclose the arbitration on one of the broker's Form U5 until August 2019—950 days late.

- In August 2017, customer BR filed a statement of claim alleging that his broker engaged in excessive trading, charged excessive commissions, and made unsuitable recommendations, among other things. Spartan disclosed this arbitration 510 days late. The parties settled for $37,500, however Spartan did not disclose this disposition for 244 days.[8]

- In November 2017, customer LC filed a statement of claim alleging that two brokers churned LC's account and made unsuitable recommendations. Spartan disclosed the arbitration on the brokers' Form U5s more than 60 days late. The parties settled for $60,000, which Spartan disclosed on their Forms U5 144 days and 403 days late.

- In February 2018, customer MA filed a statement of claim alleging that his Spartan broker made unauthorized and unsuitable trades, churned his accounts, and engaged in fraud, among other things. Spartan disclosed the arbitration 18 days late and the settlement of the arbitration 184 days late.

- In April 2018, customer JS filed a statement of claim alleging, among other things, that his Spartan broker made unsuitable recommendations and engaged in fraud and breach of contract. Spartan did not disclose this arbitration until August 2018—86 days late.

- In December 2019, customer SC, along with 18 other co-claimants named 19 Spartan registered representatives in a statement of claim alleging, among other things, qualitatively and quantitatively unsuitable trading in customer accounts. The firm amended the 19 brokers' Forms U4 between 97 and 112 days late.

Respondents accept responsibility for many of these disclosure failures, acknowledging that they should have been disclosed, but the firm's CCOs or other compliance employees "dropped the ball."

b. Arbitration Claims against Spartan Officers (Other Than Lowry and Monchik)

Spartan also did not disclose reportable arbitration events that named nine Spartan executives as respondents. In 26 instances, Spartan did not amend the Forms U4 of the nine executives to disclose the filing of an arbitration. In ten cases, it did not disclose the disposition of the arbitration. In all but one case, the executives were co-respondents in arbitration claims that also named Lowry, Monchik, or both, as co-respondents. Spartan did not disclose these arbitrations because, as discussed in detail below, Respondents argue they made a good faith

[8] Lowry was also named as a respondent and settled the arbitration. Neither the arbitration nor disposition was disclosed on his Form U4.

determination that these arbitrations were not disclosable. Some examples of these disclosure failures include:

- As discussed above, in February 2015, customer JR filed a statement of claim alleging that Lowry and the firm's then-CCO failed to supervise the two brokers who made unauthorized and unsuitable trades and churned his accounts. The parties settled for $50,000 but neither the arbitration nor the settlement were disclosed for Lowry or the CCO.

- In January 2017, customer RS filed a statement of claim alleging that Lowry, Spartan's CCO, and others engaged in excessive trading, churning, and otherwise failed to supervise a Spartan registered representative. None of Spartan's officers updated their Forms U4 to disclose the filing of the arbitration and the named registered representative's Form U4 was updated 159 days late.

- As discussed above, in November 2017, customer LC filed a statement of claim alleging that the branch manager, Spartan's financial and operational principal ("FINOP"), CCO, and Lowry failed to supervise the two brokers who allegedly churned LC's account and made unsuitable recommendations. The parties settled for $60,000. Spartan did not disclose the arbitration or the settlement on the Forms U4 of the executives.

- In May 2019, customer RM, along with eight other co-claimants, filed a statement of claim against Lowry, the CCO, the firm's registered options principal ("ROP"), and a broker. The customers alleged that the broker pursued an "inappropriate trading strategy" and respondents, including Lowry, the CCO, and the ROP, failed to supervise the broker's misconduct. The parties settled the claim for $233,000. Spartan did not amend the CCO's or the ROP's Forms U4 to disclose the arbitration, nor did the firm amend the ROP's Form U4 to disclose the settlement (the CCO was dismissed from the arbitration). Lowry's Form U4 was not amended to disclose the arbitration or the settlement.

4. Arbitrations Against Lowry

During the Relevant Period, Lowry was named in 27 arbitrations. Each of these arbitrations alleged either that Lowry was the registered representative on the customer's account or otherwise directly participated in the sales practice violation, or that he failed to supervise one or more Spartan registered representatives. Lowry never disclosed 22 arbitrations and untimely disclosed four—between 406 and 1,118 days late.[9] Of the 27 arbitrations, 12 resulted in an award against Lowry or a settlement of at least $15,000, requiring him to disclose the disposition on his Form U4.

In six of the arbitrations naming Lowry as a respondent, the statements of claim allege that Lowry directly committed sales practice violations. These include:

[9] Lowry timely disclosed one arbitration.

- In December 2015, customer CH filed a statement of claim naming Lowry and Spartan's then-CCO alleging fraudulent churning, misrepresentation, unsuitable recommendations, and unauthorized trading. Lowry timely disclosed this arbitration in January 2016 and entered comments in the DRP section of his Form U4 to record that he disputed the merits of the claim. However, Lowry did not timely disclose the disposition of the arbitration. The parties settled the matter in 2018 for $35,000, which Lowry disclosed 354 days late.

- In January 2017, customer RS, discussed above, filed a statement of claim alleging that Lowry churned his account and for failing to supervise. Lowry never disclosed this arbitration.

- In April 2017, customers RW and JW filed a statement of claim alleging that Lowry, in addition to failing to supervise, engaged in a manipulative, deceptive and fraudulent scheme by churning respondents' account and made unsuitable recommendations. Lowry never disclosed this arbitration.

- In September 2018, customer GDE filed a statement of claim alleging that Lowry knowingly misrepresented the prospects of a stock and made unsuitable investment recommendations. Lowry disclosed this arbitration 708 days late.

- In May 2019, company SFH filed an arbitration counterclaim against Spartan and Lowry alleging that Lowry engaged in market manipulation. Spartan and Lowry disclosed this arbitration 470 days late.

In addition to the arbitrations discussed above, the following are examples of arbitration claims and dispositions that include the allegation that Lowry failed to supervise Spartan's registered representatives:

- In July 2015, customer LK filed a statement of claim alleging, among other things, that "[Spartan's] principals, including Lowry and Monchik failed to adequately supervise the firm's registered representatives and protect its clients from mismanagement and abusive activity."[10] Lowry disclosed this arbitration 406 days late. Lowry was ordered to pay the customer $41,842 and disclosed this award 164 days late.[11]

[10] There were five other statements of claim filed naming Lowry as a respondent that contained identical language regarding Lowry's alleged supervisory failures as that contained in LK's statement, yet those arbitrations were never disclosed.

[11] Monchik testified that she and Spartan did not timely disclose the LK arbitration award because the underlying claim against her and Lowry was "factually impossible" because neither she nor Lowry served in supervisory capacities at that time and there were no specific allegations that they failed to supervise. Lowry and Monchik also moved to have LK's arbitration expunged. The arbitrator denied their requests.

- In the TW and KW arbitration discussed above, the statement of claim alleged "Spartan and Lowry were under a duty to supervise the activities of its associated persons in a manner that is reasonably designed to achieve compliance with applicable securities laws and regulations and with FINRA's rules. Had Respondent[s] Spartan and Lowry been supervising and training properly, Claimants' accounts would not have been mismanaged…." Lowry disclosed this arbitration 1,118 days late. In addition, Lowry did not disclose that he was ordered to pay the customers $330,000 until 508 days after the close of the 30-day disclosure window.

Lowry testified that he did not make the determination himself whether to disclose any of these arbitrations against him on his Form U4, and instead left the decision up to others. Whenever Lowry received a statement of claim in which he was a named respondent, he claims to have "skim[med] over it briefly" before handing it over to the CCO to make the reporting decision. For arbitration claims that were disclosed on his Form U4, Lowry claims that he left it up to the CCO to answer the Disclosure Questions and populate the DRPs on his behalf and is not even certain whether he saw amendments to his Form U4 before they were filed.

5. Arbitrations Against Monchik

Monchik was named as a respondent in 12 arbitrations.[12] Each statement of claim generally alleged that Monchik failed to supervise one or more registered representatives. In 11 of the 12 cases, Monchik did not amend her Form U4 to disclose that she was named in the arbitration. In one instance, she updated her Form U4 562 days late. Monchik also failed to disclose or timely disclose dispositions of three arbitrations. In all, Monchik failed to disclose or timely disclose arbitrations and dispositions in 15 instances. Below are examples of these disclosure failures:

- In the LK arbitration discussed above, Monchik amended her Form U4 to disclose the filing of the arbitration 562 days late. She then disclosed the arbitration award 320 days late.

- In May 2018, customer MF filed a statement of claim against Lowry, Monchik, and two other firm executives alleging, among other things, that these officers failed to supervise two brokers who engaged in churning, fraudulent conduct, excessive and unauthorized trading, unsuitable recommendations, and supervisory failures. In September 2019, the respondents settled MF's claim for $287,500. Monchik (and Lowry) never reported the initial arbitration filing or the settlement on their Forms U4.

[12] In each statement of claim that named Monchik, Lowry was also one of the other named respondents.

6. FINRA Staff Repeatedly Warn Respondents that Arbitrations Against Officers Must be Disclosed on Forms U4 and U5

FINRA staff from multiple FINRA departments, including FINRA's Disclosure Review Group ("Disclosure Review"), Department of Member Supervision ("Member Supervision"), and Department of Enforcement ("Enforcement"), repeatedly warned Respondents that the arbitrations against its officers must be disclosed on Forms U4 and U5. Yet FINRA's warnings went unheeded.

a. Respondents Communications with FINRA's Disclosure Review Group[13]

i. Overview of Process and Procedures

Disclosure Review was responsible for reviewing Forms U4 and U5 and soliciting information concerning Disclosure Questions and DRP issues that came to its attention. Disclosure Review communicates with firms through disclosure letters and electronic communications via CRD, in which Disclosure Review can request initial or updated disclosures or documentation or communicate with firms on disclosure issues in general.

Disclosure Review sends disclosure letters to firms when it becomes aware of an event that appears to trigger a disclosure obligation, asking the firm to disclose the event or to provide information supporting a conclusion that no disclosure is required. If firms do not respond to a disclosure letter, Disclosure Review's practice is to leave the letter outstanding, or "Unresolved," until the firm responds or, after a period, to send a new letter on the same event and marking the old letter "Resolved" for the reason "New Letter Sent." When a firm responds to a disclosure letter, Disclosure Review's practice is to review the response, and either send out a new disclosure letter making further inquiries, leave the existing inquiry open, or close out the existing inquiry, marking the letter on the CRD disclosure letter as "Resolved."[14] Disclosure Review also took email inquiries and telephone calls from member firms about particular disclosure obligations. When presented with questions on substantive disclosure issues, it was Disclosure Review's policy not to give legal advice or specific answers. Instead, it would direct those inquiring to applicable Form U4 and U5 interpretive guidance from FINRA.

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[13] During the Relevant Period, the Disclosure Review Group was re-named Credentialing, Registration, Education and Disclosure ("CRED"). Because the testimony and documents admitted at the hearing referred to the office as Disclosure Review, we do as well for clarity.

[14] FINRA staff testified at the hearing that marking a disclosure letter "Resolved" does not indicate that Disclosure Review agreed with the firm's position on disclosure. It simply indicates that the event was no longer pending because, for example, the registration department had sent a follow-up letter about the same event or because they decided not to inquire further due to resource constraints.

ii. Dealings with Respondents

During the Relevant Period, Disclosure Review sent more than 75 letters to Spartan questioning why it had failed to disclose the customer arbitrations in which its officers were named.[15] In many instances, Disclosure Review sent multiple disclosure letters regarding the same arbitration matter. Monchik regularly accessed disclosure letters on CRD concerning herself and others at Spartan. Lowry, however, never accessed a disclosure letter on CRD and never communicated with anyone in Disclosure Review.[16]

Disclosure Review occasionally sent other written communications to Spartan about disclosure of arbitrations alleging its officers failed to supervise. Consistent with its practice, when Spartan inquired about its obligation to report such arbitrations, Disclosure Review responded by directing the firm to the Interpretive Questions and Answers guidance. For example, on January 4, 2017, Disclosure Review sent the complete text from the Form U4 and U5 Interpretive Questions and Answers to Spartan's then-CCO in an attempt to facilitate Respondents' required disclosure. On March 7, 2019, Disclosure Review again referred Spartan to the Form U4 and Form U5 Explanation of Terms, specifically the definition of "involved" as including "failing reasonably to supervise another in doing an act," and advised Spartan that Form U4 disclosure question for arbitrations "is allegation driven."

Finally, in some instances where Disclosure Review's earlier disclosure letters inquiring about Spartan's failures to amend were disregarded, Disclosure Review made formal CRD filings. For example, on August 24, 2016, Disclosure Review filed a Uniform Disciplinary Action Reporting Form ("Form U6")[17] for Lowry and Monchik reporting the $41,842 award against them in the LK arbitration. At that point, Respondents had failed to disclose this arbitration on their Forms U4 even though the award was issued on April 8, 2016. It took Lowry an additional 56 days after the Form U6 filing to disclose the arbitration filing and award on his Form U4. It took Monchik 212 days after the Form U6 filing to make the disclosures on her Form U4. Similarly, on October 2, 2018, Disclosure Review filed a Form U6 reporting the $330,000 award against Lowry in the TW and KW arbitration, but Spartan and Lowry did not amend Lowry's Form U4 to disclose the arbitration or its resolution for another 508 days.

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15 For Lowry and Monchik alone, Disclosure Review sent nearly 40 disclosure letters.

16 In at least ten instances, Spartan waited more than two months to view disclosure letters FINRA sent concerning Lowry.

17 FINRA uses the Form U6 to report disclosure events, including final arbitration awards against broker-dealers and associated persons, and disciplinary actions against individuals and firms. "Firms have an obligation to report U6 information on the appropriate registration form filing." *See* https://www.finra.org/registration-exams-ce/broker-dealers/registration-forms/form-u6.

b. Respondents' Communications with Member Supervision

Member Supervision also conveyed FINRA's position that customer arbitrations naming the firm's executive officers and alleging their involvement in sales practice violations through a failure to supervise must be disclosed. Indeed, Member Supervision issued to Spartan two cautionary actions related to such failures to disclose.

The first cautionary action resulted from a 2016 cycle exam of Spartan. Near the conclusion of the exam in February 2017, Member Supervision sent Spartan an examination report. Among the exceptions identified in the report was the firm's failure to disclose on Lowry's Form U4 five arbitrations alleging his failure to properly supervise a registered representative, as well as the firm's failure to disclose three arbitrations involving similar allegations on Monchik's Form U4. In March 2017, Spartan responded, disputing that the arbitrations had to be reported. It maintained that Respondents relied on Disclosure Review's notations in CRD that disclosure letters it sent to the firm were "Resolved" and it had received guidance from industry professionals, counsel, and FINRA before determining that it did not have to disclose the arbitrations. On August 31, 2017, Member Supervision rejected the firm's position that these arbitrations were not required to be disclosed, issuing a disposition letter with cautionary action on the failure to disclose the arbitrations. Notwithstanding this warning, at the time of the hearing, Respondents still had not disclosed four of those five arbitrations naming Lowry or the three naming Monchik.

Six months later, on February 16, 2018, Spartan received the examination report from a 2017 cause exam specific to undisclosed arbitrations with an exception on the failure to disclose the RS arbitration on the Forms U4 of Lowry and Spartan's former CCO. Spartan contested Member Supervision's findings, writing that in its view the "'allegation' must be bona fide" to trigger an obligation to disclose an arbitration. Spartan's counsel followed up with a letter in June 2018. He wrote that customer RS made no "specific factual allegation" that Lowry or the firm's former CCO were involved in conduct that obligated them to make a disclosure. FINRA staff rejected Spartan's arguments, issuing a disposition letter on July 20, 2018, with a second cautionary action for failing to disclose the RS arbitration on the Forms U4 or U5 of executive officers, including Lowry. At the time of the hearing, Respondents still had not disclosed this arbitration.[18]

c. Respondents' Communications with Enforcement

Enforcement also cautioned Respondents that arbitrations against Spartan's executive officers alleging their involvement in sales practice violations must be disclosed on the officers' respective Forms U4 or U5. In February 2019, Enforcement sent Spartan, Lowry, and Monchik FINRA Rule 8210 requests asking them to explain why they did not disclose the arbitrations on

[18] Twelve arbitrations requiring disclosure were filed against Lowry and four against Monchik after the first disposition letter in August 2017. Eight of those 12 arbitrations against Lowry and two of the four against Monchik were filed after the second disposition letter in July 2018.

their own and other executive officers' Forms U4, including those that were the subjects of prior cautionary actions. Spartan, Lowry, and Monchik responded in a single letter, either reaffirming their position that certain arbitrations need not be disclosed or acknowledging that disclosure was required and noting that they took corrective action.

In January and February 2020, Enforcement questioned Lowry and Monchik during on-the-record testimony ("OTR") about their failures to disclose the arbitrations. Enforcement also sent Wells notices to Lowry and Monchik in August 2020, informing them that Enforcement had made a preliminary determination to recommend disciplinary action against them for their failures to amend or timely amend their Forms U4 to disclose the arbitrations filed against them. Even though the Wells notices made clear that Enforcement believed that these arbitrations should be disclosed, neither Lowry nor Monchik revisited the arbitration statements of claims at issue to reconsider their position of non-disclosure.

Notwithstanding repeated warnings from multiple FINRA departments, Lowry and Monchik failed to disclose almost all the arbitrations filed against them on their own Forms U4. Spartan similarly refused to amend the Forms U4 and U5 of Lowry, Monchik, and other executive officers.

2. Customer Complaints

In addition to arbitration claims, Spartan also received written customer complaints during the Relevant Period alleging misconduct by its brokers. Questions 14I(2) and 14I(3) of Form U4 require that a firm and registered representative disclose a written, non-arbitration complaint that alleges a sales practice violation and damages of at least $5,000.

Question 14I(2) asks:

> Have you ever been the subject of an investment-related, consumer initiated (written or oral) complaint, which alleged that you were involved in one or more sales practice violations, and which:
>
> (a) was settled, prior to 5/18/2009, for an amount of $10,000 or more, or;
>
> (b) was settled, on or after 5/18/2009, for an amount of $15,000 or more?

Question 14I(3) asks:

> Within the past twenty-four (24) months, have you been the subject of an investment-related, consumer-initiated, written complaint, not otherwise reported under question 14I(2) above, which:
>
> (a) alleged that you were involved in one or more sales practice violations and contained a claim for compensatory damages of $5,000 or more (if no damage amount is alleged, the complaint must be reported unless the firm

> has made a good faith determination that the damages from the alleged conduct would be less than $5,000), or;
>
> (b) alleged that you were involved in forgery, theft, misappropriation or conversion of funds or securities?

During the Relevant Period, Spartan failed to disclose or, in one instance, timely disclose, nine reportable investment-related written customer complaints. Spartan also failed to disclose a settlement with one of the complaining customers for at least $15,000. Each written complaint made allegations that constituted a "sales practice violation," as the term is defined in the Explanation of Terms. Spartan failed to disclose eight of those nine complaints entirely and was 949 days late in disclosing the ninth complaint.

In five of the written complaints, customers specified damages that exceeded the $5,000 threshold required for reporting. For example, in November 2018, an attorney for customer RG sent Spartan a letter demanding payment of $25,656 for losses allegedly caused by churning of his account and unauthorized trading by his broker. Spartan did not disclose RG's complaint on the broker's Form U4.

In three of the written complaints that did not specify damages, Enforcement presented evidence at the hearing of the alleged damages based on its examiner's calculations.[19] For example, in October 2018 customer CS emailed Monchik alleging that his broker had engaged in unauthorized trading and demanded that he be made whole by reversing the transactions. FINRA's examiner calculated potential losses of $54,100, representing the difference between the price CS paid for the unauthorized trades and the value of the securities on the date of the complaint. Spartan did not disclose this complaint on the broker's Form U4.

Finally, Spartan itself calculated damages for one customer in a FINRA Rule 4530 filing.[20] In September 2018, customer JS wrote to Spartan alleging that one of its brokers improperly reinvested the proceeds of a stock sale. Spartan calculated the damages at over $16,000 but never updated the broker's Form U4.

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[19] Respondents do not challenge Enforcement's calculations on appeal.

[20] FINRA Rule 4530 "requires member firms to promptly report to FINRA, and associated persons to promptly report to firms, specified events, including, for example, violations of securities laws and FINRA rules, certain written customer complaints, certain disciplinary actions the firm takes and certain internal conclusions of violations." *See* https://www.finra.org/rules-guidance/guidance/reports/2023-finras-examination-and-risk-monitoring-program/regulatory-events-reporting#:~:text=FINRA%20Rule%204530%20(Reporting%20Requirements,actions%20the%20firm%20takes%20and

3. Financial Disclosures

Question 14M of the Form U4, under the section entitled "Financial Disclosure," requires a member firm and a registered representative to identify unsatisfied judgments and liens against the registered representative within 30 days of learning of it. Question 14K(1) requires a firm and a registered representative to disclose whether the registered representative has, among other things, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition within the past ten years.

Spartan failed to timely amend the Forms U4 of 24 registered representatives to disclose 51 reportable financial events. In 50 instances, Spartan failed to disclose an unsatisfied judgment or lien within 30 days of learning of it. One of these liens was filed against Monchik.[21] On one occasion, Spartan failed to timely disclose a bankruptcy. In 30 of these 51 instances, Spartan was more than 200 days late in disclosing the reportable financial event after learning about it. Some untimely disclosed judgments and liens were for large amounts—several exceeded $100,000; one was over $400,000.

Spartan discovered three unsatisfied judgments and liens through pre-hire background checks of three registered representatives, yet it was nonetheless 270, 439, and 1,009 days late in amending the representatives' Forms U4. In two other instances, the registered representative timely reported the unsatisfied lien or judgement or bankruptcy petition to Spartan, yet the firm was 56 and 191 days late in amending the relevant representatives' Forms U4.[22]

Spartan learned about the majority of the disclosable financial events from FINRA. In July 2019, Enforcement sent Spartan a FINRA Rule 8210 request for information about multiple judgments and liens entered against more than 40 of its registered representatives, asking Spartan to explain why it had not disclosed the events.[23] In each instance, FINRA provided Spartan with the exact judgment or lien amount, the creditor, and the date it was recorded. FINRA learned of these financial events through public record searches.

Spartan was on notice at the beginning of the Relevant Period that its lax reporting of registered representative's financial events was under regulatory scrutiny. In January 2015, the Securities and Exchange Commission ("SEC") sent Spartan an examination deficiency letter informing the firm that the SEC, using publicly available information, had identified 25 Spartan

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[21] Monchik testified that she took issue with the validity of the judgment and lien, testifying that "I don't think [the judgment is] valid." She eventually disclosed the judgment and lien 23 days late.

[22] Spartan explained to FINRA in a written submission that the late disclosure of the bankruptcy "was the result of a ministerial oversight."

[23] FINRA informed Spartan of other failures to disclose financial events in 2016, 2017, and 2018 through additional FINRA Rule 8210 requests and disclosure letters.

employees with judgments, liens, or bankruptcies that the firm had not disclosed on the registered representatives' Forms U4. The SEC instructed Spartan to take "immediate corrective action." Spartan responded that it would immediately start performing quarterly checks on all currently employed registered representatives. It did not do so.

Similarly, Member Supervision notified Spartan of additional financial disclosure failures in March 2016, February 2017, and April 2018. In response to the SEC's and FINRA's findings, Spartan promised its regulators that it would improve its disclosure practices. Instead, over the course of the Relevant Period, Spartan's background check promises regressed from quarterly, to semi-annually, to annually, to eventually randomly conducted background checks.[24]

IV. Procedural Background

On October 19, 2021, Enforcement filed a three-cause Complaint against Respondents. Cause one alleges that Spartan failed to amend or to timely amend Forms U4 and Forms U5 in 220 instances.[25] The Complaint alleges that of those 220 instances, 159 involved the filing or disposition of customer arbitrations naming Lowry, Monchik, other officers, and/or the firm's registered representatives. Cause one further alleges that Spartan's failure to amend, or to timely amend, the Forms U4 or Forms U5 of its executive officers to disclose customer arbitrations and dispositions was willful. Furthermore, cause one alleges that Spartan failed to disclose, or timely disclose, ten written, non-arbitration customer complaints on its brokers' Forms U4 and that the firm failed to timely amend its registered representatives' Forms U4 to disclose 51 financial events.

Cause two alleges that in 38 instances, Lowry failed to amend, or timely amend, his Form U4 to disclose arbitrations and dispositions of arbitrations. Cause two further alleges that Lowry's violations were willful.

Cause three alleges that in 15 instances, Monchik failed to amend, or timely amend, her Form U4 to disclose arbitrations and the dispositions of arbitrations. Cause three alleges that Monchik's violations were willful.

After a nine-day hearing, the Hearing Panel issued a decision on March 28, 2023. The Hearing Panel found that Enforcement had met its burden of proving the allegations in all three causes of action. For Spartan, the Hearing Panel censured the firm and imposed a $600,000 fine. In addition, the Hearing Panel required the firm to retain an independent consultant and take

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[24] In February 2019, Spartan hired a Registration Specialist to specifically address the firm's disclosure issues and "tasked her with cleaning up any prior disclosures which had not been properly made."

[25] The Complaint originally alleged 223 instances of disclosure violations, but Enforcement reduced the number to 220 prior to the hearing.

affirmative steps to cure its disclosure deficiencies.[26] With respect to Lowry, the Hearing Panel suspended Lowry for two years in all capacities and fined him $40,000. The Hearing Panel also suspended Monchik for two years in all capacities and fined her $30,000. Finally, the Hearing Panel concluded that Respondents were subject to statutory disqualification. This appeal followed.

V. Discussion

FINRA's By-Laws and Rules require firms and their associated persons to disclose information deemed important to regulators and the investing public on Forms U4 and U5. "FINRA and other self-regulatory organizations use [these Forms] to screen applicants and monitor their fitness for registration within the securities industry." *Dep't of Enf't v. Kielczewski*, Complaint No. 2017054405401, 2021 FINRA Discip. LEXIS 22, at *35 (FINRA NAC Sept. 30, 2021), *appeal docketed*, No. 3-20636 (SEC Oct. 28, 2021), (citing *Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *8 (Dec. 22, 2008)).

Article V of the By-Laws and Rule 1122 require registered persons and their firms to keep their Forms U4 and U5 current. *Dep't of Enf't v. Tranchina*, Complaint No. 2018058588501, 2023 FINRA Discip. LEXIS 3, at *21–22 (FINRA NAC Mar. 23, 2023), *appeal docketed*, No. 3-21390 (SEC Apr. 20, 2023). Rule 1122 prohibits filing "information with respect to membership or registration which is incomplete or inaccurate so as to be misleading . . . or fail[ing] to correct such filing after notice thereof." Violating FINRA Rule 1122 also constitutes a violation of Rule 2010. *Id.* at *22 n.22. Each registered person is responsible for the accuracy of his or her Form U4 and may not blame his or her disclosure failures on compliance officers or others. *See, e.g.*, *Allen Holeman*, Exchange Act Release No. 86523, 2019 SEC LEXIS 1903, at *29 (July 31, 2019), *aff'd*, 833 F. App'x 485 (D.C. Cir. 2021).

These disclosure obligations apply to both registered representatives and their member firms. *See, e.g.*, *N. Woodward Fin. Corp.*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867, at *28 (May 8, 2015) ("The duty to maintain an accurate Form U4 lies primarily with an associated person who is in the best position to provide information about the questions presented in the form. But a member, which is required to file the Form U4, also is subject to that duty and therefore can be held liable for failing to satisfy it."), *aff'd sub nom*, *Troszak v. SEC*, 2016 U.S. App. LEXIS 24259 (6th Cir. June 29, 2016)

Each registered representative is responsible for the completeness and accuracy of the information on his or her Form U4. *See Mathis*, 2009 SEC LEXIS 4376, at *16 ("Every person submitting a Form U4 has the obligation to ensure that the information provided on the form is true and accurate."), *aff'd*, 671 F.3d 210 (2d Cir. 2012). "It is well established that securities industry professionals must take responsibility for compliance with Form U4 and cannot be

[26] In its decision, the Hearing Panel directed Respondents to update the Forms U4 of Lowry, Monchik and others to disclose the arbitrations, arbitration dispositions, and written customer complaints at issue. Respondents have made the required disclosures.

excused for lack of knowledge, understanding or appreciation of its requirements." *Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 SEC LEXIS 1148, at *31 (Apr. 18, 2013), *aff'd*, 575 F. App'x 1 (D.C. Cir. 2014).

A. Cause One – Spartan Failed to Disclose or Timely Disclose Customer Arbitrations and Dispositions, Customer Complaints, and Reportable Financial Events

The Hearing Panel found, as alleged under cause one of the Complaint, that Spartan violated Article V, Sections 2(c) and 3(b) of FINRA's By-Laws and FINRA Rules 1122 and 2010 by failing to disclose, or timely disclose, 159 arbitration-related events, ten written customer complaints, 50 judgments and liens, and one bankruptcy filing on its registered representatives' Forms U4 and Forms U5. The Hearing Panel further found that Spartan acted willfully when it failed to amend, or timely amend, the Forms U4 and Forms U5 of its executive officers, including Lowry and Monchik, to disclose arbitrations naming them as respondents. We agree and affirm the Hearing Panel's findings.

1. Spartan Failed to Amend or Timely Amend Its Registered Representatives' and Officers' Forms U4 and U5 to Disclose Customer Arbitrations and Dispositions

An arbitration must be disclosed if it (1) is "investment-related" and "consumer-initiated"; (2) names the individual "as a respondent"; (3) "alleged that [the individual] w[as] involved in one or more sales practice violations"; and (4) is pending, resulted in an award against the individual, or was settled for $15,000 or more. Form U5 requires the same disclosures for arbitrations "while the individual was employed by or associated with [a] firm." "Involved" means "doing an act" or "failing reasonably to supervise another in doing an act."

a. Non-Officer Arbitrations

We agree with the Hearing Panel that Spartan failed to disclose one arbitration filing and failed to timely disclose 69 arbitration filings and dispositions against registered persons other than the firm's officers. Indeed, Respondents do not contest that ruling in their opening brief and conceded at the hearing below that it had no justifications for the untimely reporting of 16 arbitrations and 16 arbitration disposition involving their non-executive registered representatives. Therefore, we affirm the Hearing Panel's findings and conclusions with respect to Spartan's failures to disclose or timely disclose those 70 events in violation of Article V, Sections 2(c) and 3(b) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

b. Officer Arbitrations

While Respondents concede that they were required to disclose arbitrations that alleged sales practice violations against the firm's registered representatives, they dispute that they had to disclose arbitrations and dispositions naming Lowry, Monchik, and other executive officers. Respondents claim this is an issue of first impression and argue that "good faith" in a decision not to report is a defense on which they can rely. Respondents further argue that Forms U4 and

U5, when read together with FINRA's available guidance, did not obligate them to disclose arbitrations against Spartan executives for alleged supervision failures or that allege what Respondents characterize as general, rather than specific, allegations. We disagree.

Respondents' arguments hinge on the Form U4 FAQ hypothetical discussed above to justify not disclosing arbitrations with allegations of a failure to supervise. They argue that the language of the last paragraph of the hypothetical allows them to review arbitrations on a "case-by-case basis" using "good faith" in determining whether an arbitration alleging supervisory failures needs to be disclosed. That paragraph states as follows:

> It is not necessary that a statement of claim use precise legal terminology. The fact that the claim does not use the legal term "failing reasonably to supervise" does not alleviate the branch manager's obligation to report. *The allegation that the manager should have been overseeing a broker's activities is sufficient to trigger reporting.* Firms and registered persons should review each claim on a case-by-case basis and make a good faith determination as to whether reporting is required. (Emphasis added.)

Respondents read this guidance as allowing them to review each statement of claim naming a Spartan officer on a case-by-case basis to determine whether an arbitration alleging supervisory failures needs to be disclosed. This is incorrect. There is no basis to invoke "good faith" in a determination of which arbitrations to disclose when the statement of claim *specifically alleges* Spartan officers, including Lowry and Monchik, failed to supervise. The cited hypothetical in the Form U4 FAQ provides for a case-by-case, "good faith" determination of whether a disclosure must be made only when the allegations of supervisory failures use vague or ambiguous language rather than directly using the phrase "failure to supervise," or similar language. However, a statement of claim alleging involvement in a sales practice violation by unambiguously asserting that a respondent, such as Lowry, Monchik, or other Spartan officers "failed to supervise" triggers a reporting obligation, with no room for interpretation or second-guessing by the firm.

The Form U4 FAQ also makes it clear that the disclosure requirement is *allegation driven*—meaning that it is the allegation of involvement in a sales practice violation in the statement of claim, which includes a failure to supervise, that triggers the obligation to disclose. Respondents contend that for each statement of claim naming an officer, they made a "good faith" determination that the arbitration need not be disclosed because, for example, the failure to supervise allegation lacked specific information or was factually impossible. The rules prohibit such an approach by the firm or associated persons.[27]

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[27] An individual can make a motion to the arbitration panel to have the disclosure expunged from the CRD system if the allegations are determined to be factually impossible or clearly erroneous. *See* FINRA Rule 2080(b)(1) (expungement is available when "[t]he claim, allegation, or information is factually impossible or clearly erroneous"; "[t]he registered person was not involved in the alleged investment-related sales practice violation…"; or "[t]he claim, allegation, or information is false.")

When analyzing whether to disclose an arbitration filing, Respondents, their lawyers, and consultants often looked outside the four corners of the statements of claim. Respondents contend that an officer need not disclose an arbitration in which they are alleged to have failed to supervise a broker unless that officer in fact supervised the broker. Respondents are arguing for a merits-based assessment (as well as a self-interested assessment). Respondents are incorrect. Disclosure is determined by the allegations made in the claim—not on a respondent's view of the allegations, such as the belief that they are factually impossible, or don't have the requisite factual underpinnings. The statements of claim naming Spartan officers at issue here all include unambiguous allegations of failing to supervise and as such should have been disclosed.[28]

2. Spartan Failed to Disclose or Timely Disclose Customer Complaints

We agree with the Hearing Panel that Spartan failed to disclose and, in one instance, timely disclose, nine investment-related written customer complaints that it was required to disclose on its representatives' Forms U4. Spartan failed to disclose eight of those nine complaints and was 949 days late in disclosing the remaining complaint. Each of these written customer complaints was for over $5,000 in damages, with the amounts either directly identified by the customer in the written complaint itself, identified by Spartan in its FINRA Rule 4530 filing, or calculated by Enforcement. Respondents do not address, let alone challenge, these findings in its brief on appeal. Accordingly, Spartan's failure to report or to timely report the nine written customer complaints violated Article V, Section 2(c) of FINRA's By-Laws and Rules 1122 and 2010.

3. Spartan Failed to Timely Disclose Financial Events for its Registered Representatives

We also agree with the Hearing Panel that Spartan failed to timely report 51 financial events in violation of Article V, Sections 2(c) of FINRA's By-Laws, and FINRA Rules 1122 and 2010. Spartan reported these financial events for its registered representatives between 9 and 1009 days late and, in most instances, only after regulators had alerted the firm to its disclosure failures.

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[28] We agree with the Hearing Panel that even if there was a case-by-case "good faith" test—which there is not—Respondents failed it. Respondents were unable to produce credible evidence that they acted in such a manner. Respondents repeatedly ignored warnings from FINRA staff—first Disclosure Review, then Member Supervision, and finally Enforcement itself—that they had to disclose the arbitrations at issue. Respondents claims of good faith analysis are further undermined by the fact that Lowry and Spartan did not disclose or timely disclose the six statements of claim that alleged direct sales practice violations against Lowry. Nor does their "good faith" claim explain the failure to disclose arbitration awards and settlements against Lowry, Monchik, and other officers.

Spartan presented no evidence to rebut Enforcement's proof of their disclosure failures. Instead, Respondents argue that they had an obligation to confirm the veracity of the reportable financial issues—and that took some time. We disagree. Respondents do not cite any authority requiring a firm to verify financial events before disclosing them, or excusing delays in disclosure due to efforts to verify information. Rather, the SEC has ruled that financial events must be disclosed regardless of doubts about their validity. *Tucker*, 2012 SEC LEXIS 3496, at *23 n.44 ("Tucker suggested that he was entitled to withhold disclosure of the judgments and liens if he contested them. This is not the case . . . ."). In addition, FINRA Rule 1010, which governs Form U4 filings, provides that a "member is obligated to file the disclosure information as to which it has knowledge" even if the registered person at issue cannot or will not confirm the information. FINRA Rule 1010(c)(3).

Similarly, Respondents attempt to shift blame for these disclosure failures to FINRA, claiming that FINRA's refusal to turn over supporting documentation to Spartan materially impacted the firm's ability to timely confirm the financial events. But Spartan cannot shift its responsibility for Form U4 disclosures or compliance to FINRA, even if the firm "sought FINRA's advice and did not receive a response." *Dep't of Enf't v. America First Assoc. Corp*., Complaint No. E1020040926-01, 2008 FINRA Discip. LEXIS 27, at *17-18 (FINRA NAC Aug. 15, 2008) (holding that individual respondent cannot shift responsibility for failing to disclose a federal court action on his Form U4 to FINRA). It was Spartan's obligation—not FINRA's—to conduct background checks and other searches to ensure that its registered representatives' Forms U4 were up to date. Spartan's failure to discover reportable financial disclosures does not allow it to shift the burden to FINRA. Moreover, Spartan's argument provides no excuse for Spartan's delay in disclosing the financial events that the firm learned of from its pre-hire background checks or self-reports from its brokers. Even when Spartan discovered events on its own, it was woefully late in disclosing them. For example, the firm discovered two liens through background checks in 2016 and 2017 yet disclosed them 439 and 1,009 days late.

In addition, Respondents contend that the Hearing Panel's reliance on the NAC's decisions in *Holeman* and *Elgart* is misplaced because those disciplinary actions involved an individual's disclosure violations rather than a firm's. *See Dep't of Enf't v. Holeman*, Complaint No. 2014043001601, 2018 FINRA Discip. LEXIS 12, at *16–17 (FINRA NAC May 21, 2018), *aff'd*, 2019 SEC LEXIS 1903, *aff'd*, 833 F. App'x 485; *Elgart*, 2017 FINRA Discip. LEXIS 9, at *17 n.8. We disagree and find these decisions applicable here because the NAC's reasoning in those cases applies with equal force to Spartan. Like the respondents in *Holeman* and *Elgart*, Spartan should have disclosed reportable financial events even though it purported to challenge the legitimacy of the financial events. Spartan should have disclosed the judgments, liens, and bankruptcy, and could have noted any valid doubts about them in the DRPs. Regardless, the obligation to disclose remained.

None of Respondents' arguments provides a defense for Spartan's untimely disclosures of these financial events. We therefore affirm that Hearing Panel's finding that Spartan violated Article V, Sections 2(c), and Rules 1122 and 2010.

B. Cause Two – Lowry Failed to Disclose or Timely Disclose Arbitrations and Dispositions

The Hearing Panel concluded that Lowry failed to disclose 38 reportable arbitration-related events on his Form U4 involving 27 arbitration claims. Specifically, the Hearing Panel concluded that he failed to disclose 22 arbitration filings and disclosed four arbitrations late. He also never disclosed the disposition of eight arbitrations and, in four instances, disclosed the disposition of an arbitration late. It noted that six of the arbitrations at issue involve allegations that Lowry was the registered representative on the customer's account or was directly involved in the sales practice violations. The remaining arbitrations allege that Lowry failed to reasonably supervise brokers. The arbitrations naming Lowry resulted in 12 reportable awards and settlements totaling more than $1.6 million. Lowry was a party to all the settlements and awards. The largest award was for $330,000 and the largest settlement was for $300,000, neither of which he timely disclosed. He never disclosed eight of the awards and settlements and disclosed four untimely. We find that the record supports these findings.

For the reasons discussed above, we find that Lowry was obligated to disclose the arbitration filings and the dispositions of the arbitrations that alleged he failed to supervise. We, like the Hearing Panel, have reviewed each of the statements of claim. Each claim plainly and unequivocally alleges that Lowry failed to supervise one or more brokers who committed a sales practice violation. The statements of claim use language such as Lowry "failed to supervise" or "failed to adequately supervise" the actions of Spartan's brokers. The claims therefore allege that Lowry was involved in a sales practice violation by failing to reasonably supervise a broker.

Lowry completely abdicated his responsibility as a registered representative to timely update his Form U4. Lowry testified that he "left it in [Spartan's CCO's] hands to make the qualified determination of what to do" with respect to updates to his Form U4. However, the obligation to update his Form U4 always remained with Lowry and his decision to leave these determinations to others does not excuse his obligation. Therefore, we affirm the Hearing Panel's finding that Lowry violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

C. Cause Three – Monchik Failed to Disclose or Timely Disclose Arbitrations and Dispositions

Finally, the Hearing Panel found that Monchik failed to disclose 15 arbitration-related events. Specifically, it noted that she was named as a respondent in 12 arbitrations alleging that she failed to supervise one or more registered representatives who committed sales practice violations. Monchik failed to disclose 11 arbitrations and untimely disclosed one arbitration (562 days late). In addition, three arbitrations resulted in two settlements and one award. Each settlement exceeded the $15,000 threshold required for disclosure. The arbitrations in which she was named resulted in awards or settlements totaling more than $360,000. Monchik never disclosed the two settlements, and she disclosed one award late. We concur.

For the reasons discussed above, we find that Monchik was obligated to disclose the arbitration filings and the dispositions of the arbitrations that alleged she failed to supervise. We, like the Hearing Panel, have reviewed each of the statements of claim. Each claim plainly

alleges that Monchik failed to supervise one or more brokers who committed a sales practice violation. The statements of claim use language such as Monchik had "supervisory responsibility over" or "failed to supervise" one or more brokers. The claims therefore allege that Monchik was involved in a sales practice violation by failing to reasonably supervise a broker.

Therefore, we affirm the Hearing Panel's finding that Monchik violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

D. Respondents' Defenses

1. Respondents Constitutional Arguments[29]

Respondents raise two arguments concerning the constitutionality of the process by which FINRA disciplined them. Each of these arguments is inconsistent with longstanding precedents that hold private entities are not subject to the constitutional requirements that the Respondents seek to impose on FINRA.

a. The Appointments Clause Does Not Apply to FINRA or its Hearing Officers

Respondents argue that FINRA hearing officers are subject to the Constitution's appointment requirements. They are plainly mistaken.

The Appointments Clause applies only to "Officers of the United States" holding principal offices "established by Law." U.S. Const. art. II, § 2, cl. 2. Constitutional appointment requirements thus apply only to "*a class of government officials*" employed by the federal government. *Lucia v. SEC*, 138 S. Ct. 2044, 2049 (2018) (emphasis added); *accord Riley v. St. Luke's Episcopal Hosp.*, 252 F.3d 749, 757-58 (5th Cir. 2001) (en banc) ("Supreme Court precedent has established that the constitutional definition of an 'officer' encompasses, at a minimum, a continuing and formalized relationship of employment with the United States Government."). Accordingly, the Appointments Clause does not apply to FINRA, a private entity, or its hearing officers.[30] *See Nat'l Horsemen's Benevolent & Protective Ass'n v. Black*,

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[29] Because Respondents did not assert these constitutional arguments in their notice of appeal (nor did they raise them below), we deem them waived. *See* FINRA Rule 9311(e). Notwithstanding this waiver, we consider these arguments on the merits.

[30] Citing the Supreme Court's decision in *Lucia,* and a concurrence from a motions-panel order granting an injunction in *Alpine Securities Corp. v. FINRA* (No. 23-519, 2023 U.S. App. LEXIS 16987, at *6-7 (D.C. Cir. 2023) (Walker J., concurring)), Respondents contend that FINRA is a "government actor." FINRA hearing officers, however, are distinguishable from the Commission administrative law judges in *Lucia,* which were unquestionably federal government personnel. *See* 138 S. Ct. at 2051 ("The sole question here is whether the Commission's ALJ's are 'Officers of the United States' or simply employees of the Federal Government."). And the

Footnote Continued on Next Page

672 F. Supp. 3d 220, 238 (N.D. Tex. 2023) (rejecting Appointments Clause claim against the Horseracing Integrity and Safety Authority because, "[l]ike FINRA, the Authority is a private entity"), *aff'd in relevant par*t, No. 23-10520, 2024 U.S. App. LEXIS 16506 (5th Cir. July 5, 2024).

The Court's opinion in *Lebron v. Nat'l R.R. Passenger Corp.* (513 U.S. 374 (1995)) instead supplies the operative test for determining whether Article II applies to FINRA and its hearing officers. *See Nat'l Horsemen's,* 2024 U.S. App. LEXIS 16506, at *46 ("*Lebron* is the governing test to determine whether an entity is private or public and, under that test, the Authority is a private entity not subject to Article II's Appointments Clause."). Under *Lebron*, FINRA, which the government did not create, does not receive government funding, and is governed by a privately appointed board, is not the "Government itself," and FINRA's employees, including its hearing officers, cannot be "officers of the United States*"* for appointments clause purposes. *See Lebron,* 513 U.S. 374 at 400 (holding that a corporation is part of the "Government itself" where the government "creates [the] corporation by special law, for the furtherance of governmental objectives, and retains for itself permanent authority to appoint a majority of the directors of that corporation"); *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 485 (2010) (distinguishing securities industry SROs, of which FINRA is one, from the Public Company Accounting Oversight Board, "a Government-created, Government-appointed entity"); *Newport Coast Sec., Inc.*, Exchange Act Release No. 88548, 2020 SEC LEXIS 911, at *43-44 (Apr. 3, 2020) ("Because FINRA is 'not part of the Government itself' for constitutional purposes, FINRA employees cannot be 'officers *of the United States*' for purposes of the appointments clause.") (emphasis in original).

[Cont'd]

non-precedential concurrence in *Alpine*, which itself relies on *Lucia* for its conclusions, does not address the threshold question presented by Respondents' assertion that FINRA hearing officers are subject to the constitution's appointment requirements. *See Kim v. FINRA*, No. 1:23-cv-02420, 2023 U.S. Dist. LEXIS 180456, at *23 (D.D.C. Oct. 6, 2023), *appeal docketed*, No. 23-7136 (D.C. Cir. Oct. 19, 2023) (*Lucia* did not "address[] the threshold question posed by FINRA's structure—whether FINRA hearing officers are employees of a federal government entity or instrumentality in the first instance (i.e., whether the defendant is a state actor)."); *Nat'l Horsemen's Benevolent & Protective Ass'n v. Black*, 672 F. Supp. 3d 220, 239 (N.D. Tex. 2023) ("*Lucia* does not resolve an Appointments Clause question where the challenged entity is private."), *aff'd in relevant part*, No. 23-10520, 2024 U.S. App. LEXIS 16506 (5th Cir. July 5, 2024).

b. Respondents' Assertion That the Seventh Amendment Constrains FINRA Disciplinary Proceedings Also Lacks Merit

Respondents further contend that the process by which FINRA disciplined them violated their Seventh Amendment right to a jury trial. FINRA disciplinary proceedings, however, do not implicate this constitutional constraint.[31]

To establish that FINRA violated their Seventh Amendment right to a jury trial, Respondents must, as "a threshold matter," demonstrate "that in denying [their] constitutional rights, [FINRA's] conduct constituted state action." *Desiderio v. NASD*, 191 F.3d 198, 206 (2d Cir. 1999); *see also Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802 (2019) ("In accord with the text and structure of the Constitution, this Court's state-action doctrine distinguishes the government from individuals and private entities."). Respondents, however, fail to make a persuasive state-action argument in this case.[32] Respondents thus have failed to demonstrate that FINRA's action against them is "fairly attributable" to the government for the purpose of

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[31] In addition to failing to make a meritorious constitutional argument, Respondents knowingly forfeited any rights they might otherwise have had to defend themselves against FINRA's allegations before a jury in federal court. *See CFTC v. Schor*, 478 U.S. 833, 848 (1986) (Article III and jury-trial rights are "subject to waiver, just as are other personal constitutional rights"). FINRA members and associated persons registered with FINRA affirmatively agree to abide by FINRA's rules, *including* its disciplinary procedures. *See* Form U4, Section 15A ¶ 2 ("[I]n consideration of the jurisdictions and SROs receiving and considering my application, I submit to the authority of the jurisdictions and SROs and agree to comply with all . . . by-laws and rules and regulations of the jurisdictions and SROs as they are or may be adopted, or amended from time to time.").

[32] To support their assertion that FINRA's disciplinary proceedings concerning them violated the Seventh Amendment, Respondents cite only an opinion of the United States Court of Appeals for the Fifth Circuit, which found unconstitutional administrative proceedings through which the Commission seeks civil penalties for fraud under the federal securities statutes because such proceedings deny defendants of their constitutional right to a jury trial. *See Jarkesy v. SEC,* 34 F. 4th 446, 451 (5th Cir. 2022). As the Supreme Court recently made clear when it affirmed the Fifth Circuit's *Jarkesy* opinion, the issues the courts confronted in that case concerned "the basic concept of separation of powers that flow from the scheme of a tripartite government" and the ability of Congress to "withdraw from judicial cognizance" a matter that is the subject of a "suit at common law" under the Seventh Amendment. *SEC v. Jarkesy,* No. 22-859, 2024 U.S. Lexis 2847, at *27 (June 27, 2024) (internal quotation marks omitted). Respondents do not show, and we fail to see, that *Jarkesy* has any bearing on FINRA, which is not a "government actor," and the disciplinary proceedings that it brings against its members and their associated persons for violations of FINRA rules. As the Commission has explained "[a] disciplinary hearing before a self-regulatory organization is . . . no[t] a "suit at common law" within the meaning of the Seventh Amendment. The guarantees pertaining to trials by jury . . . are therefore inapposite."). *Daniel Turov*, 51 S.E.C. 235, 238 (1992).

applying the requirements of the Seventh Amendment to its disciplinary proceedings. *See Lugar v. Edmondson Oil. Co*., 457 U.S. 922, 937 (1982) ("Our cases have . . . insisted that the conduct allegedly causing the deprivation of a federal right be fairly attributable to the State."); *Desiderio*, 191 F.3d at 206 (rejecting a Seventh Amendment claim because the "requisite state action" was absent); *Duffield v. Robertson Stephens & Co*., 144 F.3d 1182, 1200-02 (9th Cir. 1998) (rejecting Seventh Amendment claim and observing that "[a] threshold requirement of any constitutional claim is the presence of state action"), *overruled on other grounds by EEOC v. Luce, Forward, Hamilton & Scripps*, 345 F.3d 742 (9th Cir. 2003).

Finally, Respondents offer no reason we should ignore an unbroken line of precedent that holds FINRA does not engage in state action when it fulfills its self-regulatory responsibilities, such as when it disciplines its members and their associated persons. *See, e.g.*, *Kim v. FINRA*, 2023 U.S. Dist. LEXIS 180456, at *26-27 ("[C]ourts in this District and elsewhere have repeatedly rejected arguments that FINRA . . . engages in state action") (collecting cases); *Charles C. Fawcett*, Exchange Act Release No. 56770, 2007 SEC LEXIS 2598, at *14 (Nov. 8, 2007) ("Fawcett's position [that NASD is a state actor] . . . is directly contrary to established precedent."). Because FINRA's disciplinary proceeding does not constitute state action, we find that Respondents' Seventh Amendment argument has no merit.

2. Respondents' Reliance on Counsel and Consultants

Respondents maintain that they engaged experienced legal counsel and consultants to assist them in making good faith determinations on the reporting of arbitration claims against Spartan officers. They contend that the "testimony and evidence proves that Respondents provided each statement of claim to counsel for legal advice; counsel reviewed the Form U4 and FINRA Guidance; and counsel provided legal advice to Respondents that the particular Officer Disclosures were not reportable for Lowry and/or Monchik." We are not persuaded by Respondents' argument. To the contrary, we agree with the Hearing Panel that, rather than acting in good faith, "Respondents sought ratification of a broad strategy they adopted to not disclose the arbitrations at issue and avoid compliance with their reporting obligations."

As discussed above, Lowry claims to have relied on others to make his Form U4 reporting decisions for him and purportedly played no part in that determination at all. Lowry testified that he "left it in their hands to make the qualified determination of what to do." He could not recall any specific instances of discussing a particular statement of claim with any CCO. Lowry did not speak to any outside compliance consultants, and although he claims to have spoken to attorneys with respect to disclosure of some of the arbitrations, he could not recall which arbitration, who the attorneys were, when he spoke to them, or any other specifics of those communications.

Monchik makes unsupported claims that she sent a compliance consultant four arbitration statements of claim filed between June and August 2015 for review and a good faith determination not to report. However, there is no evidence setting forth any consultant's analysis

or reasoning—no report, email, or other written communication—and none of these consultants testified at the hearing.[33]

One outside counsel provided opinions about two arbitrations in July 2015. Significantly, the attorney could not recall either Lowry or Monchik telling him that FINRA staff had said the arbitrations at issue needed to be disclosed. In fact, the attorney believed, because someone at Spartan told him, that Disclosure Review agreed with his analysis in these instances that disclosure was not required. That attorney also was not made aware of the cautionary actions at the time.

Monchik was unclear whether she consulted with counsel with respect to many of the arbitration claims at issue or, if so, with whom she consulted on some of the claims. In response to a September 2020 FINRA Rule 8210 letter seeking information concerning any advice received from counsel concerning disclosure of arbitrations, Spartan mentions only seven arbitrations. The firm could not recall which, if any counsel, advised Monchik concerning the disclosure of the settlements of any of the arbitration claims at issue. In addition, Spartan stated that because many statements of claim contained similar language alleging a failure to supervise, it was unnecessary for Spartan to get an opinion for every arbitration.

Monchik also claims to have relied on the advice of two attorneys for Respondents' disclosure decisions, but neither attorney could recall the specific advice they rendered, or on which specific arbitrations, and neither could testify that the advice given was at the time the arbitration claim was filed or within the 30 days Respondents had to disclose them.

The only testimony from counsel concerning specific advice relating to disclosure came from a third attorney, who testified that he advised Monchik that six claims need not be disclosed on Lowry's and her Forms U4. However, he wrote his opinion letters with respect to disclosure of at least two of the arbitrations—the SC and SFE arbitrations—more than five months and one year, respectively, after those claims were filed and well past the 30-day period to report them had expired.

Reliance on counsel is not an applicable defense to Respondents' failures to make the required disclosures. First, reliance on counsel is not available as a defense where, as here, intent is not an element of the violation. *See Dep't. of Enf't v. Harari,* Complaint No. 2011025899601, 2015 FINRA Discip. LEXIS 2, at *29 (FINRA NAC Mar. 9, 2015); *America First*, 2008 FINRA Discip. LEXIS 27, at *18 n.20. Even if it were a defense, however, Respondents have not established the required elements. To prove reliance on counsel, Respondents must show that

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[33] The only written evidence of an opinion that Monchik received from a securities industry compliance professional came from a compliance associate at another firm where a Spartan FINOP previously had worked. In October 2018, this person emailed Spartan's FINOP to advise him to have Spartan amend his Form U4 to disclose an arbitration in which he was named as a respondent. The FINOP forwarded the email to Monchik who conferred with the firm's then-CCO. Spartan did not amend the FINOP's Form U4.

they "made complete disclosure to counsel, sought advice as to the legality of [their] conduct, received advice that [the] conduct was legal, and relied on that advice in good faith." *Markowski v. SEC*, 34 F.3d 99, 104-05 (2d Cir. 1994).

Respondents did not prove those elements. First, Respondents did not make a complete disclosure to their counsel. For example, they did not tell two of their attorneys that FINRA issued two cautionary action letters for failing to disclose arbitrations, and they told a third that FINRA's registration department agreed with Respondents' position on non-disclosure, which was not true. Nor did Respondents seek advice about disclosing each arbitration or disposition at issue. No attorney provided Respondents an opinion regarding the disclosure of arbitration settlements. Finally, Respondents did not rely on any advice in good faith. And to the extent that Respondents received advice that they did not need to disclose arbitrations, they did not reconcile such advice with FINRA's unambiguous position. Therefore, we reject Respondents' arguments about reliance on counsel.

3. Respondents' Other Arguments Fail

Respondents make several other arguments against liability that are not supported by the record. Respondents maintain they had contacted Disclosure Review and advised it that the firm had concluded that the particular claims were not reportable for Lowry and Monchik. Because Disclosure Review did not contest Respondents' conclusions, Respondents maintain that they believed that FINRA agreed with their position. However, the absence of a response from Disclosure Review is insufficient to provide Respondents a reasonable basis for believing that FINRA agreed with their position about disclosure. *See, e.g., KJM Securities, Inc*., Exchange Act Release No. 94059, 2022 SEC LEXIS 190, at *12 (Jan. 25, 2022) (holding that "the onus of compliance with the securities laws falls on FINRA members, who cannot shift their compliance obligations to SRO officials . . . . FINRA staff repeatedly told KJM that to avoid expulsion KJM was required to file an audited annual report. Thus, FINRA's alleged failure to respond to KJM's letter is not a basis for setting aside the expulsion."); *Leslie A. Arouh*, Exchange Act Release No. 62898, 2010 SEC LEXIS 2977, at *57 (Sept. 13, 2010) (rejecting, as an attempt to shift blame to NASD, the argument that respondent's attorney disclosed his activities "to . . . NASD, and that he thereafter reasonably relied on the lack of any response in assuming that NASD found his activities unobjectionable."); *Apex Fin. Corp*., 47 S.E.C. 265, 267 (1980) (finding that "applicants were not justified in relying on the agencies' silence" where applicant contended that he "asked for these agencies' comments on the offerings, none were forthcoming, and he therefore assumed that no regulatory provisions were being violated"). On the contrary, as discussed in detail above, FINRA clearly directed Respondents to disclose the arbitrations on multiple occasions.

Monchik also claimed that in some cases someone at Disclosure Review told her that one or more arbitrations need not be disclosed. The Hearing Panel found Monchik not credible on this point—and we adopt the Hearing Panel's credibility determination. *See Eliezer Gurfel*, 54 S.E.C. 56, 62 n.11 (1999) (explaining that "[c]redibility determinations by the fact finder are entitled to substantial deference and can be overcome only where the record contains 'substantial evidence' for doing so"), *aff'd*, 205 F.3d 400 (D.C. Cir. 2000). Monchik did not memorialize in writing any conversations in which Disclosure Review purportedly told her or anyone else at

Spartan that no disclosure of an arbitration was required. There is no documentary evidence in the record that Disclosure Review ever agreed with or told Spartan in writing that it did not need to disclose a particular arbitration. Rather, the record clearly reflects that Disclosure Review's practice was not to give legal advice on the non-reportability of arbitrations or dispositions but instead directed firms to consult FINRA's guidance to make their own decisions.

Respondents also claim that they interpreted the marking of disclosure letters as "Resolved," which occurred in only a few cases, to mean that Disclosure Review agreed that the arbitration was not reportable. This rationalization falters when compared with other disclosure letters in the record. For example, two arbitrations involving customers LK and TW/KW were marked "Resolved" only because Disclosure Review had filed Forms U6 disclosing them. In addition, disclosure letters associated with five arbitrations against Lowry and three against Monchik marked "Resolved" became the subject of a cautionary action in August 2017.

Respondents also maintain that no "Enforcement witness walked the [Hearing] Panel through each statement of claim; rather, H.O Dixon admitted them in bulk without review." Had there been a discussion of each statement of claim, Respondents contend, then the Hearing Panel, and in turn the NAC, would see that several statements of claim referenced in Respondents' brief, were incorrectly deemed disclosable. We, like the Hearing Panel, do not need a witness to walk us through each statement of claim in the record. We reviewed each of the statements of claim and the allegations speak for themselves. Each claim clearly alleged that Spartan officers failed to supervise one or more brokers who allegedly committed a sales practice violation. These arbitration statements of claim should have been disclosed in a timely manner.

E. Respondents are Statutorily Disqualified

We also affirm the Hearing Panel's findings that Respondents' failures to amend, or timely amend, the Forms U4 and U5 were willful, resulting in each Respondent being statutorily disqualified.[34]

Under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 (the "Exchange Act"), a person is subject to statutory disqualification if, among other things, he "has willfully made or caused to be made in any application . . . to become associated with a member of a self-regulatory organization . . . any statement which at the time, and in light of the circumstances under which it was made, was false or misleading with respect to any material fact, or has omitted to state . . . any material fact which is required to be stated therein." 15 U.S.C. § 78c(a)(39)(F). Article III, Section 3 of FINRA's By-Laws provides that a person subject to a

[34] Both member firms and individuals can be subject to statutory disqualification. *See Dep't of Enf't v. The Dratel Grp. Inc.*, Complaint No. 2009016317701, 2015 FINRA Discip. LEXIS 10, at *12-17 (FINRA NAC May 6, 2015); *Dep't of Enf't v. Dakota Sec. Int'l, Inc.*, Complaint No. 2016047565702, 2022 FINRA Discip. LEXIS 2, at*7-8 (FINRA NAC Mar. 16, 2022) (firm statutorily disqualified for willful violations of recordkeeping rules in Exchange Act Section 17(a) and Exchange Act Rule 17a-3).

statutory disqualification cannot become or remain associated with a FINRA member unless the disqualified person's member firm applies for, and is granted by FINRA, relief from the statutory disqualification. This statutory provision applies to representatives who willfully have failed to amend Form U4 with material information that is required to be disclosed on the Form U4. *See*, *e.g*., *McCune*, 2016 SEC LEXIS 1026, at *13-23 (finding that applicant was statutorily disqualified for willfully failing to amend Form U4).

1. Information about Officer Arbitrations and Dispositions is Material

"In the context of Form U4 disclosures, a fact is material if there is substantial likelihood that a reasonable regulator, employer, or customer would have viewed it as significantly altering the total mix of information made available." *McCune*, 2016 SEC LEXIS 1026, at *21-22. In general, "[b]ecause of the importance the securities industry places on full and accurate disclosure of information required by the Form U4, it is presumed that essentially all the information that is reportable on the Form U4 is material." *Holeman*, 2018 FINRA Discip. LEXIS 12, at *23 (citations omitted). "Information on investment-related customer arbitrations is important to regulators, investors, and potential employers. FINRA and other regulators would want to be aware of arbitrations promptly, because the filing or settlement of an arbitration might signal that there are problems that need regulatory attention, and multiple arbitration filings would cause greater concern." *Dep't of Enf't v. Otalvaro*, Complaint No. 2008011725901, 2011 FINRA Discip. LEXIS 39, at *14-15 (FINRA Hearing Panel Decision June 24, 2011). Thus, there is no doubt that the host of arbitrations at issue here are material.

2. Respondents Misconduct was Willful

"A willful violation under the federal securities laws simply means 'that the person charged with the duty knows what he is doing.'" *Tucker*, 2012 SEC LEXIS 3496, at *41 (further citations omitted). A respondent willfully fails to disclose reportable events on a Form U4 or Form U5 when the respondent "intentionally committed the act which constitutes the violation" and the respondent "need not also be aware that he is violating the Rules or Acts." *Elgart*, 750 F. App'x at 823-824 (respondent subject to statutory disqualification for willfully failing to disclose five outstanding tax liens); *see also McCune, 6*72 F. App'x at 868 (respondent statutorily disqualified for willfully failing to disclose two bankruptcy petitions and four unsatisfied tax liens); *Mathis v. SEC*, 671 F.3d 210, 216-219 (2d Cir. 2012) (respondent subject to statutory disqualification for willfully failing to disclose five unsatisfied tax liens).

A failure to disclose is willful if the registered representative "'subjectively intended to omit material information from' his required disclosures." *Holeman*, 2019 SEC LEXIS 1903, at *38 (quoting *Robare v. SEC*, 922 F.3d 468, 479 (D.C. Cir. 2019)); *see Richard Allen Riemer, Jr.,* Exchange Act Release No. 84513, 2018 SEC LEXIS 3022, at *13 (Oct. 31, 2018) ("To act willfully for purposes of the federal securities laws means that a person 'intentionally commit[ted] the act which constitutes the violation.'") (quoting *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000)). Proof of "extreme recklessness" suffices to establish willfulness. *Holeman*, 2019 SEC LEXIS 1903, at *38 (quoting *Robare*, 922 F.3d at 479). By contrast, "[a]n 'inadvertent filing of an inaccurate form' would not support a finding of willfulness." *Riemer*, 2018 SEC LEXIS 3022, at *13 (*quoting Mathis v. SEC*, 671 F.3d at 218).

Spartan's failures to amend, or timely amend, the Forms U4 or U5 of its officers and a branch manager were willful, as were Lowry's and Monchik's failures to amend, or timely amend, their own Forms U4. Respondents do not dispute that Spartan knew about the arbitration filings and dispositions against its officers, and Lowry and Monchik knew about arbitration filings and dispositions against themselves. Respondents also do not dispute that they made a conscious decision not to disclose those events. Respondents were aware of FINRA's position that these arbitrations and dispositions needed to be disclosed. Most notably, FINRA staff twice cautioned Spartan that multiple arbitrations against Lowry and Monchik needed to be disclosed on their Forms U4. Lowry and Monchik were aware of the cautionary action and the issuance of two arbitration awards against Lowry via the filing of a Forms U6. Yet Lowry still waited months after the filing of those Forms U6 before disclosing those awards himself on his Form U4. Similarly, FINRA filed a Form U6 to disclose the KW award against Monchik, yet she waited seven months after that filing to amend her Form U4 to report the award herself. Respondents also elected not to disclose arbitrations with allegations that were substantively identical to allegations in arbitrations that they did (untimely) disclose. Finally, throughout Enforcement's investigation, including at Lowry's and Monchik's early 2020 OTRs, the staff presented them with numerous arbitrations that had not been disclosed on their Forms U4. Enforcement staff repeatedly encouraged Respondents, through communications with their outside counsel, to make the necessary filings. Respondents persistently refused. We agree with the Hearing Panel that Respondents possessed a "dismissive attitude" concerning customer arbitrations.

Nor does Respondents' claim of reliance on counsel have merit. As we stated above, Respondents did not make complete disclosures to their attorneys. They did not tell them at the time that Spartan had received cautionary actions about its failure to disclose arbitrations involving its officers. Respondents did not receive advice on all customer arbitrations, nor did they obtain legal advice concerning arbitration dispositions. We find that the record supports a finding that Respondents' failures to disclose or timely disclose were at a minimum extremely reckless. *Dep't of Enf't v. Henderson*, Complaint No. 2017053462401, 2022 FINRA Discip. LEXIS 15, at *32 (FINRA NAC Dec. 29, 2022) (finding that respondent's failure to disclose four tax liens on his Form U4 was "at least extremely reckless" and thus willful).

For all these reasons, we agree with the Hearing Panel that Spartan, Lowry, and Monchik acted willfully and affirm the finding that they are subject to statutory disqualification.

VI. Sanctions

The Hearing Panel censured Spartan and fined it $600,000. It also ordered the firm to disclose all the arbitration filings and dispositions and other customer complaints at issue during the Relevant Period and to retain an independent consultant to review the firm's policies, systems, and procedures relating to disclosures on Form U4 and U5. For his violations, the Hearing Panel suspended Lowry for two years in all capacities, fined him $40,000, and ordered him to disclose the arbitration filings and dispositions in question on his Form U4. Finally, the Hearing Panel suspended Monchik for two years in all capacities, fined her $30,000, and ordered her to disclose the arbitration filings and dispositions in question on her Form U4.

A. Relevant Sanction Guidelines

When a small firm[35] fails to amend or timely amend a Form U4 or Form U5, the Sanction Guidelines recommend a fine of $5,000 to $77,000 or, where "aggravating factors predominate," a "higher fine" and a suspension "with respect to the relevant business lines or activities until the firm corrects the deficiency."[36] When an individual fails to amend or timely amend a Form U4 or Form U5, the Guidelines recommend a fine of $5,000 to $20,000 and a suspension in any or all capacities of ten business days to six months or, where aggravating factors predominate, a suspension in any or all capacities of up to two years, or, if the respondent intended to conceal information or mislead, a bar.[37]

B. Respondents' Misconduct Warrants Substantial Sanctions

For both firms and individuals, sanctions are governed by seven principal considerations: (1) the nature and significance of the information at issue; (2) the number, nature, and dollar value of the disclosable events at issue; (3) whether information was omitted in an effort to conceal it or to mislead; (4) the duration of the delinquency; (5) whether the failure delayed any regulatory investigation; (6) whether the failure resulted in a statutorily disqualified individual becoming or remaining associated with a firm; and (7) whether the misconduct resulted directly or indirectly in injury to other parties, and if so, the nature and extent of the injury.[38] For individuals, there is an eighth principal consideration: whether a lien or judgment that was not timely disclosed has been satisfied.[39] Applying these considerations, we agree that aggravating factors predominate.

First, the nature and significance of the information at issue is aggravating. The arbitrations and customer complaints alleged serious misconduct, such as fraud, churning, and unauthorized trading. Those allegations did not involve isolated incidents but reflected a pattern of misconduct and implicated dozens of Spartan's registered persons, including the firm's officers. The financial events are also serious, casting doubt on Spartan's registered persons'

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35 During the Relevant Period, Spartan employed approximately 130 registered representatives. The Sanction Guidelines adopt the definition of firm size set forth in FINRA's By-Laws. Article I(ww) of the By-Laws defines a "small firm" as a member firm that has at least one and no more than 150 registered persons. *See FINRA Sanction Guidelines* at 3 (2022) https://www.finra.org/sites/default/files/2024-03/2022-sanction-guidelines.pdf [hereinafter *Guidelines*]

36 *Guidelines*, at 55.

37 *Id*. at 108.

38 *Id*. at 55, 108.

39 *Id*. at 108.

ability to manage money. *See Holeman*, 2019 SEC LEXIS 1903, at *45. The financial events also were not isolated, impacting 24 registered persons, including Monchik. As discussed above, the failures to disclose these arbitrations, dispositions, complaints, and financial events improperly shielded this information from the investing public, potential employing firms, and regulators.

Second, the number and dollar value at issue for each of the Respondents' violations is significant. Spartan failed to disclose or timely disclose 220 events, Lowry failed to disclose or timely disclose 38 events, and Monchik failed to disclose or timely disclose 15 events. The awards and settlements totaled more than $1.9 million, with those involving Lowry and Monchik totaling more than $1.6 million and $360,000, respectively. The judgments and liens also totaled more than $1.9 million, the pending arbitrations involved millions of dollars, and the nine other complaints involved more than $400,000.

Third, the duration of Respondents' delinquency spanning nearly six years is also aggravating. Notably, Respondents did not disclose more than 80 events even after Enforcement filed its complaint, meaning that events that occurred as early as 2015 were not disclosed until mid-2023, when the Hearing Panel ordered Respondents to disclose them.

Respondents' failures to disclose resulted in concealing information and misleading regulators. Respondents were at a minimum reckless when they did not disclose the customer arbitrations, settlements, complaints, liens, and judgments, all of which could cast doubt on their collective and individual trustworthiness and ability to conduct their business and manage their own affairs.

In sum, Respondents failed to disclose or timely disclose hundreds of reportable events, evincing a pattern of misconduct.[40] Respondents engaged in their misconduct over an extended period and did so recklessly.[41] Respondents tried to lull regulators into inactivity by promising to systematically conduct background checks, and persisted in misconduct despite repeated warnings from FINRA and the SEC.[42] Respondents had ineffective compliance controls in place during the Relevant Period.[43] In addition, Respondents have not accepted responsibility for their misconduct, instead blaming FINRA, compliance officers, and others. *See Keith D. Geary*, Exchange Act Release No. 80322, 2017 SEC LEXIS 995, at *33 (Mar. 28, 2017), *aff'd*, 727 F. App'x 504 (10th Cir. 2018) (Respondent's "efforts to shift blame to others indicates a disturbing

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40 *Guidelines*, at 7 (Principal Considerations No. 8).

41 *Id*. at 7-8 (Principal Considerations Nos. 9, 13).

42 *Id*. (Principal Considerations Nos. 10, 14); *See Wedbush*, 2014 FINRA Discip. LEXIS 40, at *69-70 ("[t]he Firm's disciplinary history coupled with its failure to remedy regulatory reporting problems despite repeated warnings from regulators present a significant aggravating factor in our determination of sanctions.").

43 *Id*. at 7 (Principal Considerations No 5).

approach to regulatory compliance and its role in protecting customers."); *Dep't of Enf't v. Eplboim*, Complaint No. 2011025674101, 2014 FINRA Discip. LEXIS 8, at *45 (FINRA NAC May 14, 2014) (Respondent's continued denial of responsibility and attempts to blame others was "troubling and serves to aggravate his misconduct.").

C. Respondents' Mitigation Arguments Fail

Respondents argue that with respect to Lowry and Monchik, a finding that they are statutorily disqualified is a punitive sanction that is tantamount to the death penalty. However, the statutory disqualification results from Respondents' misconduct by operation of the Exchange Act and is not a sanction FINRA imposes. *See, e.g., McCune*, 2016 SEC LEXIS 1026, at *37 (explaining that "FINRA does not subject a person to statutory disqualification as a penalty or remedial sanction"); *Anthony A. Grey*, Exchange Act Release No. 75839, 2015 SEC LEXIS 3630, at *11 n.60 (Sept. 3, 2015) (stating that a "statutory disqualification is not a FINRA-imposed penalty or remedial sanction").

Respondents argue that the Hearing Panel failed to consider that Lowry and Monchik do not have prior disciplinary history, did not injure any customers, and did not benefit financially from their actions.[44] But the absence of those factors is not mitigating as a matter of law. *See Denise M. Olson*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629, at *32 (Sept. 3, 2015) (rejecting argument that lack of disciplinary history is mitigating "because an associated person should not be rewarded for acting in accordance with her duties as a securities professional"); *KCD Fin. Inc.*, Exchange Act Release No. 80340, 2017 SEC LEXIS 986, at *48 (Mar. 29, 2017) (lack of customer harm not mitigating); *Howard Braff*, Exchange Act Release No. 66467, 2012 SEC LEXIS 620, at *26 & n.25 (Feb. 24, 2012) ("The absence of monetary gain or customer harm is not mitigating . . .").

Respondents also contend that Lowry and Monchik did not act intentionally, recklessly, or in bad faith. However, Respondents do not deny that Lowry and Monchik intentionally did not disclose filings and dispositions of arbitrations against themselves. Moreover, they acted recklessly by ignoring FINRA's many warnings about their obligations to disclose those events. In addition, as discussed above, there is no credible evidence showing that they acted in good faith.

Respondents cite a supposed "multiplicity of efforts made by Lowry and Monchik to comply." Yet Lowry completely relinquished control of updating his Form U4 to others and testified that he "never" made decisions about disclosing the arbitrations at issue. In addition, Monchik could not provide examples of her efforts when asked by the Hearing Panel, nor is there documentary evidence of any efforts to analyze her disclosure obligations. While she testified

[44] As an initial matter, we disagree that only a showing of actual financial gain is relevant under the Guidelines. *See Guidelines* at 7 (Principal Consideration No. 16) (whether the individual respondent's or respondent firm's misconduct resulted in the *potential* for the respondent's monetary or other gain)(emphasis added).

that she spoke with Disclosure Review, the Hearing Panel found that Monchik was not credible in this regard.

Next, Respondents maintain that Lowry and Monchik relied on advice of counsel. While reasonable reliance on competent legal advice can be mitigating, Respondents fall far short of establishing several key points to support this claim for mitigation. In their brief, Respondents focus on purported advice about a single arbitration as evidence of their reliance. They do not address the dozens of other arbitrations against Lowry, Monchik, or other Spartan officers, and do not explain how such advice was reasonable given conflicting warnings from FINRA. They also do not address the lack of any claimed legal advice concerning the dozens of arbitration settlements or awards that were neither disclosed nor timely disclosed. In light of these facts, we do not find claims of reliance of counsel to be mitigating.

Respondents also contend that they relied on five compliance officers and two compliance consultants. However, Spartan has also blamed several of those compliance officers for the firm's disclosure deficiencies.[45] The compliance officers acted on behalf of Spartan as a matter of law and cannot both be to blame for the disclosure deficiencies and a reason to excuse the firm from those failures. Furthermore, Monchik testified that she decided what to disclose on her Form U4, she helped to decide what to disclose on Lowry's Form U4, and she supervised Spartan's CCOs. Thus, the evidence doesn't support that the CCOs gave Respondents independent advice. Moreover, the consultants reviewed only four of the arbitrations in question, all in 2015, and the only tangible evidence of a consultant's opinion is a recommendation that the firm disclose an arbitration "as soon as possible"—a recommendation Spartan ignored.

Respondents note that Lowry and Monchik did not attempt to conceal their conduct because they informed FINRA "in each instance" of arbitrations that they were not disclosing. But the record does not show that they informed FINRA about each of the 27 arbitrations naming Lowry and the 12 arbitrations naming Monchik. In addition, we concur with the Hearing Panel that Respondents acted intentionally to conceal the extent and seriousness of the customers' allegations against them. Respondents only amended Lowry's and Monchik's Forms U4 when they felt they could no longer withhold disclosure—for example, after the filing of Forms U6, a Wells notice, or at the direction of the Hearing Panel decision.

Finally, Respondents blame their disclosure issues on an influx of "shotgun pleadings of compensated non-attorney representatives" filed on behalf of customers during the Relevant Period. This is not an excuse. Lowry and Monchik's disclosure obligations depends on what the claim alleges, not who filed it or the number or frequency of such claims. While Respondents note that FINRA recently proposed a rule barring non-attorneys from representing parties in

[45] Spartan concedes that a minor sanction would be appropriate for the firm given the myriad disclosure problems it admitted to during the Relevant Period.

Dispute Resolution proceedings, this unapproved proposal does not excuse Respondents' misconduct during the Relevant Period.[46]

Therefore, we agree with the Hearing Panel that considering the numerous aggravating factors and absence of any mitigating factors significant sanctions are warranted for Respondents.[47]

D. Sanctions for Spartan

Respondents contend that the fine against Spartan is excessive because it exceeds the Guidelines' range for small firms. But the Guidelines direct the adjudicator to consider a higher fine when "aggravating factors predominate," as they do here.[48] As we explain above, aggravating factors predominate and there are no applicable mitigating factors. The record shows that Spartan intentionally did not disclose arbitration filings and dispositions against its registered representatives and officers, knew about other customer complaints seeking more than $5,000 yet did not disclose them, and ignored repeated warnings from FINRA and the SEC to be more diligent in their discovery and disclosure of its registered representatives' financial events. We find that this egregious misconduct supports a sanction above the recommended range.

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[46] On October 5, 2023, FINRA filed a Proposed Rule Change with the SEC to prohibit compensated non-attorney representative firms from representing parties in FINRA Arbitrations. *See Notice of Filing of a Proposed Rule Change to Amend the FINRA Codes of Arbitration Procedure and Code of Mediation Procedure to Revise and Restate the Qualifications for Representatives in Arbitrations and Mediations*, SR-FINRA-2023-013, Exchange Act Release No. 98703, 88 Fed. Reg. 71051 (Oct. 13, 2023). In any event, some of the arbitrations filed by non-attorney representatives resulted in arbitrations awards or settlements against Lowry and Monchik.

[47] Respondents rely on several disciplinary actions that FINRA settled with individuals through Letters of Acceptance, Waiver and Consent ("AWCs") to argue for lower sanctions. However, it is well-settled that "the appropriateness of a sanction depends on the facts and circumstances of each particular case and cannot be precisely determined by comparison with action [taken] in other proceedings." *Dep't of Enf't v. Clark*, Complaint No. 2017055608101, 2020 FINRA Discip. LEXIS 46, at *37-38 (NAC Dec. 17, 2020), c*iting William J. Murphy*, Exchange Act Release. No. 69923, 2013 SEC LEXIS 1933, at *115-16 (July 2, 2013), *aff'd sub nom*., *Birkelbach v. SEC*, 751 F.3d 472 (7th Cir. 2014). Moreover, FINRA has repeatedly stated it is not appropriate to compare sanctions in settled cases to sanctions in litigated cases. *See, e.g., Dep't of Enf't v. C.L. King & Assoc., Inc.*, Complaint No. 2014040476901, 2019 FINRA Discip. LEXIS 43, at *136-37 (FINRA NAC Oct. 2, 2019).

[48] *Guidelines*, at 55.

The Guidelines further provide that "[s]anctions should be a meaningful deterrent" and direct adjudicators to consider a "firm's financial resources" in imposing sanctions.[49] Spartan's annual revenues during the Relevant Period were between $20 and $30 million. Thus, a fine of $600,000 amounts to two to three percent of the firm's annual revenue. This fine strikes a balance between having a meaningfully deterrent effect but not being so large as to financially cripple the firm.

Respondents also contend that the Hearing Panel failed to consider Spartan's corrective measures. First, Respondents repeat that Spartan acted in good faith, but—as explained above—the Hearing Panel properly rejected that claim as not credible. Second, Respondents claim that Spartan performed background checks and attempted to obtain information about judgments and liens. However, while Spartan promised the SEC and FINRA that it would conduct periodic background checks, the firm failed to follow through with these checks for several years. And while Spartan eventually obtained information about financial events, it did not diligently disclose those events. For example, the firm took nearly two months to disclose a judgment against Monchik herself. Respondents claim that Spartan took corrective measures in 2019 by hiring a new CCO and hiring a Registration Specialist. However, Monchik also testified that this CCO was "delinquent in [his] obligation to ensure timely U4 and U5 reporting," indicating that his appointment had no real corrective impact. In addition, it took Spartan four years from the first regulatory notification concerning its disclosure issues to hire the Registration Specialist, a fact which undermines its claim that the firm took its disclosure obligations seriously and thus is not mitigating. In light of the years of disclosure issues, we also believe that the undertakings imposed by the Hearing Panel will improve the firm's ability to comply with its disclosure obligations.

Finally, Respondents blames FINRA for providing "unverified and incomplete" information about financial events. But Spartan cannot shift responsibility for Form U4 and U5 disclosures to its regulators. Further, by the time FINRA notified Spartan about those events in 2019, some of them had already existed for more than a decade yet the firm had not taken steps to detect them. For all these reasons, we affirm the censure, $600,000 fine, and the undertakings imposed by the Hearing Panel.

E. Sanctions for Lowry and Monchik

After carefully considering the number and nature of the aggravating factors, the lack of mitigating factors, and the facts and circumstances of this case, we agree with the Hearing Panel that meaningful remedial sanctions are warranted for Lowry and Monchik.

Lowry's and Monchik's violations were numerous and occurred over an extended period of time. Lowry failed to disclose 38 reportable arbitration-related events on his Form U4 involving 27 arbitration claims. Specifically, he failed to disclose 22 arbitration filings and disclosed four arbitrations late. He also never disclosed the disposition of eight arbitrations and

[49] *Id*. at 2, 3 n.3.

in four instances disclosed the disposition of an arbitration late. Furthermore, in six of the arbitrations, Lowry is alleged to have directly committed serious sales practice violations, including churning of accounts, unauthorized trading, unsuitable recommendations, misrepresentation, and fraud. Lowry never disclosed two of these arbitrations and disclosed three arbitrations untimely—in one case, 1,118 days late. The arbitrations in which he was named resulted in awards or settlements totaling more than $1.6 million. For the host of aggravating factors present and the lack of mitigating factors, we affirm the two-year suspension in all capacities but reduce the fine to $20,000, the upper limit of the recommended fine in the Guidelines.

Monchik never disclosed 11 arbitrations and two settlements with customers. She was late in disclosing one arbitration and the award in that arbitration. The arbitrations in which she was named resulted in awards or settlements totaling more than $360,000. For the host of aggravating factors present and the lack of mitigating factors, we affirm the two-year suspension in all capacities but reduce the fine to $10,000.

Respondents contend that suspending Lowry and Monchik is tantamount to the death penalty. However serious the consequences may be as a result of their misconduct, it does not warrant lesser sanctions. FINRA sanctions are remedial in nature, not punitive. They are designed to prevent future harm. Accordingly, the fact that Lowry and Monchik may lose their jobs or endure negative financial consequences is not a factor in determining sanctions. *See Kent M. Houston*, Exchange Act Release No. 71589, 2014 SEC LEXIS 614, at *35-36 (Feb. 20, 2014) (holding that "any collateral consequence that [the individual] may have suffered as a result of his misconduct or from the disciplinary proceeding that followed, such as the impact on his reputation, career, or finances, is not a mitigating factor").

We agree with the Hearing Panel's determination that "Lowry and Monchik set the tone for the Firm's lax regulatory culture and sought to conceal Firm executives' arbitration-related disclosures (including their own arbitration-related disclosures) at all costs." Their dishonest actions signal that they pose a threat to investors, firms, and other market participants. We believe that these sanctions give Lowry and Monchik a strong incentive and sufficient time away from a FINRA member firm to contemplate their misconduct and recognize the critical importance of timely and honest disclosures to all FINRA stakeholders.

VII. Conclusion

We affirm the Hearing Panel's findings under cause one that Spartan failed to amend, or timely amend, on 220 occasions, the Forms U4 and Forms U5 of its registered representatives to disclose the filing or disposition of customer arbitrations, the receipt or disposition of written customer complaints, and reportable financial events, in violation of Article V, Sections 2(c) and 3(b) of FINRA's By-Laws and FINRA Rules 1122 and 2010. Spartan's failure to disclose or timely disclose arbitrations and dispositions of its officers was willful. Thus, Spartan also is statutorily disqualified. We affirm the imposition of a censure and the $600,000 fine for these violations.

Under cause two, we affirm the Hearing Panel's finding that John D. Lowry willfully failed to amend his Form U4 38 times, to disclose, or timely disclose, the filing and disposition

of customer arbitrations in which he was a named a respondent, in violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010. Lowry also is subject to statutory disqualification. In addition, we fine Lowry $20,000 and suspend him for two years in all capacities. Lowry's suspension shall begin with the opening of business on Monday, December 2, 2024, and end at the close of business on Wednesday, December 2, 2026.

Under cause three, we affirm the Hearing Panel's finding that Kim M. Monchik willfully failed to amend her Form U4 15 times, to disclose, or timely disclose, the filing and disposition of customer arbitrations in which she was a named a respondent, in violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010. Monchik's failure to disclose or timely disclose arbitrations and dispositions was willful and thus, Monchik is subject to statutory disqualification. In addition, we fine Monchik $10,000 and suspend her for two years in all capacities. Monchik's suspension shall begin with the opening of business on Monday, December 2, 2024, and end at the close of business on Wednesday, December 2, 2026.

We also affirm the Hearing Panel's undertakings, including retaining an independent consultant and making required updates to its registered representatives, including, Lowry and Monchik's, Forms U4 and U5.

Finally, we also affirm the Hearing Panel's imposition of hearing costs in the amount of $17,768.31 and impose appeal costs in the amount of $1,891.47.

On Behalf of the National Adjudicatory Council,

Jennifer Piorko Mitchell,
Vice President and Deputy Corporate Secretary

OS Received 11/04/2024

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October 9, 2024

VIA SEC 19d-1 SYSTEM

Vanessa Countryman
Securities and Exchange Commission
100 F Street, NE – Room 10915
Washington, DC 20549-1090

RE: Complaint No. 2019061528001: Spartan Capital Securities, LLC, John D. Lowry, and Kim M. Monchik

Dear Ms. Countryman:

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. The attached NAC decision is the final decision of FINRA.

Sincerely,

/s/ *Colleen Durbin*

Colleen Durbin

Enclosure

cc: Melanie Campbell