

**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.**

In the Matter of the Application of
Spartan Capital Securities, LLC, John D. Lowry, and Kim M. Monchik,
For Review of Disciplinary Action Taken by
FINRA
File No. 3-22285

**BRIEF OF THE FINANCIAL INDUSTRY REGULATORY AUTHORITY IN
OPPOSITION TO THE APPLICATION FOR REVIEW**

Michael Garawski
Senior Vice President and
Director – Appellate Group

Gary Dernelle
Associate General Counsel

Andrew Love
Associate General Counsel

Colleen Durbin
Associate General Counsel

FINRA
Office of General Counsel
1700 K Street, NW
Washington, DC 20006
(202) 728-8816
colleen.durbin@finra.org
nac.casefilings@finra.org

February 24, 2025

TABLE OF CONTENTS

- I. INTRODUCTION 1
- II. BACKGROUND 3
 - A. Applicants’ Background3
 - B. FINRA’s Disclosure Rules and Relevant Interpretive Guidance4
 - 1. Arbitration-Related Disclosure Questions and Interpretive Guidance5
 - 2. Customer Complaint Disclosure Questions7
 - 3. Financial Events Disclosure Questions.....7
 - C. Reportable Events that Applicants Did Not Disclose or Timely Disclose on Forms U4 or U57
 - 1. Spartan Capital7
 - 2. Lowry9
 - 3. Monchik10
 - D. Applicants Were Repeatedly Warned about Their Disclosure Shortcomings10
 - 1. Warnings to Disclose Arbitrations and Dispositions Involving Officers10
 - 2. Warnings to Disclose Reportable Financial Events.....14
- III. PROCEDURAL HISTORY15
- IV. DISCUSSION16
 - A. The NAC Correctly Found that Applicants Failed to Disclose, or Timely Disclose, Customer Arbitrations, Dispositions, Customer Complaints, and Reportable Financial Events in Violation of FINRA Rules.....17
 - B. Applicants are Subject to Statutory Disqualification Because They Willfully Failed to Disclose Material Information on Forms U4 and U5.....19
 - 1. Arbitrations that Allege Officers’ Involvement in Sales Practice Violations is Material Information20

2.	Applicants’ Misconduct was Willful	20
C.	Applicants’ Arguments Against Liability Are Without Merit.....	22
1.	Applicants Misapprehend FINRA’s Guidance for Arbitration Disclosures	22
2.	Applicants’ Good Faith Determination Defense is Not Applicable....	23
3.	Applicants Did Not Demonstrate Good Faith Reliance on Counsel ...	26
4.	The NAC Did Not Err in Its Findings Concerning Spartan’s Financial Reporting Obligations	28
D.	The Sanctions Imposed Are Consistent with FINRA’s Guidelines, and the Public Interest, and are Neither Excessive Nor Oppressive	29
1.	Applicants’ Arguments Against Sanctions For Lowry and Monchik are Unpersuasive	33
2.	Applicants Arguments for a Reduced Fine for Spartan are Unpersuasive	36
E.	Applicants’ Constitutional Arguments are Without Merit	38
1.	FINRA Is a Private Entity, and Its Hearing Officers are Not Subject to Constitutional Appointment Requirements	38
2.	FINRA’s Disciplinary Proceedings do Not Implicate the Seventh Amendment.....	42
V.	CONCLUSION.....	46

TABLE OF AUTHORITIES

<u>Federal Decisions</u>	<u>Pages</u>
<i>All. for Fair Bd. Recruitment v. SEC</i> , No. 21-60626, 2024 U.S. App. LEXIS 31475 (5th Cir. Dec. 11, 2024)	44, 45
<i>Alpine Sec. Corp. v. FINRA</i> , 121 F. 4th 1314 (D.C. Cir. 2024).....	40, 41, 44
<i>Black v. SEC</i> , 125 F.4th 541 (4th Cir. 2025)	39
<i>Buckley v. Valeo</i> , 424 U.S. 1 (1976).....	39
<i>CFTC v. Schor</i> , 478 U.S. 833 (1986).....	45
<i>Desiderio v. NASD</i> , 191 F.3d 198 (2d Cir. 1999).....	42, 43
<i>D.L. Cromwell Invs., Inc. v. NASD</i> , 279 F.3d 155 (2d Cir. 2002).....	41-42
<i>Elgart v. SEC</i> , 750 F. App’x 821 (11th Cir. 2018).....	20-21
<i>Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.</i> , 561 U.S. 477 (2018).....	40, 41
<i>Freytag v. Comm’r</i> , 501 U.S. 868 (1991)	40
<i>In re Clark</i> , 678 F. Supp. 3d 112 (D.D.C. 2023)	45
<i>Jones v. SEC</i> , 115 F.3d 1173 (4th Cir. 1997)	44
<i>Kim v. FINRA</i> , 698 F. Supp. 3d 147 (D.D.C. 2023).....	39, 43
<i>Lebron v. Nat’l R.R. Passenger Corp.</i> , 513 U.S. 374 (1995).....	39
<i>Lucia v. SEC</i> , 585 U.S. 237 (2018).....	39, 40
<i>Lugar v. Edmondson Oil Co.</i> , 457 U.S. 922 (1982).....	42-43
<i>Manhattan Cmty. Access Corp. v. Halleck</i> , 587 U.S. 802 (2019).....	42
<i>Markowski v. SEC</i> , 34 F.3d 99 (2d Cir. 1994).....	27
<i>Mathis v. SEC</i> , 671 F.3d 210 (2d Cir. 2012).....	21
<i>McCune v. SEC</i> , 672 F. App’x 865 (10th Cir. 2016).....	21

<i>Nat'l Horsemen's Benevolent & Protective Ass'n v. Black</i> , 107 F.4th 415 (5th Cir. 2024)	39, 40
<i>Robare v. SEC</i> , 922 F.3d 468 (D.C. Cir. 2019)	21
<i>SEC v. Jarkesy</i> , 603 U.S. 109 (2024)	42, 43, 44
<i>United States v. NASD</i> , 422 U.S. 694 (1975)	41
<i>Wonsover v. SEC</i> , 205 F.3d 408 (D.C. Cir. 2000)	21

SEC Decisions and Releases

<i>Joseph S. Amundsen</i> , Exchange Act Release No. 69406, 2013 SEC LEXIS 1148 (Apr. 18, 2013)	18
<i>Howard Brett Berger</i> , Exchange Act Release No. 58950, 2008 SEC LEXIS 3141 (Nov. 14, 2008)	27
<i>Howard Braff</i> , Exchange Act Release No. 66467, 2012 SEC LEXIS 620 (Feb. 24, 2012)	35
<i>Jason A. Craig</i> , Exchange Act Release No. 59137, 2008 SEC LEXIS 2844 (Dec. 22, 2008)	17
<i>Charles C. Fawcett</i> , Exchange Act Release No. 56770, 2007 SEC LEXIS 2598 (Nov. 8, 2007)	43
<i>Keith D. Geary</i> , Exchange Act Release No. 80322, 2017 SEC LEXIS 995 (Mar. 28, 2017)	32
<i>Anthony A. Grey</i> , Exchange Act Release No. 75839, 2015 SEC LEXIS 3630 (Sept. 3, 2015)	33
<i>Allen Holeman</i> , Exchange Act Release No. 86523, 2019 SEC LEXIS 1903 (July 31, 2019),	18, 21, 31
<i>KCD Fin. Inc.</i> , Exchange Act Release No. 80340, 2017 SEC LEXIS 986 (Mar. 29, 2017)	34
<i>Mark H. Love</i> , 57 S.E.C. 315 (2004)	43
<i>Scott Mathis</i> , Exchange Act Release No. 61120, 2009 SEC LEXIS 4376 (Dec. 7, 2009)	18

<i>Michael Earl McCune</i> , Exchange Act Release No. 77375,.....	17, 20, 33
2016 SEC LEXIS 1026 (Mar. 15, 2016)	
<i>Mission Sec., Corp.</i> , Exchange Act Release No. 63453,	40, 42
2010 SEC LEXIS 4053 (Dec. 7, 2010)	
<i>Newport Coast Sec., Inc.</i> , Exchange Act Release No. 88548,.....	38, 42
2020 SEC LEXIS 911 (Apr. 3, 2020)	
<i>Richard Allen Riemer, Jr.</i> , Exchange Act Release No. 84513,	21
2018 SEC LEXIS 3022 (Oct. 31, 2018)	
<i>Jack H. Stein</i> , 56 S.E.C. 108 (2003)	29
<i>Robert D. Tucker</i> , Exchange Act Release No. 68210,.....	20
2012 SEC LEXIS 3496 (Nov. 9, 2012)	
<i>Daniel Turov</i> , 51 S.E.C. 235 (1992)	44-45
<i>Vincent M. Uberti</i> , Exchange Act Release No. 58917,.....	29
2008 SEC LEXIS 3140 (Nov. 7, 2008)	
<i>Valley Forge Sec. Co.</i> , 41 S.E.C. 486 (1963)	44

FINRA Decisions

<i>Dep't of Enf't v. C.L. King & Assoc., Inc.</i> , Complaint No. 2014040476901,.....	36
2019 FINRA Discip. LEXIS 43 (FINRA NAC Oct. 2, 2019)	
<i>Dep't of Enf't v. Henderson</i> , Complaint No. 2017053462401,	22
2022 FINRA Discip. LEXIS 15 (FINRA NAC Dec. 29, 2022)	
<i>Dep't of Enf't v. Holeman</i> , Complaint No. 2014043001601,	20
2018 FINRA Discip. LEXIS 12 (FINRA NAC May 21, 2018)	
<i>Dep't of Enf't v. Kielczewski</i> , Complaint No. 2017054405401,.....	17
2021 FINRA Discip. LEXIS 22 (FINRA NAC Sept. 30, 2021)	
<i>Dep't of Enf't v. Tranchina</i> , Complaint No. 2018058588501,	17
2023 FINRA Discip. LEXIS 3 (FINRA NAC Mar. 23, 2023)	
<i>Dep't of Enf't v. Wedbush Sec., Inc.</i> , Complaint No. 20070094044,	18, 32, 34
2014 FINRA Discip. LEXIS 40 (FINRA NAC Dec. 11, 2014)	

Federal Constitution, Statutes and Codes

U.S. Const. art. II, § 2, cl. 239

U.S. Const. art. III, §143

15 U.S.C. § 78c(a)(39)(F).....19

15 U.S.C. § 78o-3(b)(6)41, 44

15 U.S.C. § 78s(e).....16

FINRA Rules, Notices and Guidelines

FINRA By-Laws Article III, Section 4.....19

FINRA By-Laws Article IV, Section 1(a)(1)45

FINRA By-Laws Article V, Section 2(a)(1).....45

FINRA By-Laws Article V, Section 2(c)5

FINRA By-Laws Article V, Section 3(b)5

FINRA Interpretive Questions and Answers6, 24

FINRA Rule 9311(e).....38

FINRA Sanction Guidelines (2022)30, 32, 36, 37

Form U4 Explanation of Terms6

Form U5 Explanation of Terms6

**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.**

In the Matter of the Application of
Spartan Capital Securities, LLC, John D. Lowry, and Kim M. Monchik,
For Review of Disciplinary Action Taken by
FINRA
File No. 3-22285

**BRIEF OF THE FINANCIAL INDUSTRY REGULATORY AUTHORITY IN
OPPOSITION TO THE APPLICATION FOR REVIEW**

I. INTRODUCTION

Applicants Spartan Capital Securities, LLC, John Lowry, and Kim Monchik (collectively, “Applicants”) appeal an October 9, 2024 Decision of the National Adjudicatory Council (“NAC”) to the Securities and Exchange Commission. RP 26123-24.¹ The record unequivocally demonstrates that for six years, Spartan Capital Securities, LLC and its two top executive officers, John Lowry and Kim Monchik, deliberately flouted their respective duties to file or timely file required amendments to Uniform Applications for Securities Industry Registration or Transfer (“Form U4”) and Uniform Termination Notices for Securities Industry Registration (“Form U5”) for dozens of Spartan’s registered representatives, their supervisors, and firm officers—including themselves—in violation of Article V, Sections 2(c) and 3(b) of FINRA’s By-Laws and FINRA Rules 1122 and 2010. Applicants’ disclosure failures were

¹ “RP” refers to the record page number in the certified record.

systemic and troubling. Their misconduct encompassed 220 independent disclosure failures; implicated the Forms U4 or U5 of 72 registered representatives; and extended to multiple types of disclosure events—including customer arbitrations, customer complaints, unsatisfied liens, and judgments. Dozens of the events involved Spartan’s officers, including its chief executive officer Lowry and chief administrative officer (and former chief compliance officer) Monchik, who personally failed to disclose or timely disclose 38 and 15 events, respectively. Most glaringly, these failures persisted despite repeated warnings from FINRA that the arbitrations against its officers alleging their involvement in sales practice violations must be disclosed on Forms U4 and U5—yet FINRA’s warnings went unheeded. For this misconduct, the NAC imposed appropriately remedial sanctions: a \$600,000 fine upon the firm, a two-year suspension in all capacities and a \$20,000 fine upon Lowry, and a two-year suspension in all capacities and a \$10,000 fine upon Monchik.

As they did before the NAC, Applicants contest FINRA’s liability findings by making several self-serving and dubious arguments that directly conflict with the evidence in the record and are based on invalid legal theories.² Applicants’ argument that officers can decline to disclose arbitrations if they believe that the claims lack merit is contrary to precedent and the explicit language of Forms U4 and U5. In addition, Applicants’ contention that they cannot disclose financial events until they verify them does not excuse the extreme untimeliness of these disclosures. Applicants’ reliance-on-counsel defense is not cognizable with respect to liability or

² Applicants’ brief does not challenge the NAC’s findings with respect to Spartan’s failure to disclose arbitrations and dispositions of its non-officer registered representatives or Spartan’s failure to disclose customer complaints. Thus, Applicants, placing blame on the compliance failures of a string of compliance personnel, concede that the firm failed to disclose or timely disclose registered representatives’ arbitrations, dispositions, and customer complaints in approximately 80 instances, all which alleged direct involvement with customers in sales practice violations—typically churning, making unsuitable recommendations, or engaging in unauthorized trading.

statutory disqualification (a collateral consequence of their misconduct), nor is it supported by the record. Additionally, Applicants' constitutional arguments are meritless and contrary to decades of case law. In sum, none of Applicants' arguments obviates their affirmative obligation to timely update Forms U4 and U5 and comply with FINRA rules. The Commission should therefore affirm the NAC's findings.

Moreover, the fines and suspensions the NAC imposed on Applicants, which are consistent with FINRA's Sanction Guidelines, supported by multiple aggravating factors, and reflect the staggering scope and duration of Applicants' disclosure failures orchestrated by the firm's leadership—as discussed in this brief— should be sustained. Applicants have not provided any legitimate basis to disturb the NAC's sanctions for their misconduct.

For all of these reasons, the Commission should affirm FINRA's findings of liability and sanctions.

II. BACKGROUND

A. Applicants' Background

Spartan has been a FINRA member since 2008. RP 63. Spartan's primary business is servicing approximately 5,000 retail accounts. RP 14, 63. From January 1, 2015 to December 31, 2020 ("the Relevant Period"), Spartan generated annual revenues of between \$20- \$30 million. RP 1835. As of 2021, Spartan employed 133 registered persons.³ *Id.*

Lowry entered the securities industry in 2000. RP 1826-27. He has been registered with FINRA or its predecessor since 2001, including as a general securities principal since 2005. RP 1828, 1841, 4430-32. He helped to found Spartan and serves as its chief executive officer (CEO). RP 1830–33, 1838. In addition to managing Spartan, he managed between 20 and 50

³ Both FINRA and Applicants agree that Spartan is a small firm for purposes of the sanctions analysis.

customer accounts during the Relevant Period. RP 1840. Lowry understood the importance of timely disclosures on the Form U4 and that registered persons have an independent responsibility to disclose reportable events. Nonetheless, he “never” made any decisions about disclosing the arbitrations in which he was named as a respondent, instead relying on others to make those decisions. RP 1866-68; 4545

Monchik entered the securities industry in 1993 and became a general securities principal in 2000. RP 2213; 4474; 4476. She has associated with Spartan since 2008 and has been its chief administrative officer (CAO) since June 2015, reporting to Lowry. RP 1839; 2230, 3712, 4473. She also was Spartan’s chief compliance officer (CCO) on three occasions during the Relevant Period, and when she did not hold that role, she supervised the firm’s other chief compliance officers. RP 3712; 22811. Monchik was also responsible for filings in FINRA’s Central Registration Depository (“CRD®”), an electronic, web-based system accessible to authorized users, including securities regulators and other member firms. RP 2237, 2255–56, 2447, 2449, 2451, 2453–5418. Her CRD filing responsibilities included filing Forms U4 and Forms U5 for Spartan’s registered representatives and officers. She helped decide when to amend Lowry’s Form U4, and she decided which events to disclose on her own Form U4. This task was not new to Monchik, as she played an active role in disclosure filings throughout most of her career. RP 2251-52, 2516-17.

B. FINRA’s Disclosure Rules and Relevant Interpretive Guidance

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 and must be updated as appropriate. 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-initiated arbitrations and complaints. 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.

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 Disclosure Question sections of the Forms U4 and U5 ask a series of “Yes” or “No” questions regarding certain types of events, including consumer-initiated arbitration claims, written customer complaints, unsatisfied judgments, liens, and bankruptcies, among others.

1. Arbitration-Related Disclosure Questions and Interpretive Guidance

Question 14I of the Form U4 requires a currently registered representative to disclose, among other things, whether the representative has been named as a respondent in, or been the subject of, a consumer-initiated arbitration alleging that the registered representative was involved in one or more sales practice violations. In instances where the registered

representative is a named respondent in an arbitration, as is the case in this appeal, Question 14I(1) sets forth the circumstances in which disclosure is required when a registered person is a named respondent in an arbitration. Question 7E of Form U5 contains the same disclosure requirements. A firm or registered person must disclose an arbitration by filing a Form 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 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. The Form U4 Explanation of Terms and the Form U5 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.”⁴ An affirmative answer to any of the arbitration-related questions requires the individual to provide details on Forms U4’s and U5’s Disclosure Reporting Pages (“DRPs”), such as requiring the filer to describe the allegations made in the statement of claim and allowing the filer to comment generally on the arbitration.

FINRA has published interpretive guidance to assist individuals and firms in determining whether arbitrations must be disclosed. (“Interpretive Questions and Answers”).⁵ Central to this appeal is an FAQ for Form U4 Question 14I(1) addressing when registered persons who are named in an arbitration are required to report an arbitration. The FAQ clearly states that any registered person (including an officer), named as a respondent, who is alleged in a statement of claim to have failed to supervise another in doing an act is required to report the arbitration.

⁴ <https://www.finra.org/sites/default/files/AppSupportDoc/p468051.pdf> (emphasis added).

⁵ See <https://www.finra.org/sites/default/files/Interpretive-Guidance-final-03.05.15.pdf>.

2. Customer Complaint Disclosure Questions

Questions 14I(2) and 14I(3) of Form U4 require generally that a firm and registered representative disclose a written, non-arbitration complaint that alleges a sales practice violation and damages of \$5,000 or more.

3. Financial Events Disclosure Questions

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.

C. Reportable Events that Applicants Did Not Disclose or Timely Disclose on Forms U4 or U5

1. Spartan Capital

a. Spartan’s Total Number of Disclosure Failures

Spartan did not disclose or timely disclose 220 events involving 72 registered persons, including Lowry and Monchik, during the Relevant Period, including 159 arbitration filings and dispositions, nine other customer complaints and one related settlement, and 51 financial events. RP 22773, 22783, 22793, 25320, 25330–48, 22809, 22807. The awards and settlements in the arbitrations totaled more than \$1.9 million, with those involving Lowry and Monchik totaling more than \$1.6 million and \$379,000, respectively. RP. 22795, 22800, 22801. The pending arbitrations sought millions of dollars, and many of those arbitrations alleged serious sales

practice violations such as fraud, churning, and unauthorized trading. *See, e.g.*, RP 20960–65, 21036, 21039, 21056.

b. Failures Related to Undisclosed Arbitrations

As a result of 49 consumer-initiated 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 required amendments. All the arbitrations at issue named Spartan 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. 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. RP 3897-3907.

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 (including an 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. RP 3909-15. Spartan does not challenge the NAC’s findings that it failed to disclose or timely disclose arbitration related events for its non-officer registered representatives.

c. Failures Related to Undisclosed Customer Complaints

Spartan was also required to disclose 9 customer complaints and a related settlement. Spartan does not challenge the NAC’s findings that it failed to timely disclose these matters.

d. Failures Related to Undisclosed Financial Events

The financial events that Applicants failed to disclose or timely disclose on Forms U4 comprised 44 liens, six judgments, and one bankruptcy filing. RP 22807. They involved 24 of Spartan's registered persons, including Monchik. *Id.* The judgments and liens totaled nearly \$2 million. *Id.* Spartan learned about 46 of the judgments and liens from FINRA, which had identified them from public records. *Id.* FINRA provided the creditor, date, and amount for 37 of the judgments and liens to Spartan in late July 2019, when Monchik was the firm's chief compliance officer. RP 22561–62, 22725, 22811. Spartan discovered the other five financial events on its own; for example, in January 2016 and December 2017 the firm received background checks reflecting liens against newly hired registered persons but did not disclose the liens until later in 2018. RP 22807. In all, Spartan disclosed 30 of the financial events at least 200 days after learning about them. *Id.*

2. Lowry

Lowry was named in 27 arbitrations during the Relevant Period. RP 22799. Six of the arbitrations alleged that he committed sales practice violations—for example, two customers alleged that he “churn[ed]” their accounts, and another alleged that Lowry made representations that he “knew . . . to be false.”⁶ R. 20908, 20914, 20990.

The other arbitrations alleged that he failed to supervise people who committed sales practice violations; for example, several customers each alleged that, among other things, “[t]he supervisors at Spartan Capital condoned the conduct of the broker handling the subject account and/or otherwise failed to supervise the brokers' actions and conduct.” *See, e.g.,* RP 20756.

⁶ Applicants maintain that these arbitrations were disclosed on Lowry's Form U4. Br. at 36. However, they (and related dispositions) were not disclosed timely, if at all. *See* RP 3917-18.

Of those 27 arbitration filings, Lowry never disclosed 22 and untimely disclosed four— between 400-1,000 days late. *Id.* Twelve of the arbitrations resulted in awards or settlements of at least \$15,000. *Id.* He never disclosed eight of those dispositions, and he untimely disclosed the other four. *Id.* In total, he never disclosed 30 events relating to arbitration and untimely disclosed eight, by an average of 538 days.

3. Monchik

Monchik was named in 12 arbitrations during the Relevant Period, all alleging that she failed to supervise people who committed sales practice violations. RP 22801. For example, four arbitrations specifically alleged that “Monchik failed to adequately supervise the firm’s registered representatives” and another customer alleged that “Monchik ... failed to adequately supervise Claimant’s account.” RP 3934-37. She never disclosed 11 of the filings and disclosed the twelfth 562 days late. RP 22801. Three of the arbitrations resulted in an award or a settlement of at least \$15,000, but she never disclosed two settlements and belatedly disclosed the arbitration award 320 days late. *Id.*

D. Applicants Were Repeatedly Warned about Their Disclosure Shortcomings

1. Warnings to Disclose Arbitrations and Dispositions Involving Officers

FINRA staff from multiple FINRA departments, including: (1) FINRA’s Registration and Disclosure Department (currently known as the Disclosure Review Group within FINRA’s Credentialing, Registration, Education and Disclosure Department or CRED) (“Disclosure Review Group”); (2) FINRA’s Department of Member Supervision (“Member Supervision”); and (3) FINRA’s Department of Enforcement (“Enforcement”), repeatedly warned Applicants that the arbitrations against its officers must be disclosed on Forms U4 and U5. Yet FINRA’s warnings went unheeded.

a. Member Supervision Twice Issued Cautionary Actions to Spartan for Not Reporting Arbitrations on Officers' Forms U4 and U5

Member Supervision was explicit with Applicants that customer arbitrations naming the firm's officers and alleging their involvement in sales practice violations through a failure to supervise must be disclosed. Indeed, Member Supervision issued the firm two cautionary actions to Spartan on that very issue, first in 2017 and, again, in 2018.

The first cautionary action arose from the 2016 cycle exam of Spartan. Near the conclusion of the exam, in February 2017, Member Supervision sent Spartan an examination report. RP 20605-18. 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 Spartan's failure to disclose three arbitrations on Monchik's Form U4 with similar allegations against her.⁷ RP 20610. Member Supervision rejected Spartan's position that these arbitrations were not required to be disclosed, issuing, on August 31, 2017, a disposition letter with cautionary action on the failure to disclose the arbitrations. RP 20667-80.

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 a particular arbitration on the Forms U4 of Lowry and Spartan's former CCO, Yvonne Owens. RP 20683-86. Spartan contested Member Supervision's finding, writing that, in its view, the "allegation' must be bona fide" to trigger an obligation to disclose an arbitration. RP 20687. Spartan followed up with a letter dated June 6, 2018, in which it argued that "conclusory, generalized allegation do not equate to an allegation that either Mr. Lowry or Ms. Owens were

⁷ As discussed in detail below, at least one of the arbitrations that FINRA told Applicants needed to be disclosed contained identical language to the Wampler arbitration Applicants argue they made a good faith determination not to disclose.

individually *involved* in one or more sales practice violations,” and that because the Statement of Claim “conclusively lumps Mr. Lowry, Ms. Owens and the other Applicants together for purposes of conclusively asserting wrongdoing,” the arbitration need not be disclosed by them. RP 20719-24.

FINRA staff rejected Spartan’s arguments, issuing a disposition letter on July 20, 2018, with a second cautionary action for failing to disclose the arbitration on the Forms U4 or U5 of officers, including Lowry. RP 20725-28.

b. Disclosure Review Group Repeatedly Informed Applicants that Arbitrations Against Officers Must be Disclosed

The Disclosure Review Group also sent Disclosure Letters to Spartan through CRD concerning the Forms U4 and U5 of Lowry, Monchik, and other officers inquiring as to why each had failed to disclose on their Forms U4 and U5 customer arbitrations in which they were named. *See, e.g.*, RP 21483-21651.

The Disclosure Review Group also sent other written communications to Spartan about the disclosure of arbitrations alleging its officers failed to supervise. On January 4, 2017, the Disclosure Review Group sent the complete text from the Form U4 and U5 Interpretive Questions and Answers (discussed further below) to Spartan’s then-CCO, Anthony Monaco, in an attempt to secure Applicants’ compliance with their arbitration disclosure obligations. RP 21699-21700. Again, on March 7, 2019, the Disclosure Review Group 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 the Form U4 disclosure question for arbitrations “is allegation driven” so “Please review the disclosure questions, the [Statement of Claim] allegations, published guidance then make the required disclosure.” RP 21735-38.

On August 24, 2016, the Disclosure Review Group filed Forms U6 for Lowry and Monchik reporting the award against them in an additional arbitration filing and subsequent resolution, but Applicants failed to disclose this on Lowry's and Monchik's Forms U4 until, respectively, 56 and 212 days *after* FINRA filed the Forms U6.⁸ RP 22800-01. Similarly, the Disclosure Review Group filed, on October 2, 2018, a Form U6 reporting the award against Lowry in another arbitration, but Spartan and Lowry did not amend Lowry's Form U4 to disclose the arbitration or its resolution for another 499 days. Finally, the Disclosure Review Group filed, on October 27, 2020, a Form U6 reporting a third arbitration against Lowry. These Form U6 filings reinforced FINRA's concern over Applicants' refusal to disclose those arbitrations and, for two arbitrations, resulting awards. RP 4577-79, 4591-93, 4664-69.

c. Enforcement Warned Applicants that its Officers Must Disclose the Arbitrations

Enforcement also repeatedly warned Applicants that arbitrations against its executive officers alleging their involvement in sales practice violations must be disclosed on the officers' respective Forms U4 or U5. Enforcement sent Spartan, Lowry, and Monchik Rule 8210 Request Letters in February 2019, requiring them to explain why they did not disclose the arbitrations on executive officers' Forms U4, including those that were the subject of cautionary action. RP 22541-556. 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 failure to amend or timely amend their Forms U4 to disclose the arbitrations filed against them. RP 22685-86, 22687-88.

⁸ Form U6 is used by the SEC, self-regulatory organizations, and state securities regulators to report disciplinary actions against broker-dealers and associated persons. FINRA also uses the form to report final arbitration awards against broker-dealers and associated persons. *See* <https://www.finra.org/registration-exams-ce/broker-dealers/registration-forms>. Events reported on a Form U6 are generally available to the public in BrokerCheck.

Thus, notwithstanding repeated warnings from multiple FINRA departments over a several-year period, 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 officers until after FINRA's Office of Hearing Officers issued its Hearing Panel Decision ordering them to do so. *See, e.g.*, RP 25609.

2. Warnings to Disclose Reportable Financial Events

Likewise, Spartan was also on notice at the beginning of the Relevant Period that its lax reporting of registered representatives' financial events was under regulatory scrutiny. In January 2015, the Commission sent Spartan an examination deficiency letter informing the firm that the Commission, using publicly available information, had identified 25 Spartan employees with judgments, liens, or bankruptcies that the firm had not disclosed on the registered representatives' Forms U4. The Commission instructed Spartan to take "immediate corrective action." RP 20545-556. Spartan responded that it would immediately start performing quarterly checks on all currently employed registered representatives. RP 20557-574. It did not do so.

Similarly, Member Supervision notified Spartan of additional financial disclosure failures in March 2016, February 2017, and April 2018. RP 20575-586, 20605-617, 20689-702. In response to the Commission'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. *See, e.g.*, RP 20587-603, 22609-12, 22667-70.

III. PROCEDURAL HISTORY

On October 19, 2021, Enforcement filed a three-cause Complaint against Applicants. RP 1-44. Cause one alleges that Spartan failed to amend or to timely amend Forms U4 and Forms U5 in 220 instances, in violation of Article V, Sections 2(c) and 3(b) of FINRA's By-Laws and FINRA Rules 1122 and 2010.⁹ Cause one further alleges that Spartan's failure to amend, or to timely amend, the Forms U4 or Forms U5 of its officers to disclose customer arbitrations and dispositions was willful.

Cause two alleges that in 38 instances, Lowry willfully failed to amend, or timely amend, his Form U4 to disclose arbitrations and dispositions of arbitrations, in violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

Cause three alleges that in 15 instances, Monchik willfully failed to amend, or timely amend, her Form U4 to disclose arbitrations and the dispositions of arbitrations, in violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

The Hearing Panel issued a decision on March 28, 2023. RP 25319-25402. 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 affirmative steps to cure its disclosure deficiencies and update the Forms U4 of Lowry, Monchik and others to disclose the arbitrations, dispositions, and written customer complaints at issue. 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

⁹ The Complaint originally alleged 223 instances of disclosure violations, but Enforcement reduced the number to 220 prior to the hearing.

and fined her \$30,000. Finally, the Hearing Panel concluded that Applicants were subject to statutory disqualification.

Spartan, Lowry, and Monchik appealed to the NAC. RP 25403-06. The NAC affirmed the Hearing Panel's findings of liability and affirmed the censure and the fine imposed on Spartan as well as the suspensions imposed on Lowry and Monchik. RP 26081-122. The NAC, however, reduced the fine to \$20,000 as to Lowry and \$10,000 as to Monchik. This appeal followed.

IV. DISCUSSION

The record conclusively demonstrates that Applicants engaged in a years-long course of deliberate misconduct in violation of one of the core regulatory obligations of broker-dealers and registered representatives: the requirement to timely disclose registration-related information of material importance to the investing public, member firms, and regulators. The Commission should sustain the NAC's findings of violations against the Applicants and the sanctions imposed on them. Applicants engaged in conduct that violated FINRA rules, FINRA applied its rules in a manner consistent with the purposes of the Exchange Act, and FINRA imposed sanctions that are neither excessive nor oppressive and that do not impose an unnecessary or inappropriate burden on competition. 15 U.S.C. § 78s(e).

The NAC's findings of liability are sound and fully supported by the record, and the sanctions the NAC imposed are appropriately remedial. The troubling nature of Applicants' misconduct is apparent. Applicants failed to disclose or timely disclose hundreds of reportable events despite repeatedly being reminded by regulators of their disclosure obligations. Their serious misconduct and grave violations of the ethical standards central to the self-regulation of the securities markets require meaningful sanctions. Applicants provide no basis on which the

Commission should vacate or modify the sanctions, which are abundantly supported by record evidence. The Commission should uphold the NAC's findings and affirm the sanctions.

A. The NAC Correctly Found that Applicants Failed to Disclose, or Timely Disclose, Customer Arbitrations, Dispositions, Customer Complaints, and Reportable Financial Events in Violation of FINRA Rules

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 FINRA's 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. "Failing to timely amend a Form U4 when required violates [] the high standards of commercial honor and just and equitable principles of trade to which FINRA holds its members and their associated persons under [] FINRA Rule 2010." *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *15 (Mar. 15, 2016), *aff'd*, 672 F. App'x 865 (10th Cir. 2016). 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 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).

Each registered representative is responsible for the completeness and accuracy of the information on his or her Form U4. *See Scott Mathis*, Exchange Act Release No. 61120, 2009 SEC LEXIS 4376, at *16 (Dec. 7, 2009) (“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 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).

As discussed above, the record abundantly supports the NAC's finding that Spartan willfully 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. The

record further supports that 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 respondent, in violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010. Finally, the record supports the finding that 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 respondent, in violation of Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.

B. Applicants are Subject to Statutory Disqualification Because They Willfully Failed to Disclose Material Information on Forms U4 and U5

The NAC also correctly concluded that Applicants are subject to statutory disqualification because they willfully failed to disclose or timely disclose the aforementioned events on the Forms U4 and U5 of its officers as well as Lowry and Monchik's own Forms U4. A person is subject to "disqualification" with respect to FINRA membership, or association with a FINRA member, if that person is subject to any "statutory disqualification" under Section 3(a)(39) of the Securities Exchange Act of 1934 ("Exchange Act"). FINRA By-Laws Article III, Section 4. Section 3(a)(39)(F) of the Exchange Act provides that a person is statutorily disqualified if such person has, among other things,

willfully made or caused to be made in any application . . . to become associated with a member of . . . a self-regulatory organization . . . any statement which was at the time, and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application . . . any *material fact* which is required to be stated therein.

15 U.S.C. § 78c(a)(39)(F) (emphasis added). This statutory provision applies to a representative or member firm who has willfully provided false or misleading statements on a Form U4 with respect to a material fact or who willfully failed to amend a Form U4 with material information

that is required 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. Arbitrations that Allege Officers' Involvement in Sales Practice Violations is Material Information

“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.” *Dep't of Enf't v. Holeman*, Complaint No. 2014043001601, 2018 FINRA Discip. LEXIS 12, at *23 (FINRA NAC May 21, 2018), (citations omitted), *aff'd*, 2019 SEC LEXIS 1903, *aff'd*, 833 F. App'x 485. Information concerning investment-related, consumer-initiated arbitrations that allege a registered representative—including an officer—was involved in sales practice violations is important to regulators, investors, and potential employers. Thus, there is no doubt—and Applicants do not challenge—that the undisclosed or late-disclosed arbitrations and related dispositions are material.

2. Applicants' 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.’” *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *2641 (Nov. 9, 2012) (further citations omitted). An individual willfully fails to disclose reportable events on a Form U4 or Form U5 when he “intentionally committed the act which constitutes the violation” and “need not also be aware that he is violating the Rules or Acts.” *Elgart v. SEC*, 750 F. App'x 821, 823-824 (11th Cir.

2018) (respondent subject to statutory disqualification for willfully failing to disclose five outstanding tax liens); *see also McCune*, 672 F. App'x at 868-689 (respondent subject to statutory disqualification for willfully failing to disclose two bankruptcy petitions and four unsatisfied tax liens on Form U4); *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 were willful, as were Lowry’s and Monchik’s failures to amend, or timely amend, their own Forms U4. Applicants 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. Applicants also do not dispute that they made a conscious decision not to disclose those events. Applicants were aware of FINRA’s position that these arbitrations and dispositions needed to be disclosed, yet persistently refused to do so.

The NAC correctly concluded that the record supports a finding that Applicants' numerous failures to disclose or timely disclose reportable events were at a minimum extremely reckless and, thus, willful. *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).¹⁰ Thus, the NAC correctly concluded that the Applicants are subject to statutory disqualification.

C. Applicants' Arguments Against Liability Are Without Merit

Applicants make several arguments in which they attempt to undermine the NAC's liability findings. Their arguments miss the mark and should be rejected.

1. Applicants Misapprehend FINRA's Guidance for Arbitration Disclosures

As they did below before the Hearing Panel and the NAC, Applicants reassert their contention that "[f]or Officer Disclosures . . . FINRA's Guidance adds additional legal elements for determining whether or not the arbitration is disclosable for the individual." Appellants/Respondents Brief in Support of Their Application for Review ("Br.") at 16. In support of this contention, Applicants rely on a strained interpretation of FINRA guidance as well as a misrepresentation of testimony provided by FINRA staff, neither of which is persuasive.

The NAC correctly determined that the language of Form U4 and the Explanation of Terms, including an example provided in the Form U4 FAQ, require disclosure of the arbitrations at issue. We note at the outset that contrary to Applicants' attempts to create a new standard, there is no distinct disclosure standard specifically for officers. Form U4 and Form U5

¹⁰ As set forth below, Applicants' claim of reliance on counsel has no merit and cannot serve as a basis to undercut these findings.

require disclosure of an “investment-related consumer-initiated arbitration” when a registered representative—officer or not— is named as a respondent, and the statement of claim alleges that the registered representative was “involved in one or more sales practice violations.”

Thus, the plain language of Form U4 and Form U5 requires disclosure when a statement of claim alleges that a named respondent has failed to supervise. Because the arbitrations at issue clearly allege that Spartan’s officers, including Lowry and Monchik, failed to supervise specific broker(s) who engaged in sales practice violations, there is no question that these arbitrations should be disclosed.

2. Applicants’ “Good Faith Determination” Defense Is Not Applicable

Applicants also rely on the hearing testimony of Bernard Howard, a director in Disclosure Review, to support their assertion that Applicants can, on a case-by-case basis, apply a good faith determination in deciding whether to disclose an arbitration. *Id.* at 4-5. A complete reading of the testimony, however, reveals that Applicants have misconstrued his testimony. The director testified unequivocally that if a named respondent is alleged to have failed to supervise the conduct, then “that would be a specific allegation that would require disclosure.... [T]he expectation is, clearly, they would need to disclose.” RP 1808. Only when given a hypothetical in which a claim describes a CEO as having broad supervisory duties over a firm, and no specific failure to supervise the account representative, did the witness testify that applying good faith might be appropriate. RP 1809-10. As the record reflects, the broad hypothetical relied on by Applicants—permitting a firm to make a good-faith determination only when allegations use imprecise legal terminology about a named respondent’s involvement in a sales practice violation—is not the case here. Rather, the statements of claim in the instant record contain no

instances where the allegations used imprecise legal terminology that may allow for a good faith determination.

Simply put, there is no basis to invoke “good faith” in a determination of which arbitrations to disclose when the statement of claim specifically alleges Lowry, Monchik, and other officers’ failures to supervise. The Form U4 FAQ provides for a “good faith” determination of whether an arbitration must be disclosed only when the allegations do not use “precise legal terminology.”¹¹ See Form U4 and U5 Interpretive Questions, Question 14I(1), FAQ 4 (“The fact that the claim does not use the legal term ‘failing to reasonably supervise’ does not alleviate the . . . obligation to report 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.”). This narrow applicability of when a “good faith determination” can play a role in Forms U4 and U5 disclosure determinations is just common sense: a claim alleging involvement in a sales practice violation by unmistakably asserting that a respondent “failed to supervise”—such as the undisclosed arbitrations at issue here against Lowry, Monchik, and other Spartan officers—triggers a reporting obligation and leaves no room to determine otherwise.

The Wampler statement of claim to which Applicants point—and which they failed to disclose—does not support their arguments. See Br. at 21. Applicants state that the Wampler claim made no specific allegation that Lowry failed to supervise the broker who engaged in the sales practice violation. *Id.* In that claim, however, it is unambiguous that Lowry is named as a respondent, was alleged to be responsible for supervising Spartan’s brokers, and was alleged to have failed to supervise the registered representative accused of churning the client’s account and

¹¹ The only reference to “good faith” in Form U4 and Form U5 is in connection with a firm’s determination whether damages not expressly stated in a written customer complaint are less than \$5,000.

making unsuitable recommendations. *See* RP 20764 (“The supervisors at Spartan Capital condoned the conduct of the broker handling the subject account and/or otherwise failed to supervise the brokers’ actions and conduct.”) Indeed, the language in this statement of claim contains language identical to that of another arbitration that Applicants —ultimately but reluctantly —disclosed. *See, e.g.,* 20764, 20783.¹² There is no principled basis to distinguish between the allegations in these other cases. Applicants’ failure to disclose arbitrations with the same allegations as in arbitrations that the Applicants have disclosed reflects a culture of non-disclosure and bad faith.¹³

Even if a good faith determination standard applied to the disclosures at issue (it did not), Applicants have not shown that they satisfied that standard. Indeed, the several instances they argue demonstrate that Monchik and Spartan made good faith determinations about officer disclosures are not supported by record evidence.¹⁴ Moreover, these cherry-picked instances are

¹² That identically worded statement of claim was the subject of FINRA’s February 2017 exam report, subsequent cautionary action, and the filing of a Form U6. *See* RP 20605-18, 20667-20680, 21673-4.

¹³ Furthermore, the Disclosure Review Group responded by email to Monchik’s decision not to disclose the Wampler arbitration by asking Monchik to “please review” a highlighted excerpt from the Form U4 FAQ focusing on the definitions of “involved” and “sales practice violations,” implying that the Disclosure Review Group had a different view as to whether the arbitration should have been disclosed. RP 21671.

¹⁴ On pages 23-25 of their Brief, Applicants attempt to pick apart the examples listed in the NAC’s Decision. This attempt fails. For example, Applicants argue that the FINOP referenced in LC’s statement cannot be liable for a failure to supervise because the license does not allow for supervision. Br. at 24. This is yet another example of Applicants ignoring the fact that the disclosure requirement is allegation driven. The FINOP, as a named respondent, was alleged to have failed to supervise the claimant’s brokers, resulting in damages. RP 20934. In addition, MF’s statement of claim reads differently than quoted by Applicants. It reads: “Respondent Spartan Capital Securities, LLC and the above identified Respondents, in their capacities as control and supervisory personnel, failed to supervise the firm’s registered representatives and, therefore, *permitted the Claimant’s account to be abused in the manner described herein*” – which included churning. RP 20974 (emphasis added).

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 in the face of repeated warnings from FINRA that they were required to do so.¹⁵

Furthermore, the text of Form U4 Question 14I and the Form U4 FAQ make clear that the arbitration-disclosure requirement is allegation driven—meaning that it is the allegation of involvement in a sales practice violation, which includes a failure to supervise, that triggers the obligation to disclose. Applicants instead improperly made a “good faith” determination that the arbitration need not be disclosed because, for example, they believed the failure to supervise allegation lacked specific information or was factually impossible. 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.

3. Applicants Did Not Demonstrate a Good-Faith Reliance on Counsel

Applicants similarly maintain that they relied on experienced securities counsel, Messrs. O’Brien, Fiorovanti, and Rabinowitz, or consultants who reviewed each statement of claim and made a good faith determination as to whether or not the claim was reportable.

Applicants’ arguments about reliance on counsel and their review of all individual statements of claim are not supported by the record. To prove reliance on counsel, Applicants

¹⁵ Monchik testified that Applicants interpreted a notation marking a disclosure letter as “Resolved” to mean that Disclosure Review agreed that the arbitration was not reportable. RP 2430. However, disclosure letters associated with five arbitrations against Lowry and three against Monchik marked “Resolved” became the subject of a cautionary action in August 2017. RP 20609-10; 20762, 20678. Moreover, even when disclosure letters to Lowry were marked as “Unresolved,” Spartan and Lowry did not disclose them. RP 3939. These facts undermine Applicants’ position.

must show that 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). As the Commission has held, “it isn’t possible to make out an advice-of-counsel defense without producing the actual advice from an actual lawyer”—a respondent’s mere “say-so” is insufficient. *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *40-41 (Nov. 14, 2008), *aff’d*, 347 F. App’x 692 (2d Cir 2009).

Applicants did not prove those elements. First, Applicants did not disclose relevant facts to their counsel. For example, they did not tell O’Brien and Rabinowitz that FINRA issued two cautionary action letters for failing to disclose arbitrations, and they told Fiorovanti that FINRA’s registration department agreed with Applicants’ position, which was not true. RP 3025–28, 3225–36, 3534.

Second, Applicants did not seek advice about each arbitration at issue. Lowry recalled discussing only two arbitrations with counsel—who advised him to disclose the events. RP 1912, 2080–81, 3367. Monchik could not recall who gave any advice about disclosing settlements. RP 3367. And Spartan, in response to a Rule 8210 request in September 2020, four months before the end of the Relevant Period, for information about “each instance in which [the firm] relied on legal advice to determine whether to disclose an arbitration claim,” identified fewer than ten arbitrations. RP 22659, 22661–66.

Third, Applicants did not receive advice not to disclose each arbitration at issue. O’Brien could not recall advising Spartan about any specific arbitrations, Fiorovanti testified that he gave advice about only seven claims, starting in “May or June or 2018,” and Rabinowitz testified that

Lowry and Monchik “probably . . . should have made disclosures” of arbitrations that were listed in FINRA’s cautionary action letters. RP 3022, 3227, 3530–3.

Fourth, Applicants did not rely on any advice in good faith. Fiorovanti provided some advice after Spartan’s thirty-day window for disclosing the arbitrations in question had expired. RP 3579–81. And to the extent that Applicants received advice that they did not need to disclose arbitrations, they did not reconcile such advice with FINRA’s authority and guidance. For example, Rabinowitz testified that he considered “not just the four corners of what was alleged in the complaint” but also “where the complaints came from”—meaning who filed them—which is contrary to authority, including the plain language of Form U4, that allegations alone determine whether or not they should be disclosed. RP 3192–93, 3211–12.

Thus, the NAC correctly rejected Applicants’ arguments about reliance on counsel, and correctly ruled that Spartan violated Article V, Section 3(b), and that Applicants each violated Article V, Section 2(c), and Rules 1122 and 2010.

4. The NAC Did Not Err in Its Findings Concerning Spartan’s Financial Reporting Obligations

Although it is undisputed that Spartan did not timely disclose financial events for Spartan’s registered representatives, Applicants maintain that the NAC erred in its conclusion that they should have filed Form U4 disclosure updates for unverified and incomplete third-party information concerning potential reportable financial events based upon information sent to them by FINRA. Br. at 30. They maintain that Spartan and its staff took reasonable steps to verify the

accuracy of this third-party information before it reported it. The Commission should flatly reject these claims.¹⁶

There is no justification Spartan's delay—more than 200 days on average from notice of the financial events. And when Spartan discovered events on its own, it was woefully late in disclosing them—for example, the firm discovered two liens on background checks in 2016 and 2017 yet disclosed them 439 and 1,009 days late. Spartan also argues that it took corrective action by hiring a compliance assistant in early 2019—four years after the SEC first noted its concerns. This also ignores the fact that many disclosures were still untimely after the compliance assistant joined Spartan—some as late as 2020. The NAC correctly ruled that Spartan violated Article V, Sections 2(c) and 3(b), and Rules 1122 and 2010 with respect to failing to disclose these financial events.

D. The Sanctions Imposed are Consistent with FINRA's Guidelines, and the Public Interest, and are Neither Excessive Nor Oppressive

The Commission should affirm the NAC's sanctions, which are well supported and neither excessive nor oppressive. Section 19(e)(2) of the Exchange Act provides that the Commission may eliminate, reduce, or alter a sanction if it finds that the sanction is excessive, oppressive, or imposes a burden on competition not necessary or appropriate to further the purposes of the Exchange Act. *See Jack H. Stein*, 56 S.E.C. 108, 120-21 (2003). In considering whether sanctions are excessive or oppressive, the Commission gives significant weight to whether the sanctions reflect the framework provided in FINRA's Sanction Guidelines. *See Vincent M. Uberti*, Exchange Act Release No. 58917, 2008 SEC LEXIS 3140, at *22 (Nov. 7, 2008) (noting that the Guidelines serve as a "benchmark" in Commission's review of sanctions).

¹⁶ Applicants contend that because the liens involved registered representatives and not the firm, it was reasonable for them to determine their accuracy. However, as discussed above, even if they were required to confirm, Spartan's excessive delay in disclosure was not reasonable.

When a small firm 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.”¹⁷ 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.¹⁸

Contrary to Applicants’ assertions, the NAC properly considered seven principal considerations when determining the severity of Applicants’ misconduct and what appropriate sanctions to impose: (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.¹⁹ For individuals, there is an eighth principal consideration: whether a lien or judgment that was not timely disclosed has been satisfied.²⁰ Applying these considerations, the NAC properly concluded that aggravating factors predominate for Spartan, Lowry, and Monchik.

¹⁷ See *FINRA Sanction Guidelines* at 55 (2022).

¹⁸ *Id.* at 108.

¹⁹ *Id.* at 55, 108.

²⁰ *Id.* at 108.

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' 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 Applicants' 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 \$370,000, respectively. RP 3917-19. The judgments and liens totaled more than \$1.9 million, the pending arbitrations involved millions of dollars, and the nine customer complaints alleged more than \$400,000. RP 3943-45.

Third, the duration of Applicants' delinquency spanning nearly six years is also aggravating. Notably, Applicants 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 Applicants to disclose them.

Applicants' failures to disclose resulted in concealing information and misleading regulators. Applicants 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, Applicants failed to disclose or timely disclose hundreds of reportable events, evincing a pattern of misconduct.²¹ Applicants disregarded ongoing warnings and the frequent receipt of guidance from FINRA staff and the Commission. FINRA staff sent Applicants multiple disclosure letters about unreported arbitrations and then followed up with cautionary actions and Forms U6 when they failed to correct deficiencies. Applicants engaged in their misconduct over an extended period and did so recklessly.²² Applicants tried to lull regulators into inactivity by promising to systematically conduct background checks but did not do so.²³ Applicants had ineffective compliance controls in place during the Relevant Period.²⁴ In addition, Applicants have not accepted responsibility for their misconduct. *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 approach to regulatory compliance and its role in protecting customers.").

²¹ *Guidelines*, at 7 (Principal Considerations No. 8).

²² *Id.* at 7-8 (Principal Considerations Nos. 9, 13).

²³ *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.").

²⁴ *Id.* at 7 (Principal Considerations No 5).

1. Applicants' Arguments Against Sanctions for Lowry and Monchik are Unpersuasive

Applicants contend that the two-year suspensions imposed on Lowry and Monchik are unprecedented and excessive, given that they acted in good faith, were victims of “shotgun pleadings,”²⁵ and relied on numerous outside counsel and consultants when making their disclosure determinations. Br. 34. As discussed in detail below, Applicants’ position is not supported by the record.

As an initial matter, Applicants argue that the finding that Lowry and Monchik are statutorily disqualified is a punitive sanction that is tantamount to the death penalty. However, the statutory disqualifications result from Applicants’ 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”).

Applicants argue that Lowry and Monchik did not act recklessly or in bad faith. They argue that “they reviewed each statement of claim’s allegations; reviewed FINRA Guidance; consulted with experienced legal counsel; documented their decision-making process and notified [FINRA] of their good faith determination.” Br. at 36. As discussed in detail above, these assertions are not borne out in the record. As noted by both the Hearing Panel and the NAC, “Lowry and Monchik set the tone for the Firm’s lax regulatory culture and sought to

²⁵ This is not an excuse. Lowry and Monchik’s disclosure obligations depend on what the claim alleges, not who filed it or the number or frequency of such claims. In any event, some of the arbitrations filed by non-attorney representatives resulted in arbitration awards or settlements against Lowry and Monchik.

conceal Firm executives' arbitration-related disclosures (including their own arbitration-related disclosures) at all costs." RP 26121. Lowry and Monchik failed to disclose arbitrations despite clear and specific allegations and ignored FINRA's many warnings about their obligations to disclose those events. There is no credible evidence showing that they acted in good faith.

Applicants reassert that Lowry and Monchik reasonably relied on legal advice. While reasonable reliance on competent legal advice can be mitigating, Applicants did not prove such a defense. As discussed in detail above, Applicants have provided no legal advice for dozens of arbitrations against Lowry, Monchik, or other Spartan officers, and do not explain how such advice was reasonable given conflicting warnings from FINRA and the plain language of Form U4 and the Form U4 FAQ. In light of these facts, the NAC properly concluded that Applicants' claims of reliance of counsel are not mitigating.

Applicants also erroneously assert that they did not attempt to conceal their misconduct. The record does not establish that they informed FINRA about each of the 27 arbitrations naming Lowry and the 12 arbitrations naming Monchik, and often ignored FINRA's directives to disclose on the occasions they did. Applicants 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.

Applicants next argue that Lowry and Monchik's conduct did not result in an injury to the investing public. Br. at 37. While there is no specific evidence of harm, in general, "[t]he failure to properly file Forms U4 and U5 harmed both FINRA and the investing public by depriving them of material information." *Wedbush Sec., Inc.*, 2014 FINRA Discip. LEXIS 40, at *58. And, in any event, the lack of customer harm is not mitigating. *See KCD Fin. Inc.*, Exchange Act Release No. 80340, 2017 SEC LEXIS 986, at *48 (Mar. 29, 2017). Moreover, contrary to

Applicants' assertions, Lowry and Monchik's lack of monetary gain provides no mitigative weight. *See 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 . . ."). Nor is the fact that their misconduct did not delay a regulatory investigation or result in a statutory disqualified individual remaining associated with the firm.

Finally, relying on a misreading of Mr. Howard's testimony, Applicants contend that a lower suspension is warranted on the specious grounds that the decisions whether to disclose the officer related arbitrations and dispositions in this case were "not black and white." Br. at 38. As explained above, however, while a good faith analysis of the disclosure obligation may be required in narrow instances—such as when an arbitration's allegations use imprecise legal terminology—that is not the case here. The record supports the NAC's conclusion that the statements of claim naming Lowry and Monchik clearly and unequivocally allege failures to supervise.

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. 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. 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 \$370,000. Considering the

aggravating factors, the absence of mitigation, and that the Guidelines recommend suspensions of up to two years or a bar, the sanctions imposed on Lowry and Monchik are not excessive or oppressive and should be affirmed.²⁶ Moreover, FINRA’s sanctions are remedial in nature, not punitive. Lowry’s and Monchik’s dishonest actions signal that they pose a threat to investors, firms, and other market participants. The sanctions imposed by the NAC give Lowry and Monchik a strong incentive to contemplate their misconduct and recognize the critical importance of timely and honest disclosures to all FINRA stakeholders.

2. Applicants’ Arguments for a Reduced Fine for Spartan Are Unpersuasive

Applicants contend that the fine against Spartan is excessive because it exceeds the Guidelines’ range for small firms and is “unprecedented.”²⁷ But the Guidelines direct the adjudicator to consider a higher fine when “aggravating factors predominate,” as they do here.²⁸ 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. This egregious and systemic misconduct—misconduct that occurred over an extended period—supports a sanction above the recommended range.

²⁶ Applicants 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 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).

²⁷ Spartan concedes that a minor sanction would be appropriate for the firm. Br. at 42.

²⁸ *Guidelines*, at 55.

Indeed, 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.²⁹ Spartan’s annual revenues during the Relevant Period were between \$20 and \$30 million. Thus, the NAC appropriately concluded that a fine of \$600,000 — two to three percent of the firm’s annual revenue—an amount that will serve as a meaningful deterrent and that is appropriately remedial given the scope and breadth of Spartan’s misconduct.

Applicants also contend that the Hearing Panel failed to consider Spartan’s corrective measures. First, Applicants repeat that Spartan acted in good faith, but—as explained above—the NAC properly rejected that claim as having no support in the record. Second, Applicants claim that Spartan performed background checks and attempted to obtain information about judgments and liens. However, while Spartan promised the Commission and FINRA that it would conduct periodic background checks, it failed to follow through with these checks for several years. And while Spartan eventually obtained information about financial events, it did not timely disclose those events. For example, the firm took nearly two months to disclose a judgment against Monchik herself. RP 3944. Applicants claim that Spartan took corrective measures in 2019 by hiring a Registration Specialist. However, 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 Spartan took its disclosure obligations seriously and thus is not mitigating.

Finally, Applicants blame 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

²⁹ *Id.* at 2, 3 n.3.

of them had already existed for more than a decade yet the firm had not taken steps to detect them. For all these reasons, the censure and the \$600,000 fine against Spartan are appropriately remedial and serve to protect the investing public.

E. Applicants' Constitutional Arguments are Without Merit

Federal courts and the Commission have long affirmed the securities industry's system of self-regulation and rebuffed attempts to impose on self-regulatory organizations, such as FINRA, constitutional requirements that are reserved for officers or agents of the federal government. The arguments Applicants raise in their brief do not justify overturning these longstanding precedents. Rather, precedent serves to reinforce the fact that FINRA is private and not part of the federal Government, that its hearing officers thus are not subject to the Constitution's appointment requirements, and that FINRA is not a state actor such that its ability to discipline FINRA members and their associated persons through its internal proceedings is constrained by the Seventh Amendment. Applicants' arguments concerning the constitutionality of the process by which FINRA disciplined them lack merit.³⁰

1. FINRA Is a Private Entity, and Its Hearing Officers are Not Subject to Constitutional Appointment Requirements

Applicants maintain that FINRA's use of "non-government appointed Hearing Officers" violates the Appointments Clause of the Constitution. Br. at 10. This argument fails because

³⁰ The NAC concluded, appropriately, that Applicants, as a threshold matter, waived their constitutional arguments because they did not assert them before the hearing panel or in their notice of appeal to the NAC. See FINRA Rule 9311(e); see also *Newport Coast Sec., Inc.*, Exchange Act Release No. 88548, 2020 SEC LEXIS 911, at *39 (Apr. 3, 2020) ("Newport failed to exhaust its claim that the manner of selection of FINRA's adjudicators violates the Appointments Clause by failing to raise the claim before FINRA.").

constitutional appointment requirements do not apply to employees of a private, self-regulatory organization such as FINRA.³¹

The Appointments Clause applies to “Officers of the United States” holding principal offices “established by Law.” U.S. Const. art. II, § 2, cl. 2. Constitutional appointment requirements therefore apply only to “‘Officers of the United States,’ *a class of government officials*” employed by the federal Government.³² *Lucia v. SEC*, 585 U.S. 237, 241 (2018) (emphasis added).

Applicants have not established that FINRA is part of the “Government itself” for constitutional purposes. *See Lebron v. Nat’l R.R. Passenger Corp.*, 513 U.S. 374, 396 (1995). Under the strict framework established in *Lebron*, a private entity is considered “part of the Government” for constitutional purposes only when the Government “create[d] [the] corporation” for “governmental objectives” and “retains for itself permanent authority to appoint a majority of the directors of that corporation.” *Id.* at 397, 400. FINRA, however, does not possess any of those unique, governmental characteristics: the Government did not create FINRA; it does not appoint any members of FINRA’s board; and it does not fund or otherwise control it. *See Kim v. FINRA*, 698 F. Supp. 3d 147, 157-58, 162 (D.D.C. 2023).

³¹ FINRA is a private, self-regulatory organization and registered national securities association under the Exchange Act. *Black v. SEC*, 125 F.4th 541, 543 (4th Cir. 2025).

³² Applicants, quoting *Buckley v. Valeo*, 424 U.S. 1, 126 (1976), claim that “[a]nyone who wields ‘significant’ executive power is an Officer of the United States and ‘must be appointed in the manner prescribed by [the Appointments Clause].’” Br. at 11. *Buckley*, however, clearly predicated application of the Constitution’s appointment requirements on the condition that an “Officer of the United States” must first be a federally employed Government official. *See Buckley*, 424 U.S. at 125-26 (defining “Officers of the United States” to include “all persons who can be said to hold an office under the government”). Courts have rejected efforts to extend *Buckley* to private entities in the manner Applicants propose. *See Nat’l Horsemen’s Benevolent & Protective Ass’n v. Black (“Horsemen’s IP”)*, 107 F.4th 415, 439 (5th Cir. 2024) (declining to extend *Buckley* “beyond [its] facts to analyze whether persons in a *private* entity are ‘Officers.’”).

In making their Appointments Clause claim, Applicants do not address, let alone overcome, *Lebron's* “insuperable hurdle.” See *Nat’l Horsemen’s*, 107 F.4th at 439. Instead, Applicants draw on *Lucia* and *Freytag v. Comm’r*, 501 U.S. 868 (1991), to argue that FINRA and its hearing officers are part of the Government for Article II purposes. Br. at 12. FINRA hearing officers, however, are employees of FINRA, a private entity, and are thus readily distinguishable from the judges at issue in *Lucia* and *Freytag*, which were unquestionably federal government personnel. See *Lucia*, 585 U.S. at 244 (“The sole question here is whether the Commission’s ALJs are ‘Officers of the United States’ or simply employees of the Federal Government.”); *Freytag*, 501 U.S. at 880 (“If we . . . conclude that a special trial judge is only an employee, petitioners’ challenge fails, for such ‘lesser functionaries’ need not be selected in compliance with the strict requirements of Article II.”). *Lebron*—rather than *Lucia* or *Freytag*—supplies the appropriate standard for evaluating Applicants’ Article II claim concerning FINRA and its hearing officers, and Applicants fail to satisfy that standard³³ See *Horsemen’s II*, 107 F.4th at 439 (“*Lebron* addressed when a private entity qualifies as part of the government for constitutional purposes. . . . We are not at liberty to displace the Supreme Court’s governing framework.”); see also *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 486 (2018) (“The parties agree that the Board is ‘part of the Government’ for constitutional purposes” under *Lebron*”).

“FINRA does not exercise federal executive power.” *Mission Sec., Corp.*, Exchange Act Release No. 63453, 2010 SEC LEXIS 4053, at *39 (Dec. 7, 2010). FINRA is instead registered

³³ Applicants’ table, Br. at 14, which compares the duties and powers of FINRA hearing officers to those of the judges at issue in *Lucia* and *Freytag*, is irrelevant. The activities that Applicants equate with the exercise of federal Government power refer simply to the powers that FINRA hearing officers possess to regulate FINRA’s internal disciplinary proceedings under its Code of Procedure. “They are not [] authority bestowed by the federal government.” *Alpine Sec. Corp. v. FINRA*, 121 F. 4th 1314, 1328 (D.C. Cir. 2024).

under, and operates subject to, Section 15A of the Exchange Act, 15 U.S.C. § 78o-3, which the Supreme Court has noted, “supplements the [S]ecurities and Exchange Commission’s regulation of the over-the-counter markets by providing a system of cooperative self-regulation.” *United States v. NASD*, 422 U.S. 694, 700 n.6 (1975). Although Section 15A authorizes the SEC to exercise a “significant oversight function” over registered securities associations, *id.*, self-regulatory organizations, such as FINRA, are not “Government-created, Government-appointed entit[ies].” *Free Enter. Fund*, 561 U.S. at 484-85 (distinguishing between FINRA and other private self-regulatory organizations in the securities industry on one hand, and the PCAOB on the other).

Applicants have provided the Commission no basis to depart from the well-settled consensus that FINRA is not part of the government for constitutional purposes, including for Article II purposes.³⁴ *See, e.g., D.L. Cromwell Invs., Inc. v. NASD*, 279 F.3d 155, 162 (2d Cir.

³⁴ The opinion in *Alpine*, which Applicants cite to support their arguments, *Br. passim*, does not alter the conclusion that FINRA *is not* part of the federal Government for constitutional purposes. In *Alpine*, the court partially reversed a district court’s denial of a preliminary injunction, and it instructed the district court on remand to enjoin FINRA from expelling the plaintiff in the context of a special “expedited proceeding” under FINRA rules until after the Commission reviewed the merits of any expulsion order that may be issued, or until the time for the plaintiff to seek Commission review of such an expulsion order has elapsed. *Alpine*, 121 F. 4th at 1330. The court held, as a “preliminary” matter on “the early record,” that the plaintiff demonstrated a “likelihood of success” in establishing that the private nondelegation doctrine prevents FINRA from expelling the plaintiff “with no opportunity for SEC review,” but it rejected the plaintiff’s broader attempt to halt the expedited proceeding. *See id.* at 1319. The court stressed that its “opinion is narrow” and “limited to expedited expulsion proceedings,” which “function [] differently” from “many” other FINRA proceedings that are “unlikely to violate the Constitution because [Commission] review can take place after FINRA’s sanctions take effect.” *Id.* at *1326, 1330-31. Notably, the court found that the plaintiff had not established grounds for a preliminary injunction from an alleged Appointments Clause violation, and although it did not express any view on the merits of the applicability of Article II to FINRA and its employees, the court highlighted the fact that “*Alpine*’s *private* nondelegation argument suggests[] FINRA is not a government agency.” *Id.* at 1336-37 (emphasis in original).

2002) (“It has been found, repeatedly, that [FINRA’s predecessor] NASD itself is not a government functionary.”); *Newport Coast*, 2020 SEC LEXIS 911, at *43-44 (“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.”); *Mission Sec. Corp.*, 2010 SEC LEXIS 4053, at *39 (“FINRA . . . is not ‘contrary to Article 2 of the Constitution’s vesting of executive power in the President,’ as Applicants contend”). Applicants’ challenge to FINRA and its hearing officers on the basis of the Constitution’s Appointments Clause accordingly fails.

2. FINRA Disciplinary Proceedings Do Not Implicate the Seventh Amendment

Applicants, citing *SEC v. Jarkesy*, 603 U.S. 109 (2024), also contend that the Commission “must set aside” FINRA’s final disciplinary action concerning them “because it is the product of an unconstitutional proceeding that violated [their] Seventh Amendment right to a jury trial.” Br. at 10. Applicants’ Seventh Amendment argument fails for several reasons.

First, to establish that FINRA violated Applicants’ Seventh Amendment jury trial rights, the Applicants must as “a threshold requirement” 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, 808 (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.”). FINRA, however, is a private self-regulatory organization, and the Applicants have not shown that FINRA’s disciplinary action against them is one of the “few limited circumstances,” *Halleck*, 587 U.S. at 809, in which a private entity’s conduct is “fairly attributable to” the government and thus constitutes state action subject to constitutional requirements. *Lugar v. Edmondson Oil Co.*, 457

U.S. 922, 937 (1982). Because “frontline authority over broker-dealers has fallen to *private* entities and *not* the state,” FINRA’s private-self regulatory responsibilities are private conduct, not state action. *Kim*, 698 F. Supp. 3d at 164. Courts and the Commission have rejected—repeatedly—the argument that FINRA engages in state action when it fulfills its regulatory responsibilities under the Exchange Act. *See, e.g., Desiderio*, 191 F.3d at 206 (rejecting plaintiff’s Seventh Amendment and due process claims after finding “NASD is a private actor, not a state actor”); *Charles C. Fawcett*, Exchange Act Release No. 56770, 2007 SEC LEXIS 2598, at *13-14 (Nov. 8, 2007) (“Fawcett’s position [that the NASD is a state actor] . . . is directly contrary to established precedent.”); *Mark H. Love*, 57 S.E.C. 315, 322 n.13 (2004) (“We have held that NASD proceedings are not state actions and thus not subject to constitutional requirements.”).

Second, *Jarkesy* has no bearing on FINRA or this disciplinary proceeding. In *Jarkesy*, the Supreme Court made clear that the issues it confronted 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 was the subject of a “suit at common law” at the time of the Founding under the Seventh Amendment. *Jarkesy*, 603 U.S. at 127, 132. Applicants do not explain how the separation-of-powers principles regarding the exercise of the “judicial Power of the United States,” U.S. Const. art. III, §1, apply to FINRA, a private, self-regulatory organization.³⁵

³⁵ Applicants inevitably concede that *Jarkesy* does not concern private entities such as FINRA. As they recognize, *Jarkesy* held that “a jury trial attaches to SEC enforcement actions, and Congress, or an *agency* acting pursuant to congressional authorization, cannot assign the adjudication of such claims to an *agency* because such action would violate the Seventh Amendment right to a jury trial.” Br. at 7-8 (emphasis added). FINRA inescapably *is not* a federal Government agency such that *Jarkesy* has any bearing on the issues presented in this

Moreover, a FINRA disciplinary proceeding is not a “suit at common law” such that it must be, as Applicants argue, Br. at 8, tried before a jury in an Article III court. The hallmark the Supreme Court has looked to in determining whether a matter is a suit at common law is whether it is “made of the stuff of the traditional actions at common law tried by the courts at Westminster in 1789.” *Jarkesy*, 603 U.S. at 127-28. In making this determination, the Supreme Court considers “centuries old rules” and “historic categories of adjudications” outside courts. *Id.* at 130-31. The self-regulatory mechanisms of the securities industry, which have involved private investigation and adjudication of broker conduct since the 1790s, have never been “the stuff of the traditional actions at common law.”³⁶ *Jarkesy*, 603 U.S. at 127-28. Indeed, the Commission previously has found that FINRA disciplinary actions are not suits at common law, and therefore the Seventh Amendment does not apply to them.³⁷ *See Daniel Turov*, 51 S.E.C.

case. *See Jones v. SEC*, 115 F.3d 1173, 1183 (4th Cir. 1997) (“While [FINRA] is a closely regulated corporation, it is not a governmental agency.”).

³⁶ “[T]he securities industry in the United States has engaged in extensive self-regulation for more than two centuries.” *Alpine*, 121 F.4th at 1319-21 (discussing “[b]y way of background, the history of the securities industry’s self-regulation).

³⁷ FINRA disciplinary actions, including this one, are founded on allegations that a respondent violated FINRA Rule 2010, which requires that FINRA members and associated persons, “in the conduct of [their] business,” “observe high standards of commercial honor and just and equitable principles of trade.” This rule fulfills FINRA’s mission to, among other things, “protect investors and the public interest.” *See* 15 U.S.C. § 78o-3(b)(6); *see also Valley Forge Secs. Co.*, 41 S.E.C. 486, 490 (1963). It allows FINRA to discipline members and associated persons for any business-related conduct that is unethical. *See Valley Forge*, 41 S.E.C. at 490. Those under FINRA’s jurisdiction who violate the securities laws or rules are thus subject to discipline for an ethical violation under FINRA Rule 2010. *See All. for Fair Bd. Recruitment v. SEC*, No. 21-60626, 2024 U.S. App. LEXIS 31475, at *38 (5th Cir. Dec. 11, 2024) (stating that “SROs have frequently applied [FINRA Rule 2010 and similar rules] to discipline [their] members for conduct that is unethical, such as[] violating the securities laws”). Accordingly, a FINRA disciplinary proceeding is, at its core, an ethical proceeding. *See Jones*, 115 F.3d at 1179 (“The major issues in [FINRA] disciplinary proceedings are whether a member or registered representative violated [just and equitable principles of trade].”). Imposing discipline for a violation of the ethical norms of the securities industry, a quintessentially self-regulatory act, is neither “the stuff of” a suit at common law nor an action in

235, 238 (1992) (“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.”).

Lastly, by joining or associating with FINRA, Applicants submitted to FINRA’s jurisdiction and rules, including its procedures for disciplinary proceedings, and thus waived any right they might otherwise have had to a jury trial. *See CFTC v. Schor*, 478 U.S. 833, 848 (1986) (finding that jury-trial rights are “subject to waiver, just as are other personal constitutional rights”).


FINRA members and associated persons registered with FINRA voluntarily agree to join or associate with FINRA and to abide by its rules, including the Commission-approved rules that govern FINRA disciplinary proceedings. *See* FINRA By-Laws Article IV, Section 1(a)(1) (stating that an application for membership in FINRA shall contain an “agreement to comply” with the federal securities laws, the rules and regulations thereunder, the rules of the MSRB, and FINRA rules, “and all rulings orders, directions, and decisions issued and sanctions imposed under [FINRA rules]”); Article V, Section 2(a)(1) (requiring that an application by any person for registration with FINRA contain the same “agreement to comply” as that required of firms applying for FINRA membership). Consequently, when Applicants applied for FINRA membership or registration, they knowingly relinquished any rights they might otherwise have had to defend FINRA disciplinary charges before a jury in an Article III court. *See Schor*, 478 U.S. at 850.

equity requiring adjudication in an Article III court. *See All. for Fair Bd. Recruitment*, 2024 U.S. App. LEXIS 31475, at *37 (“[T]he J&E provision simply requires [self-regulatory organizations] to promote behavior that is morally right and in conformity with the rules and customs of the securities profession.”); *cf. In re Clark*, 678 F. Supp. 3d 112, 122 (D.D.C. 2023) (attorney disciplinary proceedings are “not of a character traditionally recognized by courts of common law or of equity”) (collecting cases).

V. CONCLUSION

The NAC correctly found that Applicants failed to timely disclose reportable information on Forms U4 and U5 of its officers and registered representatives. Applicants' years-long willingness to conceal material information concerning serious allegations of broker misconduct and financial problems violated FINRA's fundamental principles of disclosure and cooperation and undermined the investor protection purposes of FINRA's rules. The Commission should sustain the findings and the meaningful sanctions that the NAC imposed.

Respectfully submitted,

/s/ 
Colleen E. Durbin
Associate General Counsel

CERTIFICATE OF SERVICE

I, Colleen Durbin, certify that on this 24th day of February 2025, I caused FINRA's Brief in Opposition to the Application for Review in the matter of Spartan Capital Securities LLC, John D. Lowry, and Kim M. Monchik Administrative Proceeding File No. 3-22285, to be served through the SEC's eFAP system on:

Vanessa A. Countryman
Securities and Exchange Commission
100 F St., NE
Room 10915
Washington, DC 20549-1090

I further certify that, on this date, I caused a copy of FINRA's Brief in Opposition in the foregoing matter to be served by electronic service on:

Richard J. Babnick Jr.
Michael Ference
Sichenzia Ross Ference Carmel LLP
1185 Avenue of the Americas, 31st Floor
New York, New York 10036
rbabnick@srfc.law
mference@srfc.law

Respectfully submitted,

/s/ [REDACTED]

Colleen Durbin
Associate General Counsel
FINRA
1700 K Street, NW
Washington, DC 20006
(202) 728-8816
colleen.durbin@finra.org
nac.casefilings@finra.org

CERTIFICATE OF COMPLIANCE

I, Colleen Durbin, certify that this brief complies with the Commission's Rules of Practice by filing a brief in opposition that omits or redacts any sensitive personal information described in Rule of Practice 151(e).

I, Colleen Durbin, further certify that this brief complies with the Commission's Rules of Practice by filing a brief in opposition not to exceed 14,000 words. I have relied on the word count feature of Microsoft Word in verifying that this brief contains 13,946 words.

/s/ 

Colleen Durbin
Associate General Counsel
FINRA
1700 K Street, NW
Washington, DC 20006
(202) 728-8816
colleen.durbin@finra.org
nac.casefilings@finra.org

February 24, 2025