

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 60505 / August 14, 2009

Admin. Proc. File No. 3-13324

In the Matter of the Application of
NORTH WOODWARD FINANCIAL CORP.

and

DOUGLAS A. TROSZAK
690 East Maple
Birmingham, Michigan 48009-6353

For Review of Disciplinary Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF DISCIPLINARY
PROCEEDINGS

Failure to Comply with Recordkeeping and Reporting Requirements

Conduct Inconsistent with Just and Equitable Principles of Trade

Where member firm of registered securities association maintained, and financial and operations principal caused member firm to maintain, deficient books and records, *held*, association's findings of violations and the sanctions it imposed are *sustained*.

APPEARANCES:

Douglas A. Troszak, *pro se* and for North Woodward Financial Corp.

Marc Menchel, *Alan Lawhead*, and *Jante C. Santos*, for FINRA.

Appeal filed: January 5, 2009
 Last brief received: April 8, 2009

I.

North Woodward Financial Corp. ("North Woodward" or the "Firm"), a registered broker-dealer, and Douglas A. Troszak, its principal owner, president, and financial and operations principal ("FINOP"),¹ appeal from NASD disciplinary action.² NASD found that North Woodward, acting through Troszak, failed to prepare and maintain a current general ledger and trial balance for February and March 2005, in violation of Securities Exchange Act of 1934 Rules 17a-3(a)(2) and 17a-3(a)(11),³ and NASD Rules 3110(a) and 2110.⁴ NASD fined North

¹ Troszak is also North Woodward's general securities representative and general securities principal.

² On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Restated Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of NASD and the member-regulation, enforcement, and arbitration functions of the New York Stock Exchange. *See* Securities Exchange Act Rel. No. 56146 (July 26, 2007), 91 SEC Docket 517 (Aug. 1, 2007). Because NASD instituted the disciplinary action before that date, it is appropriate to continue to use the designation NASD.

³ 17 C.F.R. §§ 240.17a-3(a)(2) and (11). Exchange Act Rules 17a-3(a)(2) and (11) require that broker-dealers "make and keep current . . . Ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts," 17 C.F.R. § 240.17a-3(a)(2), and "[a] record of the proof of money balances of all ledger accounts in the form of trial balances, and a record of the computation of aggregate indebtedness and net capital, as of the trial balance date," 17 C.F.R. § 240.17a-3(a)(11). Rule 17a-3(a)(11) further provides that "[s]uch trial balances and computations shall be prepared currently at least once a month."

⁴ Conduct Rule 3110(a) requires, in pertinent part, that members "make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations and statements of policy promulgated [by NASD] . . . and as prescribed by SEC Rule 17a-3." Conduct Rule 2110 requires members to observe "high standards of commercial honor and just and equitable principles of trade." A violation of any NASD Conduct Rule, such as Conduct Rule 3110, also constitutes a violation of Rule 2110. *Ronald Pelligrino*, Exchange Act Rel. No. 59125 (Dec. 19, 2008), 94 SEC Docket 12628, 12629 n.2; *Robert E. Strong*, Exchange Act Rel. No. 57426 (Mar. 4, 2008), 92 SEC Docket 2875, 2887. NASD General Rule 115 extends the applicability of NASD rules governing members to their associated persons. *James W. Browne*, Exchange Act Rel. No. 58916 (Nov. 7, 2008), 94 SEC

(continued...)

Woodward and Troszak \$2,500, jointly and severally.⁵ We base our findings on an independent review of the record.

II.

This case concerns inadequacies in North Woodward's books and records that were identified during a routine examination conducted by NASD staff in May 2005. NASD notified the Applicants of the examination three days before it was set to begin and asked that Applicants make available to its staff North Woodward's financial records for the period from February 1, 2005 through April 30, 2005. In its notice, NASD specifically informed the Applicants that the Firm's "General Ledger" and "Trial Balance" would "be needed for review during the examination"

a. During the examination, Troszak gave the examiners a number of documents related to the Firm's finances, including bank and brokerage statements and check registers.⁶ However, he failed to provide either a general ledger or a trial balance for February and March 2005. When NASD staff asked for North Woodward's general ledgers, Troszak responded that the documents that he had provided the examiners contained everything that would be included

⁴ (...continued)

Docket 11389, 11390 n.3; *Michael Frederick Siegel*, Exchange Act Rel. No. 58737 (Oct. 6, 2008), 94 SEC Docket 10501, 10509 n.13.

FINRA is in the process of revising and renumbering many of its rules as part of the process of developing a new consolidated rulebook. *See* FINRA Information Notice, Mar. 12, 2008 (Rulebook Consolidation Process). No substantive changes have been made to the rules at issue here.

⁵ NASD also assessed \$1,950.42 in costs.

⁶ Troszak provided the examiners with the following North Woodward documents: (1) bank statements from January to March 2005, containing Troszak's handwritten notes of North Woodward's revenues, expenses, net capital, and profit computations; (2) a check register for March 2005; (3) cleared checks from February through April 2005; (4) the Financial and Operational Combined Uniform Single Report, Part IIA, for the period between January and March 2005 (the "FOCUS Report"); (5) a clearing statement from Sterne Agee Clearing, North Woodward's clearing firm, for March 2005; (6) a brokerage statement from Sterne, Agee & Leach, Inc. for the month of March 2005; (7) an invoice from the Securities Investor Protection Corporation ("SIPC") showing the assessment of \$150 in January 2005 and the payment by check of the assessment on April 14, 2005; and (8) a copy of a bill from Blue Cross Blue Shield of Michigan for the coverage period from March 25, 2005 through April 25, 2005, which contains a handwritten notation stating that the bill was paid by North Woodward on February 8, 2005.

in a general ledger.⁷ When the examiners asked Troszak to provide them with North Woodward's trial balances, Troszak told them that North Woodward's February bank account statement, along with some handwritten notes that he had made on that statement, was the same thing as the February trial balance and that North Woodward's statement of financial condition contained in its FOCUS Report was the same as the March trial balance.⁸

In the absence of North Woodward's general ledger and trial balance for February and March 2005, NASD staff used the Firm's bank statements, cleared checks, brokerage statement, clearing statement, and bills to check North Woodward's net capital calculation as of March 31, 2005. Based on these documents, the staff determined that North Woodward maintained an excess amount of net capital for the period (understating its net capital by \$6,994) and, as a result, North Woodward's quarterly FOCUS Report for the period ending March 31, 2005 was inaccurate. The NASD examiner attributed the understatement primarily to Applicants' failure to use the accrual method of accounting.

b. Subsequent to the examination, NASD sent Applicants a written report summarizing the deficiencies identified in the Firm's books and records. In correspondence with NASD dated June 2, 2005 responding to this report, Troszak conceded that North Woodward's "general ledger and trial balance were not current as of March 31, 2005" but advised that, since the examination, "[t]hat deficiency [had been] corrected" and "both [the general ledger and trial

⁷ Troszak conceded in his sworn, on-the-record testimony ("OTR Testimony") to NASD, that he had not provided the NASD examiners with the sort of general ledger that he had provided during earlier examinations but maintained that the documents he had provided "presented all records that clearly reflected the assets, liabilities, income and expense of the period." He also asserted that he had satisfied the requirement for maintaining a current trial balance since "[t]he checks and who the checks were written to is the same idea as a trial balance."

⁸ Although NASD initially sought North Woodward's general ledger and trial balance for the period from February 1 through April 30, 2005, during the on-site examination, the examiner only requested North Woodward's records for February and March 2005. The examiner testified that he did not request the April 2005 general ledger and trial balance because he "expected" Troszak to respond as he had for the February and March records, namely that Troszak "didn't have one for April." NASD's National Adjudicatory Council limited its review to just February and March 2005.

The NASD examiner testified that, during the exit interview, he again asked Troszak about his failure to furnish the examiners with a general ledger and trial balance. Troszak replied, according to the examiner, that he did not prepare a traditional general ledger and trial balance because it was Troszak's view "that the SEC and FINRA accounting requirements were archaic and don't reflect what actually happens in the true accounting world." Troszak confirmed at the NASD hearing that he told the examiner that the requirements were archaic.

balance were] accurate as of the end of the first quarter." In December 2005, the staff requested that North Woodward provide NASD with copies of several documents, including North Woodward's updated general ledger and trial balance as of March 31, 2005. Troszak provided NASD the requested documents in December 2005.⁹

III.

Applicants contend that they have "fully complied at all times" with regulatory requirements. They claim that the Firm "had a general ledger and trial balance," but that it was not presented in the format used by larger firms "which the examiner was used to examining." We disagree and find, as discussed below, that the Firm's books and records did not comply with regulatory requirements.

a. Source Documents Do Not Satisfy Substantive Requirements

Applicants assert that, notwithstanding the Firm's failure to maintain a traditional general ledger and trial balance, the records furnished to NASD's examiners satisfied the specific substantive requirements for what must be included in a broker-dealer's ledger and trial balance.¹⁰ They claim that the Firm's bank statements, cancelled checks, various statements from North Woodward's clearing firm, some bills, and a check register were sufficient to comply with the requirement for maintaining a ledger. Applicants further contend that the statement of financial condition from the FOCUS filing for March of 2005 was the same thing as a trial balance and that North Woodward's statement of financial condition contained in its March 2005 FOCUS Report and the Firm's reconciled bank account statement, along with some handwritten notes that Troszak had made on the statement was the equivalent of the requested February 2005 trial balance.

Applicants note that the Firm only had seven transactions in March 2005 -- a clearing firm deposit and six checks that it wrote that month from its bank account -- and that it "does not have a payroll ledger, subsidiary ledgers, account receivable ledgers or inventory, land and buildings." They contend that NASD rules "allow[] small firms that deal mostly in mutual fund sales," such as North Woodward, "to have a simple recordkeeping system."

⁹ On December 21, 2005, NASD issued North Woodward a Letter of Caution for, among other deficiencies, the inaccurate net capital computation and FOCUS Report filing during the preceding spring.

¹⁰ Applicants explained that North Woodward's general ledger was compiled by reconciling North Woodward's bank statement at the end of the month. The Firm's trial balance was compiled, Applicants state, by taking the unadjusted cash balance from the bank statement and adjusting it by adding any clearing firm deposits in order to derive North Woodward's "adjusted trial balance." From this amount, Applicants then determined whether the Firm was in compliance with its net capital requirement.

Applicants' records did not satisfy the applicable requirements. NASD Rule 3110(a) requires, in pertinent part, that members keep books and records as prescribed by Exchange Act Rule 17a-3. As relevant here, Rule 17a-3 requires that broker-dealers keep "[l]edgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts"¹¹ and "[a] record of the proof of money balances of all ledger accounts in the form of trial balances, and a record of the computation of aggregate indebtedness and net capital, as of the trial balance date . . . [with] [s]uch trial balances [to] be prepared currently at least once a month."¹²

In a 1996 NASD Board of Governors Memorandum, the NASD noted that a general ledger should consist of "a record of all asset, liability and nominal accounts" and should be maintained in such a way that the broker-dealer's "trial balance can be abstracted in order to prepare financial statements showing the broker's or dealer's financial condition."¹³ In addition, NASD declared in a 2004 release that a broker-dealer's general ledger should include all of its "asset account balances," "liability account balances," "income account balances," "expense account balances," and "capital account balances."¹⁴ The NASD further noted in that release that a broker-dealer's trial balance should include the "account name," as well as the "open debit or credit balance" for the firm's various accounts.¹⁵ These interpretations are consistent with those generally understood and applied in the accounting profession.¹⁶

¹¹ 17 C.F.R. § 240.17a-3(a)(2). In a 1974 release, we clarified that the "ledgers" described in Rule 17a-3(a)(2) include a "general ledger" that is compiled from the "blotters and other records of original entry." *Statement Regarding the Maintenance of Current Books and Records by Brokers and Dealers*, Accounting Series Rel. No. 156 (Apr. 26, 1974), 4 SEC Docket 195, 196.

¹² 17 C.F.R. § 240.17a-3(a)(11).

¹³ *Memorandum of the NASD Board of Governors re: Rule 17a-3* (1996), NASD Manual (Nov. 2003 ed.).

¹⁴ *Suggested Formats for Books and Records* (Oct. 2004), <http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/industry/p009847.pdf>.

¹⁵ *Id.* at 21.

¹⁶ See, e.g., Patricia A. Woodbury, *Basics of Accounting for Lawyers: What Every Practicing Lawyer Needs to Know - Understanding Generally Accepted Accounting Principles (GAAP), Generally Accepted Auditing Standards (GAAS) and the Accounting Cycle*, 1613 PLI/Corp 9, 19, Practising Law Institute Corporate Law and Practice Course Handbook Series, PLI Order No. 11112, July-August, 2007 (noting that a general ledger is "the entire set of accounts for a company"), and at 20 (defining a "trial balance" as "a schedule that lists all the general ledger account balances at a given point in time"). See also Love, 1195 PLI/Corp at 137

The records provided to NASD's examiners did not satisfy the requirements of Rule 17a-3. The documents that Applicants submitted did not properly classify the Firm's transactions. As Edward Wegener, an NASD associate district director, explained, a general ledger, in contrast to the documents provided by North Woodward, "is meant to record not only that the event happened but how it was classified."¹⁷ He observed that North Woodward's bank statements and other source documents merely recorded particular transactions but failed to classify them by type of transaction.

Moreover, many of the checks written by North Woodward during the examination period do not provide sufficient information to properly and fully classify the transaction. For example, the Firm wrote a check in the amount of \$2,421.55 to the Bank of Northern Michigan on March 10, 2005. The note on this check indicated that it was for a "Loan #100032515." There is no indication on the check as to how much of this payment was for interest and how much was for principal repayment (or for other purposes). Similarly, a check in the amount of \$752.56 made payable to the Birmingham Athletic Club has a notation "member #001307" but no indication as to whether this was, for example, a company expense, a reimbursable personal expense, or even a charitable contribution. And a number of checks were written to various payees where the only notation is an account number. Again, with this limited information, it is very difficult to properly classify these payments.

¹⁶ (...continued)

(describing a trial balance as "a listing of the net balances in all the accounts in the general ledger"); and *Accounting For Lawyers--A Satellite Program - Bookkeeping*, 622 PLI/Corp at 74 (explaining that a trial balance is prepared by, "not only aggregat[ing] the total of the related accounts into a single line item, but also includ[ing] certain adjustments that must be made under generally accepted accounting principles").

¹⁷ As an example of how a general ledger should account for a transaction, Wegener explained that for a capital withdrawal, the ledger should show a credit to cash and a debit to the capital account. He noted that this accounting would permit an examiner to "review the general ledger and see that . . . there was a . . . credit to cash and a debit to capital withdrawal and review the supporting documentation to verify that that was . . . [r]ecorded correctly and classified correctly."

Broker-dealers are required to use the accrual method of accounting.¹⁸ Applicants source documents, however, were not prepared using the accrual method of accounting. Under accrual accounting, a broker-dealer must recognize revenues when earned and liabilities when incurred.¹⁹ Applicants admit that North Woodward "recognizes revenue when received, credit to bank statement, and expenses when checks are cut, 'debits' on a bank statement and a clearing deposit." In his OTR Testimony, Troszak seemed to confirm that the Firm's books examined by NASD were not kept regularly on an accrual basis.²⁰

The NASD examiner determined from his review of North Woodward's records that, while North Woodward was in compliance with the net capital requirement, it had nevertheless understated its net capital by about \$7,000, "primarily [due to its] . . . failure to accrue an account receivable from the clearing firm that was commissions and the failure to accrue a small account payable for a specific assessment." In addition, the examiner discovered after the examination that North Woodward had written a \$500 check to NASD to pay a prior fine and that this had not been reflected in North Woodward's March 2005 net capital computation. The examiner explained that if North Woodward had had a proper general ledger, this amount should have been reflected in the March ledger as an accrual for the outstanding balance of the NASD fine and should have been recorded in the March trial balance as an account payable.

Applicants assert that, given North Woodward's small size and the limited number of transactions it engages in, the NASD examiners "could clearly ascertain the accuracy of [North Woodward's] net capital computation" by reviewing the books and records that Applicants

¹⁸ *Joseph S. Barbera*, 54 S.E.C. 967, 969 (2000) (noting our long-standing position that "broker-dealers must . . . 'use the accrual method of accounting'" (citations omitted)); *James S. Pritula*, 53 S.E.C. 968, 973 (1998) (same); *Clinger & Co.*, 53 S.E.C. 358, 361 (1997) (same); *Troy A. Wetter*, 51 S.E.C. 763, 765 (1993) (same); see also *Net Capital Requirements for Brokers and Dealers*, Exchange Act Rel. No. 18737 (May 13, 1982), 25 SEC Docket 468, 468 & n.4 (noting that, in order for a broker-dealer to determine its net capital, it must first determine its net worth in accordance with generally accepted accounting principles, which requires, among other things, that it "us[e] the accrual method of accounting").

¹⁹ *Barbera*, 54 S.E.C. at 969 (explaining that "[u]nder accrual accounting, a broker-dealer 'must recognize revenues when earned and liabilities when incurred'" (citations omitted)); *Pritula*, 53 S.E.C. at 973-74 (same).

²⁰ Troszak explained that North Woodward's books are kept on a cash basis until the end of a reporting or audit period, at which time they are adjusted and converted to an accrual basis. He conceded that the March 2005 documents, while providing "full disclosure" on a cash basis, were not complete on an accrual basis since they were "missing the work that happened during the month of March which is cash basis deposited in April."

furnished them.²¹ According to Wegener, however, it would be difficult for an NASD examiner to determine a member firm's accrued but unpaid liabilities without a general ledger because the examiner would simply not know that these liabilities exist.²²

We agree with the NASD staff testimony that the general ledger and the trial balance are "two key foundation documents" that allow examiners to verify the accuracy of the member firms' capital computation. Thus, we have previously rejected an applicant's claim that providing the underlying source documents was sufficient to comply with the requirement for maintaining a trial balance. In *Joseph S. Barbera*,²³ the applicant asserted that Rule 17a-3 was not violated, notwithstanding respondent's failure to prepare a trial balance, because NASD was provided with the "requisite information" for preparing the firm's trial balance, noting that the Exchange Act "is

²¹ Applicants assert that, in contrast to several of the largest investment banks which "have experienced severe liquidity problems," North Woodward has never had a problem with net capital. According to Applicants, NASD's contention that North Woodward had understated its net capital by \$6,994 during the May 2005 examination was erroneous because North Woodward's net capital calculation was done in conformance with GAAP, "as opposed to FINRA examination rules." While Applicants acknowledge that NASD did not, in fact, charge North Woodward with violating the net capital rules, they assert that they are "compelled to bring it up" in this appeal "because it adds credence to the entire process which is designed to intentionally mislead the SEC."

However, the issue to be resolved here is not whether North Woodward's net capital computations were accurate or even whether these computations could be determined by reference to the source documents provided to the NASD examiners. Rather, the question for our determination is whether these source documents satisfied the requirements under Rule 17a-3 for a "ledger" and a "trial balance."

²² Wegener explained that an examiner reviews a firm's trial balance and general ledger as part of the examination of the firm's net capital. This examination is done by "review[ing] the transactions as recorded on the general ledger, review[ing] those against what was posted to a trial balance and then follow[ing] those through to the financial statements to make sure all the transactions were recorded accurately, were transferred from the general ledger to the trial balance, to the ultimate financial statements to make sure that the net capital computation is correct." Wegener noted that, without the general ledger and a trial balance, an examiner would not know about a firm's accrued receivables and liabilities and, thus, would be hindered in determining the accuracy of the firm's net capital computation. He explained that an examiner will review the general ledger to make sure that the firm is correctly booking its receivables and liabilities and that the examiner will only know of the existence of these items if "it's reported in the firm's general ledger and then makes its way from the general ledger to the trial balance, etc."

²³ 54 S.E.C. 967 (2000).

silent on what constitutes a 'trial balance' for purposes of compliance" with the rules.²⁴ We noted that Exchange Act Rule 17a-3 (a)(11) expressly provides the requirements for the creation of trial balances, and emphasizing that "[a] principal purpose of the requirement for a trial balance is 'to assist in keeping members, brokers and dealers currently informed of their capital positions.'"²⁵

Here, consistent with our analysis in *Barbera*, we conclude that the records required to be maintained under Rule 17a-3(a) are specific in their own right, not simply another name for a loose grouping of underlying source documents. We, thus, find that the underlying source documents North Woodward provided to examiners did not satisfy the applicable recordkeeping requirements.

b. Failure To Keep Ledger and Trial Balance Current

Rule 17a-3(a)(11) mandates that broker-dealers update their trial balances on at least a monthly basis, although the rule is silent as to the frequency for updating general ledgers beyond the general requirement that they be kept "current." In determining how frequently a broker-dealer must update its general ledger, we stated that a "broker-dealer is required to be in compliance with the net capital rule at all times and the general ledger must be posted as frequently as may be necessary to make that determination."²⁶ However, our release further specified that "[i]f a broker-dealer effects only a limited number of transactions during an accounting period and it is clear from the nature of the business conducted that such transactions would have no material adverse effect on the broker-dealer's financial and operational condition, net capital, and [customer] protection requirements during the period it may be appropriate to post the general ledger on a monthly basis."²⁷ In its 2004 release, NASD advised broker-dealers that their general ledgers "[s]hould be kept up-to-date and should be posted as frequently as activity warrants - daily, if necessary, but at least monthly in order to prepare financial statements."²⁸ Thus, in accordance with our and NASD's directives, even if a broker-dealer only has a limited amount of financial activity and that activity would not have a material adverse effect on the broker-dealer's financial and operational condition, net capital or customer

²⁴ *Id.* at 978.

²⁵ *Id.* at 979 & n.35 (quoting Exchange Act Rel. No. 7550 (Mar. 10, 1965), 1965 SEC LEXIS 653, *1 (Proposal to Amend Rules 17a-3 and 17a-4), *adopted in* Exchange Act Rel. No. 8023 (Jan. 18, 1967), 1967 SEC LEXIS 446 (Adoption of Amendments)).

²⁶ 4 SEC Docket at 196.

²⁷ *Id.*

²⁸ *Suggested Formats for Books and Records* at 9 (Oct. 2004), <http://www.finra.org/web/groups/industry/@ip/@comp/@regis/documents/industry/p009847.pdf>.

protection requirements, as was the case with North Woodward, it must prepare and update its general ledger on at least a monthly basis.

Applicants failed to make these required monthly postings to North Woodward's records as required by Rule 17a-3(a)(2) and 17a-3(11). Indeed, Troszak conceded in his June 2005 letter to NASD staff that North Woodward's "general ledger and trial balance were not current as of March 31, 2005."²⁹

* * *

Accordingly, we find that North Woodward violated Exchange Act Rule 17a-3 and NASD Conduct Rules 3110 and 2110 by failing to prepare and maintain a current general ledger and trial balance for February and March 2005. We further find that Troszak, who as North Woodward's principal and FINOP was responsible for North Woodward's violations, violated NASD Conduct Rules 3110 and 2110.³⁰

IV.

Exchange Act Section 19(e)(2) requires that we sustain NASD's sanctions unless we find, having due regard for the public interest and the protection of investors, that the sanctions are

²⁹ Applicants complain that, during its settlement discussions, NASD staff threatened to increase the proposed fine if Applicants did not promptly settle the case. They further complain that NASD sought to "overwhelm" the Firm by bringing this proceeding and seek reimbursement of their associated costs. Applicants provide no evidence of improper conduct (during settlement negotiations or otherwise) and our review of the record indicates that the proceedings were fair, as required by the Exchange Act. *See* Exchange Act § 15A(b)(8), 15 U.S.C. § 78o-3(b)(8) (requiring that NASD "provide a fair procedure for the disciplining of members and persons associated with members").

We see no reason for awarding costs to Applicants since, as discussed herein, NASD was amply justified in bringing this proceeding. In any event, Applicants have cited to no basis for the awarding of costs to an NASD member firm (or associated persons of members) or for compensating a member for its "administrative costs," and we are unaware of any such provision.

³⁰ Exchange Act Rule 17a-3, by its terms, applies to broker-dealers, not to persons associated with broker-dealers. *See Davrey Fin. Servs., Inc.*, Exchange Act Rel. No. 51780 (June 2, 2005), 85 SEC Docket 2057, 2062 & n.13 (holding that, while member firm violated, among other rules, Exchange Act Rule 17a-3, the firm's principal and FINOP who caused the firm to commit the violation did not himself violate this rule as the rule only applies to broker-dealers). We therefore set aside NASD's finding that Troszak also violated Exchange Act Rule 17a-3. However, as discussed below, we do not believe that our decision to set aside this finding justifies a modification in the sanction imposed on Troszak.

excessive or oppressive or impose an unnecessary or inappropriate burden on competition.³¹ The proper sanction depends on the unique facts and circumstances of each case, and it cannot be determined by comparison with other cases.³² Applying this standard, we see no basis for reducing the sanctions.

Applicants do not address the sanctions in their briefs, and we believe, with consideration for the public interest and the protection of investors, that the fine that NASD imposed is remedial and not excessive or oppressive.³³ As an initial matter, we observe that the amount of the fine is at the lower end of the recommended range set out in NASD's Sanction Guidelines. The Sanction Guidelines recommend that, for non-egregious recordkeeping violations, NASD should consider suspending the firm and its FINOP or responsible party for up to 30 business days and imposing a fine of \$1,000 to \$10,000.³⁴

³¹ Applicants do not assert, and the record does not show, that NASD's action imposes an undue burden on competition.

³² See, e.g., *Scott Epstein*, Exchange Act Rel. No. 59328 (Jan. 30, 2009), 95 SEC Docket 13833, 13865 n.75; see also *Butz v. Glover Livestock Comm'n Co.*, 411 U.S. 182, 187 (1973).

³³ See *PAZ Sec., Inc. v. SEC*, 566 F.3d 1172, 1176 (D.C. Cir. 2009) (noting that, while Exchange Act Section 19(e)(2) requires the Commission to "review[] NASD's sanction with 'due regard for the public interest and the protection of investors,'" it does "not limit the discretion of the Commission to choose an appropriate sanction so long as its choice meets the statutory requirements that a sanction be remedial and not 'excessive or oppressive'" (citations omitted)).

The NASD Hearing Panel had fined North Woodward and Troszak \$10,000, jointly and severally, ordered Troszak to requalify as a FINOP, and imposed hearing costs of \$1,950.42. NASD's National Adjudicatory Council affirmed the Hearing Panel's findings of violations and the imposition of hearing costs but reduced the fine to \$2,500, joint and several, and eliminated Troszak's requalification requirement.

³⁴ Although the Commission is not bound by the Guidelines, we use them as a benchmark in conducting our review under Exchange Act Section 19(e)(2). *CMG Institutional Trading, LLC*, Exchange Act. Rel. No. 59325 (Jan. 30, 2009), 95 SEC Docket 13802, 13814 n.38; see also *Perpetual Sec., Inc.*, Exchange Act Rel. No. 56613 (Oct. 4, 2007), 91 SEC Docket 2489, 2506 n.56 (stating that NASD promulgated the Sanction Guidelines in an effort to achieve greater consistency, uniformity, and fairness in its sanctions). The Guidelines suggest that a principal consideration in determining the appropriate sanction should be the "[n]ature and materiality of [the] inaccurate or missing information." NASD Sanction Guidelines at 34 (2001 ed.).

A central purpose of the requirement for maintaining a general ledger and trial balance, as we explained in our 1974 release, is to "enable the broker-dealer to make the computations necessary to ascertain his compliance with the net capital rule and the customers' reserve requirement rule" and in order to facilitate the preparation of financial statements showing the broker's or dealer's financial condition.³⁵ As we have previously observed, the recordkeeping "rules are not technical but involve fundamental safeguards imposed for the protection of the investing public on those who wish to engage in the securities business."³⁶ The inadequacy of using these source documents to calculate North Woodward's net capital balance, in the absence of a properly prepared general ledger and trial balance, is illustrated by the inaccuracy of the Firm's net capital computation and by the difficulty the examiners had in verifying the Firm's actual net capital computation.³⁷

Applicants argue that NASD staff was able to compute North Woodward's net capital from the documents provided. However, a broker-dealer is required to maintain current books and records in order to "demonstrate compliance to the Commission and the self-regulatory authorities without the burden of bringing books and records up-to-date being placed upon the regulatory authorities."³⁸ In this way, the requirement aids regulatory authorities in "conduct[ing] effective examinations of broker-dealers."³⁹ North Woodward's and Troszak's failure to maintain a general ledger and trial balance forced the NASD examiners to expend additional time reviewing the underlying documents in order to perform their verification of the Firm's net capital computation and thus undercut the rule's purpose in facilitating more effective examinations.

We note, in assessing the need for sanctions here, that this is not the first time Applicants have run afoul of regulatory requirements. They previously received an NASD Letter of Caution in connection with an inaccurate general ledger discovered during an earlier NASD examination. They also settled proceedings alleging the operation of their securities business without a FINOP for thirteen months and agreed to pay, as part of that settlement, a \$5,000 fine.

³⁵ 4 SEC Docket at 196.

³⁶ *Lowell H. Listrom*, 50 S.E.C. 883, 888 (1992).

³⁷ According to the NASD examiner, the absence of the ledger and trial ledger forced him to make a "best effort attempt . . . to verify the net capital position of the firm" by reviewing the various source documents.

³⁸ 4 SEC Docket at 195.

³⁹ *Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934*, Exchange Act Rel. No. 44992 (Oct. 26, 2001), 76 SEC Docket 433, 433.

We further note that, in making its own sanction determination, NASD carefully considered certain circumstances that weighed against a significant sanction, including that North Woodward maintained excess net capital for the entire period at issue, that it was a small firm with few customers and limited operations (focused on the sale of mutual funds), and that Troszak was its only operating professional. We find that NASD properly considered the various applicable factors and that the relatively lenient sanction NASD imposed is appropriate in the public interest, remedial and neither excessive nor oppressive. The public interest requires that "appropriate sanctions be imposed to secure compliance with the rules, regulations, and policies of both NASD and SEC."⁴⁰ The fine that NASD imposed here protects investors and the public interest by encouraging the Applicants, who remain in the securities business, as well as others in the industry, to take their recordkeeping responsibilities seriously in the future.

An appropriate order will issue.⁴¹

By the Commission (Commissioners CASEY, WALTER and PAREDES); Chairman SCHAPIRO and Commissioner AGUILAR not participating.

Elizabeth M. Murphy
Secretary

⁴⁰ *Sisung Sec. Corp.*, Exchange Act Rel. No. 56741 (Nov. 5, 2007), 91 SEC Docket 3050, 3064 (quoting *Boruski v. SEC*, 289 F.2d 738, 740 (2d Cir. 1961)).

⁴¹ We have considered all of the contentions advanced by the parties. We have rejected or sustained these contentions to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 60505 / August 14, 2009

Admin. Proc. File No. 3-13324

In the Matter of the Application of
NORTH WOODWARD FINANCIAL CORP.,

and

DOUGLAS A. TROSZAK
690 East Maple
Birmingham, Michigan 48009-6353

For Review of Disciplinary Action Taken by

FINRA

ORDER SUSTAINING DISCIPLINARY ACTION TAKEN BY REGISTERED SECURITIES
ASSOCIATION

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

ORDERED that the disciplinary action taken by FINRA against North Woodward
Financial Corp. and Douglas A. Troszak, and the assessment of costs imposed, be, and they
hereby are, sustained.

By the Commission.

Elizabeth M. Murphy
Secretary