

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 87638 / November 27, 2019

Admin. Proc. File No. 3-18150

In the Matter of the Application of
THADDEUS J. NORTH
For Review of Disciplinary Action Taken by
FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY
PROCEEDINGS

Failure to Enforce Written Supervisory Procedures

Registered representative of former FINRA member firm appeals from FINRA disciplinary action finding that he failed to reasonably enforce his firm's written supervisory procedures governing the review of electronic correspondence. *Held*, association's findings of violations and imposition of sanctions are sustained.

APPEARANCES:

Constance J. Miller, for Thaddeus J. North.

Alan Lawhead, Andrew Love, and Jennifer Brooks, for FINRA.

Appeal filed: September 5, 2017

Last brief received: December 28, 2017

Thaddeus J. North, formerly associated with former FINRA member firm Ocean Cross Capital Markets, LLC ("Ocean Cross"), seeks review of FINRA disciplinary action taken against him. FINRA found that North violated FINRA and NASD rules by failing to reasonably review

Ocean Cross's electronic correspondence.¹ FINRA fined North \$5,000 and ordered him to pay hearing and appeal costs. We sustain FINRA's findings of violation and imposition of sanctions.

I. Background

North first associated with a FINRA member firm in 1994. From July 2009 to August 2011, he served as the Chief Compliance Officer ("CCO") at FINRA member firm Southridge Investment Group, LLC ("Southridge"). North worked at Southridge with William Schloth, who became Ocean Cross's president. We recently sustained FINRA disciplinary action finding that North, among other things, failed to adequately review Southridge's electronic correspondence.² We also sustained, among other sanctions, the \$20,000 fine imposed for that failure.³

North became associated with Ocean Cross in August 2011 and was the firm's CCO while employed there. Ocean Cross had approximately 15 associated persons and two principals in two offices between September 8, 2011 and April 30, 2012—the relevant period in this case.

A. Ocean Cross's written supervisory procedures required a daily review of an appropriately-sized sample of the firm's electronic communications.

North testified that it was his responsibility to "set" Ocean Cross's written supervisory procedures ("WSPs"). The firm's WSPs required the firm's "president or designated principal" to perform a daily review of an appropriately-sized sample of the firm's email and instant message correspondence or a daily review of any such correspondence flagged by filtering software. The WSPs also required the president or designated principal to maintain all reviewed emails and instant messages in a separate folder; to initial and date the electronic correspondence review log; and to initial and maintain a record of any findings and actions taken.

On behalf of Ocean Cross, North purchased these WSPs from a third-party vendor and modified them to specify that the "president or designated principal," rather than the CCO, would conduct the required review of the firm's electronic communications. He testified that he "did not put myself in as the supervisor to review emails because I knew what it was like to do that." North explained that he did not otherwise tailor the procedures to Ocean Cross's business because he spent most of his time working on matters related to migrating client accounts from

¹ As a result of the consolidation of the regulatory functions of NASD and NYSE Regulation into FINRA and the development of a new FINRA rulebook, *see* Exchange Act Release No. 56148, 2007 WL 2159604, at *2 (July 26, 2007), North was subject to both FINRA and NASD Rules, depending on the time of the relevant conduct. *See, e.g., KCD Fin., Inc.*, Exchange Act Release No. 80340, 2017 WL 1163328, at *1 n.1 (March 29, 2017) (applying both NASD and FINRA rules, depending on whether conduct occurred before or after consolidation).

² *Thaddeus J. North*, Exchange Act Release No. 84500, 2018 WL 5433114, at *5 (Oct. 29, 2018).

³ *Id.* at *12.

Southridge and answering requests for information related to a FINRA investigation of his conduct while at Southridge.

B. North was responsible for enforcing the WSPs and reviewing the firm's electronic communications, but he only reviewed electronic communications sporadically.

North and Schloth were the only registered principals associated with Ocean Cross during the relevant time. At the hearing, North testified repeatedly that it “was his responsibility to enforce the WSPs.” And when asked as part of his on-the-record testimony during FINRA’s investigation what his responsibilities were at Ocean Cross, North testified that his responsibilities included setting the WSPs and “review[ing] emails.”

At the hearing, however, North asserted that Schloth was the principal responsible for reviewing Ocean Cross’s electronic communications. Nonetheless, North also acknowledged in his hearing testimony that he knew that Schloth did not review Ocean Cross’s electronic communications and that Schloth had not designated another principal to conduct reviews. North testified further that, because he “knew that [Schloth] wasn’t [reviewing electronic communications] in the beginning because we were so busy doing all sorts of other stuff,” North accepted that it was his role to “step in and do it.” A FINRA examiner who conducted an on-site examination of Ocean Cross beginning on January 30, 2012 testified at North’s hearing that both Schloth and North told him that North was responsible for reviewing Ocean Cross’s electronic communications and that neither Schloth nor North ever told him that Schloth was responsible for email review at Ocean Cross. The record below is entirely consistent with North being the person who was responsible for reviewing the firm’s electronic communications.

Ocean Cross used a vendor, Smarsh, Inc., to archive its electronic communications and provide a platform for reviewing them. The Smarsh Management Console (“SMC”) allowed designated staff to log on to the system, run searches, view the search results, and open the messages for review. Smarsh’s system recorded, among other things, the identity of the user who logged on to the system, the searches run by the user, the search history, the message review history, and the number of messages located through the search.

The SMC archived Ocean Cross’s emails and Bloomberg instant messaging (“IM”) chats into separate repositories. Reviewers had to access each repository separately to review. North was provided log-in credentials for the Smarsh system to review both types of communications.

North testified that he reviewed Ocean Cross’s electronic communications “at least once a week” and “quite often” during the relevant period. But the SMC data showed that North reviewed the firm’s emails rarely and not in accordance with the daily review the WSPs required. Although the WSPs required daily review of electronic communications, the data showed that North did not log in to the SMC to review Ocean Cross’s emails until December 14, 2011—approximately three months after they became available on the SMC in September 2011. After logging in on December 14, North did not log in to the SMC again until January 31, 2012 (during FINRA’s on-site examination), when he reviewed just one of the 91 available emails. North then reviewed emails on ten days in February 2012, seven days in March 2012, and two days in April 2012. He logged in to the SMC four other times during those months but did not review emails.

North reviewed the Bloomberg IMs even less frequently. The SMC data showed that he reviewed the firm's Bloomberg IMs eight times during the relevant period and did not review any Bloomberg IMs for the first three months that they were available on the SMC. He began reviewing the IMs only after FINRA started its on-site examination of the firm.

C. FINRA found that North violated FINRA and NASD rules.

On October 23, 2013, FINRA's Department of Enforcement charged North with failing to adequately review electronic correspondence while he was CCO at Ocean Cross in violation of NASD Rule 3010 and FINRA Rule 2010.⁴ After a hearing, a FINRA Hearing Panel issued a decision finding that Enforcement proved the charged violations. The Hearing Panel fined North \$5,000. North appealed to the National Adjudicatory Council (the "NAC"). The NAC affirmed the Hearing Panel's findings of liability and the fine it imposed. North timely filed this appeal.

II. Analysis

Under Exchange Act Section 19(e)(1), we review a FINRA disciplinary action to determine whether the applicant engaged in the conduct FINRA found, whether such conduct violates the statutes and rules FINRA found it to have violated, and whether FINRA's rules are, and were applied in a manner, consistent with the purposes of the Exchange Act.⁵ We base our findings on an independent review of the record and apply the preponderance of the evidence standard.⁶

We reiterate here that CCOs "play a vital role in our regulatory framework."⁷ "That role in many instances has increased in complexity, and there are circumstances where the role presents difficult challenges."⁸ "In making determinations about CCO liability, the protection of

⁴ Enforcement's complaint did not include claims against Schloth. Separately, Schloth entered into a settlement with FINRA through a Letter of Acceptance, Waiver, and Consent (the "AWC") pertaining to his involvement with false statements made in connection with a private placement offering at Ocean Cross. The AWC also found that Schloth had failed to ensure that Ocean Cross established, maintained, and enforced an adequate supervisory system (including written supervisory procedures) addressing, inter alia, the retention of business-related communications. In doing so, the AWC did not state whether Schloth was responsible for personally reviewing the firm's electronic communications and failed to do so. *See* Letter of Acceptance, Waiver, and Consent, *William E. Schloth*, Disciplinary Proceeding No. 2012030527501 (Feb. 9, 2013).

⁵ *See* 15 U.S.C. § 78s(e)(1).

⁶ *Robert Marcus Lane*, Exchange Act Release No. 74269, 2015 WL 627346, at *5 (Feb. 13, 2015).

⁷ *North*, 2018 WL 5433114, at *9.

⁸ *Id.*

investors and the public interest are at the forefront of our minds.”⁹ “The principles of fairness and equity, applied in context, also shine brightly in our decisions.”¹⁰ Application of these principles “generally requires a matter-specific analysis of the facts and circumstances.”¹¹

“While matters involving the determination of CCO liability are facts and circumstances specific, there are matter types where determinations of individual liability generally are straightforward.”¹² “For example, absent unusual mitigating circumstances, when a CCO engages in wrongdoing, attempts to cover up wrongdoing, crosses a clearly established line, or fails meaningfully to implement compliance programs, policies, and procedures for which he or she has direct responsibility, we would expect liability to attach.”¹³ “In contrast, disciplinary action against individuals generally should not be based on an isolated circumstance where a COO, using good faith judgment makes a decision, after reasonable inquiry, that with hindsight, proves to be problematic.”¹⁴ Here, as discussed below, we find that North had direct responsibility for reviewing Ocean Cross’s electronic communications yet failed to conduct a meaningful review. Accordingly, we sustain FINRA’s disciplinary action in this case.

A. North failed to reasonably review electronic correspondence.

NASD Rule 3010(b) required a member to “establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons.”¹⁵ The WSPs for Ocean Cross that North established required the firm’s “president or designated principal” to perform a daily review of a sample of the firm’s email and instant message correspondence or a daily review of any such correspondence flagged by filtering software. North was the person with that responsibility here. He and Schloth were Ocean Cross’s only registered principals; North testified repeatedly at the hearing that it was his responsibility to enforce the firm’s WSPs; and North admitted in his on-the-record testimony that one of his responsibilities specifically was to “review emails.”

The record establishes that North did not review the firm’s emails or IMs for the first three months after they were available in the SMC. After that period, North’s review was at best sporadic. He began reviewing the emails and IMs periodically after FINRA began its on-site investigation on January 30, 2012, but even then did not conduct the daily review the WSPs

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ NASD Rule 3010(b).

required. Indeed, North admits that neither he nor anyone else reviewed the correspondence daily. North's failure to conduct any review of the firm's emails or IMs for a three-month period—let alone the daily review that the WSPs he established required and that the record shows he was responsible for performing—is alone sufficient to sustain FINRA's findings that he failed to enforce the firm's WSPs in violation of NASD Rule 3010(b) and FINRA Rule 2010.¹⁶

North does not contest that he failed to conduct a daily review of the firm's electronic communications as required by the Ocean Cross WSPs. Disciplinary action was appropriate here because North had direct responsibility for enforcing Ocean Cross's WSPs for electronic communications yet failed to meaningfully do so.¹⁷

North argues that he was not responsible for enforcing the firm's WSPs regarding electronic correspondence because the WSPs did not expressly name him as being responsible. Although North testified at the hearing that Schloth was responsible for reviewing Ocean Cross's electronic communications, this assertion contradicted his on-the-record testimony during FINRA's investigation. In addition to his statement in his on-the-record testimony that it was always his responsibility to review Ocean Cross's electronic communications, North acknowledged in his hearing testimony that he knew Schloth did not review the firm's electronic communications. North also testified that, because he “knew that [Schloth] wasn't [reviewing electronic communications],” North accepted that it was his [North's] role to “step in and do it.” And FINRA's examiner testified that both Schloth and North told him that North was responsible for reviewing Ocean Cross's electronic communications and that neither Schloth nor North ever told him that Schloth was responsible for email review at Ocean Cross. We find that the preponderance of the evidence establishes that North was responsible for reviewing Ocean Cross's electronic communications under the WSPs.

North also argues that he should not be liable for failing to review Ocean Cross's electronic communications based on “the condition of the Email . . . in FINRA's production files.” According to North, the “condition of the Email” in FINRA's production files demonstrates that “Enforcement procured Smarsh to assist in intercepting and delivering the Email to Enforcement without the knowledge or permission of the brokers sending and receiving those communications.” As discussed more fully below, however, North's various claims about

¹⁶ See *North*, 2018 WL 5433114, at *6 (finding a violation of Rule 3010(b) where the WSPs required CCO to review the firm's electronic communications but CCO “admit[ted] that he never reviewed the SMC repositories containing the firm's Bloomberg messages or chats”). A violation of any NASD rule also constitutes a violation of FINRA Rule 2010. *Id.* at *5 (citing *Michael Pino*, Exchange Act Release No. 74903, 2015 WL 2125692, at *10 n.31 (May 7, 2015)).

¹⁷ See *Dennis Todd Lloyd Gordon*, Exchange Act Release No. 57655, 2008 WL 1697151, at *12 (Apr. 11, 2008) (finding chief compliance officer liable for failure to disclose markups on trade confirmations because firm's supervisory procedures made him “responsible for the content of the confirmations” yet he did not ensure that the markups were disclosed).

Smarsh, Enforcement, and the underlying emails are irrelevant. The underlying emails are not the basis for North's liability. North's liability stems from his failure to review electronic correspondence—including a three-month period in which he conducted no reviews—in accordance with the WSPs for email review that he established and was responsible for enforcing.

As discussed above, North did not review the electronic correspondence for substantial periods of time. This was unreasonable and inconsistent with the provisions of the WSPs. North's conduct represents an unreasonable departure from the WSPs and is a sufficient basis for his liability. Based on these facts, we find that North failed to reasonably enforce the firm's WSPs regarding electronic correspondence in violation of NASD Rule 3010(b) and FINRA Rule 2010.¹⁸

B. NASD Rule 3010 and FINRA Rule 2010 are, and were applied in a manner, consistent with the purposes of the Exchange Act.

We have “long emphasized that the responsibility of broker-dealers to supervise their employees is a critical component of the federal regulatory scheme.”¹⁹ FINRA's application of NASD Rule 3010 was appropriate in this case given North's failure to meaningfully enforce the WSPs regarding electronic correspondence despite it being his responsibility to do so. Accordingly, we find that NASD Rule 3010 is, and was applied in a manner, consistent with the purposes of the Exchange Act. We have held previously that FINRA Rule 2010, which prohibits conduct inconsistent with just and equitable principles of trade, is consistent with the Exchange Act's purpose of promoting just and equitable principles of trade.²⁰ FINRA's application of Rule 2010 to North's failure to reasonably review Ocean Cross's electronic communications furthered the objective of promoting just and equitable principles of trade.

In sustaining FINRA's disciplinary action, we recognize that North was not the only person at Ocean Cross whose performance may have been deficient with respect to enforcing the firm's WSPs regarding electronic communications. We have held repeatedly that the “chief executive officer of a brokerage firm is responsible for compliance with all of the requirements imposed on his firm ‘unless and until he reasonably delegates particular functions to another

¹⁸ We need not decide whether daily review of email correspondence is required under FINRA rules. North's violation stems from the facts that his firm's WSPs, which he was responsible for establishing, required that electronic correspondence be reviewed daily; that he was responsible for conducting the review that the WSPs required; and that he failed to do so—including during a three-month period in which he conducted no review of the firm's emails or Bloomberg IMs.

¹⁹ *KCD Fin. Inc.*, 2017 WL 1163328, at *10 (citation omitted).

²⁰ *Kenny Akindemowo*, Exchange Act Release No. 79007, 2016 WL 5571625, at *7 n.16 (Sept. 30, 2016).

person in the firm and neither knows nor has reason to know' that a problem has arisen."²¹ "It is not sufficient for the person with overarching supervisory responsibilities to delegate supervisory responsibility to a subordinate, even a capable one, and then simply wash his hands of the matter until a problem is brought to his attention. . . . Implicit is the additional duty to follow-up and review that delegated authority to ensure that it is being properly exercised."²² The record does not indicate what actions Schloth took to monitor North's review of electronic communications nor whether Schloth knew North was not reviewing those communications.

Finally, it is not clear from the record why FINRA did not charge Ocean Cross, although we take official notice of the fact that Ocean Cross terminated or withdrew its registration approximately two months prior to FINRA instituting its action here.²³ "A firm . . . can act only through its agents, and is accountable for the actions of its responsible officers."²⁴ We think it important to make it clear to firms—by holding them responsible when there are compliance failures—that it is in their interest to have effective, diligent compliance officers to help them remain in compliance with their obligations. Further, as we have said previously, "broker-dealers must provide effective staffing, sufficient resources and a system of follow-up and review to determine that any responsibility to supervise delegated to compliance officers, branch managers and other personnel is being diligently exercised."²⁵ Indeed, the Commission has previously stated that in some cases it may be more appropriate to hold the firm liable rather than the compliance officer.²⁶ In this case, we agree with FINRA that its disciplinary action against North was warranted.

²¹ *Michael J. Markowski*, Exchange Act Release No. 43259, 2000 WL 1264292, at *4 (Sept. 7, 2000) (quoting *Thomas F. White*, Exchange Act Release No. 34398, 1994 WL 389903, at *2 (July 19, 1994)), *reconsideration denied*, Exchange Act Release No. 43503, 2000 WL 1656276 (Nov. 1, 2000).

²² *Castle Sec. Corp.*, Exchange Act Release No. 39523, 1998 WL 3456, at *4 (Jan. 7, 1998) (citations omitted).

²³ <https://brokercheck.finra.org/firm/summary/156256> (showing termination or withdrawal on August 16, 2013). See generally FINRA By-Laws Article IV, Section 6 (stating that a "resigned member or a member that has had its membership canceled or revoked shall continue to be subject to the filing of a complaint . . . based upon conduct which commenced prior to the effective date of the member's resignation . . . or the cancellation or revocation of its membership," provided that the complaint "be filed within two years after the effective date of resignation, cancellation, or revocation").

²⁴ *A.J. White & Co. v. SEC*, 556 F.2d 619, 624 (10th Cir. 1977).

²⁵ *Stuart K. Patrick*, Exchange Act Release No. 32314, 1993 WL 172847, at *3 (May 17, 1993) (citation omitted), *petition denied*, 19 F.3d 66 (2d Cir. 1994).

²⁶ *North*, 2018 WL 5433114, at *10.

C. North’s remaining arguments are unavailing.

1. North’s claims about the exclusion of evidence concerning the Ocean Cross emails underlying the SMC data are irrelevant to his liability.

North contends that the Hearing Officer and a NAC subcommittee erroneously excluded evidence about Ocean Cross emails that FINRA allegedly “spoliated” and that the Smarsh system improperly archived.²⁷ As discussed above, the contents and retention of the Ocean Cross emails underlying the SMC data are irrelevant to our decision to sustain FINRA’s finding of violations.²⁸ North’s failure to review the firm’s electronic communications at all over a three-month period—let alone perform the daily review that the WSPs required—establishes his liability.

2. Neither the Hearing Officer nor a NAC subcommittee demonstrated bias.

North claims that the FINRA hearing officer was biased against him, citing “evidentiary rulings . . . blocking all of Mr. North’s efforts to present evidence of what he perceived to be massive failures in the services Smarsh was to have provided and to defend himself against what he contends are spurious charges made from altered evidence.” North suggests, without support, that FINRA Enforcement “created the Smarsh reports at issue with its resources and its access to government resources.” North’s only evidence in support of his claim of bias is the Hearing Officer’s evidentiary ruling related to North’s attempt to introduce as an exhibit an email that Ocean Cross provided to FINRA examiners in response to FINRA’s request for “copies of Bloomberg messages and email from the firm.” The hearing officer allowed North to introduce the exhibit, but limited the questions North’s counsel could ask regarding the exhibit to those that related directly to the question of his review of electronic communications, noting that the underlying emails themselves have “nothing to do with his review.”

As noted above, we agree that the basis for FINRA’s findings of violations is North’s failure to review the electronic communications in compliance with the WSPs. The specific

²⁷ On April 6, 2015, North filed an action against FINRA and Smarsh in federal district court alleging that the data Smarsh produced to FINRA in connection with his review of electronic communications at both Southridge and Ocean Cross was spoliated and tampered with. The district court dismissed the action on December 4, 2015, finding that North “was highly unlikely to succeed on the merits of [his] negligent spoliation claim,” that the court lacked jurisdiction to review or enjoin FINRA’s disciplinary actions, and that FINRA was “absolutely immune from suit for the improper performance of . . . [its] duties.” *See North v. Smarsh*, 160 F. Supp. 3d 63, 86–88 (D.D.C. 2015) (alteration and omission in original).

²⁸ North now moves to adduce before the Commission much of the evidence that he contends was improperly excluded by the Hearing Officer and the NAC and other evidence he claims supports his argument that Smarsh spoliated Ocean Cross’s emails. Because, as noted above, we find that evidence irrelevant, we deny the motion. *See* Rule of Practice 452, 17 C.F.R. § 201.452 (allowing a party to adduce evidence before the Commission that “is material”).

content of the emails stored on the Smarsh system does not relate to whether or not North committed those violations. We therefore find that the hearing officer's evidentiary rulings were correct. And, in any event, adverse rulings alone do not establish bias.²⁹

North also contends that the NAC was biased against him. Again, North's only evidence of bias is the NAC subcommittee's rulings against him. These rulings, which we find fully supported by the record, do not establish bias.³⁰

3. North's claims of a conspiracy against him are meritless.

North claims that FINRA conspired with Smarsh to illegally intercept and fabricate emails from North and other Ocean Cross brokers and "made up" or altered exhibits, including the SMC data, to pursue allegedly frivolous disciplinary cases in violation of the Maloney Act,³¹ the Electronic Communications Privacy Act,³² the Y2K Act,³³ and the Fourth Amendment to the U.S. Constitution.³⁴ We find no basis for those claims. As explained above, Ocean Cross's underlying emails are not relevant to finding North liable here. North also does not specify how FINRA's alleged conduct violated these provisions beyond vague allegations about a broad, unlawful conspiracy against him. Finally, we can find no evidence in the record to support those allegations.

III. Sanctions

Under Exchange Act Section 19(e)(2), we must sustain FINRA's sanctions unless we find, having due regard for the public interest and the protection of investors, that the sanctions are excessive or oppressive or impose an unnecessary or inappropriate burden on competition.³⁵

²⁹ *AutoChina Int'l Ltd.*, Exchange Act Release No. 79010, 2016 WL 5571626, at *4 n.21 (Sept. 30, 2016) (citing *Liteky v. United States*, 510 U.S. 540, 555 (1994) and *Marcus v. Dir., Office of Workers' Comp. Programs*, 548 F.2d 1044, 1051 (D.C. Cir. 1976)).

³⁰ *Cf. Schweiker v. McClure*, 456 U.S. 188, 196 (1982) (stating that the party claiming bias must establish a "conflict of interest or some other specific reason for disqualification" and that "the burden of establishing a disqualifying interest rests on the party making the assertion").

³¹ *See* Maloney Act of 1938, Pub. L. No. 75-719, 52 Stat. 1070.

³² *See* 18 U.S.C. §§ 2510–22.

³³ *See* 15 U.S.C. §§ 6601–17.

³⁴ The Fourth Amendment does not apply to FINRA proceedings. *See Sheen Fin. Res., Inc.*, Exchange Act Release No. 35477, 1995 WL 116484, at *5 (Mar. 13, 1995) (observing that the Fourth Amendment was not applicable to FINRA's predecessor NASD).

³⁵ 15 U.S.C. § 78s(e)(2). The record does not show that FINRA's sanctions impose an unnecessary or inappropriate burden on competition.

In doing so, we must consider any aggravating or mitigating factors.³⁶ We also consider whether the sanctions are remedial or punitive.³⁷ Although we are not bound by FINRA’s Sanction Guidelines, we use them as a benchmark in conducting our review.³⁸ North does not challenge the sanctions other than to claim that we should “vacate the hearing and NAC panel decision[s]” in their entirety because FINRA allegedly obtained evidence illegally and was biased—claims that we have already rejected as either irrelevant or unsupported.

FINRA’s Sanction Guidelines recommend a fine of \$5,000 to \$73,000 and a suspension in all principal capacities for up to 30 business days for failing to establish and maintain reasonable supervisory procedures and, in egregious cases, recommend imposing a longer suspension in all capacities or a bar.³⁹ FINRA’s imposition of a \$5,000 fine is within these Guidelines, and we find that this sanction is neither excessive nor oppressive.

In determining the appropriate sanctions, the Guidelines provide three Principal Considerations: (1) the quality and degree of the implementation of the firm’s supervisory procedures and controls; (2) the nature, extent, size and character of the underlying misconduct; and (3) whether the individual ignored “red flag” warnings that should have resulted in additional supervisory scrutiny.⁴⁰ Here, North operated in nearly complete non-compliance with the WSPs he established and that rendered him responsible for reviewing emails. Those WSPs, as discussed above, provided that either he or Schloth had to review the firm’s electronic communications, and the evidence establishes that it was North who had that responsibility. Yet North reviewed the firm’s emails and Bloomberg messages very rarely over a nearly eight-month period. And the reviews he did conduct almost entirely followed FINRA’s on-site examination of the firm. The Principal Considerations indicate that the \$5,000 fine is not excessive or oppressive.

The \$5,000 fine is at the lowest end of the Guidelines’ recommended range. The NAC imposed such a fine after recognizing that North’s failures occurred while he was attempting to “establish[] Ocean Cross as a new firm” and had other demands on his time. We have recognized previously that other demands on a CCO’s time may be a mitigating factor and think it was appropriate for FINRA to consider competing demands on North’s time a mitigating factor

³⁶ *Saad v. SEC*, 718 F.3d 904, 906 (D.C. Cir. 2013) (citing *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1065 (D.C. Cir. 2007)).

³⁷ *McCarthy v. SEC*, 406 F.3d 179, 188–191 (2d Cir. 2005).

³⁸ *See, e.g., John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 WL 2898033, at *11 (June 14, 2013).

³⁹ FINRA Sanctions Guidelines at 104 (Apr. 2017).

⁴⁰ *Id.* The Sanctions Guidelines also provide, as a Principal Consideration with respect to all violations, “Whether the respondent attempted to conceal his or her misconduct or to lull into inactivity, mislead, deceive or intimidate a customer, regulatory authorities or, in the case of an individual respondent, the member firm with which he or she is/was associated.” *Id.* at 7.

here.⁴¹ We also agree with the NAC that, “[n]onetheless, the quality of North’s enforcement of the WSPs related to electronic correspondence was insufficient and reflects his inattention to his responsibilities in this regard.” The \$5,000 fine imposed for North’s misconduct here will protect the public by encouraging North to take his responsibility for the tasks he is required to perform more seriously in the future. Under the facts and circumstances of this case, we find that FINRA’s imposition of a \$5,000 fine is a remedial sanction and is neither excessive nor oppressive.⁴²

An appropriate order will issue.⁴³

By the Commission (Chairman CLAYTON and Commissioners JACKSON, PEIRCE, ROISMAN, and LEE).

Vanessa A. Countryman
Secretary

⁴¹ See *North*, 2018 WL 5433114, at *9 (citing *Richard J. Rouse*, Exchange Act Release No. 32658, 1993 WL 276149, at *5 (July 19, 1993)).

⁴² We also sustain FINRA’s imposition of costs.

⁴³ We have considered all of the parties’ contentions. We have rejected or sustained them 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
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In the Matter of the Application of
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For Review of Disciplinary Action Taken by
FINRA

ORDER SUSTAINING DISCIPLINARY ACTION TAKEN BY FINRA

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

ORDERED that the disciplinary action taken by FINRA against Thaddeus J. North is sustained.

By the Commission.

Vanessa A. Countryman
Secretary