BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Richard O. White Charlotte, North Carolina, Respondent.	DECISION Complaint No. 2015045254501 Dated: July 26, 2019

Respondent structured cash deposits to avoid federal reporting requirements. Held, findings affirmed and sanction modified.

Appearances

For the Complainant: Leo F. Orenstein, Esq., Joseph E. Strauss, Esq., Savvas A. Foukas, Esq., Tiffany A. Buxton, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Nathan Zezula, Esq., Lueker Mott Zezula LLC

Decision

Richard O. White appeals a February 27, 2018 Hearing Panel decision. The Hearing Panel found that White knowingly structured cash deposits to evade the federal currency reporting requirements of the Bank Secrecy Act, in violation of the high standards of ethical conduct imposed by FINRA Rule 2010. For his misconduct, the Hearing Panel barred White from associating with any FINRA member in any capacity.

The primary issue on appeal is whether White, through his training at his member firm, knew about the relevant currency reporting requirements and then intentionally structured the cash deposits to evade reporting. A second issue is the appropriateness of the sanction imposed by the Hearing Panel. The Hearing Panel concluded that White acted knowingly and intentionally. After an independent review of the record, we agree with the liability findings of the Hearing Panel but modify the sanction it imposed.

I. Introduction

The Currency and Foreign Transactions Reporting Act of 1970 (a statute commonly referred to as the "Bank Secrecy Act" or "BSA") requires U.S. financial institutions to assist U.S. government agencies in detecting and preventing money laundering.[1] Specifically, the Bank Secrecy Act requires financial institutions to keep records of cash purchases of negotiable instruments, file reports of cash transactions exceeding $10,000, and report suspicious activity. *See* 31 U.S.C. § 5313(a). The Bank Secrecy Act mandates that U.S financial institutions file currency transaction reports ("CTRs") with the Department of Treasury's Financial Crimes Enforcement Network ("FinCEN") for each deposit, withdrawal, exchange of currency, or other payment or transfer, by, through, or to the financial institution which involves a transaction in currency of more than $10,000. 31 C.F.R. § 1010.311. The purpose of CTRs is to provide law enforcement officials with information to enable them to uncover misconduct such as tax evasion, money laundering, or other criminal activity.

The act of parceling what would otherwise be a large financial transaction into a series of smaller transactions to avoid scrutiny by regulators or law enforcement is commonly referred to as structuring. Structuring occurs when a person "conducts or attempts to conduct one or more transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading the reporting requirements [of FinCen]." 31 C.F.R. § 1010.100(xx).

The Bank Secrecy Act prohibits "structur[ing] or assist[ing] in structuring . . . any transaction with one or more domestic financial institutions" "for the purpose of evading the reporting requirements of Section 5313(a)." 31 U.S.C. § 5324(a)(3). Structuring represents conduct that is inconsistent with the high standards of commercial honor members of the securities industry are bound to observe and thus violates FINRA Rule 2010. *See Dep't of Enforcement v. Iida*, Complaint No. 22012033351801, 2016 FINRA Discip. LEXIS 32, at *14 (FINRA NAC May 18, 2016).

II. Factual Background

A. White's Background

White began working in the securities industry after graduating from college in 1992 and obtaining an M.B.A. in 1994. White worked for Wells Fargo Securities, LLC and its predecessor entities (collectively, "WFS" or the "Firm") from October 24, 1994 until his termination by WFS on March 25, 2015. White was registered as a general securities representative, investment banking limited representative, municipal securities principal, and operations professional. WFS is the broker-dealer under the parent Wells Fargo & Company ("Wells Fargo"). White was a team member, or employee, in the Wholesale group at WFS.

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[1] The BSA is codified at 12 U.S.C. § 1829b; 12 U.S.C. §§ 1951-1959; 18 U.S.C. § 1956; 18 U.S.C. § 1957; 18 U.S.C. § 1960; and 31 U.S.C. §§ 5311-5332 and notes thereto, with implementing regulations at 31 C.F.R. Chapter X.

Beginning in 1999, White worked on the Firm's municipal bond trading desk. In that position, he engaged in underwriting and trading and was involved in managing positions on a day-to-day basis. White was promoted to director in 2011 or 2012. Those who worked with White viewed him as a good person and professional colleague.

B. White's Knowledge of Bank Secrecy Act Reporting Requirements

1. Training

All Wells Fargo employees, including WFS registered persons, were required to complete annual Bank Secrecy Act training. JS, Director and Financial Crimes Manager at Wells Fargo, testified that, because Wells Fargo employees are required to comply with the BSA both professionally and personally, Wells Fargo's BSA training is designed to convey the core BSA principles, including CTRs, the reporting trigger for transactions more than $10,000, and structuring.[2]

Prior to the events at issue in May 2014 and February 2015, White received many years of training on the Bank Secrecy Act at the Wells Fargo corporate level and at his line of business level at WFS. WFS's training, entitled "Wholesale BSA/AML/OFAC," was a self-paced, online computer training course. The training modules consisted of 30-50 pages of reading material on slides with test questions to ensure adequate understanding of the material. Each annual training included a "course overview" slide, which explained: "Regardless of your job at Wells Fargo, you have an important role in promoting Bank Secrecy Act (BSA) and Anti-Money Laundering (AML) awareness. This course provides information about [BSA] and [AML] regulations and is designed to help you understand how you contribute to the success of Wholesale's BSA/AML/OFAC compliance programs."

An employee could read the training slides first and then take the test, or simply take the test. If an employee did not score at least 80%, he was required to review the training materials and take the test again. In 2010, 2011, 2012, and 2013, White passed the annual BSA training test with scores of 90% or above. In 2014, White passed the test with a score of 100% correct. We review the materials presented in these trainings below.

a. 2014 Bank Secrecy Act Training

White's 2014 BSA training emphasized the importance of compliance with the Bank Secrecy Act. It stated that the potential consequences for team members for non-compliance with the Bank Secrecy Act included disciplinary action up to and including termination of employment, civil or criminal penalties, and debarment from working in the financial services industry.

The training explained currency transaction reporting requirements, noting that "[Bank Secrecy Act] regulations require most financial institutions, including Wells Fargo, to file

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[2] JS came to Wells Fargo after White's termination.

[CTRs] when transactions in currency totaling more than $10,000 are conducted on the same business day by, through, or to the financial institution." The training continued: "[m]ultiple currency transactions by or on behalf of the same individual or entity that exceed $10,000 on the same business day . . . are aggregated into a single currency transaction report." The 2014 training explained that any party who "conducts" a currency transaction exceeding $10,000 must be identified, along with any person who is a beneficiary of the transaction.

The test at the end of the 2014 training module presented the following true or false question: "All of a Wholesale's customer's transactions involving either cash in or cash out of any of their accounts at any location, within a single day have to be aggregated and reported in a Currency Transaction Report (CTR) if the total cash transacted exceeds $10,000, unless there is an approved exemption."[3] The correct answer is true. White received a score of 100% correct on the 2014 test.

b. 2013 Bank Secrecy Act Training

White's 2013 BSA training similarly explained that Bank Secrecy regulations require Wells Fargo to file a CTR for any currency transaction larger than $10,000, and that multiple currency transactions on the same day by the same person that exceeded $10,000 in the aggregate would be combined into a single CTR. The 2013 training contained a slide with a test question that highlighted that multiple currency transactions by the same person on the same business day would be aggregated and reported on a single CTR. The 2013 training, like the 2014 training, informed Wells Fargo employees that noncompliance with the Bank Secrecy Act could result in termination and even a bar from the securities industry. The 2013 training also presented the same question as the 2014 training about whether it was true or false that multiple transactions by or on behalf of a single person on the same day would be aggregated for purposes of submitting a currency transaction report. The correct answer is true. White received a score of 90% correct on the 2013 test.

c. 2012, 2011, and 2010 Bank Secrecy Act Training

White's 2012, 2011, and 2010 BSA trainings contained similar information. The 2012 training declared that an individual who conducts a transaction in currency exceeding $10,000 must be identified. The training declared that currency transaction reporting was an important concept for all "team members of Wholesale," referring to WFS employees in the investment banking and securities business, to understand even though the currency transaction might occur in another part of Wells Fargo such as regional banking.

The 2010 and 2011 trainings discussed the identification of persons who conduct large currency transactions and the aggregation of multiple transactions by the same person on the same day. A slide in the 2010 training material explained that some customers try to avoid CTRs by structuring their transactions, and the slide defined structuring as dividing a transaction that is over $10,000 into smaller transactions. The slide stated that structuring is a

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[3] Generally individuals, with the exception of some very high net worth individuals, are not Wholesale customers. White was not a Wholesale customer.

federal offense. The 2010 training continued that customers who make multiple currency transactions at different tellers or stores could potentially be structuring to avoid CTR reporting requirements, which is a federal offense that could lead to criminal prosecution.

2. Firm Policies and Other Training

In addition to the above BSA training modules, WFS had policies, guidelines, and other training related to the Bank Secrecy Act.

a. Ethics Training, Code of Conduct, and Employee Handbook

While associated with WFS, White completed annual Code of Ethics training. The Code of Ethics training reiterated the principles contained in Wells Fargo's Code of Ethics and Business Conduct ("Code of Conduct"), which applied to every Wells Fargo team member. Team members were required to complete the annual self-paced, online computer training course and certify, upon completion of the training, that they had read and would comply with the Code of Conduct.

White took Code of Conduct training each year, including from 2010 through June 2014. The 2013 and 2014 trainings emphasized that team members are expected to "properly manage the use of Wells Fargo's financial services" and that "[m]isuse . . . will result in the same penalties or restrictions that apply to customers." The 2014 training continued that team members are "held to the same standards customers are, as far as the use of financial products at Wells Fargo." On October 27, 2014, White attested that he had read and understood the Code of Conduct and would abide by its policies and procedures.

The Code of Conduct and other corporate policies were encompassed in an employee handbook, which was available to employees online. The January 2015 employee handbook made clear that, although an employee's personal finances were generally private, it was important to Wells Fargo, as a financial institution that manages other people's money, that Wells Fargo employees manage their own finances "properly and in a prudent manner."[4] Wells Fargo also reminded employees that, when they received financial services from Wells Fargo, they were subject to the same restrictions as other customers. The handbook specified, "Wells Fargo prohibits improper transactions by team members, such as but not limited to kiting, writing worthless personal checks, and conducting fraudulent or worthless electronic transactions." The handbook also provided that a team member could be immediately terminated for engaging in illegal conduct, listing a series of specific examples, including "[c]onducting a transaction that violates the Bank Secrecy Act" in a "personal bank account."

[4] White testified that "properly managing the use of Wells Fargo['s] financial services" means "not doing anything illegal" or "knowingly wrong."

b. AML Compliance Guidelines for White's Business Unit

White also attended required, annual in-person training to review numerous issues related to his business unit within the Wholesale group hosted by a senior compliance officer. WFS's AML policy, entitled "Anti-Money Laundering and Anti-Terrorist Financing" (the "AML Policy"), was part of this training. The AML Policy described the BSA and notified its registered representatives that "the BSA requires the reporting of certain currency transactions totaling $10,000 or more."[5] White's second level supervisor, MB, testified that the AML Policy and the BSA were covered each year at this training, and that it would not be possible for someone to complete this compliance training yearly without understanding that currency transactions over $10,000 had to be reported.

c. Corporate Policy on Currency Transaction Reporting

During the relevant period, White also had access on the Firm's intranet to Wells Fargo's "Currency Transaction (CTR) and CTR Exemption Policy" ("CTR Policy"). The CTR Policy applied to all divisions of Wells Fargo, including WFS and its registered representatives, who were responsible for reviewing it. The CTR Policy was available on the corporate intranet training site. According to MB, WFS's registered representatives typically were provided links to the CTR Policy as part of their annual training. White admitted he had access to Wells Fargo's corporate policies on the intranet, but he did not know that the CTR Policy was in effect in 2014 and 2015.

The CTR Policy provided: "All team members must understand the concept of structuring. Team members are strictly prohibited from attempting to avoid a CTR filing by structuring . . . any transaction." The CTR Policy defined "structuring" as "the illegal act of breaking up currency transactions into smaller amounts for the purpose of evading the CTR reporting requirements. For example, the practice might involve dividing a sum of money into lesser quantities and then making two or more deposits or withdrawals that add up to the original amount."

3. White's General Knowledge Regarding the Bank Secrecy Act and CTRs

White testified that he had heard of the $10,000 figure throughout his life. He said that, during the period 2014 to 2015, he did not know exactly what its significance was: "I knew the number. I knew something happened. I didn't know specifically what. I just had heard, over the years, and not specifically related to [Wells Fargo] training, that something happened at 10. That was what stuck out in my mind." White also testified that, when a

[5] The AML Policy is contained in WFS's written supervisory procedures and compliance guidelines. Besides the training, White also had the ability to access the AML Policy on WFS's intranet.

Wells Fargo investigator interviewed him about three of his Wells Fargo deposits at issue, he told her, "I knew something happened at 10, yes."

JS, the current Wells Fargo Director of Monitoring Surveillance, testified: "[M]ost employees ultimately do at least know the CTR requirement . . . . [T]hey may not always know the $10,000 versus $10,000.01 threshold, but they generally [have] at least [the] understanding that there's some requirement that comes into play for a large cash transaction." "[P]eople will – they'll know the CTR requirement . . . . They may not know it's called a CTR, but they'll understand something about $10,000 cash."

C. White's Accounts and Deposits

1. White's Accounts

White opened a checking account at his employer's affiliated bank in 1994, when he started working at a WFS predecessor. At the time of the events at issue, the Wells Fargo checking account was his primary account for everyday use. White did most of his banking at a Wells Fargo branch bank located approximately three blocks from his office. In March 2013, White established a safe deposit box at this branch. The safe deposit box was linked to another Wells Fargo bank account called a "Premier Checking" account, which he opened at the same time.[6]

White also had a savings account at a credit union unaffiliated with Wells Fargo. White used the credit union account infrequently prior to making the deposits at issue. As of January 1, 2014, the balance in the credit union account was $132.21. The credit union was located two blocks from his local Wells Fargo branch and approximately four or five blocks from his office.

2. White's Gambling Trips and Deposits

White went on eight trips with colleagues and friends to Las Vegas between March 2012 and March 2015, where he engaged in sports betting and played some table games.[7] White, and another witness, testified that cash on hand was required to gamble on sports events. On six trips, White lost money. On the other two, White won. The cash deposits White made upon returning home from his winning trips form the basis of the underlying allegations and are detailed below.

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[6] White also had a Wells Fargo brokerage account in which he primarily traded exchange traded funds on margin.

[7] The Hearing Panel's decision reviewed in detail all eight of White's trips to Las Vegas. We focus our discussion on the two winning trips that form the basis of the underlying allegations, but adopt and hereby incorporate into our decision the Hearing Panel's recitation of the other six trips.

a. May 2014 Deposits

In late April 2014, White went to Las Vegas to attend a Wells Fargo healthcare conference. In advance of his trip, he withdrew $5,000 in cash from his Wells Fargo account at his local branch located approximately three blocks from his office. He later decided he needed more cash and withdrew another $7,000 from another Wells Fargo branch while at a shopping mall. White won more than $13,000 in Las Vegas, so he returned home with more than $25,000 in cash. Although he could not recall specifically, White believed that the $25,000 likely was made up of two $10,000 bundles and the remainder loose cash. The $10,000 bundles were $100 bills bound by a currency wrapper that said "$10,000."

White did not deposit the $25,000 at one time. On May 5, 2014, he deposited $9,900 into his account at his local Wells Fargo branch. That same day, he deposited another $9,900 into his credit union account. The next day, he deposited $5,700 in cash in his account at the same Wells Fargo branch. White explained his depositing behavior as follows. White testified that he brought all $25,000 with him on his 12- to 15-minute walking commute to his office, and then later walked with all $25,000 to his Wells Fargo branch and credit union. According to White, he broke the currency wrapper on one of the $10,000 bundles before making the Wells Fargo deposit at the teller window and removed a one hundred dollar bill because he wanted "cash on hand." He then walked two blocks to the credit union, where he again broke the currency wrapper on the other $10,000 bundle and removed a one hundred bill because "he decided to take more money out" to have pocket cash.[8]

The following day, White returned to his Wells Fargo branch and deposited the $5,700 into his account. White said he had planned to deposit the $5,700 in his safe deposit box on May 5, but he had forgotten his key, so he kept the money in his office overnight. White testified that, after forgetting his key again on May 6, he decided to deposit the $5,700 into his account.

b. February 2015 Deposits

White returned to Las Vegas for the 2015 Super Bowl. In advance of this trip, White withdrew $15,000 from his Wells Fargo account at his local branch on January 29, 2015. At the time, White had wanted to withdraw $27,000, but branch personnel told him that the branch did not have enough hundred dollar bills to fulfill that request. Therefore, White returned the next day and withdrew an additional $12,000. White won approximately $45,000 in Las Vegas, and he returned home on February 2, 2015 with approximately $72,000 in cash.

On February 3, 2015, White deposited $9,900 at his Wells Fargo branch and $9,900 at the credit union. According to White, he walked to work that day with approximately $26,000, comprised of two $10,000 bundles and almost $6,000 in loose cash. White testified that he left approximately $45,000 in a home safe. White first placed the $6,000 in loose cash in his safe deposit box, and then deposited $9,900 at the teller window, breaking the currency wrapper and keeping a one hundred bill for spending money. After making the Wells Fargo

[8] Notwithstanding this explanation, White acknowledged that, at the time, he had at least $5,700 in loose cash on hand plus the $100 in cash he removed from the other $10,000 bundle.

deposit, White walked to the credit union and deposited $9,900, again breaking the currency wrapper and keeping a one hundred bill.

On February 19, 2015, White deposited $9,800 cash at the Wells Fargo branch and $9,700 at the credit union, each time breaking the currency wrapper from the bundle of $10,000 and taking out two or three hundred dollar bills, respectively. He also visited his Wells Fargo safe deposit box that day. White testified that he did not put any cash into his safe deposit box that day or remove any cash. He said that he either was checking on the expiration date of his passport, which he kept in his safe deposit box, or he was looking for the title to a car that he intended to donate to Goodwill.

On February 27, 2015, White deposited $9,500 in cash plus a $160 check at the Wells Fargo branch and $3,100 in cash at the credit union. He testified that the money he deposited was cash that he had previously put into his safe deposit box.[9] Bank records show that he visited his Wells Fargo safe deposit box that day.

White testified that, during the month of February 2015, he kept portions of his winnings in a safe he had at home and that he put "portions" of it into his safe deposit box during one or two of his visits to the safe deposit box.[10]

D. Subsequent Events

1. Wells Fargo's Investigation and Termination of White

White's February 2015 deposits at Wells Fargo triggered an investigation by Wells Fargo. On March 13, 2015, an internal fraud detection field investigator, CN, along with White's second level supervisor, MB, met with White.[11] During the interview, CN talked with White while MB observed. White, CN, and MB all testified at the hearing about this interview, though White's recollection of it differs from the version presented by CN and MB.

CN and MB described the interview as cordial, conversational, and non-confrontational. CN introduced herself to White, explained that she was an investigator with Wells Fargo, and asked whether White had completed training on the Bank Secrecy Act.

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[9] White's Amended Answer said that the cash came from his safe at home. But at the hearing White recollected that he wanted to keep the cash at home because he was going back to Las Vegas in a few days.

[10] The Wells Fargo safe deposit box entrance record (which contains a handwritten date and time, White's signature, and a bank attendant's initials) reflects that White visited the safe deposit box on February 4, 19, and 27, 2015. White testified, and Enforcement did not contest, that the February 4 date was incorrect because White was certain he visited the safe deposit box on February 3, 2015. Therefore, the record establishes that White visited the safe deposit box every day that White deposited money at Wells Fargo Bank in February 2015.

[11] CN did not inform MB about the nature of the inquiry prior to the interview, and MB did not give White any notice that he was going to be interviewed by CN.

According to MB, the focus of the interview initially was on two of White's withdrawals, whether White knew what a CTR was, and White's three deposits at Wells Fargo Bank on February 3, 19, and 27, 2015, inquiring why White made the deposits the way he did.

According to MB, White described coming back from Las Vegas with slightly more money than he had withdrawn. MB testified that White said that he made the three separate deposits because "he wanted to stay below $10,000" because "he had done nothing wrong and . . . that would raise the red flags and somebody would call." According to MB, White said that he held the rest of the cash in his safe deposit box. MB testified that White did not seem clear about the details of when or how a CTR is filed, but White split the deposits into amounts below $10,000 on purpose to avoid raising a red flag and having someone call with questions. MB also testified that CN asked White if he wanted to make an additional statement regarding the matters they discussed in the interview, and White declined to do so.

CN's testimony was consistent with MB's testimony. She testified that White told her that he purposefully split up his deposits to be below $10,000 to avoid questions. Like MB, she testified that White "did not express clear knowledge of how a CTR was completed," but he admitted to intentionally breaking up the larger sum of money into amounts less than $10,000 to avoid reporting. Both CN and MB testified that White said at the interview that he wanted his deposits to stay below $10,000 or otherwise there would be "red flags."

In certain respects, White's testimony was consistent with MB's and CN's testimony. White confirmed that he admitted to CN that he knew "something happened at $10,000." When CN then asked what he thought might happen at $10,000, White confirmed that he said it might set off a red flag and someone might call and ask about the source of the money. But he also testified that, at the time of the meeting with CN, he had "no clue" about CTRs.

Contradicting MB and CN, White did not describe the interview as conversational and non-confrontational. Rather, White testified that CN accused him of committing a felony and that the meeting "spun out of control from there." White also testified that he never admitted in the interview that he made the three deposits below $10,000 for a specific purpose. He testified that he told CN that he was not sure what he was going to do with the money, that he planned to return to Las Vegas in a month, and that he did not need all the money in the bank. According to White, he told CN, "[T]hat's just how I wanted to make the deposits." He later reiterated that he told CN that he made the three deposits "the way I wanted to put the money in."

It is uncontested that, during the interview, White did not mention anything about his deposits at his credit union on February 3, 19, and 27, his additional gambling winnings, his home safe, or being uncomfortable carrying large amounts of money on his walk to work.

On March 25, 2015, after White's return from vacation, WFS terminated White.[12] MB, with the input of others, ultimately made the decision. At that time, WFS only knew

[12] White left for a vacation shortly after the interview, a planned gambling trip to Las Vegas, believing that things would work out and WFS would give him a warning.

about White's three cash deposits in his Wells Fargo account in February 2015. It did not know about White's deposits at the credit union or the earlier cash deposits at Wells Fargo in May 2014.

2. White's Text Messages with Friends

After he was fired, White exchanged electronic text messages with multiple friends and colleagues about his termination. They expressed support and surprise at what happened. In these text messages, White admitted he "knew something happened at 10," that he made the deposits "on purpose" because he "didn't want to do anything to look suspicious," and that he "didn't know what [he] wanted to do with the money and remembered depositing large amounts looked questionable so [he] didn't do it."

White did not reveal in his text messages that he also made deposits under $10,000 at his credit union the same days as his Wells Fargo deposits. White also mentioned that after making a deposit, he placed the remainder of his funds in his safe deposit box. For example, White wrote: "I come back [from Las Vegas] with almost the same amount [I withdrew to take to Las Vegas] and deposit it like I want to. I deposit 9 grand and put the rest in my safety deposit box…then deposited another 9 grand 3 weeks later. The last day of the month I deposit the rest of what I took out….2 withdrawals…3 deposits. YOU ARE GONE. This is crazy."

3. White's Dispute Resolution Request

In April 2015, White filed a dispute resolution request with Wells Fargo seeking reinstatement. In his written request, White explained that he withdrew $27,000 over a two-day period for a trip to Las Vegas over Super Bowl weekend. He described his trip as "successful," so he "therefore re-deposited the $27,000 and a small amount of additional money to [his] personal bank account with Wells Fargo." White said he did not immediately deposit the entire amount "[d]ue to the large amount of money and the fact that [he] walk[ed] to work." He said he made his initial deposit and put the remainder of the money in his "safety [sic] deposit box."

White did not disclose the amount of his additional gambling winnings or his same-day credit union deposits.[13]

4. White's Arbitration Claim for Wrongful Termination

In June 2015, White filed an arbitration claim with FINRA's Office of Dispute Resolution against WFS, alleging that WFS had wrongfully terminated him and seeking correction or expungement of the explanation of his termination on his Uniform Termination Notice for Securities Industry Registration ("Form U5"). Similar to his dispute resolution request, White explained that he withdrew $27,000 over a two-day period for a Super Bowl

[13] White was questioned at the hearing about the statements in his dispute resolution request. He testified that the "remainder of the money" referred to only the $5,700 he initially deposited in his safe deposit box, and he did not mention his home safe, his gambling winnings, his credit union deposits because he was only questioned about, and then terminated for, his three deposits at Wells Fargo in February 2015.

gambling trip to Las Vegas in 2015, and he "re-deposited the $27,000 and a small amount of additional money in his personal bank account with Wells Fargo." He explained that he deposited his money on three separate days due to the large amount of money and the fact he walked to work.

White and WFS reached a settlement on all matters other than White's request for expungement of his Form U5, which proceeded to hearing before an arbitration panel. On March 29, 2017, the arbitration panel denied White's request for expungement of the reason for termination but directed the termination comment on White's Form U5 be changed to "Violation of company policy." North Carolina state court confirmed the award.

5. FINRA's Investigation

FINRA commenced its investigation after receiving a copy of White's Form U5. In a June 2015 response letter to FINRA, White repeated his story that, after withdrawing $27,000 for a Super Bowl gambling trip to Las Vegas in 2015, he "deposited the previously withdrawn $27,000 and a small amount of his winnings into his personal bank account on three separate days for fear of losing the full amount in the event he was robbed on his walk to work and for convenience, as [he] generally could not carry more than that amount in his pockets." White did not mention that he was carrying additional cash that he was depositing the same days at his credit union.

In February 2016, in response to a request by the Department of Enforcement ("Enforcement") pursuant to FINRA Rule 8210 for, among other things, "copies the account statements[ ] for all bank accounts maintained by Mr. White during the period of December 2014 through April 2015," White provided the responsive statements for his Wells Fargo checking account and credit union account.[14] The next day, White made a "supplemental production" to FINRA of a one-page spreadsheet containing the "[a]ctivity of $3,000 or more in bank accounts" from "Dec. 2014-May 2015." The spreadsheet showed White made same day deposits at Wells Fargo Bank and his credit union on February 3, 19, and 27, 2015. Later, without being requested by FINRA, White produced copies of text messages between White and his former co-workers.

On August 31, 2016, Enforcement sent White a Wells letter notifying him that Enforcement made a preliminary determination to recommend disciplinary action be brought against White.[15] In his October 11, 2016 response to FINRA's Wells letter, White wrote about his other gambling trips, including the April 2014 trip. He wrote that "[he] took $12,000 to Las Vegas, returned with $10,000 and deposited $9,900 having taken $100 for pocket cash out

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[14] Although not requested, White also provided his Wells Fargo brokerage account statements for the period January 2014 through April 2015 and additional select Wells Fargo checking account statements from 2013 and 2014, including his May 20, 2014 statement showing his April 2014 deposits.

[15] The Wells letter is not in the record, but it is apparent from the context of White's response that only the February 2015 deposits were at issue at the time.

of the $10,000 stack he had on his person." White did not mention his April 2014 gambling winnings or his same day credit union deposit.

Regarding the February 2015 "deposits at issue," White wrote that "[h]e had a [Wells Fargo] bank account as well as a credit union where he periodically bought CDs because of the better rates of return. And he had a safe deposit box at [Wells Fargo Bank]." He described that, after returning from Las Vegas, the next day "[h]e left home with around $25,000 in cash in his pockets," and "he put around $5,000 in safe deposit box" and "deposited $9,900 into his [Wells Fargo] bank account (taking a $100 bill out of a $10,000 wrap as pocket change)." He continued that he "next walked a few blocks to his credit union, where he again deposited a $10,000 stack, where he again took a $100 bill for pocket change." The letter continued: "Two weeks later, [White] revisited his finances and decided he needed more money in his bank account to pay some upcoming credit card and other bills, and that he should invest in another CD." White then described his February 19, 2015 deposits, saying he took $20,000 from his home safe and made deposits at both Wells Fargo Bank and the credit union. The letter continued: "Finally, over a week later, . . . [White] saw that after paying down some other bills and incurring other expenses, he needed more money in his checking account to cover [an upcoming bill]," so he took approximately $12,500 from his home safe and deposited money in his Wells Fargo account, along with some other money from his safe deposit box, and additional money in his credit union account.

Two days after receiving White's Wells letter response, Enforcement requested, pursuant to FINRA Rule 8210, all of White's credit union account statements from January 2014 through September 2014.

III. Procedural History

Enforcement filed a one-cause complaint against White on November 9, 2016, alleging that White violated FINRA Rule 2010 by engaging in structuring by making nine deposits of $10,000 or less in May 2014 and February 2015 in his personal accounts at Wells Fargo Bank and the credit union, in an attempt to evade the reporting requirements of the Banking Secrecy Act and causing the banks to fail to file a CTR.

After a three-day hearing, the Hearing Panel issued its decision on February 27, 2018, finding that White engaged in the alleged misconduct. The Hearing Panel made extensive credibility findings. For his misconduct, the Hearing Panel barred White from associating with any FINRA member in any capacity. The Hearing Panel found White's conduct egregious, explicitly finding that White acted in bad faith and breached the standards of professional conduct for registered persons.

White appealed the decision.

IV. Discussion

The Hearing Panel found that White structured nine deposits in April 2014 and February 2015 at Wells Fargo Bank and his credit union with the knowledge and intent to

evade the federal currency reporting requirements in the Bank Secrecy Act, in violation of FINRA Rule 2010. After reviewing the record in its entirety, we affirm the Hearing Panel's findings of fact and conclusions of law. In so doing, we reject the arguments and defenses raised by White in this appeal.

A. Credibility Findings by the Hearing Panel

The Hearing Panel made extensive credibility findings in its decision. These "[credibility] determinations, based on hearing the witness's testimony and observing demeanor, are entitled to considerable deference." *William Scholander*, Exchange Act Release No. 77492, 2016 SEC LEXIS 1209, at *30 n.45 (Mar. 31, 2016), *aff'd sub nom.*, *Harris v. SEC*, 712 F. App'x 46 (2d Cir. 2017).

The Hearing Panel found MB, White's second-level supervisor, credible. MB testified that he understood that White split the deposits because White wanted to stay below the $10,000 threshold, and that White told CN that he thought that a $10,000 deposit would raise a red flag and cause questions to be asked. The Hearing Panel noted that MB's testimony was straightforward and consistent with the testimony of CN, and in light of MB's high regard for White and sadness about terminating White's employment, MB had no reason to misrepresent what White said to CN. The Hearing Panel also noted that CN's testimony was consistent with the testimony of MB and White that, during the interview, White indicated he knew that something happened at $10,000 at which a red flag would be raised, triggering some kind of inquiry.

On the other hand, the Hearing Panel did not find White credible. Specifically, the Hearing Panel "[did] not credit White's testimony about how he handled the cash he brought back from his gambling trips or about his reasons for making the deposits the way that he did." The Hearing Panel "conclude[d] that he did not tell the truth about his conduct either during the investigation or at the hearing." The Hearing Panel found that the way White deposited "[made] no sense." The Hearing Panel found White's claim that he deposited that way for "convenience" implausible and White's assertion that he deposited at both Wells Fargo and the credit union to "diversify" not credible.[16] The Hearing Panel explicitly found that White deposited the way he did "in order to keep his cash deposits on any given day with either financial institution under $10,000." The Hearing Panel also found White's claim that, although he knew something happened at $10,000 but "had no clue what it was" not credible in light of

[16] The record establishes that White, for each of the relevant deposits at the credit union, purchased or transferred to a certificate of deposit at the credit union in the same amount on the same day.

his MBA, training, and apparent professional competence. The Hearing Panel found that White "could not possibly believed that *his* transactions were somehow exempt."[17]

The Hearing Panel also found that White told inconsistent stories. They also found that he misled Wells Fargo and FINRA staff, leading them to believe that the three deposits at Wells Fargo Bank in February 2015 constituted the entirety of his winnings by omitting his credit union deposits. He also originally told CN that, when he made the February 2015 deposits, he placed the funds he did not immediately deposit into his safe deposit box. He later told WFS that he placed the funds he did not immediately deposit in a safe at home, not in his safe deposit box. According to the Hearing Panel, the latter version was necessary to support his story that he was not comfortable carrying more than $10,000 on his walk to work. The Hearing Panel explicitly did not find this version of his story credible.

We defer to the Hearing Panel's credibility determinations. They are supported by the record, which contains no substantial contrary evidence. *See Daniel D. Manoff*, 55 S.E.C. 1155, 1161-62 & n.6 (2002) (explaining that a Hearing Panel's credibility determination is entitled to deference absent substantial evidence to the contrary).

B. White Engaged in Unlawful Structuring

Having reviewed the credibility findings of the Hearing Panel, we next turn to Enforcement's allegation that White structured the nine cash deposits at issue. Structuring cash deposits to avoid the filing of the required report is a crime with three elements: (i) the breaking of large sums of cash into smaller amounts of $10,000 or less; (ii) knowledge of the reporting requirement; and (iii) intent to evade the reporting requirement. *See United States v. Nguyen*, 854 F.3d 276, 281 (5th Cir. 2017). A person does not need to know that structuring deposits to evade the reporting requirement is illegal to be liable. Rather, the person need only know that there is a reporting requirement and intend to evade it. *See United States v. MacPherson*, 424 F.3d 183, 188-89 (2d Cir. 2005); *United States v. Ismail*, 97 F.3d 50, 56-57 (4th Cir. 1996). As discussed by the Hearing Panel, the standard of proof for the three elements of structuring in a criminal case is beyond a reasonable doubt, whereas in a disciplinary case, the standard of proof is a preponderance of the evidence. *See, e.g.*, *Joseph R. Butler*, Exchange Act Release No. 77984, 2016 SEC LEXIS 1989, at *16 (June 2, 2016) (applying a preponderance of the evidence standard in FINRA disciplinary proceedings).

The Hearing Panel found that White structured the nine cash deposits at issue. We agree that the preponderance of evidence supports that White structured the relevant deposits.

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[17] The Hearing Panel noted that MB, when asked whether it was possible for someone who completed Wells Fargo's training year after year and not know that currency transactions over $10,000 had to be reported pursuant to the Bank Secrecy Act and CTR requirements, answered, "No." JS, Wells Fargo's current director of the group responsible for ensuring that the firm files appropriate CTRs, also testified people in the financial industry have a general understanding that there is a requirement that comes into play for a large cash transaction and they know the $10,000 figure.

First, it is undisputed that White deliberately broke larger sums of cash into smaller amounts. On May 5, 2014, White carried at least $25,700 on his person, but made deposits of $9,900 into both his account at the Wells Fargo branch and the credit union. The very next day, White made an additional deposit of $5,700 at the Wells Fargo branch. On February 3, 2015, White carried at least $20,000 on his person but made deposits of $9,900 at the Wells Fargo branch and the credit union. On February 19, 2015, White carried at least $20,000 on his person but made deposits of $9,800 at the Wells Fargo branch and $9,700 at the credit union. Finally, on February 27, 2015, White carried at least $12,600 on his person but made a cash deposits of $9,500 at the Wells Fargo branch and $3,100 at the credit union.

Second, White knew about the $10,000 threshold and federal reporting requirement. The Hearing Panel found White's claim that he knew something happened at $10,000 but "had no clue what it was" not credible in light of his MBA, training, and professional competence. We defer to this credibility finding, which is well supported by the record. White received annual training that banks and other financial institutions are legally required to file a CTR in connection with currency transactions in excess of $10,000. White testified that he "knew something happened" at $10,000 but asserts he did not have sufficient knowledge to be held liable for structuring. We disagree. White concedes that he told CN that he wanted to stay below $10,000 because otherwise "that would raise the red flags and somebody would call." We agree with the Hearing Panel that it was not necessary for White to know in detail the mechanisms for filing a CTR or whether a CTR is required at the $10,000 mark or the $10,000-plus-a-penny mark to be liable. White's testimony establishes that he knew that some type of report was required to be filed at the $10,000 threshold, which we find sufficient.

Third, White intended to evade the CTR filing requirement. The Hearing Panel found that White deposited the way he did "in order to keep his cash deposits on any given day with either financial institution under $10,000." We agree. White told CN that he wanted to avoid raising a red flag and having someone ask questions, which both CN and MB understood him to mean that he purposely made the cash deposits below $10,000. White also told some of his friends in text messages that he had purposely made the deposits below $10,000 in order to avoid suspicion.

In addition, the pattern of White's deposits further suggests that he intended to avoid the filing of a report on his deposits. Breaking up a lump sum into smaller transactions can be a sign of intent to evade the reporting requirement because there is no obvious reason not to deposit the lump sum all at once. *See United States v. Gibbons*, 968 F.2d 639, 645 (8th Cir. 1992) (observing that, because "receipt and cashing of six checks would have been less efficient and convenient than receiving and cashing one, it is difficult to explain this change except that Gibbons sought to evade the reporting requirements"). Furthermore, splitting same-day deposits between two financial institutions is another sign of intent because it has the effect of concealing the full extent of a person's currency transactions. *See United States v. Scholl*, 166 F.3d 964, 968, 979 (9th Cir. 1999) ("Whenever Scholl made two deposits on the same day, he made the deposits at different banks. By using different banks, he concealed from each bank the fact that he was making multiple deposits.").

Proof of motive is not necessary to find that a person engaged in unlawful structuring. We disagree with White that Enforcement's failure to establish his motive is fatal because "the question of motive is inherently tied up with the question of intent." White's intent to break up the relevant deposits is clear from the circumstantial evidence and his testimony. We conclude that White intended to evade the CTR filing requirement.

C. White's Conduct Violates FINRA Rule 2010

FINRA Rule 2010 states that a broker-dealer, "in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."[18] The rule is "'designed to enable [FINRA] to regulate the ethical standards of its members' and 'encompass[es] business related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security.'" *Stephen Grivas*, Exchange Act Release No. 77470, 2016 SEC LEXIS 1173, at *10 (Mar. 29, 2016) (quoting *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996)). To determine whether conduct violates FINRA Rule 2010, the Commission examines whether the misconduct "reflects on the associated person's capacity to comply with the regulatory requirements of the securities business and to fulfill [his or her] fiduciary duties in handling other people's money." *Id.* at *10. To be liable under FINRA Rule 2010, White's conduct must be business related and in bad faith or unethical. *See Blair Alexander West*, Exchange Act Release No. 74030, 2015 SEC LEXIS 102, at *20 (Jan. 9, 2015), *aff'd*, 641 F. App'x 27 (2d Cir. 2016).

White contends that his conduct did not violate FINRA Rule 2010 because he was "depositing personal gambling winnings into his *personal* bank accounts" and therefore not engaging in business-related conduct. We disagree. Pursuant to the Bank Secrecy Act, all financial institutions, including Wells Fargo, are obligated to file CTRs with FinCEN for each deposit, withdrawal, exchange of currency, or other payment or transfer, by, through, or to the financial institution which involves a transaction in currency of more than $10,000. We agree with the Hearing Panel that Wells Fargo made plain that its employees, including registered persons at WFS, have a heightened duty to comply with the laws and regulations governing that industry, and that WFS demonstrated an interest in overseeing their compliance. WFS had employee policies related to the Bank Secrecy Act and structuring, emphasizing the importance the firm placed on prohibiting its employees from engaging in structuring, including in personal accounts. Wells Fargo's CTR policy, which was available on the WFS's intranet, provided: "Team members [meaning all Wells Fargo employees] are strictly prohibited from attempting to avoid a CTR filing by structuring . . . any transaction." The Code of Conduct provided that Wells Fargo team members were "held to the same standards customers are, as far as the use of financial products at Wells Fargo." The employee handbook, which was comprised of the Code of Conduct and other corporate policies, explicitly provided that a team member could be immediately terminated for engaging in illegal conduct, including "[c]onducting a transaction that violates the Bank Secrecy Act" in a "personal bank account."

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[18] FINRA Rule 2010 applies also to persons associated with a member under FINRA Rule 0140(a), which provides that "[p]ersons associated with a member shall have the same duties and obligations as a member under the Rules."

Despite being obligated to abide by WFS's policies and procedures, White structured the nine deposits at issue. White's conduct was unethical. By structuring the nine deposits, White violated WFS's policies and breached the standards of professional conduct for registered persons. Although we agree that White's conduct was unethical, we do not believe it rises to the level of bad faith. White intended to evade the CTR filing requirement, but it is not clear from the record that he did so with an underlying dishonest purpose. We note there is no evidence that White's funds were the product of illegal activity or made as part of a money laundering scheme. We find that White acted intentionally and with bad judgment, but without the "conscious doing of a wrong because of dishonest purpose or moral obliquity." *Edward S. Brokaw*, Exchange Act Release No. 70883, 2013 SEC LEXIS 3583, at *33 n.72 (Nov. 15, 2013).

D. White's Other Procedural Arguments Fail

White makes various other procedural arguments on appeal, which we have considered and reject for the following reasons.

1. The Expungement Order Does Not Affect this FINRA Disciplinary Action

White argues that the Hearing Panel's findings contradict the findings of a FINRA arbitration panel, and that the findings of the arbitration panel "should mitigate against the extreme and overly harsh findings of the . . . hearing panel." We disagree.

As we previously explained, a FINRA arbitration panel, after a full hearing, denied White's request for expungement of the reason for termination on his Form U5 but directed the termination comment on the Form U5 be changed to "Violation of company policy." Enforcement did not participate in the arbitration. Enforcement unsuccessfully sought to stay the proceeding until resolution of this disciplinary proceeding, arguing that the arbitration panel would be determining the issue to be resolved in this proceeding—i.e., whether White engaged in unlawful structuring. White successfully opposed Enforcement's motion, arguing that the arbitration and disciplinary proceedings were different and "under separate auspices and separate rules." White continued: "The parties are different, the burdens of proof are different, the claims and allegations are different, and the evidence at issue, while overlapping is different. In short, a ruling on the expungement hearing by [the arbitration panel] could not and would not have any preclusive effect on Enforcement's action."

The only evidence in the record of the arbitration hearing is the arbitration award itself. The award does not specify what issues were addressed and who testified at the hearing. It also does not set forth any factual findings or credibility findings. We agree with the Hearing Panel that White's assertion before the Hearing Panel that res judicata applies is mistaken:

there is no identity of the parties and no identity of the claims.[19] For the same reasons, there is no "contradiction" between FINRA's findings in this disciplinary matter and the arbitration. Nor do the findings of the arbitration panel mitigate against our findings because the arbitration award has no bearing on the disposition of this matter.

2. FINRA's Conduct Does Not Violate the Constitution

White argues that FINRA's structure and procedures violate the Constitution in a variety of ways. Specifically, he argues that FINRA's conduct violates the "private nondelegation doctrine" because FINRA exercises "legislative, executive, and judicial power;" violates the appointments clause because FINRA adjudicators are "officers" within the meaning of the Constitution; violates due process; violates Article III of the Constitution because FINRA exercises judicial power; and compares FINRA to entities such as PCAOB and Amtrak. These arguments are without merit.

As White acknowledges, FINRA is registered under and operates subject to Section 15A of the Securities Exchange Act of 1934.

> The [Supreme] Court [has] stated that Section 15A 'authorizes [voluntary associations of brokers and dealers] to promulgate rules designed to prevent fraudulent and manipulative practices; to promote equitable principles of trade; to safeguard against unreasonable profits and charges; and generally to protect investors and the public interest.' However, although Section 15A authorizes the SEC to exercise a 'significant oversight function' over the rules and activities of the registered associations, self-regulatory organizations, such as FINRA, are not 'Government-created, Government-appointed entit[ies] . . . .

Manuel P. Asensio, Exchange Act Release No. 62645, 2010 SEC LEXIS 2521, at *6-7 (Aug. 4, 2010) (quoting *United States v. NASD*, 422 U.S. 694, 700 n.6 (1975)). Unlike the PCAOB and Amtrak, FINRA is a private Delaware corporation. *See Jones v. SEC*, 115 F.3d 1173, 1183 (4th Cir. 1997) ("[FINRA] is not a governmental agency, but rather a private corporation organized under the laws of Delaware."). And contrary to White's assertion, FINRA does not exercise delegated government authority. When members and associated persons become registered, they agree to be subject to FINRA's jurisdiction. *See* Exchange Act § 15A(b)(7), 15 U.S.C. § 78o-3(b)(7).

Additionally, FINRA is not a state actor subject to Constitutional restrictions. *See Desiderio v. NASD*, 191 F.3d 198, 206 (2d Cir. 1999) ("The NASD is a private actor, not a state actor. It is a private corporation that receives no federal or state funding. Its creation was not mandated by statute, nor does the government appoint its members or serve on any

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[19] Res judicata is a legal doctrine that precludes re-litigation of the same cause of action. *See New Hampshire v. Maine*, 532 U.S. 742, 748-49 (2001). The litigant cannot re-litigate the claims that "arise out of the same transaction or series of transactions, or the same core of operative facts." *In re Varat Enterprises, Inc.*, 81 F.3d 1310, 1315-16 (4th Cir. 1996).

NASD board or committee."). Thus, FINRA's actions do not violate the Constitution.[20] *See, e.g., Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *37 n.52 (Mar. 15, 2016) (holding that FINRA is not a state actor and thus could not violate the applicant's due process rights), *aff'd*, 672 F. App'x 865 (10th Cir. 2016); *Asensio*, 2010 SEC LEXIS 2521, at *6-7 (rejecting argument that FINRA exercises federal executive power); *Dep't of Enforcement v. William H. Murphy & Co.*, Complaint No. 2012030731802, 2018 FINRA Discip. LEXIS 24, at *62 (FINRA NAC Oct. 11, 2018) (rejecting argument that FINRA's action violated the Appointments Clause), *appeal docketed*, No. 3-18895 (SEC Nov. 9, 2018).

V. Sanctions

The Hearing Panel barred White from associating with any FINRA member in any capacity. We modify this sanction and impose an two-year suspension in all capacities and $10,000 fine.

The FINRA Sanction Guidelines ("Guidelines") do not specifically address structuring.[21] We therefore consider the nature of the violation and the Principal Considerations and General Principles Governing All Sanction Determinations. The Hearing Panel found that White's structuring was egregious in nature. It noted that the misconduct may conceal other unlawful activity and that it is classified as a felony for which an offender can be imprisoned up to five years. While we agree with the Hearing Panel that structuring is a serious offense, we note that there is no evidence that White's misconduct was motivated by a desire to conceal an unlawful activity or illegally obtained funds.

As we previously stated, we defer to the Hearing Panel's credibility findings that White intentionally structured the relevant deposits and was not credible in his testimony. The Hearing Panel found it "extremely aggravating" that White was a 20-year veteran in the securities industry who had extensive annual training on the Bank Secrecy Act and the prohibition on structuring. We agree that White's experience and training goes to White's knowledge of structuring and by which we determined that, along with his depositing behavior, he intended to evade the CTR filing requirement when he made the deposits at issue at separate financial institutions. White acted intentionally, which aggravates his misconduct.[22]

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[20] White also argues that FINRA's disciplinary hearing adjudicated a question of federal law—whether White structured the relevant deposits—which could only be answered by a federal court. In fact, this disciplinary proceeding concerns whether White's misconduct violated FINRA Rule 2010. Moreover, the lack of precedential effect in other forums does not preclude FINRA adjudicators from addressing constitutional issues raised by respondents.

[21] *FINRA Sanction Guidelines* (April 2017), http://www.finra.org/sites/default/files/2017_April_Sanction_Guidelines.pdf [hereinafter "*Guidelines*"].

[22] *See id*. at 8 (Principal Considerations In Determining Sanctions, No. 13).

The Hearing Panel found it aggravating that White engaged in the misconduct in spite of his training because it was similar to engaging in misconduct notwithstanding prior warnings from FINRA or a supervisor that it violates applicable securities laws or regulations.[23] White knew something happened at $10,000, and the circumstantial evidence supports that he intended to evade the reporting requirements. But the record does not support that he engaged in the misconduct despite knowing that it violated FINRA rules or even knowing the seriousness of the violation of federal law.[24] Based on these facts, we cannot equate White's training with prior warnings from FINRA or a supervisor.[25]

The Hearing Panel also found it aggravating that White "concealed the full extent of his misconduct from Wells Fargo and others by misleadingly describing his three deposits at Wells Fargo Bank [in February 2015] as though they represented the entirety of his gambling winnings."[26] Associated persons have an obligation not to conceal information from their firm during an investigation. In this case, White's only investigative interaction with WFS prior to his termination was a single interview when he was questioned about his February 2015 deposits at Wells Fargo Bank. White was not asked about other accounts. There was no subsequent interview by WFS and thus no opportunity to elaborate. We therefore do not assign the same magnitude of aggravation as did the Hearing Panel.[27]

We disagree with White's assertion that he made no attempts to hide or conceal his deposits from Wells Fargo because he made his deposits at the bank. In fact, White split same day deposits between Wells Fargo and his credit union, thereby concealing the full extent of

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[23] *See id.* (Principal Considerations In Determining Sanctions, No. 14).

[24] White argues that he should receive mitigation because he had "no prior warning . . . from either Wells Fargo or FINRA." As the Guidelines make clear, "some considerations have the potential to be only aggravating or only mitigating. For instance, the presence of certain factors may be aggravating, but their absence does not draw an inference of mitigation." *See id.* at 7. We assign no mitigation for the lack of prior warning.

[25] The Hearing Panel also found it aggravating that White engaged in the misconduct when Wells Fargo had an express policy prohibiting employees from structuring. Violating firm policy is not a Principal Consideration. The list of Principal Considerations, however, is illustrative, not exhaustive. Given the severity of the violation, we consider White's violation of a firm policy to add minimal aggravation.

[26] *See id.* at 7 (Principal Considerations In Determining Sanctions, No. 10).

[27] White's subsequent interactions with WFS involve his reinstatement request, wrongful termination arbitration claim, and request for expungement of his Form U5. Although we agree that these subsequent interactions undercut White's credibility, they are not the same as misrepresenting facts during a firm's investigation.

his transactions. Similarly, that White may have told his coworkers about his winnings does not excuse his misconduct.

The Hearing Panel was "significantly influenced" by White's untruthful hearing testimony. We find White's untruthfulness and lack of candor at the hearing appreciably aggravates his misconduct.[28] *See Thomas S. Foti*, Exchange Act Release No. 31646, 51 S.E.C. 217, 222 (1992) (affirming that applicant's "subsequent contradictory account warranted increased penalties").

The Hearing Panel also aggravated White's misconduct because he attempted to mislead FINRA staff during its investigation.[29] "[White] had an 'unequivocal' responsibility to fully cooperate with FINRA." *Keith D. Geary*, Exchange Act Release No. 80322, 2017 SEC LEXIS 995, at *35 (Mar. 28, 2017), *aff'd*, 727 F. App'x 504 (10th Cir. 2018). White's explanations in his communications with FINRA about his deposits were not credible. Based on our review of the record, which in many cases does not include what FINRA was asking, however, we cannot conclude that White provided misleading information to FINRA. To the contrary, among other things, White provided a one-page spreadsheet that plainly showed that he made same day deposits at Wells Fargo Bank and his credit union on February 3, 19, and 27, 2015. He also provided, without being requested, his May 2014 Wells Fargo Bank statement that showed the relevant April 2014 deposits.

The Hearing Panel found that White engaged in a pattern of misconduct "both times that he had gambling gains." Structuring, by its nature, is making multiple deposits, which White made in April 2014 and February 2015. We view White's misconduct as involving two sets of transactions related to his gambling winnings, not an extended pattern over a substantial period of time.[30] We also consider the legal source of the deposits and the relatively small size of the transactions.[31]

White's misconduct did not result in monetary gain.[32] White's actions also had no direct relationship to his work as municipal bond trader. We agree, at least in part, with the Hearing Panel that White's misconduct harmed WFS, which made clear to its employees in its

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28 *See id*. at 7-8 (Principal Considerations In Determining Sanctions, No. 10).

29 *See Guidelines*, at 8 (Principal Considerations In Determining Sanctions, No. 12).

30 *See Guidelines*, at 7 (Principal Considerations In Determining Sanctions, Nos. 8, 9).

31 *See id.* at 8 (Principal Considerations In Determining Sanctions, No. 17).

32 *See id*. (Principal Considerations In Determining Sanctions, No. 16). Enforcement argues that "White may have structured deposits as he did to avoid paying taxes on his winnings," thereby aggravating his conduct because his misconduct resulted in the potential for monetary or other gain. The evidence did not establish this allegation, and thus we assign no aggravation for it.

trainings and policies that its reputation and business could be damaged if its employees failed to comply with the Bank Secrecy Act. White's misconduct put WFS at risk of regulatory action and reputational damage. Moreover, even though White's actions did not directly involve or impact the clients of WFS, the absence of customer harm is not mitigating. *See KCD Financial Inc.*, Exchange Act Release No. 80340, 2017 SEC LEXIS 986, at *48 (Mar. 29, 2017); *McCune*, 2016 SEC LEXIS 1026, at *34-35.

White argues that he is not a recidivist and has no disciplinary history.[33] But the "lack of a disciplinary history is not a mitigating factor." *John B. Busacca, III*, Exchange Act Release No. 63312, 2010 SEC LEXIS 3787, at *65 n.77 (Nov. 12, 2010), *aff'd*, 449 F. Appx. 886 (11th Cir. 2011). White argues that although he was a sophisticated bond trader, he was "an unsophisticated handler, withdrawer and depositer of cash." Even if that were true, we do not award mitigation in this instance for any alleged naiveté to White, a 20-year veteran in the securities industry.

The Hearing Panel found that White was without remorse.[34] White's defense, however, was that he never intended to avoid the reporting requirements of the Bank Secrecy Act.[35] While the record does not contain unqualified statements of remorse, White did testify that he regrets depositing the way did, that he now has an appreciation of the gravity of the offense of structuring and an understanding about the application of the Bank Secrecy Act to personal cash deposits, and that he would not engage in similar misconduct in the future. *Cf. N. Woodward Fin. Corp.*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867, at *44 (May 8, 2015) (explaining that respondent is "entitled to present a vigorous defense" but the denial that conduct was wrongful demonstrated either a misunderstanding or a lack of recognition of his duties as a professional and of his regulatory obligations), *aff'd sub nom.*, *Troszak v. SEC*, 2016 U.S. App. LEXIS 24259 (6th Cir. June 29, 2016).

We considered that WFS terminated White for some of the same misconduct at issue here—his February 2015 deposits at Wells Fargo Bank. We find that White's termination offers some mitigation, but it alone does not sufficiently remediate his misconduct. *Cf. Denise M. Olson*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629, at *18 (Sept. 3, 2015). (finding applicant's termination by her firm, while mitigating, was no guarantee of changed behavior and insufficient to overcome the concern that she poses a continuing danger to the securities industry).

Both White and Enforcement urge us to consider, and attempt to distinguish, White's misconduct from our only previous structuring decision, *Department of Enforcement v. Iida*,

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[33] *See Guidelines*, at 7 (Principal Considerations In Determining Sanctions, No. 1).

[34] *See Guidelines*, at 7 (Principal Considerations In Determining Sanctions, No. 2).

[35] We, however, find that White had the requisite intent to structure the relevant deposits. *See* Part IV.B. *infra.*

Case No. 2012033351801, 2016 FINRA Discip. LEXIS 32 (NAC May 18, 2016).[36] It is well established that "the appropriateness of the sanctions imposed depends on the facts and circumstances of the particular case and cannot be determined precisely by comparison with action taken in other cases." *Dennis S. Kaminski*, Exchange Act Release No. 65347, 2011 SEC LEXIS 3225, at *41 (Sept. 16, 2011). That being said, we, like the Hearing Panel, considered the application of the Guidelines' principle considerations and general principles in *Iida*.

The purpose of FINRA's disciplinary process is to protect the investing public, support and improve the overall business standards in the securities industry, and decrease the likelihood of recurrence of misconduct by the disciplined respondent.[37] We find that White's misconduct was serious and warrants significant sanctions. Based on the particular facts and circumstances of this case, we conclude that an two-year suspension in all capacities and $10,000 fine is an appropriately remedial sanction and is sufficient to achieve the deterrent objectives of FINRA's sanction guidelines. Considering the severity of White's misconduct, it also would be beneficial for White to re-familiarize himself and demonstrate competency with FINRA rules through the examination process before acting in any capacity that requires registration. Therefore, we order White to requalify through the examination process.

VI. Conclusion

White violated FINRA Rule 2010 when he structured cash deposits to evade the federal currency reporting requirements of the Bank Secrecy Act. For his misconduct, we suspend White in all capacities for two years, fine him $10,000, and order him to requalify through the examination process. We also affirm the Hearing Panel's order to pay $6,647.85 in costs.[38]

On Behalf of the National Adjudicatory Council,

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Jennifer Piorko Mitchell
Vice President and Deputy Corporate Secretary

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[36] Liability was not under review on appeal to the NAC in *Iida*.

[37] *Guidelines*, at 2 (General Principles Applicable to All Sanction Determinations, No. 1).

[38] Pursuant to FINRA Rule 8320, the registration of any person associated with a member who fails to pay any fine, costs, or other monetary sanction, after seven days' notice in writing, will summarily be revoked for non-payment.