BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Robbi J. Jones Houston, TX, and Kipling Jones & Company., Ltd. Houston, TX, Respondents.	DECISION Complaint No. 2015044782401 Dated: December 17, 2020

Respondent firm and its president filed materially inaccurate FOCUS reports and created inaccurate books and records. Respondent president also provided inaccurate and misleading information to FINRA. Held, findings affirmed and sanctions modified.

Appearances

For the Complainant: Mark J. Fernandez, Esq. and John R. Baraniak, Jr., Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondents: Aida Vernon, Esq.

Decision

Robbi J. Jones and Kipling Jones & Company, Ltd. ("KJC" or the "Firm") (collectively, "Respondents") appeal a Hearing Panel decision issued on October 17, 2018. The Hearing Panel found that Jones caused KJC to willfully create and maintain inaccurate books and records and to file materially inaccurate Financial and Operational Combined Uniform Single Reports Part IIA ("FOCUS reports"). Specifically, between April 2014 and February 2016, Jones filed or caused to be filed materially inaccurate FOCUS reports in which she claimed a $70,000 certificate of deposit ("CD") as an "allowable asset" for the Firm, when the CD had been canceled by the bank. Rather than noting its cancellation, Jones continued to include the cancelled CD as a

current asset in the Firm's FOCUS reports, general ledger, and net capital computations, which, in turn, caused KJC's books and records to be inaccurate.

The Hearing Panel further found that Jones provided inaccurate and misleading information to FINRA staff and refused to respond to questions FINRA staff asked during her on-the-record testimony ("OTR"). In connection with a 2014 cycle examination, FINRA staff asked Jones to provide documentary support for the reported value of the allowable assets claimed by the Firm in its net capital computation and FOCUS reports. Knowing that the bank had canceled the CD, Jones nonetheless testified that she had never pledged or assigned the CD as collateral. In addition, FINRA staff learned that the City of Houston, a municipal securities client of KJC, was investigating Jones's apparent unauthorized use of a city credit card. In response to FINRA's requests concerning the city's investigation, Jones provided inaccurate and misleading information and documents, and, in certain instances, refused to provide the information.

On appeal, Respondents have conceded liability as outlined in the Hearing Panel's decision. Their appeal therefore focuses on sanctions only. Respondents argue that the sanctions are too severe, punitive, and should be reduced. After an independent review of the record, we affirm the Hearing Panel's findings of liability and modify the sanctions imposed.

I. Background

A. Jones and KJC

Jones entered the securities industry in 1991 and registered as a municipal securities representative. She later registered as a general securities representative and principal. In 2007, she formed KJC, a small broker-dealer based in Houston, Texas. KJC is registered with the Securities and Exchange Commission ("SEC") as a municipal advisor and has been a member of FINRA since 2007. During the period relevant to the conduct in this case, Jones was the Firm's president, CEO, and CCO. From May 2013 forward, she also served as the Firm's financial and operations principal ("FINOP"), and, for a brief period, acted as the Firm's CFO. Both Jones and KJC are still in the industry.

KJC derives its income primarily from municipal advisory activities. The Firm is required to maintain a minimum net capital of $100,000. Throughout 2014, KJC was required to file monthly FOCUS reports due to its statutory net capital requirement and the fact that it had been approved to engage in securities underwritings. In addition, as discussed below, KJC was under heightened supervision, and, consequently, was required to provide FINRA with supplemental information including monthly balance sheets, trial balances, and general ledgers.

B. Jones Improperly Increases KJC's Reported Net Capital with a Pledged CD

In 2011, Jones wanted to increase the amount of net capital to be reported in KJC's fourth-quarter FOCUS report to improve its prospects of securing new business. To that end, Jones bought a $70,000 one-year CD from CNB ("CD-0331") to list as an asset in the Firm's net

capital computation. To pay for the CD, Jones planned to take a one-year loan from CNB ("Loan-0331"). CNB's president, TF, told Jones at the time that she would have to have an ownership interest in the CD before she could pledge it as collateral for the loan. Therefore, the CD was titled in both Jones's name and KJC's name. Jones signed a promissory note for the loan. In a box to the left of the signature line on the note captioned "SECURITY," the note reflected that it was "separately secured by" CNB CD-0331. Consistent with what TF had discussed with Jones, the CD was titled to "Kipling Jones & Co., Ltd. or Robbi J. Jones." Jones was also required to sign the CD to memorialize her acceptance of its terms and conditions. Simply put, Jones and KJC took out a loan to purchase a CD and then used the CD as collateral for that loan.

By its terms, CD-0331 was to renew automatically on its maturity date, December 30, 2012. To effect the renewal, Jones also had to renew Loan-0331 to pay for the CD and sign another promissory note. Like the note she had signed a year earlier, the note recited that it was secured by CD-0331.[1]

On October 28, 2013, CNB notified Jones that the second renewal period was approaching, and that her line of credit from the loan would expire on December 30, 2013. CNB advised Jones that she could either pay off Loan-0331 or renew it by that date. If she chose to renew it, CNB informed Jones that she would have to submit a credit application and proof of income. Jones did not pay off the loan or renew it by the expiration date; rather, she attempted to

---

[1] In April 2013, FINRA placed KJC on heightened supervision because of Jones's activities with CDs that KJC had purchased in December 2007 and December 2010. The CDs were pledged in support of personal loans that Jones had executed in December 2011 and April 2012, respectively. A KJC audit report prepared by its accountant for 2012 summarized the problems with KJC's categorization of the CDs:

> [Jones] failed to communicate to the [CFO] the pledging of certain [CDs] of [KJC] for the purpose of obtaining a personal loan, the proceeds of which were used to contribute additional capital to the Partnership. The pledging of the [CDs] resulted in them becoming non-allowable assets in the computation of net capital.

The accounting of the CDs as allowable assets, even though Jones had pledged them as security for personal loans, meant that KJC had inaccurate books, records, and FOCUS reports. Accordingly, FINRA placed the Firm on heightened supervision and required the Firm to submit to FINRA staff its general ledger, trial balance, and balance sheet on a monthly basis.

In response to KJC being placed on heightened supervision, Jones represented that she had taken and passed the Series 28 (Introducing Broker-Dealer Financial and Operations Principal) exam to better understand financial reporting requirements. And she committed "to increase transparency of" KJC's assets. Jones specifically represented that "CDs will no longer be used as capital." Despite these representations, Jones did not disclose that she was contemporaneously including CD-0331 in the calculation KJC's net capital, and that she had pledged it as collateral for a personal loan.

renew it in early February 2014. When she did so, however, she failed to supply the required proof of income.

On February 19, 2014, CNB sent Jones a letter advising her that Loan-0331 was in default, and CNB would use the funds in CD-0331 to pay off the outstanding balance if she did not renew the loan by February 21, 2014. Jones did not renew the loan, and, on March 5, 2014, CNB used CD-0331 to pay off the $70,313 loan balance. KJC nonetheless continued to carry CD-0331 as an asset on its general ledger, balance sheets, and trial balances. KJC also continued to show CD-0331 as an allowable asset in monthly FOCUS reports and amended FOCUS reports for March through December 2014. During the latter half of 2014, the Firm's FOCUS report should have reflected that the Firm was net capital deficient, but by including the liquidated CD-0331 as an allowable asset in its net capital computations, the reports showed excess net capital for those months.

On December 30, 2014, Jones took a new personal loan from CNB to buy another $70,000 CD ("CD-0577"). CD-0557 had a two-year maturity. Like the loan she had taken in 2011 to buy CD-0331, the new loan ("Loan-0557") was secured by CD-0557. Thereafter, although Jones knew that CD-0557 was not an allowable asset, KJC showed it as such in FOCUS reports.

C. Houston Investigates Jones's Use of a City Credit Card

In May 2013, Houston's Office of the Controller ("Controller's Office") began investigating the use of a city credit card to pay for two Southwest Airlines ("Southwest") tickets in Jones's name ("Houston Investigation"). Jones had access to a city credit card because Houston was a municipal securities client of KJC. One ticket was for a round trip flight between Houston and Birmingham in September 2012. The other ticket was for a round trip flight between Chicago and Houston in April 2013. The Controller's Office discovered the purchases while reconciling charges posted to a city credit card account.

The Controller's Office asked Jones for documentation of expenses she had incurred for travel on behalf of the city. In response, Jones provided copies of a ticket purchase confirmation for Southwest flights between Houston and Newark in April 2013, and an eTicket for a round trip ticket on United Airlines between Houston and Memphis in November 2012. None of the information Jones provided pertained to the credit card charges that had precipitated the Houston Investigation. The Controller's Office eventually referred the matter to the city's office of inspector general ("OIG") for further investigation.

In June 2014, Jones met with Houston Inspector General, RC. Jones testified that she told RC that she had used a credit card belonging to her mother to buy the plane tickets that were the subject of the Houston Investigation. At the meeting, Jones accessed her online Southwest account to show RC the list of credit cards that she had used to buy Southwest tickets, three of which were in her mother's name. According to Jones's uncorroborated testimony, RC commented that the last four digits of the card that Jones claimed to have used to buy the tickets under investigation were the same as the last four digits of the city credit card onto which the flights had been charged.

On June 16, 2014, RC sent Jones a letter informing her that OIG had completed its investigation and concluded that she was responsible for the unauthorized use of the city's credit card on two occasions to book flights for herself for non-city business. The letter was addressed to Jones in the care of her brother, RJ, an attorney who represented Jones during the Houston Investigation. The letter also copied CW, a criminal defense attorney Jones retained after meeting with RC. On December 23, 2014, Jones forwarded to FINRA staff a letter signed by CW on his firm's letterhead in which he incorrectly represented that Jones "was cleared of any wrongdoing" in the Houston Investigation.

Jones testified that she did not see RC's letter until January 2018, when preparing for the hearing in this proceeding. According to Jones, CW told her about RC's letter in June 2014, but he only told her that it said that Houston was not filing criminal charges and did not mention to her that the Houston Investigation had sustained the allegations against her.[2]

D. The 2014 Cycle Examination and Ensuing Investigation

In November 2014, FINRA began its scheduled 2014 cycle examination of KJC. During this exam, FINRA staff analyzed KJC's net capital, reporting, and legal expenses.

1. Jones Fails to Provide FINRA with Information Regarding KJC's Claimed Allowable Assets

On November 11, 2014, at the start of its cycle examination, FINRA asked Jones for various financial records including a general ledger for the month of September 2014, a trial balance and balance sheet as of September 30, 2014, and proof of all allowable assets claimed in KJC's net capital computation. Jones provided the general ledger, balance sheet, and trial balance on November 25, 2014. She did not provide any proof of KJC's claimed allowable assets. The ledger, balance sheet, and trial balance identified CD-0331 as an asset with an accrued balance of $70,313.09, an amount that corresponded to the amount shown for "exempted securities" on KJC's September 30, 2014, FOCUS report as an allowable asset. Jones did not provide documents supporting the reported balance of CD-0331.

On December 4, 2014, FINRA requested that Jones provide a copy of KJC's general ledger covering the period January 2012 through October 2014, which the Firm provided the following week. On December 11, 2014, FINRA staff sent Jones an email detailing many documents they had requested but not yet received, including another request for proof of the reported $70,313 balance for CD-0331, which FINRA had first requested a month earlier. FINRA staff sent Jones another email noting its outstanding requests on December 15, 2014.

On December 18, 2014, Jones sent an email to FINRA, representing that CNB was unable to provide a statement reflecting CD-0331's balance as of September 30, 2014, and that CNB would instead provide a "screenshot" showing that balance. Later that day, Jones forwarded a screenshot that showed the balances of the CD from December 30, 2011, through December 30, 2013, not as of September 30, 2014 as had been promised.

---

[2] OIG did not make a criminal referral because of the relatively low dollar amount at issue.

On December 26, 2014, FINRA asked Jones to contact CNB to find out the early withdrawal penalty on CD-0331. Jones responded saying she was trying and that she had contacted CNB but had only reached a teller who was unable to answer the question. FINRA sent additional requests for information about the CD by email on December 30, 2014, and January 5, January 9, and January 13, 2015. Jones continued providing insufficient responses.

On January 16, 2015, Jones told FINRA that the CD-0331 had rolled over at the end of December 2013, and that at year-end 2014, Jones requested a two-year maturity. Jones stated that, because the maturity of CD-0577 was different from CD-0331's maturity, CNB was not able to automatically roll over CD-0331. She asserted that CD-0331 was technically cancelled, and CNB was sending a check for the accumulated interest, which she had not yet received.

In February 2015, because Jones had failed to respond to multiple prior requests, FINRA began requesting information and documents pursuant to FINRA Rule 8210. During February and March, Jones continued to make excuses for why she could not provide the requested information and documents, representing that the documentation was forthcoming from CNB. As of the date of the hearing, she had not produced the requested information.

In March 2015, FINRA issued a "Notice of Current Net Capital Deficiency Identified by FINRA." The notice was based in part on KJC's failure to provide sufficient documentation to verify CD-0331, "bringing into question the balance of this allowable asset."

2. Jones Fails to Provide FINRA with Information Concerning Her Use of the Houston Credit Card

During the 2014 cycle examination, FINRA reviewed KJC's general ledger and discovered a payment of $2,500 to CW's law firm on August 14, 2014. On November 19, 2014, FINRA issued a request to Jones to provide an explanation for this payment.

On December 12, 2014, FINRA staff met with Jones to discuss the circumstances surrounding KJC's payment to CW's law firm. During this meeting, Jones told FINRA staff that she had retained CW to represent her in connection with an inquiry by the Controller's Office, and that she had not received any recent inquiries regarding the airline tickets. That same day, FINRA asked KJC to provide a letter from CW regarding the Houston Investigation, a signed statement from Jones explaining the particulars of the matter, including the current status of the Houston Investigation, and all documentation from Houston concerning the Houston Investigation.

On December 23, 2014, Jones forwarded to FINRA a copy of a letter from CW to KJC dated December 19, 2014. The letter stated that Houston had conducted an investigation regarding two airline tickets purchased in Jones's name with a Houston credit card. The letter also falsely asserted that, after a thorough investigation, it was determined that Houston did not suffer any financial loss, and that Jones was cleared of any wrongdoing. Finally, the letter noted

that none of the current contracts between KJC and Houston were affected, and that KJC continues to do business with Houston. However, Jones did not provide a signed statement, or any documentation, from Houston as FINRA had requested.

On February 5, 2015, FINRA sent Jones a FINRA Rule 8210 letter requesting a written statement regarding the Houston Investigation. Jones responded by providing two separate written statements, each dated February 13, 2015, and several documents. Despite knowing that the Houston Investigation pertained to airplane tickets she had bought for trips between Houston, Birmingham, and Chicago, Jones provided documents pertaining only to her trips between Houston, Memphis, and Newark—the same nonresponsive documents that Jones had provided to the Houston OIG as part of the Houston Investigation.

In March 2015, Jones told a FINRA examiner that the Houston Investigation involved payments made for trips to Birmingham and Chicago and emailed two documents relating to those trips. That month, Jones also sent the FINRA examiner an email in which she said that she had been unable to provide documents in response to outstanding requests because there had been a death in the family. Upon receiving the email, the examiner called Jones and asked if it was her mother who had died.[3] Jones falsely responded that it was.

3. Jones's OTR Testimony

After several postponements, Jones's OTR proceeded on May 8, 2015. During her OTR, Jones tried to evade questions about whether she had ever pledged CD-0331 as collateral, but eventually testified that she "did not use it for collateral for anything." Jones also testified that, as far as she knew, CD-0331 had been renewed at the end of 2013 as it had been at the end of 2012, and that, at the end of 2014, she "changed" CD-0331 "to a two-year instrument." We discuss these statements further in the liability section.

Jones's OTR also included questions about the Houston Investigation. Jones testified that she was questioned about five different flights, but that the two that became an issue for the Controller's Office were the Birmingham and Chicago flights. She claimed that she had paid for the tickets using her mother's credit card, and that the travel was unrelated to Houston's business. She testified that, after showing Houston's Inspector General, RC, documents that appeared to show charges made to a credit card in Jones's mother's name, RC told her that the last four digits of her mother's credit card account were the same as the last four digits of the Houston credit card account on which the charge for the Birmingham and Chicago tickets appeared. She was unable to explain how, if she had bought the tickets using her mother's credit card, the purchases could have possibly appeared on a Houston credit card statement. Jones claimed during the OTR that she had tried without success to obtain from Southwest the full 16-digit account number of the credit card used to buy the tickets.

When the staff asked if her mother was still alive, Jones refused to answer because it was "personal" information. FINRA staff explained that the question went to whether her mother

[3] The FINRA examiner asked Jones if it was her mother who had died because Jones had previously mentioned that her mother was very sick.

was available to request duplicate account statements from the credit card issuer. Jones nonetheless persisted in refusing to answer, against the advice of her attorney. She also refused to answer questions about whether she had told the FINRA examiner that her mother had died.

4. FINRA Issues an Additional Rule 8210 Request

On June 15, 2015, FINRA issued an additional FINRA Rule 8210 request to Jones. This request directed Jones to respond with an unequivocal "yes" or "no" answer to questions concerning whether CD-0331 existed in September, October, and November 2014, as reflected on the Firm's FOCUS filings for each of those months.

FINRA also asked Jones to explain how and when she had disposed of the proceeds of CD-0331. Jones did not provide the unequivocal "yes" or "no" answers FINRA sought. Instead, through newly hired counsel, she provided a single narrative response to all four of the questions in the FINRA Rule 8210 request. Jones represented that, on December 30, 2011, she had applied to CNB for an unsecured loan, the proceeds from which she had used to buy "the original CD." She stated she did not recall having "giv[en] the bank authority to use the CD as collateral for the loan" and represented that "she would not have obtained the loan under those terms because she knew that she could not then use the CD to meet her capital requirements for her Firm." She asserted that she had continued making payments on the loan after the bank had paid it off. She stated that, during 2014, she "fell behind on her payments, but caught up at some point before December 31, 2014." She explained that she did not learn until March 2015 that CNB had liquidated the CD to pay off the loan, and, further, that she was "unaware that could occur because she understood that the line of credit was unsecured." Finally, Jones blamed CNB's president, TF, for her inability to obtain information and documents to satisfy FINRA's requests.

5. Jones Admits Providing False Information to FINRA's Examiner

In August 2015, Jones left two voice messages for the FINRA examiner to whom she had falsely stated that her mother had died in March 2015. In the messages, Jones apologized for falsely answering affirmatively when asked if her mother had died. Jones stated that, while her mother was indeed sick, it was a different relative who had died.

II. Procedural History

A. Enforcement's Complaint

On April 24, 2017, Enforcement filed a four-cause complaint against Jones and KJC. The first cause alleged that Jones had caused KJC to willfully violate Section 17(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Exchange Act Rules 17a-3 and 17a-5, and that Jones and KJC had violated FINRA Rules 4511 and 2010. Specifically, the first cause charged that Jones caused KJC's books and records to be inaccurate because Jones did not record the cancellation of the CD-0331, but instead allowed it to be shown as an asset through December 30, 2014. Enforcement also alleged that Jones filed, or caused to be filed, materially inaccurate FOCUS reports that inflated KJC's reported net capital by treating CD-0331 as an allowable asset, despite the fact that CD-0331 had been pledged as collateral for the loan and had been cancelled.

The second cause alleged that Jones violated FINRA Rule 2010 because she provided false and misleading information to FINRA staff about CD-0331, the Houston Investigation, and her mother's death. The third and fourth causes alleged that Jones violated FINRA Rules 8210 and 2010 because she provided false and misleading information about CD-0331, the Houston Investigation, and her mother's death to FINRA staff in response to FINRA Rule 8210 requests and refused to answer questions at her OTR regarding her representations to FINRA staff about her mother's purported death. Respondents denied the allegations and a five-day hearing was held.

B. The Hearing Panel's Decision

On October 17, 2018, the Hearing Panel issued its decision finding KJC liable under the first cause and Jones liable under all causes. The Hearing Panel's findings, however, were not as expansive as the allegations in Enforcement's complaint.[4] Under cause one, the Hearing Panel found that Jones caused KJC to fail to record the cancellation of CD-0331 in its general ledger and caused KJC to file FOCUS reports that inaccurately reflected CD-0331 as an allowable asset. The Hearing Panel determined that KJC willfully violated Section 17(a) of the Exchange Act, Exchange Act Rules 17a-3 and 17a-5, and FINRA Rules 4511 and 2010, and that Jones violated FINRA Rules 4511 and 2010. Under cause two, the Hearing Panel found that Jones violated FINRA Rule 2010 by failing to inform FINRA staff that she had pledged CD-0331 as collateral for a personal loan and by misrepresenting to FINRA staff that her mother had died. Under cause three, the Hearing Panel found that Jones violated FINRA Rules 8210 and 2010 by omitting the Birmingham and Chicago airline tickets from her signed statements describing the Houston Investigation and by falsely testifying at her OTR that CD-0331 was never pledged as security for a loan. Under cause four, the Hearing Panel found that Jones violated FINRA Rules 8210 and 2010 because she repeatedly refused to respond to questions at her OTR concerning her representations to FINRA staff about her mother's purported death.

For the first cause, the Hearing Panel fined KJC $38,000, suspended Jones from associating with any FINRA member firm in any capacity for two years, barred her from associating with any FINRA member firm in any supervisory or principal capacity, and fined her $35,000. Because KJC's violation was willful, the Hearing Panel found that the Firm is subject to statutory disqualification. For the second, third, and fourth causes of action, the Hearing Panel imposed a unitary sanction and suspended Jones from associating with any FINRA member firm in any capacity for two years and fined her $35,000. The Hearing Panel ordered that Jones's suspension under cause one run consecutively with the suspension imposed under causes two, three, and four. This appeal followed.

III. Discussion

Respondents have not appealed the Hearing Panel's findings of liability. As part of our de novo review, however, we have reviewed them and affirm as discussed below.

---

[4] Under cause three, Enforcement alleged that Jones made 10 specific misstatements. The Hearing Panel, however, determined that Enforcement proved only two—those related to CD-0331 and the purported death of Jones's mother. We see no reason to disturb the Hearing Panel's findings.

A. The Hearing Panel's Credibility Determinations

The Hearing Panel made extensive and detailed findings regarding Jones's credibility. The Hearing Panel noted that "Jones's demeanor at the hearing[,] and the record as a whole[,] caused the [Hearing] Panel to view Jones as not being a credible witness." It also enumerated several specific instances of her lack of credibility during KJC's cycle examination, the investigation that gave rise to this proceeding, and her testimony at the hearing. The Hearing Panel concluded that despite her inconsistent testimony to the contrary, Jones understood from December 2011 forward that she had pledged CD-0331 as collateral for the loan and CD-0331 could not be an allowable asset on the Firm's books. We defer to the Hearing Panel's credibility determinations because they are supported by the record, and there is not substantial evidence to overturn them. *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. Materially Inaccurate FOCUS Reports and Inaccurate Books and Records

We affirm the Hearing Panel's findings that KJC willfully violated Section 17(a) of the Exchange Act and Exchange Act Rule 17a-3 by failing to record the cancellation of CD-0331 in its books and records. In addition, we affirm the Hearing Panel's findings that KJC willfully violated Section 17(a) of the Exchange Act, Exchange Act Rule 17a-5, and FINRA Rules 4511 and 2010, and that Jones violated FINRA Rules 4511 and 2010, because they filed FOCUS reports that reflected the CD-0331 as an allowable asset—despite the fact that Jones had pledged CD-0331 as collateral for a personal loan and CNB had cancelled CD-0331 in March 2014.[5]

FINRA member firms must prepare general ledgers and trial balances. Section 17(a)(1) requires that broker-dealers make and keep such records and make and disseminate such reports as the SEC, by rule, prescribes. Exchange Act Rule 17a-3(a)(2) requires the preparation of general ledgers, specifically, "ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts." Exchange Act Rule 17a-3(11) requires broker-dealers to make and keep current, on a monthly basis, a "record of the proof of money balances of all ledger accounts in the form of trial balances, and a record of the computation of aggregate indebtedness and net capital, as of the trial balance date[.]" 17 CFR § 240.17a-3(11). The failure to maintain accurate ledgers and trial balances violates Exchange Act Rule 17a-3 as well as FINRA Rule 2010. *See Dep't of Enforcement v. Block*, Complaint No. C059990026, 2001 NASD Discip. LEXIS 35, at * 18-19 (NASD NAC Aug. 16, 2001).

Exchange Act Rule 17a-5 covers FOCUS reports. Specifically, Exchange Act Rule 17a-5(a)(2)(iii) requires broker dealers that neither clear customer transactions nor carry customer accounts to file FOCUS reports on a quarterly basis. Implicit in that requirement is that the FOCUS reports be materially accurate. *John M. Repine*, Exchange Act Release No. 54937, 2006 SEC LEXIS 2916, at *26 (Dec. 14, 2006). The filing of an inaccurate FOCUS Report is a violation of Exchange Act Rule 17a-5(a)(2) and FINRA Rule 2010.

---

[5] The subject FOCUS reports were filed between April 2014 and February 2016.

FINRA rules also require that members comply with these recordkeeping and reporting requirements. For example, FINRA Rule 4511(a) requires member firms to "make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules." A violation of FINRA Rule 4511 also constitutes a violation of FINRA Rule 2010.[6] The SEC has repeatedly held that the duties to maintain records and file reports require that such records and reports be true and correct. *Dept of Enforcement v. Inv. Mgmt. Corp.*, Complaint No. C3A010045, 2003 NASD Discip. LEXIS 47, at *20 (NASD NAC Dec. 15, 2003).

Jones caused CD-0331 to be reflected on KJC's general ledger as an asset long after it was cancelled and while it was pledged collateral for a loan. Jones thus caused KJC to file numerous false and inaccurate FOCUS reports between April 2014 and February 2016, all listing CD-0331 as an allowable asset when it was not one. By filing materially inaccurate FOCUS reports and allowing KJC's general ledger to reflect inaccurate information, Jones violated FINRA Rule 4511 and 2010, and in doing so, caused KJC to willfully violate Section 17(a) of the Exchange Act, Exchange Act Rules 17a-3 and 17a-5, and FINRA Rules 4511 and 2010.

We also affirm the Hearing Panel's finding that KJC's violation of Section 17(a) of the Exchange Act and Exchange Act Rules 17a-3 and 17a-5 were willful and that the Firm is therefore subject to statutory disqualification. In this context, "[a] willful violation under the federal securities laws simply means that the person charged with the duty knows what he is doing." *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *41 (Nov. 9, 2012) (*citing Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000)). Jones, as the Firm's president and FINOP, knew that the CD was not an allowable asset but still caused it to be reflected as such on the Firm's book and records and FOCUS reports, even after the CD was cancelled. We attribute Jones's willfulness to KJC and find that KJC acted willfully. *Dep't of Enforcement v. The Dratel Grp.*, Complaint No. 2008012925001, 2014 FINRA Discip. LEXIS 6, at *78 (FINRA NAC May 2, 2014) ("Based on [registered person's] conduct, sole ownership of [the firm], control over the firm, and position as the only registered person conducting a securities business at [the firm], we attribute [the registered person's] willfulness to [the firm] and find that the firm also acted willfully."), *aff'd*, Exchange Act Release No. 77396, 2016 SEC LEXIS 1035 (Mar. 17, 2017). Accordingly, KJC is subject to statutory disqualification as a result of its willful violations of the Exchange Act and Exchange Act Rules.

---

[6] FINRA Rule 0140 provides that FINRA rules apply with equal force to member firms and associated persons. Thus, an associated person violates FINRA Rules 4511 and 2010 when she causes a member firm to maintain inaccurate books and records. *See Dep't of Enforcement v. Trevisan*, Complaint No. E9B2003026301, 2008 FINRA Discip. LEXIS 12, at *28 (FINRA NAC Apr. 30, 2008) (finding that an associated person who entered inaccurate information into Firm's records violated NASD Rule 3110 (the predecessor to FINRA Rule 4511) and NASD Rule 2110 (the predecessor to FINRA Rule 2010)).

C. Providing Inaccurate and Misleading Information, Documents, and Testimony and Refusing to Answer Questions

The Hearing Panel found that, on numerous occasions, Jones provided inaccurate and misleading information and documents in response to requests made by FINRA staff. We affirm the Hearing Panel's findings.

FINRA Rule 8210 requires members and persons associated with members to provide information in writing or orally with respect to any matter involved in a FINRA investigation, complaint, examination, or proceeding. "The rule is at the heart of the self-regulatory system for the securities industry" and '"provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations.'" *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008) (*quoting Richard J. Rouse*, 51 S.E.C. 581, 584 (1993)), *aff'd*, 347 F. App'x 692 (2d Cir. 2009), 559 U.S. 1102 (2010). "Delay and neglect on the part of members and their associated persons undermine the ability of [FINRA] to conduct investigations and thereby protect the public interest." *Rouse*, 51 S.E.C. at 588. Consequently, a violation of FINRA Rule 8210 is serious and subverts FINRA's ability to carry out its responsibilities as a regulator, threatening both investors and the markets. *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at *33 (June 14, 2013).

In addition, FINRA Rule 2010 is a general ethics rule that requires members and associated persons to "observe high standards of commercial honor and just and equitable principles of trade." An associated person violates FINRA Rule 2010 when he or she violates any other FINRA rule, including FINRA Rule 8210. *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *2 n.2 (Aug. 22, 2008). Moreover, providing false information to FINRA is an independent violation of FINRA Rule 2010. *Id.* at *23-24.

The evidence supports the Hearing Panel's conclusion that, as alleged in cause two, Jones violated FINRA Rule 2010 by making misleading statements during the 2014 cycle examination regarding efforts to obtain information and documents from CNB concerning CD-0331 and by misrepresenting to FINRA staff that her mother had died. As to cause three, we affirm the Hearing Panel's findings that Jones violated FINRA Rules 8210 and 2010 by omitting the Birmingham and Chicago airline tickets from her signed statements describing the Houston Investigation and by falsely testifying at her OTR that CD-0331 was never pledged as security for a loan. Finally, we affirm the Hearing Panel's findings, as outlined in cause four, that Jones violated FINRA Rules 8210 and 2010 by refusing to answer questions during her OTR regarding whether her mother was still alive and whether Jones had previously represented to FINRA staff that she had died.

IV. Sanctions

For filing materially inaccurate FOCUS reports and maintaining inaccurate books and records, the Hearing Panel fined KJC $38,000, suspended Jones from associating with any FINRA member firm in any capacity for two years, barred her from associating with any FINRA member firm in any supervisory or principal capacity, and fined her $35,000. For Jones's

failures to respond and respond truthfully during FINRA's investigation, as outlined in causes two through four, the Hearing Panel imposed a unitary sanction, suspending Jones from associating with any FINRA member in any capacity for two years and fining her $35,000. The Hearing Panel ordered that the suspensions under cause one run consecutively with the suspension imposed under causes two through four.

On appeal, Respondents assert that the sanctions imposed are tantamount to a bar and are grossly disproportionate, punitive, and unfair. Respondents note that during the relevant time period, Jones suffered serious personal and medical issues that affected her judgment. They note that she expressed remorse at the hearing and accepted responsibility for her failures.[7] Enforcement counters that Jones's misconduct was egregious, and that she should be barred for falsifying KJC's books and records, filing materially inaccurate FOCUS reports, providing false and misleading information to FINRA staff, and refusing to answer questions in an OTR.

After a review of the record, we have determined that it is appropriate to affirm the fine imposed on KJC for cause one. However, we have concluded that due to the egregiousness of Jones's misconduct, separate bars in all capacities for both Jones's books and records violations as well as for providing inaccurate and misleading information, documents, and testimony are appropriately remedial.

A. Materially Inaccurate FOCUS Reports and Inaccurate Books and Records

To determine the appropriate sanctions for Respondents' books and records violations, we consider the Sanction Guidelines ("Guidelines") for forgery, unauthorized use of signatures or falsification of records,[8] together with the Guidelines for recordkeeping violations and the guideline for filing false or misleading FOCUS reports.[9] In the absence of other violations and customer harm, the Guidelines for falsification of records instructs adjudicators to consider a suspension of 10 business days to six months.[10] When there is customer harm, or if the misconduct is accompanied by significant aggravating factors, a bar should be considered standard.[11] The Guidelines for the falsification of records contemplate fines between $5,000 and $155,000.[12]

---

7 Respondents' appended three letters to their opening brief attesting to Jones's character and reputation for integrity. Enforcement filed a motion to strike the attachments, arguing that the proposed evidence does not comport with FINRA Rule 9346. While we agree with Enforcement's arguments, we have nonetheless considered the substance of the letters—and conclude that they provide no mitigation.

8 *See FINRA Sanction Guidelines*, at 37 (Mar. 2019), https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf [hereinafter "Guidelines"].

9 *Guidelines*, at 29, 70.

10 *Id.* at 37.

11 *Id.*

12 *Id.*

The Guidelines for recordkeeping violations instructs adjudicators to consider a fine of $1,000 to $16,000 and suspend the responsible individual in any or all capacities for a period of 10 business days to three months. In cases where aggravating factors predominate, adjudicators should consider a fine of $10,000 to $155,000 and a longer suspension of an individual (of up to two years) or a bar.[13] When significant aggravating factors predominate, consideration should be given to a fine higher than $55,000. Adjudicators should consider suspending a firm for 10 business days to two years or expelling the firm in cases where aggravating factors predominate.[14] Among the specific principal considerations are the nature and materiality of the inaccurate information, whether the inaccurate information was entered intentionally, and whether the violations occurred over an extended period of time and involved a pattern of misconduct.[15]

The Guidelines for filing false or misleading FOCUS reports instructs adjudicators to consider imposing a fine between $10,000 and $77,000 and suspending the FINOP or other responsible principal in any or all capacities for up to two years. In addition to imposing a fine, adjudicators should also consider suspending a firm from all solicited retail business for up to 30 business days and thereafter until it corrects all deficiencies.[16]

We find that extensive aggravating factors predominate KJC's and Jones's misconduct. Jones's misconduct persisted for years.[17] Beginning in early 2012, Jones filed FOCUS reports on behalf of KJC that reported CD-0331 as an allowable asset even though she knew that she had pledged CD-0331 as collateral for a personal loan, which disqualified CD-0331 as an allowable asset. Jones repeatedly falsified the Firm's financial records and repeatedly filed FOCUS reports that materially overstated KJC's net capital. She deliberately inflated KJC's reported net capital to enhance her prospects of getting new business.[18] She knew that CD-0331 was not an allowable asset, but she continued to include CD-0331 in KJC's net capital computations even after the Firm's auditor flagged the issue, and FINRA placed the Firm under heightened supervision for misallocated CDs in the past.[19] Jones also attempted to conceal the Firm's

---

13 *Id.* at 29.

14 *Id.*

15 *Id.*

16 *Id.* at 70.

17 *Guidelines*, at 7 (Principal Consideration Nos. 8 and 9 (whether the respondent engaged in numerous violative acts over an extended period)), 29 (Recordkeeping Violations, Principal Consideration 1).

18 *See Guidelines*, at 8 (Principal Consideration No. 13 (whether misconduct was the result of an intentional act)), 29 (Recordkeeping Violations, Principal Consideration No. 3).

19 *Id.* at 8 (Principal Consideration No. 14 (whether the respondent engaged in the misconduct at issue notwithstanding prior warnings from FINRA that the conduct violated FINRA rules or applicable securities laws or regulations)).

recordkeeping and reporting violations from FINRA during the course of the Firm's cycle exam and Jones's OTR.[20]

Compliance with recordkeeping rules is crucial to maintain a properly functioning regulatory system. "Indeed, the [SEC] has stressed the importance of the records that broker-dealers are required to maintain pursuant to the Exchange Act, describing them as the 'keystone of the surveillance of brokers and dealers by our staff and by the securities industry's self-regulatory bodies.'" *Dep't of Enforcement v. Trevisan*, Complaint No. E9B2003026301, 2008 FINRA Discip. LEXIS 12, at *35 (FINRA NAC Apr. 30, 2008) (quoting *Edward J. Mawod & Co.*, 46 S.E.C. 865, 873 n.39 (1977), *aff'd*, 591 F.2d 588 (10th Cir. 1979)). Notwithstanding the importance of accurate recordkeeping, the Firm, through Jones, intentionally and repeatedly reported the CD-0331 as an allowable asset even though Respondents knew from the outset that Jones had pledged the CD as collateral for Loan-0331 and therefore understood CD-0331 was not an allowable asset. Jones knowingly overstated her Firm's net capital for years and repeatedly misled FINRA staff during its examination and investigation.

Nevertheless, Respondents argue that the presence of mitigating factors warrants a lower sanction. We disagree. There are limited mitigating factors here.[21] Respondents' principal mitigation argument is that, "starting around late 2013" and throughout the period in issue, Jones faced a "mountain of … family and personal troubles" that caused her to make "mistakes" through "inattention and negligence." Even crediting Jones's testimony regarding her family and personal problems, this mitigation argument fails. In general, personal problems such as stress and health issues do not mitigate violations of FINRA rules. *See John M.E. Saad*, Exchange Act Release No. 76118, 2015 SEC LEXIS 4176, at *20-21 (Oct. 8, 2015) (rejecting argument that outside stress caused respondent's misconduct and serves to mitigate such misconduct and stating that respondent's "course of conduct was not the type that one might associate with stress, such as an unthinking reaction during a stressful moment that is later redressed; instead, his deceptive conduct demonstrated a high degree of intentionality over a long period of time"),

---

[20] *See id.* at 7 (Principal Consideration No. 10 (whether the respondent attempted to conceal her misconduct)), 8 (Principal Consideration No. 12 (whether the respondent attempted to delay FINRA's investigation, to conceal information from FINRA, or to provide inaccurate or misleading testimony or documentary information to FINRA)).

[21] We assign Jones's expressed remorse at the hearing and on appeal some limited mitigative weight. *See Dep't of Enforcement v. Kelly*, Complaint No. E9A2004048801, 2008 FINRA Discip. LEXIS 48, at *32 & n.34 (FINRA NAC Dec. 16, 2008) (holding that, while accepting responsibility before intervention has "the greatest mitigative weight," later admission of wrongdoing has some mitigative weight); *Dep't of Enforcement v. Golonka*, Complaint No. 2009017439601, 2013 FINRA Discip. LEXIS 5, at *37 (FINRA NAC Mar. 4, 2013) ("[W]e assign only limited mitigative weight to Golonka's remorse because he did not express it until after his Firm had detected some of his violations."). *But see Dep't of Enforcement v. Mizenko*, Complaint No. C8B030012, 2004 NASD Discip. LEXIS 20, at *18 (NASD NAC Dec. 21, 2004) (admission of misconduct was not mitigating because it came after respondent's Firm detected the forgery and confronted respondent with evidence), *aff'd*, 58 S.E.C. 846 (2005). However, the limited mitigative weight assigned does not justify a sanction lower than a bar.

petition for review denied in part and remanded in part, 873 F.3d 297 (D.C. Cir. 2017), *aff'd*, Exchange Act Release No. 86751, 2019 SEC LEXIS 2216 (Aug. 23, 2019), *aff'd*, 980 F.3d 103 (D.C. Cir. 2020). Such problems may be treated as mitigating only "if there is evidence that such problems interfered with an ability to comply with FINRA rules or that violations resulted from, or were exacerbated by, such problems." *Id.* at *23. Making such a showing "is a difficult burden to meet and, in fact, one that has rarely been met." *Id.* at *24. Jones does not meet this burden. Her course of misconduct spanned a period of years starting in December 2011—nearly two years before the late 2013 onset of the personal difficulties Jones contends should be mitigating. The duration of her misconduct reflects "a high degree of intentionality" rather than mere "inattention and negligence"—and is aggravating.

Respondents' other purported mitigating factors also fail. They observe that there were "no customer allegations," but the absence of customer complaints is not mitigating. *See, e.g.*, *Dep't of Enforcement v. Noard*, Complaint No. 2012034936101, 2017 FINRA Discip. LEXIS 15, at *28–29 (FINRA NAC May 12, 2017); *Dep't. of Market Reg. v. Lane*, Complaint No. 20070082049, 2013 FINRA Discip. LEXIS 34, at *85 (FINRA NAC Dec. 26, 2013), (*citing Mission Sec. Corp.*, Exchange Act Release No. 63453, 2010 SEC LEXIS 4053, at *23 (Dec. 7, 2010), *aff'd*, Exchange Act Release No. 74269, 2015 SEC LEXIS 559 (Feb. 13, 2015)). They also point out there was no customer harm, but the absence of customer harm is also not mitigating. *See, e.g.*, *KCD Fin. Inc.*, Exchange Act Release No. 80340, 2017 SEC LEXIS 986, at *48 (Mar. 29, 2017).

Respondents also note that Jones has no disciplinary history and emphasize they are not recidivists, but the absence of prior disciplinary history is not a mitigating factor. *See, e.g.*, *Dep't of Enforcement v. Wyche*, Complaint No. 2015046759201, 2019 FINRA Discip. LEXIS 2, at *25–26 (FINRA NAC Jan. 8, 2019). Respondents also claim that Jones's "business reputation" is "impeccable," but that is not relevant to our sanction analysis.

Based on the presence of numerous aggravating factors and severity of the misconduct, we find that significant sanctions are warranted. Accordingly, we bar Jones in all capacities and fine KJC $38,000.[22]

B. Providing Inaccurate and Misleading Information, Documents, and Testimony and Refusing to Answer Questions

For providing inaccurate or misleading information to FINRA in response to FINRA's information, document, and testimony requests, the Guidelines provide that a bar should be standard.[23] The Guidelines further provide that a bar is standard for a partial but incomplete

---

[22] In assessing the sanction to be imposed on KJC, we take into consideration that KJC is a small firm. *Guidelines*, at 2 (noting that adjudicators should consider a firm's size with a view toward ensuring that the sanctions imposed are remedial but not punitive).

[23] *Guidelines*, at 33. We find that it is appropriate to impose a unified sanction for Jones's failures to cooperate with FINRA examinations or investigations. *See Dep't of Enforcement v. Evansen*, Complaint No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *56 n.43 (FINRA NAC Jun. 3, 2014) (applying unified sanction when respondent both responded late to FINRA

[Footnote continued on next page]

response, unless the person can demonstrate that the information provided substantially complied with all aspects of the request. A lesser sanction, a suspension of up to two years, may be warranted when mitigation exists, or the responses were untimely.

In cases that involve a complete failure to respond to a particular request in a matter that involved multiple separate requests for information or testimony, and the individual complied with at least some of the requests, the failure to respond is treated as a "partial but incomplete failure to respond" under the Guidelines. *See Plunkett*, 2013 SEC LEXIS 1699, at *55-56 (holding that the determination of sanctions for a failure to respond violation must take into account the extent to which the respondent complied with other requests made in the same investigation); *Dep't of Enforcement v. N. Woodward Fin. Corp.*, Complaint No. 2010021303301, 2014 FINRA Discip. LEXIS 32, at *37 (FINRA NAC Jul. 21, 2014) (same), *aff'd*, 2015 SEC LEXIS 1867 (May 8, 2015), *aff'd*, 2016 U.S. App. LEXIS 24259 (6th Cir. June 29, 2016).

Three principal considerations apply when, as here, the FINRA Rule 8210 violations involve a partial but incomplete response. First, adjudicators should consider the importance of the information that was requested but not provided as viewed from FINRA's perspective, and whether the information that was provided was relevant and responsive to the request. Second, adjudicators should consider the number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response. Third, adjudicators should consider whether the respondent thoroughly explained one or more valid reasons for the deficiencies in the response.

First, from FINRA's perspective, the information that Jones did not provide was important. The information FINRA sought was central to two investigations —concerning Respondents' use of CD-0331 as an allowable asset and Jones's involvement in the Houston Investigation. *See Dep't of Enforcement v. Eplboim*, Complaint No. 2011025674101, 2014 FINRA Discip. LEXIS 8, at *35 (FINRA NAC May 14, 2014) ("FINRA staff sought documentation to determine whether Eplboim committed serious infractions of FINRA rules, and they were unable to do so because they did not have the requested documents."). Second, Jones's subterfuge exhibited a pattern of misconduct over many months during which time she provided inaccurate and misleading information to FINRA relating to multiple sets of inquiries. Third, FINRA had to exert significant regulatory pressure in the form of multiple FINRA Rule 8210 requests. Finally, while Jones has expressed remorse for her misconduct, she has not provided valid reasons for the deficiencies in her response.

The failure to comply with FINRA Rule 8210 "is a serious violation justifying stringent sanctions because it subverts [FINRA]'s ability to execute its regulatory functions." *Elliot M. Hershberg*, 58 S.E.C. 1184, 1190 (2006), *aff'd*, 210 F. App'x 125 (2d Cir. 2006). In addition,

---

[cont'd]

Rule 8210 requests for information and documents and failed to appear in response to a FINRA Rule 8210 request for his testimony), *aff'd*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080, at *55 (July 27, 2015).

the failure to provide truthful responses to requests for information is "more damaging than a refusal to respond to a request for information since they mislead [FINRA] and can conceal wrongdoing." *Michael A. Rooms,* 58 S.E.C. 220, 229 (2005). Based on the foregoing, we find that Jones's provision of false and misleading information to FINRA is egregious and has rendered her unfit to remain in the securities industry. We therefore bar her in all capacities.

V. Conclusion

Under cause one, we affirm the Hearing Panel's findings that KJC willfully violated Section 17(a) of the Exchange Act, Exchange Act Rules 17a-3 and 17a-5, and FINRA Rules 4511 and 2010 by creating and maintaining inaccurate books and records and by filing inaccurate FOCUS reports. For these violations, KJC is fined $38,000. KJC is also subject to statutory disqualification. We also affirm the Hearing Panel's findings that Jones violated FINRA Rules 4511 and 2010 by causing KJC to create and maintain inaccurate books and records and causing the Firm to file inaccurate FOCUS reports. For these violations, Jones is barred in all capacities.

Under causes two through four, we affirm the Hearing Panel's findings that Jones violated FINRA Rules 8210 and 2010 by providing false and misleading information to FINRA and by refusing to respond to FINRA staff's questions during her OTR. For these violations, Jones is barred in all capacities. The bars are effective immediately. We also affirm the Hearing Panel's order that Respondents pay, jointly and severally, hearing costs of $13,914.58, and we impose appeal costs of $1,573.34.[24]

On Behalf of the National Adjudicatory Council,

_____

Jennifer Piorko Mitchell,
Vice President and Deputy Corporate Secretary

[24] Pursuant to FINRA Rule 8320, the membership of any firm that fails to pay any fine, costs, or other monetary sanction, after seven days' notice in writing, will summarily be revoked for non-payment. Similarly, 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.