BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. North Woodward Financial Corp. Birmingham, MI, and Douglas A. Troszak Birmingham, MI, Respondents.	DECISION Complaint No. 2011028502101 Dated: July 19, 2016

Associated person failed to comply fully with FINRA information and document requests, did not prepare required supervisory reports and certifications, failed to establish an adequate supervisory system, did not establish and implement adequate anti-money laundering procedures, failed to test those procedures timely, willfully failed to amend timely his Form U4, and did not provide customers of his firm with adequate privacy notice. Held, findings and sanctions affirmed.

Appearances

For the Complainant: Dale A. Glanzman, Esq., Leo F. Orenstein, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondents: Douglas A. Troszak, Pro Se

Decision

North Woodward Financial Corp. ("North Woodward") and Douglas A. Troszak ("Troszak") appeal a Hearing Panel decision. The Hearing Panel found that North Woodward and Troszak failed to abide by their obligation to provide FINRA with complete and timely information, did not prepare required supervisory reports and certifications, failed to establish and maintain an adequate supervisory system, willfully failed to amend timely Troszak's Uniform Application for Securities Industry Registration or Transfer ("Form U4") to disclose a

reportable event, did not establish and implement adequate anti-money laundering ("AML") procedures, failed to test those AML procedures timely, and failed to provide North Woodward customers with adequate privacy notice. The Hearing Panel suspended North Woodward from FINRA membership for one year and fined the firm a total of $25,000 for the misconduct. The Hearing Panel barred Troszak from associating with any FINRA member in any capacity and barred him from acting as a principal or supervisor for his violations.

For the reasons we explain below, we dismiss North Woodward's appeal as moot and vacate the Hearing Panel's findings and sanctions as they relate to the firm. Based on our independent review of the record, however, we affirm the Hearing Panel's findings that Troszak engaged in misconduct that violated FINRA rules and sustain the sanctions that the Hearing Panel imposed on him.

I. Background

Troszak entered the securities industry in 1992. North Woodward became a FINRA member in November 2000. Troszak, North Woodward's sole owner and registered person, served at all relevant times as the firm's president, chief financial officer, and chief compliance officer.[1] Troszak is also a certified public accountant and operates an accounting firm, Troszak CPA Group, at the same address as North Woodward's lone office.

In 2014, as a result of a disciplinary matter that preceded this case, FINRA expelled North Woodward from membership and barred Troszak from associating with any FINRA member in any capacity.[2] North Woodward and Troszak timely appealed FINRA's final disciplinary action in that matter to the Commission. In May 2015, the Commission sustained FINRA's findings and the sanctions it imposed. *See N. Woodward Fin. Corp.*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867, at *1 (May 8, 2015). On July 7, 2015, Troszak timely filed with the United States Court of Appeals for the Sixth Circuit a petition requesting review of the Commission's final order. On June 29, 2016, the Sixth Circuit issued an order

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[1] Troszak registered as a general securities representative and general securities principal of North Woodward in November 2000. He registered also as an introducing broker-dealer financial and operations principal in July 2003 and as an operations professional in April 2013.

[2] In a decision dated July 21, 2014, the National Adjudicatory Council ("NAC") found that North Woodward and Troszak failed to respond completely to FINRA information requests concerning loan transactions between Troszak and his customers, in violation of FINRA Rules 8210 and 2010, and failed to amend Troszak's Form U4 to disclose that he was subject to a federal tax lien, in violation of Article V, Section 2 of FINRA's By-Laws, NASD Rule 2110, and FINRA Rule 2010. *See Dep't of Enforcement v. N. Woodward Fin. Corp.*, Complaint No. 2010021303301, 2014 FINRA Discip. LEXIS 32 (FINRA NAC July 21, 2014). For violating FINRA Rule 8210, the NAC expelled North Woodward and barred Troszak. *Id.* at *59. In light of the expulsion and bar, the NAC declined to impose additional sanctions for the Form U4 violations. *Id.*

denying Troszak's petition for review and affirming the Commission's decision.[3] *Troszak v. SEC*, No. 15-3729 (6th Cir. June 29, 2016).

Although the notice of appeal filed by Troszak with the Sixth Circuit ostensibly included North Woodward, a pro se individual cannot represent a corporation. *See Doherty v. Am. Motors Corp.*, 728 F.2d 334, 340 (6th Cir. 1984). Consequently, North Woodward was not a petitioner in Troszak's Sixth Circuit appeal, and the firm was not listed as such on the court's docket. North Woodward's expulsion from FINRA membership therefore is final.[4]

II. Procedural History

This disciplinary matter began when the Department of Enforcement ("Enforcement") filed a 10-cause complaint against North Woodward and Troszak on January 10, 2013. The complaint's first cause of action alleged that North Woodward violated FINRA Rules 8210 and 2010 by refusing to provide timely access to the firm's books and records, and other documents and information requested, for the purpose of FINRA conducting a routine cycle examination of the firm in 2011.[5] The second cause of action alleged that North Woodward and Troszak violated FINRA Rule 2010 by effecting securities transactions while the firm's registration was suspended. The third cause of action alleged that Troszak also violated FINRA Rules 8210 and 2010 by failing to respond fully to FINRA requests for information and documents concerning money that Troszak borrowed, including from North Woodward customers, to redeem a condominium unit he owned.[6] The fourth cause of action alleged that North Woodward and Troszak violated NASD Rule 3012 and FINRA Rules 3130 and 2010 by failing to prepare required supervisory reports and certifications. The fifth cause of action alleged that North Woodward and Troszak violated NASD Rule 3010 and FINRA Rule 2010 by failing to establish an adequate supervisory system. The sixth cause of action claimed that North Woodward and Troszak violated FINRA Rules 1122 and 2010 by willfully failing to amend timely Troszak's Form U4 to disclose a reportable event. The seventh cause of action alleged that North Woodward and Troszak violated NASD Rule 3011(b) and FINRA Rules 3310(b) and 2010 by failing to establish and implement appropriate AML procedures. The eighth cause of action alleged that North Woodward and Troszak violated FINRA Rules 3310(c) and 2010 by failing to conduct timely independent AML testing. The ninth cause of action alleged that North Woodward and Troszak violated NASD Rules 3011(b) and 2110 and FINRA Rules 3310(b) and 2010 by failing to comply with mandatory information sharing requests from FinCEN. Finally,

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[3] A judgment has not been docketed and the opportunity for Troszak to seek further review of the court's order has not passed.

[4] The bar imposed on Troszak by FINRA, and sustained by the Commission, remains in effect pending resolution of his appeal.

[5] The conduct rules that apply in this case are those that existed at the time of the conduct at issue.

[6] The borrowings at issue in this matter are separate and distinct from the customer loan activity at issue in FINRA's final disciplinary action of July 21, 2014.

the tenth cause of action alleged that North Woodward and Troszak violated NASD Rule 2110 and FINRA Rule 2010 by failing to provide customers with adequate privacy notice under Regulation S-P.

On February 7, 2013, North Woodward and Troszak filed an answer in which they admitted many of the factual claims on which Enforcement premised its complaint, but they denied all allegations that their conduct violated FINRA rules. A Hearing Panel conducted a two-day hearing in October 2013.[7]

In its May 16, 2014 decision, the Hearing Panel dismissed the complaint's ninth cause of action, but it found that North Woodward and Troszak violated FINRA rules as Enforcement otherwise alleged in the complaint's remaining causes of action.[8] The Hearing Panel suspended North Woodward's FINRA membership for one year for impeding a FINRA examination and failing to comply timely with FINRA's information and document requests. The Hearing Panel imposed a concurrent, 30-business-day suspension and $10,000 fine for the firm's supervisory violations. For North Woodward's Form U4 and privacy notice violations, the Hearing Panel imposed fines of $5,000 and $10,000, respectively.

The Hearing Panel barred Troszak from associating with any FINRA member in any capacity for his failure to comply fully with FINRA information and document requests. The Hearing Panel also barred Troszak from associating with any FINRA member in any principal or supervisory capacity for his supervisory violations. In light of the bars, the Hearing Panel declined to impose any additional sanctions for Troszak's other misconduct.

This appeal followed. As we explain above, however, North Woodward's expulsion from FINRA membership is final. Consequently, we decline to review the Hearing Panel's findings and sanctions as to North Woodward and dismiss the firm's appeal as moot to conserve adjudicative resources. *See Commonwealth Sec. Corp.*, Exchange Act Release No. 7322, 1964 SEC LEXIS 509, at *2 (May 22, 1964) (dismissing as moot an application for review of NASD action where respondent's expulsion in an earlier NASD proceeding was final). We therefore discuss herein only those findings of misconduct and sanctions that concern Troszak.

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[7] Enforcement dismissed the complaint's second cause of action, alleging that the firm conducted securities transactions while the firm was suspended, when the disciplinary hearing commenced.

[8] The Hearing Panel found that Enforcement did not prove by a preponderance of the evidence that the respondents failed to respond to FinCEN information requests. We do not revisit the dismissal of either the second or ninth cause of action in this decision.

III. Discussion

We affirm the Hearing Panel's findings that Troszak violated FINRA rules. We discuss each of these violations in detail below.

A. Troszak Did Not Comply Fully with FINRA Information and Document Requests

FINRA Rule 8210 requires members and their associated persons to provide information and documents requested in FINRA investigations.[9] *See* FINRA Rule 8210(a). Compliance with the rule must be "full and prompt." *CMG Institutional Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *15 (Jan. 30, 2009). This obligation is "unequivocal."[10] *See Michael Markowski*, 51 S.E.C. 553, 557 (1993).

FINRA staff initiated an investigation of Troszak after learning that he borrowed $289,900 from nine lenders in February 2011.[11] On October 4, 2011, to further its investigation, FINRA staff issued to Troszak a written request for information and documents to determine whether any of the lenders were North Woodward customers. In a written response dated October 6, 2011, Troszak revealed that four of the lenders were also customers of his securities firm.[12]

On November 1, 2011, Troszak provided on-the-record testimony to FINRA. Troszak testified that he borrowed funds from his friends, neighbors, and family to redeem from foreclosure a condominium unit that he owned personally. Troszak explained that, in exchange

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[9] At the time of the conduct at issue, FINRA Rule 8210(a) stated, "[f]or the purpose of an investigation, complaint, examination, or proceeding authorized by the FINRA By-Laws or rules, an Adjudicator or FINRA staff shall have the right to: (1) require a member, person associated with a member, or other person subject to FINRA's jurisdiction to provide information orally, in writing, or electronically . . . and to testify at a location specified by FINRA staff . . . with respect to any matter involved in the investigation, complaint, examination, or proceeding; and (2) inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in the investigation, complaint, examination, or proceeding."

[10] FINRA Rule 8210 states that "[n]o member or person shall fail to provide information or testimony or to permit an inspection and copying of books, records, or accounts pursuant to this Rule." FINRA Rule 8210(c).

[11] The nine lenders included one husband and wife, seven individuals, and Troszak CPA Group.

[12] The four lenders who were also North Woodward customers included the couple and three individuals.

for the loans, he issued promissory notes secured by a mortgage on the condominium unit.[13] The notes each bore an annual interest rate of 7.5%, paid quarterly, with final principal payments due in full on December 31, 2011. Troszak signed the promissory notes and mortgage individually.

Because Troszak's disclosures raised further questions, FINRA sought additional information and documents from him about the loans and his ability to repay his lenders. FINRA staff requested, among other things, evidence of any interest and principal payments Troszak made to the lenders, including copies of any cleared checks and bank statements, an explanation, if payments were not made, of how he intended make such payments, copies of any correspondence and emails between Troszak and the lenders, information and evidence about any complaints Troszak received from the lenders, information and records concerning any refinancing or restructuring of his borrowings, including a full accounting of any funds obtained from a refinancing, and information and evidence relating to any new borrowings from any customers after his on-the-record testimony. FINRA issued a written request for this information on May 25, 2012, and again on June 11, 2012, pursuant to FINRA Rule 8210.[14]

On June 22, 2012, Troszak emailed FINRA staff and represented that his wife refinanced the mortgage from the nine lenders and that the lenders were repaid. Troszak further claimed that he could not provide FINRA any documents related to the refinancing, but that he would provide such documents after they were publicly recorded. Troszak, nevertheless, questioned FINRA's authority to investigate his personal borrowings because they were not "securities," and he claimed that federal law prohibited him from disclosing any non-public information concerning his lenders without their prior written consent. Troszak provided no other information or documents with his response.

On July 26, 2012, FINRA staff spoke with Troszak by telephone. FINRA staff informed Troszak that his June 22, 2012 email was insufficient and did not constitute a complete response to FINRA's May 25, and June 11, 2012 investigation requests. Troszak responded that his borrowings from customers and other lenders were a personal matter and beyond FINRA's jurisdiction, and he stated that he would not provide any information or documentation requested by FINRA because of concern for the privacy of his lenders.[15]

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[13] FINRA obtained copies of the notes and mortgage from Troszak.

[14] FINRA's May 25, 2012 request letter instructed Troszak that his response should explain whether a reasonable search was conducted to locate responsive information, whether all responsive information was produced, and the grounds for withholding any responsive information from FINRA. The June 11, 2012 request further cautioned Troszak that FINRA could initiate a disciplinary action against him if he failed to deliver the requested information by June 22, 2012.

[15] FINRA staff documented their July 26, 2012 telephone conversation with Troszak in a letter to him dated July 30, 2012. FINRA staff's letter informed Troszak that they would be referring the matter to Enforcement based on a violation of FINRA Rule 8210.

It is undisputed that, while Troszak provided some cursory information that his lenders had been repaid through a refinancing of the mortgage that secured their promissory notes, he failed to provide any further information and never produced any documents responsive to FINRA's May 25, and June 11, 2012 investigation requests. In particular, Troszak failed to provide proof that he made all interest and principal payments due to his lenders under the terms of the notes he provided them, did not evidence that the lenders had been repaid in full as a result of a refinancing of the mortgage that secured their notes, did not proffer copies of correspondence or emails between him and the lenders, and failed to provide any information or documents concerning any other borrowings from his securities customers. Consequently, we find that Troszak violated FINRA Rules 8210 and 2010 because he failed to respond fully and completely to FINRA's two investigation requests for information and documents about the loans he obtained from North Woodward customers and other lenders.[16] *See Gregory Evan Goldstein*, Exchange Act Release No. 71970, 2014 SEC LEXIS 1350, at *19 (Apr. 17, 2014) (finding associated person violated FINRA Rule 8210 by providing responses to some, but not all, of FINRA's requests for information).

Troszak contends that FINRA's information and document requests cannot apply to the loans he received because those loans were not securities under the Securities Act of 1933 and were not related to North Woodward's securities business. But FINRA Rule 8210 is not limited to securities transactions; it expressly provides that information requests can be issued "with respect to *any matter involved* in the investigation." *See* FINRA Rule 8210(a)(1), (a)(2) (emphasis added); *see also Goldstein*, 2014 SEC LEXIS 1350, at *14 ("The material requested from Goldstein fell squarely within the language of the Rule . . . ."). FINRA's disciplinary "authority is broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security." *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996). FINRA's power to investigate potential misconduct is accordingly summoned properly when, as is the case here, activity reflects on the capacity of a member or an associated person "to comply with the regulatory requirements of the securities business and to fulfill [their] fiduciary duties in handling other people's money." *Cf. Daniel D. Manoff*, 55 S.E.C. 1155, 1162 (2002) (citing *James A. Goetz*, 53 S.E.C. 472, 477 (1998)).

The fact that Troszak received a substantial amount of money in the form of loans, including loans from customers of North Woodward, to address his financial difficulties raised questions about whether his business-related conduct comported with ethical standards imposed on him under FINRA Rule 2010.[17] *See N. Woodward Fin. Corp.*, 2015 SEC LEXIS 1867, at *15

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[16] A violation of any FINRA rule is also a violation of FINRA Rule 2010. *See N. Woodward Fin. Corp.*, 2015 SEC LEXIS 1867, at *13 n.8. FINRA Rule 2010 states that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." FINRA Rule 0140 subjects associated persons to all rules applicable to FINRA members.

[17] The loans Troszak received from North Woodward customers were unquestionably an appropriate subject of a FINRA investigation. Borrowing from customers is regulated by

[Footnote continued on next page]

("FINRA was within its authority to investigate the circumstances surrounding the loans regardless of whether they are securities."). Troszak may not second guess FINRA or take it upon himself to determine whether FINRA's investigation requests were justified. *See CMG Institutional Trading*, 2009 SEC LEXIS 215, at *26. FINRA Rule 8210 "has no requirement that [FINRA] explain its reasons for making the information request or justify its relevance." *Id.*

Troszak also asserts that federal law prevented him from providing FINRA with information or documents concerning his borrowings. Specifically, he claims that information about any principal and interest payments he made to his lenders was included in their tax returns, which were prepared by Troszak CPA Group, and was not subject to disclosure under the Internal Revenue Code.[18] FINRA, however, did not request any information from Troszak CPA Group or any information that Troszak, in his capacity as a certified public accountant, obtained from the lenders. Rather, FINRA requested information and documents about principal and interest payments that Troszak made, or was obligated to make, personally to his lenders concerning a mortgage and promissory notes that originated with him. The fact that the lenders may have independently given some of the same information to Troszak in connection with tax services that he delivered through Troszak CPA Group does not excuse his obligation under FINRA Rule 8210 to produce that information to FINRA. *See N. Woodward Fin. Corp.*, 2015 SEC LEXIS 1867, at *22 ("The fact that the information also appeared in the customers' tax returns does not excuse Troszak's obligation to provide it to FINRA."). FINRA's "authority to request documents pursuant to [FINRA] Rule 8210 stems from the contractual relationship entered into voluntarily by [FINRA] members and associated persons with [FINRA members]."

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FINRA Rule 3240. Even if FINRA did not charge Troszak with violating that rule, his lending arrangements with customers were "within FINRA's authority to investigate." *N. Woodward Fin. Corp.*, 2015 SEC LEXIS 1867, at *27. Information and documents concerning loans from non-customer lenders, or customers other than those Troszak identified, were also an appropriate subject of FINRA investigation requests. *Cf. Goldstein*, 2014 SEC LEXIS 1350, at *15 ("FINRA's investigation . . . included whether there was any misconduct arising from conflicts between [a FINRA member, an associated person, and the member's] customers . . . ."). Such information would allow FINRA staff to determine, among other things, whether Troszak misappropriated or misused funds borrowed from some lenders to repay others, whether he favored some lenders with interest and principal payments while denying others such payments, and whether he borrowed from customers in disregard of their interests given Troszak's total financial obligations. *See NASD Notice to Members 03-62*, 2003 NASD LEXIS 70 (Oct. 2003) (discussing the potential of loan-related misconduct by associated persons); *see also John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *45 (Feb. 10, 2012) (concluding that an undisclosed loan between a registered person and his customer "carried a significant potential for conflicts of interest and misconduct").

[18] The statutes Troszak invokes are 26 U.S.C. § 6713 and 26 U.S.C. § 7216. Those statutes generally prohibit tax preparers from disclosing information given to them in connection with the preparation of tax returns.

Jay Alan Ochanpaugh, Exchange Act Release No. 54363, 2006 SEC LEXIS 1926, at *20 (Aug. 25, 2006). Because the information that FINRA needs to conduct investigations is often non-public and confidential, "FINRA's ability to police the activities of its members and associated persons would be eviscerated if FINRA could not request such information under [FINRA] Rule 8210."[19] *Goldstein*, 2014 SEC LEXIS 1350, at *36. If Troszak had concerns about responding to FINRA's investigation requests, he should have "raised, discussed, and resolved" these issues with FINRA staff in the "cooperative spirit and prompt manner" contemplated by FINRA Rule 8210. *See CMG Institutional Trading*, 2009 SEC LEXIS 215, at *23-24. Instead, he refused to comply with FINRA's requests, in violation of FINRA Rule 8210.

Finally, Troszak contends that other persons possessed some of the requested documents. In this respect, Troszak claims that any documents related to the refinancing of his condominium unit were in the hands of a third-party title company that he did not control. In asserting that some of the documents requested are in the possession of a third party, however, Troszak misconstrues FINRA's investigation requests. FINRA sought from Troszak information and documents concerning interest and principal payments for which he was responsible personally. *See Ochanpaugh*, 2006 SEC LEXIS 1926, at *21 ("[FINRA] should consider first requesting the personal financial records of the associated person before seeking the documents of a third person."). FINRA's requests satisfied the requirement under FINRA Rule 8210(a)(2) that the requests be "of such member or person" associated with a member.[20] *See N. Woodward Fin. Corp.*, 2015 SEC LEXIS 1867, at *20; *Goldstein*, 2014 SEC LEXIS 1350, at *17. That other persons may have also had documents responsive to FINRA's requests did not relieve Troszak of his obligation to produce the books, records, and other documents that he possessed. *See CMG Institutional Trading*, 2009 SEC LEXIS 215, at *25 ("Baldwin was required to provide [FINRA] with any documents that belonged to him personally."); *Joseph G. Chiuli*, 54 S.E.C. 515, 523 (2000) ("[A]s an associated person, Chiuli was responsible for responding directly to the

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[19] Troszak also refers in his brief to Regulation S-P, which limits disclosure by broker-dealers of a customer's non-public personal information to non-affiliated third parties. *See* 17 C.F.R. §§ 248.1-248.30. Regulation S-P, however, contains exceptions that permit a broker-dealer to disclose customer information to self-regulatory organizations such as FINRA for certain purposes without first giving the customer notice of, and an opportunity to opt out of, the disclosure. *See, e.g.*, 17 C.F.R. § 248.15(a)(4) (excepting certain disclosures to law enforcement and regulatory authorities, including disclosures to a self-regulatory organization pursuant to its rules). Even were we to find that Troszak withheld from FINRA non-public personal information covered by Regulation S-P, a conclusion that is not supported by the record, it did not preclude Troszak from providing information or documents to FINRA under FINRA Rule 8210. *See N. Woodward Fin. Corp.*, 2015 SEC LEXIS 1867, at *23.

[20] FINRA amended Rule 8210(a)(2), effective February 25, 2013, to expressly require that members and associated persons of members provide to FINRA books, records, and accounts of such members or associated persons that are in their "possession, custody, or control." *See Order Granting Accelerated Approval*, Exchange Act Release No. 68386, 2012 SEC LEXIS 3798, at *5 (Dec. 7, 2012). As we explain above, we apply the conduct rules in effect at the time of the conduct at issue.

NASD's requests for information."). In any event, Troszak's obligations under FINRA Rule 8210 extended beyond a mere statement that requested information is unavailable. *See CMG Institutional Trading*, 2009 SEC LEXIS 215, at *23 ("We have held that a[] [FINRA] member or an associated person has an obligation beyond a mere statement that the records are unavailable . . . ."). If Troszak did not have documents responsive to FINRA's investigation requests, he "had a responsibility to provide a detailed explanation of [his] efforts to obtain the information requested and the problems [he] encountered." *See id.* Troszak offers neither evidence that he attempted to obtain the information that FINRA staff sought from him nor a meaningful explanation as to why he could not obtain the information.

In summary, FINRA's May 25, and June 11, 2012 investigation requests were issued consistent with FINRA's regulatory authority under FINRA Rule 8210. Troszak offers no persuasive reason for his failure to respond fully and completely to these investigation requests. Accordingly, we find that Troszak's incomplete response to FINRA's information and document requests violated FINRA Rules 8210 and 2010.

B. Troszak Is Liable for North Woodward's Supervisory Failures

1. Troszak Did Not Prepare Required Supervisory Reports and Certifications

NASD Rule 3012 requires that each FINRA member designate a principal or principals who must prepare and submit to the firm's senior management, at least annually, a report that details the member's system of supervisory controls, summarizes the testing and verification of the member's supervisory procedures that is conducted by the firm, and identifies any additional or amended procedures created in response to those test results.[21] *See* NASD Rule 3012. FINRA Rule 3130 further requires that the chief executive or equivalent officer of each FINRA member certify annually that the firm has in place "processes to establish, maintain, review, test, and modify written compliance policies and written supervisory procedures reasonably designed to achieve compliance" with the federal securities laws and applicable FINRA and MSRB rules.[22] *See* FINRA Rule 3130(b), (c).

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[21] Each FINRA member must designate one or more principals "who shall establish, maintain, and enforce a system of supervisory control policies and procedures that (A) test and verify that the member's supervisory procedures are reasonably designed with respect to the activities of the member and its associated persons, to achieve compliance with applicable securities laws and regulations, and with applicable NASD rules and (B) create additional or amend supervisory procedures where the need is identified by such testing and verification." NASD Rule 3012(a)(1). NASD Rule 3012 was amended and renumbered as FINRA Rule 3120, effective December 1, 2014.

[22] The processes that are the subject of the annual certification requirement must be evidenced in a report that is reviewed by the firm's chief executive officer, chief compliance officer, and such other officers as the member deems necessary and submitted to the firm's board of directors and audit committee. FINRA Rule 3130(c)(3). FINRA Rule 3130, formerly NASD Rule 3013, became effective December 15, 2008.

During North Woodward's 2011 cycle examination, FINRA staff requested that the firm produce, for the period of October 28, 2008, to July 18, 2011, the reports and certifications required of the firm under NASD Rule 3012 and FINRA Rule 3130. Troszak provided to FINRA staff a report of supervisory control testing and annual internal review, dated July 11, 2011, for the calendar year 2010. He also provided an annual certification of compliance and supervisory procedures for the calendar year 2010, which Troszak executed as the firm's chief executive officer, and dated July 11, 2011. Troszak represented to FINRA staff, however, that the reports and certifications that were required to be completed for the years 2008 and 2009 had not been prepared and therefore could not be provided to FINRA.

As North Woodward's president and sole registered person, Troszak was responsible for preparing the reports and certifications required under NASD Rule 3012 and FINRA Rule 3130. *See Dep't of Enforcement v. Dratel Group, Inc.*, Complaint No. 2009016317701, 2015 FINRA Discip. LEXIS 10, at *45, 47 (FINRA NAC May 6, 2015) (finding a FINRA member's sole proprietor violated NASD Rule 3012 and FINRA Rule 3130 by failing to prepare adequate reports and certifications required under those rules). Consequently, we find that Troszak violated NASD Rule 3012 and FINRA Rules 3130 and 2010 by failing to prepare the reports and certifications required for the years 2008 and 2009.

2. Troszak Did Not Tailor North Woodward's Supervisory System to the Firm's Business

NASD Rule 3010 requires that each FINRA member establish and maintain a system to supervise the activities of the persons that are associated with it that is reasonably designed to achieve compliance with the federal securities laws and FINRA rules.[23] *See* NASD Rule 3010(a). Among other things, a member's supervisory system must assign an appropriately registered principal with authority to carry out the supervisory responsibilities of the member for each type of business in which it engages. *See* NASD Rule 3010(a)(2). It must include also written procedures to supervise the types of business in which the firm engages and to supervise the activities of its registered representatives, registered principals, and other associated persons. *See* NASD Rule 3010(a)(1), (b)(1).

The written supervisory procedures that North Woodward submitted for review by FINRA staff during the firm's 2011 cycle examination were inadequate.[24] North Woodward obtained the procedures from a third-party vendor, and they were not customized to North Woodward's securities business. The procedures did not, in many instances, identify the names of the individual or individuals responsible for conducting the reviews and compliance processes identified in the procedures, leaving this information blank where instructed to provide. The procedures also contained multiple, general phrases and instructions, such as "insert name," "customize if necessary," and "revise as applicable," that indicated that the procedures had not

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[23] The provisions of NASD Rule 3010 with which we are concerned in this case were adopted as FINRA Rule 3110, effective December 1, 2014.

[24] Troszak approved the written procedures, which were effective as of February 26, 2009.

been fitted to North Woodward's business. Finally, the written supervisory procedures covered numerous business lines in which North Woodward did not engage, and even where they addressed business lines the firm conducted, the procedures were incomplete and ambiguous and did not describe with detail the procedures to follow.

Assuring proper supervision is critical to operating a broker-dealer. *See Rita H. Malm*, 52 S.E.C. 64, 68 n.13 (1994). "Regardless of its size or complexity, each member must adopt and implement a supervisory system that is *tailored specifically to the member's business* and must address the activities of all its registered representatives and associated persons." *NASD Notice to Members 99-45*, 1999 NASD LEXIS 20, at *5 (June 1999) (emphasis in original). We conclude that North Woodward's supervisory system did not meet these requirements. *See Dep't of Enforcement v. Legacy Trading Co., LLC*, 2010 FINRA Discip. LEXIS 20, at *36 (FINRA NAC Oct. 8, 2010) ("Legacy's [written supervisory procedures] were incomplete, in draft form, and not tailored specifically to Legacy's business."). We therefore find that Troszak failed to maintain and enforce a supervisory system reasonably designed to achieve compliance with the federal securities laws and FINRA rules, in violation of NASD Rule 3010 and FINRA Rule 2010. *See Legacy Trading Co.*, 2010 FINRA Discip. LEXIS 20, at *38.

3. Troszak Failed to Implement Adequate AML Procedures for His Firm

NASD Rule 3011, now FINRA Rule 3310, required FINRA members to develop and implement a written AML program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act ("BSA") and its implementing regulations.[25] The rule also set forth the minimum requirements for an AML compliance program, including the requirement that a firm establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the BSA and the implementing regulations thereunder. *See* NASD Rule 3011(b); FINRA Rule 3310(b).

During North Woodward's 2011 cycle examination, FINRA staff discovered that the firm failed to implement adequate AML policies and procedures. Specifically, FINRA staff discovered that North Woodward's AML procedures, dated February 16, 2009, were simply a verbatim reproduction, complete with generalized instructions and illustrations, of the template that FINRA provides to its small-firm members to assist them in fulfilling their responsibilities to establish an AML program consistent with the requirements of NASD Rule 3011 and FINRA Rule 3310. Other than inserting North Woodward's name on the template's cover page, and designating Troszak as the firm's AML compliance officer, Troszak did not tailor the template to meet North Woodward's business and practices.[26]

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[25] NASD Rule 3011 was adopted as FINRA Rule 3310, effective January 1, 2010.

[26] FINRA provides small member firms with a template to assist them in fulfilling their obligations to devise and implement a firm-specific AML program that is consistent with federal law and FINRA rules. The template makes clear that members are responsible for ensuring that the plan fits their individual businesses and that they must tailor the plan to fit a firm's particular situation. *See* AML Template for Small Firms, *available at* http://www.finra.org/industry/anti-

[Footnote continued on next page]

Because North Woodward's AML procedures were not tailored to the specific nature of its business, they were not reasonably designed to achieve compliance with the BSA and its implementing regulations. *See Dep't of Enforcement v. Domestic Sec., Inc.*, Complaint No. 2005001819101, 2008 FINRA Discip. LEXIS 44, at *11-18 (FINRA NAC Oct. 2, 2008) (finding a FINRA member failed to comply with the requirements of NASD Rule 3011 because its AML procedures utilized standardized policies and procedures that were not customized to reflect the firm's business and practices). Consequently, we find that Troszak violated NASD Rule 3011(b) and FINRA Rules 3310(b) and 2010. *See Dep't of Enforcement v. CMG Institutional Trading, LLC*, Complaint No. 2006006890801, 2010 FINRA Discip. LEXIS 7, at *22 (FINRA NAC May 3, 2010) (finding FINRA member and its president and majority owner liable for the firm's failure to comply with the requirements of NASD Rule 3011).

4. Troszak Did Not Conduct Timely Independent AML Testing

FINRA Rule 3310 requires that FINRA members that execute transactions for customers conduct annual independent testing for compliance by member personnel or by a qualified outside party. *See* FINRA Rule 3310(c). The annual independent testing must be conducted on a calendar-year basis. *Id.*

FINRA staff requested copies of North Woodward's AML test reports during the firm's 2011 cycle examination. In response to staff's request, Troszak produced a single report, dated July 11, 2011, that reflected it covered the review period of January 1, 2009, through December 31, 2010.

The evidence is clear that annual independent testing of North Woodward's AML program for calendar year 2009 was not conducted on a timely basis. *See Dep't of Enforcement v. Dratel Group, Inc.*, Complaint No. 2008012925001, 2014 FINRA Discip. LEXIS 6, at *90 (FINRA NAC May 2, 2014) (finding a firm's 2006 and 2007 AML compliance programs were not tested until 2008, in violation of NASD Rule 3011(c)), *aff'd*, Exchange Act Release No. 77396, 2016 SEC LEXIS 1035 (Mar. 17, 2016). We thus conclude that, as North Woodward's president and AML compliance officer, with full responsibility for the firm's AML program, Troszak violated FINRA Rules 3310(c) and 2010. *See CMG Institutional Trading*, 2010 FINRA Discip. LEXIS 7, at *22.

C. Troszak Willfully Failed to Report Timely a Judgment on His Form U4

FINRA Rule 1122 requires that a person associated with a FINRA member correct any registration information that is incomplete or inaccurate so as to be misleading or could in any

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[cont'd]

money-laundering-template-small-firms. Indeed, when Troszak hired an independent consultant to review North Woodward's AML procedures in 2011, the consultant observed that "[t]he template should be customized to the Firm's business model and actual practices." North Woodward's AML procedures were updated, effective September 1, 2011, to reflect this customization.

way tend to mislead.[27] Once filed, a registered representative or associated person is under a continuing obligation to timely update information required by the Form U4 as changes occur. *See Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *11 (Mar. 15, 2016). Any correction or amendment necessary to keep a registration application current must be filed with FINRA no later than 30 days after learning of the facts or circumstances that give rise to the amendment. *See* Section 2(c) of Article V of the FINRA By-Laws.

At all relevant times, Question 14M on the Form U4 asked, "[d]o you have any unsatisfied judgments or liens against you?" In preparing for North Woodward's 2011 cycle examination, FINRA staff ran a search to determine whether Troszak had any unsatisfied judgments or liens. FINRA staff discovered a $15,304 consent judgment that had been entered against Troszak on June 3, 2010, remained unsatisfied, and had not been reported on his Form U4. FINRA staff informed Troszak of their discovery in July 2011. The preponderance of the evidence establishes that Troszak told FINRA staff that he was aware of the judgment, to which he had obviously consented, and that it resulted from unpaid legal fees related to his recent divorce.[28] Although FINRA staff told Troszak that he was obligated to update his Form U4 promptly, he did not amend the registration form to report the unsatisfied judgment for several months, until October 31, 2011.

Because Troszak amended his Form U4 to reflect the unsatisfied judgment more than a year late, we find that Troszak violated FINRA Rules 1122 and 2010. *See McCune*, 2016 SEC LEXIS 1026, at *10 (finding associated person of FINRA member failed to disclose timely material information concerning bankruptcy and tax liens on his Form U4 in violation of FINRA rules); *Dep't of Enforcement v. Fretz*, Complaint No. 2010024889501, 2015 FINRA Discip. LEXIS 54, at *53 (FINRA NAC Dec. 17, 2015) (finding associated person violated FINRA Rules 1122 and 2010 by failing to amend his Form U4 to disclose unsatisfied judgments).

We further find that Troszak is subject to statutory disqualification because his failure to disclose the unsatisfied judgment was willful and involved his failure to disclose timely material

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[27] FINRA Rule 1122 states, "[n]o member or person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof."

[28] In his hearing testimony, Troszak claimed that he did not have adequate information to determine whether the judgment was required to be disclosed until FINRA staff brought it to his attention. The Hearing Panel did not find this testimony credible. Absent substantial evidence to the contrary, the Hearing Panel's credibility determinations are entitled to our deference. *See Manoff*, 55 S.E.C. at 1162 n.6 ("Credibility determinations by a fact-finder deserve special weight." (Internal quotation omitted)).

information on his Form U4.[29] "If [Troszak] voluntarily committed the acts that constituted the violation, then he acted willfully."[30] *McCune*, 2016 SEC LEXIS 1026, at *15. Here, the record establishes conclusively that Troszak acted willfully in failing to amend his Form U4 timely. Troszak was aware of the unsatisfied consent judgment, yet he failed to amend his Form U4. Troszak also discussed the judgment, and his duty to amend his Form U4, with FINRA staff in July 2011, but he did not amend his Form U4 for another three months. His omission was no doubt willful. *See id.*, 2016 SEC LEXIS 1026, at *18 ("McCune clearly was aware of the requirement to amend his Form U4 to disclose bankruptcies and liens. McCune therefore acted willfully. . . .").

"The test of materiality is whether the omitted information would have 'significantly altered the total mix of information made available.'"[31] *Scott Mathis*, Exchange Act Release No. 61120, 2009 SEC LEXIS 4376, at *29 (Dec. 7, 2009) (quoting *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)). Troszak's unsatisfied judgment constituted material information that he should have disclosed timely on his Form U4. *See Fretz*, 2015 FINRA Discip. LEXIS 54, at *56-57 ("We find that Fretz's failure to disclose the judgments significantly altered the total mix of information available for a reasonable investor.").

D. North Woodward Did Not Provide Customers Required Privacy Notice

Regulation S-P governs the treatment of non-public personal information about consumers by financial institutions, including broker-dealers, and it requires that financial institutions provide notice to customers about their privacy policies and practices. *See* 17 C.F.R. §§ 248.1.-249.30. At the time of the misconduct at issue, the notice required under Regulation

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[29] A person is to be subject to "statutory disqualification" under Section 3(a)(39)(F) of the Securities Exchange Act of 1934 ("Exchange Act") if, among other things, "such person . . . has willfully made or caused to be made in any application . . . to become associated with a member of, a self-regulatory organization, . . . any statement which was at the time, and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application . . . any material fact which is required to be stated therein." 15 U.S.C. §78c(a)(39)(F).

[30] A willful violation of the federal securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000). Thus, in a case such as this, "[a] willfulness finding is predicated on [a respondent's] intent to commit the act that constitutes the violation—completing the Form U4 inaccurately." *Dep't of Enforcement v. Zdzieblowski*, Complaint No. C8A030062, 2005 NASD Discip. LEXIS 3, at *14 (NASD NAC May 3, 2005).

[31] As we have previously stated, "[b]ecause of the importance that the industry places on full and accurate disclosure of information required by the Form U4, we presume that essentially all the information that is reportable on the Form U4 is material." *Dep't of Enforcement v. Knight*, Complaint No. C10020060, 2004 NASD Discip. LEXIS 5, at *13 (NASD NAC Apr. 27, 2004).

S-P included the delivery of an initial and annual notice to customers about, among other things, the categories of non-public personal information collected and disclosed by the financial institution and the opportunity and methods for customers to opt out of the financial institution's sharing of their non-public information with nonaffiliated third parties. *See* 17 C.F.R. §§ 248.4, 248.5, 248.6, 248.10.

When FINRA staff requested during North Woodward's 2011 cycle examination that Troszak provide the initial and annual privacy notice that the firm provided to customers during the review period, October 2008 to July 2011, Troszak instead gave staff a copy of the engagement letter that he provided to clients of Troszak CPA Group. The client engagement letter made no reference to North Woodward, did not indicate that it addressed the privacy policies and practices of the firm, and did not include the types of information that Regulation S-P requires to be disclosed to customers.

Troszak does not dispute that North Woodward failed to adopt and provide its customers with the privacy notice required under Regulation S-P. We therefore find Troszak responsible for violations of NASD Rule 2110 and FINRA Rule 2010.[32] *See Dep't of Enforcement v. DiFrancesco*, Complaint No. 2007009848801, 2010 FINRA Discip. LEXIS 37, at *13 (FINRA NAC Dec. 17, 2010) (finding associated person violated FINRA Rule 2010 by using confidential personal information of customers in contravention of Regulation S-P).

IV. Sanctions

The Hearing Panel barred Troszak from associating with any FINRA member in any capacity for his failure to comply with two FINRA requests for information and documents. The Hearing Panel also barred Troszak from associating with any FINRA member in any principal or supervisory capacity for his supervisory violations. In light of the bars, the Hearing Panel declined to impose any additional sanctions for Troszak's other misconduct. We affirm the Hearing Panel's sanctions. In doing so, we consider first Troszak's relevant disciplinary history.

A. Troszak's Relevant Disciplinary History

The Sanction Guidelines ("Guidelines") instruct us to "always consider a respondent's disciplinary history in determining sanctions."[33] Therefore, before we assess sanctions for the

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[32] NASD Rule 2110 is the predecessor to FINRA Rule 2010. FINRA Rule 2010 was adopted, effective December 15, 2008.

[33] *See FINRA Sanction Guidelines* 2 (2015) (General Principles Applicable to All Sanction Determinations, No. 2), 6 (Principal Considerations in Determining Sanctions, No. 1), http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf [hereinafter *Guidelines*].

specific violations of FINRA rules for which Troszak is liable in this matter, we begin with a review of his relevant disciplinary history.[34]

On August 15, 2009, the Commission affirmed FINRA disciplinary action against North Woodward and Troszak. *See N. Woodward Fin. Corp.*, Exchange Act Release No. 60505, 2009 SEC LEXIS 2796 (Aug. 14, 2009). The Commission found that North Woodward violated Exchange Act Rule 17a-3, and NASD Rules 3110 and 2110, by failing to make and maintain required books and records. *Id.* at *22. The Commission further found that Troszak, as North Woodward's principal and FINOP, was responsible for these violations, and violated NASD Rules 3110 and 2110. *Id.* Troszak, jointly and severally with North Woodward, was fined $2,500 for those violations. *Id.* at *25.

On January 6, 2005, Troszak also settled a FINRA disciplinary action by consenting to findings that North Woodward, acting through him, engaged in securities-related activities without a FINOP for 13 months. *Id.* at *29. Troszak, and his firm, agreed to pay, jointly and severally, a $5,000 fine as part of that settlement. *Id.*

The sanctions previously imposed on Troszak in the foregoing matters serve, in part, to frame our assessment of sanctions in this matter. As the Guidelines state, in order to deter and prevent future misconduct, sanctions imposed in the disciplinary process should be more severe for recidivists.[35] Troszak's relevant disciplinary history evidences a disregard for fundamental regulatory requirements.[36] Having considered the foregoing matters in our assessment of sanctions, we judge them as further evidence that Troszak poses a risk to the investing public and severe sanctions are in order to confront those risks. *See John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at *48 (June 14, 2013) ("FINRA properly considered these matters in assessing sanctions because they evidence a disregard for regulatory requirements and are further evidence that he poses a risk to the investing public absent a bar."); *Joseph Ricupero*, Exchange Act Release No. 62891, 2010 SEC LEXIS 2988, at *24 (Sept. 10, 2010) (considering respondent's disciplinary history and finding that it was further evidence that he poses a risk to the investing public should he re-enter the securities industry), *aff'd*, 436 F. App'x 31 (2d Cir. 2011).

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[34] As we discuss above, FINRA's July 21, 2014 final disciplinary action barred Troszak from associating with any FINRA member in any capacity for violating FINRA Rule 8210. *See supra* note 2. The Commission subsequently affirmed FINRA's action and the Sixth Circuit Court of Appeals denied Troszak's petition to review the Commission's order. *See supra* pp. 2-3. Nevertheless, because the opportunity for Troszak to request further review of the Sixth Circuit's decision remains, *see supra* note 3, we do not consider the matter as part of our sanctions analysis.

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

[36] *See id.*

B. Troszak Is Barred for Failing to Respond Completely to FINRA's Requests for Information and Documents

An individual who provides a partial, but incomplete, response to a FINRA Rule 8210 investigation request can be permanently barred from associating with any FINRA member. According to the Guidelines, a bar is the "standard" sanction, "unless the person can demonstrate that the information provided substantially complied with all aspects of the request."[37] Where mitigation exists, the Guidelines direct us to consider suspending an individual in any or all capacities for up to two years.[38]

Troszak has not demonstrated that the information he provided to FINRA substantially complied with all aspects of FINRA's investigation requests. He did not provide any documents in response to FINRA's May 25, and June 11, 2012 requests, and the negligible information he did provide was cursory and opaque. We thus impose a bar for Troszak's misconduct. *See Goldstein*, 2014 SEC LEXIS 1350, at *41 ("Goldstein refuses to provide FINRA with the majority of the information and documents it has requested.").

The decision to bar Troszak is supported further by application of the three "principal considerations" for determining sanctions where an individual has provided a partial response to FINRA Rule 8210 requests.[39] First, from FINRA's perspective, the requested information was important and Troszak's failure to provide the information frustrated FINRA staff's efforts to examine his borrowings, including loans from customers of North Woodward. *See N. Woodward Fin. Corp.*, 2015 SEC LEXIS 1867, at *41-42 ("FINRA also could not evaluate whether Troszak could and would repay the loans."). The limited information Troszak provided shed no beneficial light on the propriety of his conduct, his ability to repay the loans, or his use of the borrowed funds. *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, the number of requests made and the degree of regulatory pressure that FINRA was required to apply are factors that support barring Troszak. *See CMG Institutional Trading*, 2009 SEC LEXIS 2015, at *35 ("Applicants' failure to give complete and timely responses prevented [FINRA] staff from fully and expeditiously determining . . . whether misconduct had

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[37] *Guidelines*, at 33.

[38] *Id.*

[39] The principal considerations applicable to this violation are: (1) the "[i]mportance of the information requested that was not provided as viewed from FINRA's perspective, and whether the information provided was relevant and responsive to the request"; (2) the "[n]umber of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response"; and (3) "[w]hether the respondent thoroughly explains valid reason(s) for the deficiencies in the response." *Guidelines*, at 33.

occurred."). FINRA staff sent Troszak two investigation requests with which he failed to comply fully. Despite its efforts, expenditure of resources, and the commencement of a disciplinary proceeding, FINRA was still unable to obtain Troszak's compliance.

Third, Troszak has provided no valid reason for his refusal to cooperate and fulfill his obligations in response to FINRA's requests. As we discuss above, *supra* Part III.A., Troszak's arguments that FINRA staff's investigation requests are outside the scope of FINRA Rule 8210, and his confidentiality concerns, are without merit. The information and documents FINRA sought were within its authority to request. *See N. Woodward Fin. Corp.*, 2015 SEC LEXIS 1867, at *43 ("FINRA was entitled to it notwithstanding his concerns."). "[Troszak] therefore has no excuse for failing to comply with FINRA's requests, especially considering the numerous opportunities FINRA afforded him to do so . . . ." *See Goldstein*, 2014 SEC LEXIS 1350, at *42.

Finally, the record does not reflect any mitigating factors. Although Troszak asserts that he relied reasonably on the advice of counsel, there is no evidence to support his claim.[40] *See Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *40 (Nov. 14, 2008) ("We believe that the respondent asserting such reliance must provide sufficient evidence . . . that the respondent made full disclosure to counsel, appropriately sought to obtain relevant legal advice, obtained it, and then reasonably relied on the advice."). And, in any event, an advice of counsel claim is not mitigating if it is premised on a strategy to avoid full compliance with applicable regulatory requirements, including FINRA Rule 8210. *Id.* at *49 (citing *Toni Valentino*, 57 S.E.C. 330, 338 (2004)).

We conclude that Troszak's failure to comply fully with FINRA information and document requests was intentional.[41] Troszak is entitled to a vigorous defense, but his refusal to acknowledge that he is required to respond fully and timely to FINRA investigation requests demonstrates a misunderstanding of, or total lack of regard for, his obligations as a securities professional.[42] *Cf. Wendy McNeeley*, Exchange Act Release No. 68431, 2012 SEC LEXIS 3880, at *62 (Dec. 13, 2012) (finding respondent's testimony and arguments on appeal reflected a continuing failure to grasp her role as a professional). "Ultimately, we find that [Troszak] does not understand or accept the breadth of requisite responsibility of an associated person, warranting the sanction of a bar in this instance." *See Eplboim*, 2014 FINRA Discip. LEXIS 8, at *45.

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[40] Indeed, Troszak admits in his appellate brief that he was not represented by counsel when the investigation requests at issue in this decision were issued by FINRA staff or when he chose not to comply fully with them.

[41] *Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 13).

[42] In his appellate brief, Troszak avers that, "[h]e had no choice but to act intentionally in pointing out the legal problems inherent in disclosing the requested documents" and, if he violated FINRA rules, "it was because [he] tried too hard to protect [his] clients' confidential information."

C. Troszak Is Barred as a Principal or Supervisor for His Supervisory Failings

We also bar Troszak in any principal or supervisory capacity for his supervisory failures.[43] For failing to supervise, the Guidelines recommend a fine of the responsible individual of between $5,000 and $73,000 and a suspension in all supervisory capacities for up to 30 business days.[44] In egregious cases, the Guidelines recommend that we consider suspending the responsible individual in any or all capacities for up to two years or imposing a bar.[45] For deficient written supervisory procedures, the Guidelines recommend a fine of between $1,000 and $37,000 and, in egregious cases, that we consider suspending the responsible individual in any or all capacities for up to one year.[46]

We conclude that Troszak's supervisory failings were egregious.[47] In reaching this conclusion, we have considered the quality and degree of Troszak's implementation of North

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[43] Troszak's supervisory violations include his failure to prepare required reports and certifications, in violation of NASD Rule 3012 and FINRA Rules 3130 and 2010; his failure to tailor North Woodward's supervisory system to the firm's business, in violation of NASD Rule 3010 and FINRA Rule 2010; his failure to implement adequate AML procedures for his firm, in violation of NASD Rule 3011(b) and FINRA Rules 3310(b) and 2010; and his failure to conduct timely independent AML testing, in violation of FINRA Rules 3310(c) and 2010. The Hearing Panel imposed a unitary sanction—a principal and supervisor bar—for those violations. In his appeal, Troszak objects and contends that the Hearing Panel erred in reaching this decision because, as he argues, the Guidelines only permit the batching of monetary sanctions for like violations. We disagree and, like the Hearing Panel, impose a bar in any principal or supervisory capacity for all of Troszak's supervisory failures. *See Dep't of Enforcement v. Hedge Fund Capital Partners, LLC*, Complaint No. 2006004122402, 2012 FINRA Discip. LEXIS 42, at *97 (FINRA NAC May 1, 2012) ("[W]e find it appropriate to impose a unitary sanction for these remaining violations because the remaining violations of FINRA rules all resulted from the broad and systematic supervisory failures at the Firm.").

[44] *Guidelines*, at 103.

[45] *Id.*

[46] *Id.* at 104.

[47] There are no specific guidelines for failing to prepare reports and certifications required under NASD Rule 3012 and FINRA Rule 3130, for inadequate AML procedures required under NASD Rule 3011 and FINRA Rule 3310, or for AML testing failures under FINRA Rule 3310. We nevertheless find that applying the analogous Guidelines for failing to supervise and deficient written supervisory procedures are appropriate for those violations. *Id.* at 1 (Overview) ("For violations that are not addressed specifically, [a]djudicators are encouraged to look to the guidelines for analogous violations."); *see also Dratel Group*, 2015 FINRA Discip. LEXIS 10, at *62 (applying the failure to supervise Guidelines for a violation involving the AML testing requirement under FINRA Rule 3130); *Domestic Sec.*, 2008 FINRA Discip. LEXIS 44, at *21

[Footnote continued on next page]

Woodward's supervisory system and controls.[48] Over an extended period, Troszak has proven himself incapable of adopting, implementing, and maintaining a system of supervisory procedures and controls necessary to ensure his firm's compliance with the federal securities laws and FINRA's rules.[49] In 2009, FINRA staff issued to North Woodward and Troszak a letter of caution detailing several supervisory deficiencies noted by staff during the firm's 2008 cycle examination. The exceptions highlighted included North Woodward's failure to create supervisory controls and conduct an annual review of those controls, adopt adequate written supervisory procedures, and develop and implement an appropriate AML program and conduct AML testing. Despite having received express notice of North Woodward's deficient supervisory system, including notice that identified specific problems that were in need of correcting, Troszak ignored FINRA's cautionary warning.[50] Rather than undertake a serious evaluation of North Woodward's supervisory system and tailor and evaluate that system's procedures and controls for his firm's business, Troszak responded by adopting canned procedures and unmodified templates, all of which remained untested and unverified.

It is entirely fitting therefore that Troszak be barred from acting in any principal or supervisory capacity. *See Dep't of Enforcement v. Pellegrino*, Complaint No. C3B050012, 2008 FINRA Discip. LEXIS 10, at *66 (FINRA NAC Jan. 4, 2008) ("The principal bar will protect investors from dealing with securities professionals who are not adequately supervised." (Internal quotation omitted)), *aff'd*, Exchange Act Release No. 59125, 2008 SEC LEXIS 2843 (2008); *see also Dep't of Enforcement v. Lane*, Complaint No. 20070082049, 2013 FINRA Discip. LEXIS 34, at *95 (FINRA NAC Dec. 26, 2013) ("[W]e find that Jeffrey Lane's supervisory failures were egregious and that he poses a risk to investors were he to act as a principal or supervisor again."), *aff'd*, Exchange Act Release No. 74269, 2015 SEC LEXIS 558 (Feb. 13, 2015). He plainly marginalized numerous duties imposed on him as president of North Woodward, and all but abandoned his supervisory responsibilities, leading to a clear breakdown in the firm's supervisory system and controls. Troszak's status as a "one-man shop" does not

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(applying the Guidelines for deficient supervisory procedures for a failure to establish adequate AML policies required under NASD Rule 3011); *Dratel Group*, 2014 FINRA Discip. LEXIS 6, at *124-25 (applying the Guidelines for deficient supervisory procedures and for a failure to supervise for a failure to conduct AML testing required under NASD Rule 3011).

[48] The Guidelines for a failure to supervise also include three "principal considerations," only one of which we find relevant here—the quality and degree of the supervisor's implementation of the firm's supervisory procedures and controls. *See Guidelines*, at 103. The Guidelines for deficient supervisory procedures include two principal considerations, but we find that neither consideration is relevant to the issues addressed in this case. *Id.* at 104.

[49] *See Guidelines*, at 6 (Principal Considerations in Determining Sanctions, Nos. 8, 9).

[50] *Id.* at 7 (Principal Considerations in Determining Sanctions, No. 15).

excuse his inability to comply with FINRA rules concerning supervisory controls. *See Dratel Group*, 2015 FINRA Discip. LEXIS 10, at *62.

There are no mitigating factors. Although Troszak claims that he took corrective action to address problems relating to North Woodward's supervisory system, the evidence is clear that he did not take such steps until after North Woodward's 2011 cycle examination. Employing "subsequent corrective measures" to revise procedures to avoid a recurrence of misconduct can only be mitigating when it is done "prior to detection or intervention . . . by a regulator."[51] Moreover, any corrective measures taken are contradicted by the fact that Troszak accepts no responsibility for his supervisory failures, blaming instead unnamed FINRA staff for failing to provide him with adequate guidance.[52] His "refusal to recognize his misconduct 'reveal[s] a fundamental misunderstanding of his supervisory duties'" and is an aggravating factor that supports the definitive sanction we impose. *See Pellegrino*, 2008 SEC LEXIS 2843, at *66 (quoting *Stephen J. Horning*, Exchange Act Release No. 56886, 2007 SEC LEXIS 2796, at *45 (Dec. 3, 2007)).

D. Troszak's Other Violations

The Hearing Panel fined Troszak $5,000 and suspended him in all capacities for a period of six months for failing to amend timely his Form U4. The Hearing Panel also fined Troszak $10,000 and suspended him in all principal capacities for ten business days for North Woodward's failure to provide adequate privacy notice to its customers. We conclude that these sanctions are consistent with the Guidelines.[53] Like the Hearing Panel, however, we do not impose them in light of the bars that we have imposed on Troszak him for his other misconduct.

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[51] *See Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 3); *see also Dennis Todd Lloyd Gordon*, Exchange Act Release No. 57655, 2008 SEC LEXIS 819, at *68 (Apr. 11, 2008) ("Remedial action taken after the initiation of an examination has little mitigative effect.").

[52] *See Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 2).

[53] The Guidelines for misconduct involving a late filing of a Form U4 amendment recommend a fine of $2,500 to $37,000 and a suspension of five to 30 business days. *Guidelines*, at 69. In egregious cases, the Guidelines recommend that we consider a longer suspension in any or all capacities of up to two years or a bar. *Id.* at 70.

The Hearing Panel found no Guidelines, or analogous Guidelines, applicable for Troszak's failure to provide adequate privacy notice under Regulation S-P. It therefore considered the recommendations included in the Guidelines' Principal Considerations in Determining Sanctions and other relevant factors in setting appropriately remedial sanctions. Among those factors considered was the fact that North Woodward received a letter of caution after the firm's 2008 cycle examination directing the firm to adopt an appropriate privacy notice under Regulation S-P and to cease reliance on Troszak CPA Group's engagement letter. We find no error in the Hearing Panel's assessment of sanctions.

V. Conclusion

We affirm the Hearing Panel's findings that Troszak violated FINRA's rules by failing to respond fully to FINRA investigation requests, in violation of FINRA Rules 8210 and 2010; failing to prepare required reports and certifications related to North Woodward's supervisory system and controls, in violation of NASD Rule 3012 and FINRA Rules 3130 and 2010; failing to establish and maintain an adequate supervisory system for his firm, in violation of NASD Rule 3010 and FINRA Rule 2010; failing to establish and implement appropriate AML procedures and conduct timely AML testing, in violation of NASD Rule 3011 and FINRA Rules 3310 and 2010; failing to amend his Form U4 timely to disclose a reportable event, in violation of FINRA Rules 1122 and 2010; and failing to provide customers with adequate privacy notice, in violation of NASD Rule 2110 and FINRA Rule 2010. Consequently, and in summary, Troszak is barred from associating with any FINRA member for his failure to comply fully with FINRA's information and document requests and barred also from acting in any principal or supervisory capacity for his supervisory failures. The bars are effective immediately upon issuance of this decision. Because we dismiss North Woodward's appeal, we vacate the Hearing Panel's order that North Woodward and Troszak pay, jointly and severally, hearing costs of $4,719.09, and we assess these costs solely on Troszak. We also impose appeal costs on Troszak of $1,438.65.

On Behalf of the National Adjudicatory Council,

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Marcia E. Asquith
Senior Vice President and Corporate Secretary