BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Kenneth J. Mathieson New York, NY, Respondent.	DECISION Complaint No. 2014040876001 Dated: March 19, 2018

Registered representative participated in private securities transactions and engaged in outside business activities without prior written notice to, and permission from, his member firm, and submitted a false compliance questionnaire. Held, findings affirmed and sanctions modified.

Appearances

For the Complainant: Leo F. Orenstein, Esq., Lane Thurgood, Esq., Jonathan Golomb, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Marc LoPresti, Esq., LoPresti Law Group, P.C.

Decision

Respondent Kenneth J. Mathieson appeals the sanctions imposed on him in a December 16, 2016 Extended Hearing Panel decision. The Extended Hearing Panel suspended Mathieson for one year in all capacities and fined him $50,000 for participating in private securities transactions and engaging in outside business activities without prior written notice to, and permission from, his member firm, Morgan Stanley Smith Barney, LLC ("Morgan Stanley").[1] The Extended Hearing Panel also found that Mathieson submitted a false compliance questionnaire. On appeal, Mathieson admits his violations, but argues that the Extended Hearing

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

Panel misapplied the relevant aggravating and mitigating factors and, consequently, the sanctions imposed are too severe.

After an independent review of the record, we affirm the Extended Hearing Panel's findings of violation and the $50,000 fine, but reduce Mathieson's suspension to six months.

I. Facts

A. Background

Mathieson joined the securities industry in 1987 when he registered as a general securities representative with member firm Prudential Securities Incorporated. In 1999, Mathieson joined Smith Barney, which was owned by Citigroup Global Markets, Inc. ("Citigroup"). In June 2009, Mathieson became associated with Morgan Stanley when Citigroup sold the Smith Barney business to Morgan Stanley. Mathieson was based in Morgan Stanley's New York, New York office, where he worked in a partnership with his brother, primarily managing fee-based retail customer accounts.

In late 2013, Morgan Stanley discovered that Mathieson had engaged in certain activities in connection with a company running an online education business, Aspen University ("Aspen"). Shortly after questioning Mathieson about his involvement with Aspen, Morgan Stanley suspended him and then terminated him.

On April 9, 2014, Morgan Stanley filed with FINRA a Uniform Termination Notice for Securities Industry Registration ("Form U5") for Mathieson. In the Form U5, Morgan Stanley indicated that it had discharged Mathieson because of "concerns regarding [his] unapproved involvement in an outside company, including communications with the company's management and board of directors, providing support related to company transactions, and purchases of company stock."

B. Mathieson's Investments with Aspen University

In early 2010, JS, Mathieson's friend and neighbor, introduced Mathieson to Aspen. Aspen was a private, for-profit school offering online degrees. JS was a member of Aspen's board of directors. Mathieson met with PS, Aspen's founder and chairman, became excited about Aspen's potential as a business, and decided he wanted to personally invest in Aspen.

On March 23, 2010, Mathieson submitted an outside investments approval request to Morgan Stanley, requesting approval for a $100,000 investment in Aspen. Morgan Stanley approved the request. The approval included an agreement by Mathieson that he would "notify the Outside Activities Compliance Unit in writing in the event of a change in the status of [his] investment, a change of ownership, or if [he] intend[ed] to commit additional capital to this investment." Mathieson subsequently purchased $100,000 worth of Aspen shares.

Between September 2010 and April 2012, Mathieson made additional investments in Aspen on behalf of himself and his children. In September 2010 and March and May 2011,

Mathieson made four additional purchases of Aspen securities totaling $66,000. In February, April, and May 2011 and April 2012, Mathieson also made four purchases for his children totaling $30,550. Mathieson did not provide Morgan Stanley with written notice of these additional purchases. In March 2012, Aspen completed a reverse merger and went public. After the stock became public, Mathieson held his Aspen stock in Morgan Stanley accounts.

C. Mathieson's Activities with Aspen University

Starting in the later part of 2010, Mathieson became involved in Aspen's business, acting as a "strategic advisor" to the company and advising PS. Mathieson routinely was copied on internal emails to Aspen's board of directors, lawyers, and MM, who would ultimately replace PS as Aspen's chief executive officer. Mathieson advised Aspen on a reverse merger with a publicly traded shell company owned by MM. Among other things, Mathieson advised on structuring the merger, pricing it, and helped draft a letter of intent. Mathieson also communicated with existing Aspen shareholders, arranging buybacks of their investments in anticipation of the merger and working out loans that PS had taken from investors.

In exchange for his work with Aspen, Mathieson expected that he would join Aspen's board of directors and expected to receive Aspen stock options in connection with the merger. Mathieson was included on numerous draft proposals, along with Aspen directors, who would receive options as part of the merger.

On December 13, 2010, Mathieson submitted an outside directorships and business affiliations form to Morgan Stanley, requesting permission to join Aspen's board of directors. The first line of the form stated that "[e]mployees are not permitted to accept any outside directorships or similar positions, employment or other business affiliations with an organization . . . without . . . obtaining prior written approval." On the request, Mathieson described his duties with Aspen as "Advis[ing] Board on Strategic Developments for Distance Education." He also represented that his anticipated date of association with Aspen would be January 1, 2011. He did not disclose that he had already been working with Aspen for several months.

On December 23, 2010, Morgan Stanley notified Mathieson that it would not approve his request to serve as a director of Aspen. In an email to Mathieson, Morgan Stanley's Outside Activities Unit explained that Morgan Stanley's "policy does not allow branch office personnel to participate in directorships with for-profit entities because of actual or potential conflicts of interest." The email also instructed Mathieson that he "must refrain from, or discontinue [his] role in, the outside activity."

Despite this directive from Morgan Stanley, Mathieson continued his work with Aspen throughout 2011 and into 2012. Mathieson's activities included helping to plan stock offerings, contacting Aspen investors, reviewing Aspen's marketing plans, communicating with Aspen's outside legal counsel, and attending investor and board of directors meetings. Mathieson worked on Aspen's reverse merger and private placements. Mathieson also recommended Aspen to friends and family members, resulting in investments by his father, girlfriend, and others, including a Morgan Stanley customer.

On April 12, 2011, Mathieson completed a Morgan Stanley compliance document entitled "Sales Questionnaire." When asked on the form whether he "participate[d] in any outside business interests or affiliations that require disclosure," Mathieson responded "no."

Mathieson testified that he hosted an Aspen meeting at Morgan Stanley's office and that he spoke regularly with his manager, Anthony DiDonato, about Aspen's prospects and the potential to bring Aspen-related business to Morgan Stanley. DiDonato acknowledged that he had conversations with Mathieson about Aspen and met Aspen representatives, but testified that Mathieson did not disclose significant aspects of his Aspen-related activities.

In November 2011, in anticipation of the planned reverse merger and Aspen becoming a publicly traded company, Mathieson submitted a more than 250-page binder of materials to Morgan Stanley. Mathieson sought Morgan Stanley's approval to open accounts for 40-50 Aspen shareholders. Approval from Morgan Stanley's compliance department for the accounts was necessary because Aspen was a low-priced security—a "penny stock." The binder included information about Aspen's business, financial condition, and the terms of the merger. In the cover letter for the binder, Mathieson represented that his "role with Aspen has been to consult with the former Chairman, [PS], concerning this transaction." The binder also included a summary of the terms of the merger, which listed Mathieson as receiving 200,000 Aspen options. Mathieson ultimately received approval and opened approximately 50 accounts at Morgan Stanley for Aspen shareholders.

II. Procedural History

Prompted by Morgan Stanley's Form U5 filing for Mathieson, FINRA's Department of Enforcement ("Enforcement") commenced an investigation of possible violations of FINRA rules by Mathieson. On March 3, 2016, Enforcement filed a four-cause complaint against Mathieson. Cause one alleged that Mathieson violated NASD Rule 3040 and FINRA Rule 2010 by making 14 purchases totaling $96,550 of Aspen securities for himself and family members without providing prior written notification to, and receiving written permission from, Morgan Stanley, and in contravention of Morgan Stanley's prior specific directions. Cause two alleged that Mathieson violated NASD Rule 3030 and FINRA Rules 3270 and 2010 by participating in Aspen's business. Cause three, pled as an alternative to cause two, alleged that Mathieson violated FINRA Rule 2010 by continuing to participate in Aspen business after Morgan Stanley directed him to discontinue his role with Aspen. Finally, cause four alleged that Mathieson violated FINRA Rule 2010 by making false certifications on a compliance form concerning his outside business activities.

A four-day hearing was held in September 2016 at which Mathieson and representatives of Morgan Stanley and Aspen testified. On December 16, 2016, the Extended Hearing Panel issued its decision. The Extended Hearing Panel found that Mathieson violated FINRA Rules 3270 and 2010 when he "failed to provide written notice of his Aspen-related activities to Morgan Stanley prior to commencing his activities." The Extended Hearing Panel also found that Mathieson violated FINRA Rule 2010 when he failed to disclose his Aspen-related activities on Morgan Stanley compliance questionnaires and when he continued his unauthorized Aspen-related activities after Morgan Stanley directed him to stop. Finally, the Extended Hearing Panel

found that Mathieson violated FINRA Rules 3040 and 2010 by making multiple purchases of Aspen securities without disclosure to, and approval from, Morgan Stanley. For Mathieson's violations, the Extended Hearing Panel imposed a unitary sanction of a one-year suspension in all capacities and a $50,000 fine.

On January 9, 2017, Mathieson filed a notice of appeal challenging the Extended Hearing Panel's factual findings, legal conclusions, and the sanctions it imposed. After the parties submitted briefing, a subcommittee of the National Adjudicatory Council (the "Subcommittee") heard oral argument on November 14, 2017. During oral argument, Mathieson, through counsel, withdrew his appeal of the Extended Hearing Panel's factual findings and legal conclusions and conceded that Mathieson had committed the violations as found by the Extended Hearing Panel. Mathieson continued with his appeal, however, with respect to the sanctions imposed. Mathieson argued that the Extended Hearing Panel had misapplied aggravating factors and had not properly considered certain mitigating factors and, as a result, the sanction it imposed was excessive.

After an independent review of the record, we affirm the $50,000 fine and reduce the suspension to six months.

III. Discussion

While Mathieson does not challenge the Extended Hearing Panel's factual findings and concedes his violations of FINRA Rules, we nonetheless briefly review those violations in order to determine the appropriate sanction.

A. Mathieson Violated NASD Rule 3040 and FINRA Rule 2010 by Purchasing Aspen Securities and by Participating in Aspen's Private Placements and Reverse Merger

NASD Rule 3040(b) provided that "[p]rior to participating in any private securities transaction, an associated person shall provide written notice to the member with which he is associated describing in detail the proposed transaction and the person's proposed role therein."[2] NASD Rule 3040(e)(1) defines private securities transactions to mean "any securities transaction outside the regular course or scope of an associated person's employment with a member."[3] The

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[2] FINRA Rule 3280 superseded NASD Rule 3040, effective September 21, 2015. NASD Rule 3040 applies to Mathieson's misconduct.

[3] The definition of private securities transactions includes both purchases and sales of securities, and NASD Rule 3040 applies to an associated person's personal investments in securities. *See, e.g.*, *Jay Frederick Keeton*, 50 S.E.C. 1128, 1129-30 (1992) (finding a violation of NASD Rule 3040's predecessor rule where respondent made undisclosed and unapproved purchases in three partnerships); *Dep't of Enforcement v. Friedman*, Complaint No. 2005000835801, 2010 FINRA Discip. LEXIS 10, at *19 (FINRA NAC July 26, 2010), *aff'd*, Exchange Act Release No. 64486, 2011 SEC LEXIS 1699 (May 13, 2011) (explaining that

[Footnote continued on next page]

reach of NASD Rule 3040 is "very broad" and an associated person "must give written notice to the firm and receive written approval before each transaction." *Stephen J. Gluckman*, 54 S.E.C. 175, 181-183 (1999). NASD Rule 3040 protects both the investing public and the member firm from claims arising from an associated person's activities away from the firm. *See Mark H. Love*, 57 S.E.C. 315, 320 (2004). There is no requirement of scienter to establish a violation of NASD Rule 3040. *See Alvin W. Gebhart, Jr.*, Exchange Act Release No. 53136, 2006 SEC LEXIS 93 (Jan. 18, 2006), *rev'd on other grounds*, 255 F. App'x 254 (9th Cir. 2007). A violation of NASD Rule 3040 is also a violation of FINRA Rule 2010. *See Gluckman*, 54 S.E.C. at 185.

The Extended Hearing Panel found that Mathieson violated NASD Rule 3040 when he made subsequent purchases of Aspen stock for himself and his children after his initial approved purchase. Mathieson admits that he made these additional purchases without additional written disclosures to and approvals from Morgan Stanley. Morgan Stanley approved Mathieson's initial $100,000 purchase and specifically directed him to inform the firm should that investment change or if he invested additional capital. We agree that Mathieson's failure to do so violates NASD Rule 3040 and FINRA Rule 2010.

The Extended Hearing Panel also found that Mathieson violated NASD Rule 3040 by participating in private placements of Aspen stock and in Aspen's reverse merger. We agree with this finding. NASD Rule 3040 applies not only to the solicitation of the sale of a security, but participation in any manner. *See Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at *32-33 (Sept. 24, 2015). Mathieson helped structure Aspen's offerings, contacted and coordinated with investors, facilitated meetings, and recommended Aspen investments to friends and family. Mathieson's activities constituted participation in private securities transactions that should have been disclosed to Morgan Stanley. *See, e.g.*, *Joseph Abbondante*, 58 S.E.C. 1082, 1100 (2006) (finding a violation of NASD Rule 3040 where the associated person touted the prospects of the issuer and introduced investors), *aff'd*, 209 F. App'x 6 (2d Cir. 2006); *Love*, 57 S.E.C. at 320-321 (finding a violation of NASD Rule 3040 where the associated person introduced investors in an initial public offering to a friend who placed them in the transaction).

Mathieson violated NASD Rule 3040 and FINRA Rule 2010 by purchasing Aspen shares for himself and his children and by participating in Aspen's private placements and reverse merger without the requisite written notification to, and written approval from, Morgan Stanley.

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"NASD Rule 3040 applies to both purchases and sales of securities"); *see also* NASD Notice to Members 75-34, 1975 NASD LEXIS 45, at *4 (Apr. 1975) (stating that the rule concerning private securities applies to all securities transactions by an associated person "whether on behalf of themselves or on behalf of customers and others").

B. Mathieson Violated FINRA Rules 3270 and 2010 by Participating in Aspen's Business Without Prior Written Notice to, and Written Approval from, Morgan Stanley

The Extended Hearing Panel found that Mathieson violated FINRA Rules 3270 and 2010 by participating in Aspen's business for months prior to requesting written permission from Morgan Stanley and for continuing that participation after his request was denied and Morgan Stanley directed him to discontinue his involvement with Aspen. We agree.

FINRA Rule 3270 provides that:

> No registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member.

FINRA Rule 3270 "ensure[s] that firms receive prompt notification of all outside business activities of their associated persons so that the member's objections, if any, to such activities could be raised at a meaningful time and so that appropriate supervision could be exercised as necessary under applicable law." *Dep't of Enforcement v. Houston*, Complaint No. 2006005318801, 2013 FINRA Discip. LEXIS 3, at *33 (FINRA NAC Feb. 22, 2013) (internal quotations omitted), *aff'd*, Exchange Act Release No. 71589, 2014 SEC LEXIS 614 (Feb. 20, 2014). An associated person is required to disclose any outside business activity "at the time when steps are taken to commence a business activity unrelated to his relationship with his firm." *See Dep't of Enforcement v. Schneider*, Complaint No. C10030088, 2005 NASD Discip. LEXIS 6, at *13-14 (NASD NAC Dec. 7, 2005). A violation of FINRA Rule 3270 is also a violation of FINRA Rule 2010. *See Dep't of Enforcement v. McGee*, Complaint No. 2012034389202, 2016 FINRA Discip. LEXIS 33, at *62 n.34 (FINRA NAC July 18, 2016), *aff'd*, Exchange Act Release No. 80314, 2017 SEC LEXIS 987 (Mar. 27, 2017), *appeal docketed*, No. 17-1240 (2d Cir. 2017).

Mathieson's involvement with Aspen's business began months before he requested permission from Morgan Stanley to serve on its board of directors in December 2010 and continued for more than a year after Morgan Stanley denied his request and directed him to cease his involvement with Aspen. Mathieson expected to be compensated for that work. His name appeared on numerous drafts of the merger documents indicating that he, along with Aspen's directors, would be receiving Aspen options. Mathieson advised Aspen on various transactions including private placements and the reverse merger. He attended board meetings, contacted Aspen investors in connection with stock buybacks, and recommended Aspen investments to friends and family. He also reviewed documents and communicated with Aspen's outside counsel.

We find that Mathieson violated FINRA Rules 3270 and 2010 by participating in Aspen's business for months prior to requesting written permission from Morgan Stanley and for continuing that participation after his request was denied and Morgan Stanley directed him to discontinue his involvement with Aspen.

C. Mathieson Violated FINRA Rule 2010 by Continuing to Participate in Aspen Business After He Was Directed by Morgan Stanley to Stop and Submitting False Compliance Questionnaires

The Extended Hearing Panel found that Mathieson violated FINRA Rule 2010 by submitting a false compliance questionnaire to Morgan Stanley and by continuing his work with Aspen after Morgan Stanley directed him to cease this outside business activity. We agree.

FINRA Rule 2010 is a broad ethical rule that requires members and associated persons to conduct their business in accordance with "high standards of commercial honor and just and equitable principles of trade." FINRA Rule 2010 encompasses all unethical, business-related conduct, even if that conduct is not in connection with a securities transaction. *See Dep't of Enforcement v. Olson*, Complaint No. 2010023349601, 2014 FINRA Discip. LEXIS 7, at *7 (FINRA Bd. of Governors May 9, 2014), *aff'd*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629 (Sept. 3, 2015); *see also Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996) (affirming the finding that an associated person violated just and equitable principles of trade by misappropriating funds from a political organization for which he served as the treasurer). Misconduct in connection with an associated person's relationship with his employer constitutes business-related conduct to which the rule applies. *See, e.g.*, *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at *23 (June 14, 2013) (finding that, for purposes of Rule 2010's predecessor rule, a registered representative's business included his relationship with his employer); *Dep't of Enforcement v. Foran*, Complaint No. C8A990017, 2000 NASD Discip. LEXIS 8, at *13 (NASD NAC Sept. 1, 2000) (stating that "[a] registered person's 'business' includes his business relationship with his employer"). Mathieson's failure to cease his Aspen-related outside business activities when Morgan Stanley denied his request to become a director and instructed him to cease his activities was a violation of FINRA Rule 2010.

FINRA Rule 2010 includes the obligation to disclose truthfully material information to an associated person's firm. *See Dep't of Enforcement v. Mullins*, Complaint Nos. 20070094345, 20070111775, 2011 FINRA Discip. LEXIS 61, at *30 (FINRA NAC Feb. 24, 2011), *aff'd in relevan. part*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464 (Feb. 10, 2012). Failure to disclose truthfully such information "calls into question the registered representative's ability to comply with regulatory requirements necessary for the proper functioning of the securities industry and the protection of the public." *Id.* Mathieson's false response on Morgan Stanley's compliance questionnaire indicating that he was not participating in any outside business activities requiring disclosure violated FINRA Rule 2010.

Sanctions

Mathieson's sole challenge on appeal is to the sanctions imposed by the Extended Hearing Panel for his admitted violations, which he argues are excessive. The Extended Hearing Panel imposed a unitary sanction for Mathieson's violations of a one-year suspension and $50,000 fine. While Mathieson does not dispute the Extended Hearing Panel's factual findings and findings of violation, he argues that the Extended Hearing Panel failed to consider the information he disclosed to Morgan Stanley concerning Aspen and other mitigating factors when it assessed sanctions. After an independent review of the record, we agree with the Extended Hearing Panel that a unitary sanction and $50,000 fine are appropriate. For the reasons set forth below, we reduce the suspension to six months.

In determining the appropriate sanctions for Mathieson's misconduct, we considered FINRA's Sanction Guidelines ("Guidelines"),[4] including the Principal Considerations in Determining Sanctions. Two specific Guidelines apply to Mathieson's violations—the Guidelines for private securities transactions and outside business activities.

The Guidelines for private securities transactions direct us to consider a fine of $5,000 to $73,000 and a suspension of 10 business days to twelve months or a bar depending on the dollar amount of the transactions at issue and application of the Principal Considerations.[5] The Principal Considerations include, in relevant part: (1) the dollar volume of sales; (2) the number of customers; (3) the length of time over which the activity occurred; (4) whether the respondent was affiliated with the issuer and, if so, whether he disclosed this information to customers; (5) whether respondent created the impression that his member firm had sanctioned his activity; (6) whether the activity resulted in harm to the investing public; (7) whether sales involved firm customers; (8) whether the respondent gave verbal notice to the firm of his activities; and (9) whether the respondent concealed his activities from the firm.[6]

The Guidelines for outside business activities direct us to consider a fine of $2,500 to $73,000 and a suspension of 10 business days to three months, or up to a year when the activities involve aggravating factors, and up to two years or a bar when aggravating factors predominate.[7] The Guidelines for outside business activities also enumerate specific applicable Principal Considerations, including: (1) whether the outside activity included customers of the firm; (2) whether the activity caused injury to third parties; (3) the duration of the outside activity, the

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[4] *See FINRA Sanction Guidelines* (2017), http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf [hereinafter *Guidelines*].

[5] *Id.* at 14.

[6] *Id.* at 14-15.

[7] *Id.* at 13.

number of customers involved, and the dollar volume of sales; (4) whether the respondent created the impression that his member firm had approved the product or service; (5) whether the respondent concealed the activity from the member firm; and (6) the importance of the role played by the respondent in the outside business activity.[8]

The Extended Hearing Panel found that Mathieson's own private securities transactions totaled $166,000. We disagree that this entire amount is an aggravating factor. While the record reflects that the total amount Mathieson invested in Aspen was $166,000, Morgan Stanley approved Mathieson's initial investment of $100,000, reducing the unapproved private securities transactions to $66,000. Mathieson also invested $30,550 on behalf of his children bringing the total to $96,550.

We find aggravating that Mathieson also was involved in the sale of Aspen securities to other investors in connection with private placements, including investments by his family and friends, and in connection with the reverse merger and public offering, which involved a substantial number of investors and occurred over the course of more than a year.[9]

Several other aggravating factors apply to Mathieson's misconduct. First, the record reflects that his activities involved a sale of Aspen securities to at least one Morgan Stanley customer.[10] There is no evidence that Mathieson disclosed his affiliation with Aspen to investors, including his expectation of receiving Aspen options after the reverse merger and public offering.[11] Mathieson continued his outside activities with Aspen despite Morgan Stanley's express direction that he cease his involvement.[12]

On the other hand, there is no evidence that Mathieson's misconduct injured any investor.[13] And while Mathieson's involvement could have created the impression that Morgan

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8 *Id.*

9 *Id.* at 13 (Principal Considerations in Determining Sanctions, No. 3), 14 (Principal Considerations in Determining Sanctions, Nos. 1, 2, 3).

10 *Id.* at 13 (Principal Considerations in Determining Sanctions, No. 1), 15 (Principal Considerations in Determining Sanctions, No. 8).

11 *Id.* at 14 (Principal Considerations in Determining Sanctions, No. 5).

12 *Id.* at 15 (Principal Considerations in Determining Sanctions, No. 10).

13 *Id.* at 13 (Principal Considerations in Determining Sanctions, No. 2), 15 (Principal Considerations in Determining Sanctions, No. 7).

Stanley had approved Aspen in some way, there is no evidence in the record that Mathieson attempted to create this impression.[14]

We also find that the record does not support that Mathieson attempted to conceal his involvement with Aspen from Morgan Stanley.[15] While Mathieson did falsely respond to Morgan Stanley's compliance questionnaires and did not make the required written disclosures—and, accordingly, violated FINRA rules—there is evidence in the record that Mathieson made some disclosures.[16] He spoke with his supervisor about his activities with Aspen and submitted a binder to Morgan Stanley in which he acknowledged having a role with Aspen and involvement in the reverse merger transaction. Mathieson's supervisor confirmed that he had many conversations with Mathieson about Aspen. The binder also reflected that Mathieson would be receiving Aspen stock options as part of the reverse merger. After the public offering, Mathieson held his Aspen stock in his Morgan Stanley accounts. While Mathieson's disclosures did not satisfy his obligations and do not negate his violations, they are relevant to assessing an appropriate sanction.

Finally, in assessing an appropriate sanction, the Extended Hearing Panel did not consider Mathieson's termination by Morgan Stanley. *See, e.g.*, *John Saad*, Exchange Act Release No. 76118, 2015 SEC LEXIS 4176, at *18 (Oct. 8, 2015), *remanded on other grounds*, 873 F.3d 297 (D.C. Cir. 2017); *Denise M. Olsen*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629, at *18 (Sept. 3, 2015). Morgan Stanley detected Mathieson's violations prior to FINRA's involvement, and first suspended and then terminated him as a result. We consider Mathieson's termination by Morgan Stanley as a basis for reducing the suspension.[17]

Based on our independent review of the record and assessment of the applicable mitigating and aggravating factors, we find that a six-month suspension and $50,000 fine are consistent with the Guidelines and appropriately remedial sanctions for Mathieson's serious violations of FINRA rules, which will protect the public interest and investors.

IV. Conclusion

Mathieson participated in private securities transactions and outside business activities without the requisite prior written notice to, and approval from, his member firm, in violation of NASD Rule 3040 and FINRA Rules 3270 and 2010. Mathieson also submitted false responses

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[14] *Id*. at 13 (Principal Considerations in Determining Sanctions, No. 4), 14 (Principal Considerations in Determining Sanctions, No. 6).

[15] *Id*. at 13 (Principal Considerations in Determining Sanctions, No. 5), 15 (Principal Considerations in Determining Sanctions, No. 13).

[16] *Id*. at 15 (Principal Considerations in Determining Sanctions, No. 9).

[17] *Guidelines*, at 5 (General Principles Applicable to All Sanction Determinations, No. 7).

on his firm's compliance questionnaire and continued his outside business activities after his firm expressly directed him to stop, in violation of FINRA Rule 2010. For this misconduct, Mathieson is suspended in all capacities for six months and fined $50,000. We also affirm the Extended Hearing Panel's order that Mathieson pay $8,619.22 in hearing costs.[18]

On behalf of the National Adjudicatory Council,

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Jennifer Piorko Mitchell
Vice President and Deputy Corporate Secretary

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