

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD

In the Matter of

Department of Enforcement,

Complainant,

vs.

Paul Joseph Benz
Chester, NJ,

Respondent.

DECISION

Complaint No. C01020014

Dated: May 11, 2004

Hearing Panel found that registered principal failed to respond timely to NASD requests for information and allowed firm to conduct a securities business when it did not meet its net capital requirement. Held, Hearing Panel's findings and sanctions affirmed.

APPEARANCES

For the Complainant: David A. Watson, Esq., NASD Department of Enforcement

For the Respondent: H. Thomas Fehn, Esq., of Fields, Fehn, & Sherwin

DECISION

Paul Joseph Benz ("Benz") appeals a March 4, 2003 Hearing Panel decision pursuant to Procedural Rule 9311. The Hearing Panel held that Benz violated Conduct Rule 2110 by allowing the firm of which he was president to conduct a securities business when it did not meet its net capital requirement under Exchange Act Rule 15c3-1. The Hearing Panel also held that Benz violated Conduct Rule 2110 and Procedural Rule 8210 by failing to respond timely to NASD requests for information. We affirm the Hearing Panel's finding that Benz allowed his firm to conduct a securities business when it did not meet its net capital requirement and affirm the sanctions for this violation. We also affirm that Benz failed to respond timely to NASD requests for information, and affirm the sanctions for this violation.

I. BACKGROUND

A. Benz' Employment History

Benz entered the securities industry in April 1989 as a general securities representative. In February 1992, Benz became registered as a general securities principal. In June 1998, Benz

and his brother, Christopher Benz, opened Beacon Trading, LLC ("Beacon Trading" or "the Firm") in San Jose, California. Beacon Trading became an NASD member in 1999 and Benz served as president of the Firm. Benz' brother, who was qualified as a Financial and Operations Principal, served as Beacon Trading's FINOP. On or around the end of the year 2000, Beacon Trading vacated its San Jose office and Benz started looking for new employment. Benz became associated with another NASD member firm in Melville, New York on or about January 30, 2000. In July 2001, Beacon Trading filed a Form BDW, thereby terminating its membership with NASD.

B. Factual Background

Beacon Trading operated as an introducing broker-dealer with a \$5,000 minimum net capital requirement. On October 30, 1998, Beacon Trading executed a clearing agreement with Computer Clearing Services ("CCS"), which allowed Beacon Trading to clear its trades through CCS. The clearing agreement also required Beacon Trading to submit a \$25,000 security deposit with CCS. In October 2000, Beacon Trading's customers included numerous traditional retail clients and approximately 200 day traders, who effected trades on proprietary software offered by CCS.

1. The GlobalNet Trade

On October 10, 2000, Dan Rubin ("Rubin"), doing business as Rubin Investment Group, opened a traditional margin account with Beacon Trading. Ruben indicated on his customer account forms that he was a self-employed investment banker with an annual income of \$300,000 and a net worth of \$2,000,000. Ruben also stated that he maintained accounts with a number of other firms in addition to Beacon Trading.

On October 31, 2000, at the end of the trading day, Ruben placed an unsolicited order to purchase 999,000 shares of GlobalNet, Inc. stock at \$5.015 per share ("GlobalNet Trade"). Beacon Trading wrote out an order ticket, and then called a market maker to enter the order on the INSTINET system.¹ After learning that the order had been executed through INSTINET at a price of \$5.015, Beacon Trading contacted CCS's trading desk to give them information on the trade, and CCS then picked up the trade on NASD's Automated Confirmation Transaction Service ("ACT").²

¹ INSTINET is a professional stock trading system that permits institutional investors to trade large blocks of securities through a computer network.

² ACT is an automated trade reporting and reconciliation service that speeds the post-execution steps of price and volume reporting, comparison, and clearing for transactions reported to Nasdaq, including trades in Nasdaq-listed securities, exchange-listed securities, and OTC Bulletin Board securities. ACT handles transactions executed through Nasdaq's automated trading systems, as well as transactions negotiated directly between market participants and transactions that are internalized by market participants.

On November 2, 2000, CCS employees contacted Christopher Benz, Beacon Trading's FINOP, about the GlobalNet Trade. The CCS employees expressed concern about Rubin's ability to pay for the stock because the total cost of the purchase was more than \$5 million. CCS had a second conference call with both Benz and Christopher Benz later in the day on November 2, 2000. During that call, Benz provided CCS with Rubin's account information and suggested that CCS use its own discretion when deciding whether to cancel the GlobalNet Trade. CCS did not cancel or reverse the trade.

CCS also contacted Rubin and his accountant directly to discuss payment for the GlobalNet Trade. Following conversations with CCS employees, Rubin wired \$200,000 to CCS on November 2, 2000, and a second payment of \$200,000 on November 8, 2000. Ultimately, Rubin did not pay in full for the stock. A debit balance of \$4,600,000 remained in Rubin's account. The market price of GlobalNet stock declined substantially after early November; by early December it slipped below \$5; and by December 19, 2000, GlobalNet stock had dropped below \$1.50. As a result, the value of the stock was far less than its purchase price.

Eventually, CCS sold a small percentage of the GlobalNet stock. In January 2001, CCS bought the remaining GlobalNet stock in Rubin's account as a result of Rubin's continued failure to pay for the GlobalNet Trade. On April 16, 2001, Beacon Trading filed an arbitration claim against CCS with NASD Dispute Resolution to resolve the GlobalNet Trade dispute. CCS filed a counterclaim on the same date, which named Benz, Beacon Trading, and Rubin as respondents and sought relief for the balance due on the Rubin account.

2. Beacon Trading's Failure to Meet Its Net Capital Requirement

On December 18, 2000, CCS contacted NASD with information regarding the GlobalNet Trade. On December 19, 2000, NASD staff examiners telephoned Benz and informed him that, because of the unsecured debit balance in the Rubin account, Beacon Trading no longer met its minimum net capital requirement of \$5,000, and was therefore prohibited from conducting a securities business. Benz disagreed that Beacon Trading was required to recognize the unsecured debit balance in the Rubin account in calculating its net capital. Benz, however, attempted to halt Beacon Trading's securities business after he received NASD's telephone call.

To attempt to halt the Firm's securities business, Benz and other Beacon Trading employees attempted to contact all of Beacon Trading's traditional retail and day-trading customers by telephone, e-mail, or facsimile, and advise them that they should not effect any transactions, except to liquidate positions in their accounts. In addition, for retail customers who placed orders directly through Beacon Trading, the Firm refused to effect any transactions for those customers, other than liquidating transactions. Beacon Trading's attempt to halt the business of its day-trading customers was unsuccessful, however, because the day traders effected transactions directly through CCS using CCS's proprietary software installed on the day traders' personal computers. Despite the Firm's efforts, three day traders effected a total of 19 impermissible non-liquidating transactions after December 19, 2000.

3. Responses to NASD Requests for Information

On December 20, 2000, NASD examiners followed up on the telephone call of the previous day by visiting Beacon Trading's offices to obtain financial records and to confirm that the Firm was not conducting a securities business. Benz was not present at Beacon Trading's offices, but he conferred with NASD staff during their visit via telephone. Beacon Trading's employees provided the NASD examiners with several documents relating to net capital during the office visit.

On December 29, 2000, NASD staff sent Benz a letter acknowledging that Beacon Trading had provided the following documents on December 20, 2000:

1) Copies of October and November 2000 FOCUS reports; 2) Trial Balance, Income Statement, and Bank Reconciliation for October and November 2000; and 3) Order Ticket to purchase 990,000 shares of GlobalNet at a limit price of \$5.015, good for the day only, for the account of the Rubin Investment Group on October 31, 2000.

The December 29, 2000 letter also included a request pursuant to Procedural Rule 8210, which asked Benz to provide the following additional information no later than January 9, 2001:

1) Net Capital Computation for October and November 2000 using Beacon Trading's internal method of record keeping; 2) Order Ticket to purchase 990,000 shares of GlobalNet for the account of the Rubin Investment Group executed on November 6, 2000; and 3) A report of Beacon Trading's unpaid bills for the months of October and November 2000.

Benz did not respond to this request by the January 9, 2001 deadline. NASD staff sent Benz a second request on January 19, 2001, which reiterated the three requests set forth in the December 29, 2000 letter. The letter invoked Procedural Rule 8210 and stated that it was "imperative" that Benz provide the requested documents to NASD by January 26, 2001. Benz failed to respond by the January 26, 2001 deadline. On January 30, 2001, however, NASD staff received, by facsimile, a letter from Benz dated January 29, 2001. Benz' letter enclosed balance sheets for October and November 2000 and stated that he had already provided NASD with the correct order ticket for the GlobalNet Trade. As to the Firm's unpaid bills, Benz informed NASD staff that Beacon Trading no longer occupied its San Jose location and that the Firm did not have any outstanding bills for the year 2000.

On March 14, 2001, NASD staff sent Benz another letter, which stated that Beacon Trading's October and November balance sheets did "not satisfy our requirements of a net capital computation, in accordance with SEC Rule 15c3-1, as well as SEC Rules 17a-3, 17a-4." The letter also requested an outline of the steps Beacon Trading took to ensure that it was not conducting a securities business. The letter requested responses pursuant to Procedural Rule 8210 and set a response deadline of March 23, 2001.

Benz did not respond to the letter by March 23, 2001. On April 4, 2001, NASD staff sent Benz a letter advising him that, "should you not respond by April 12, 2001, we will consider it a failure to respond to this second request As a reminder, a failure to respond to the Association's request for information may, in and of itself, result in disciplinary action against your firm pursuant to NASD Procedural Rule 8210." After receiving this request, Benz called NASD and suggested that his brother Christopher Benz, as Beacon Trading's FINOP, was the appropriate person to provide the net capital computations the staff was seeking.

On May 17, 2001, NASD sent Christopher Benz a request for Beacon Trading's October and November 2000 balance sheets. The letter stated that the Firm's previously submitted balance sheets did not "satisfy our requirement of a net capital computation, in accordance with SEC Rule 15c3-1, as well as SEC Rules 17a-3 and 17a-4." NASD staff requested a response by May 31, 2001. Christopher Benz did not respond. On July 6, 2001, NASD staff sent Christopher Benz a letter that requested a net capital computation for October 2000. The staff's letter also asked for the following additional documents by July 18, 2001:

- 1) Bank statements for the period of October through December 2000; 2) Clearing Account statements for the period of October through December of 2000; and 3) Any and all correspondence between Beacon Trading and CCS.

Paul and Christopher Benz responded to NASD staff in a joint letter dated July 17, 2001. The letter informed NASD that Beacon Trading's net capital computation could be located in the FOCUS reports that Beacon Trading provided to NASD in December 2000. Paul and Christopher Benz stated that there had been no written correspondence between Beacon Trading and CCS regarding the GlobalNet Trade, other than two arbitration claims that had been filed with NASD. The letter enclosed copies of the requested bank and clearing account statements.

On August 7, 2001, NASD staff sent Benz a letter requesting that he sign the July 17 letter he and Christopher had sent (apparently they had not signed the original letter) and that he "provide a copy of the firm's general ledger for the period of November 1, 2000 to December 31, 2000." NASD staff sent an identical letter to Christopher Benz that conveyed the same requests. Benz testified before the Hearing Panel that he signed and returned the July 17 letter to NASD. Benz could not recall whether the signed letter was accompanied by a copy of the firm's general ledger for the period of November 1, 2000 to December 31, 2000, but stated that "I know [NASD] received a general ledger."

C. Procedural History

On September 5, 2001, NASD's Department of Enforcement ("Enforcement") filed a complaint alleging that Benz and his brother Christopher allowed Beacon Trading to engage in a securities business when it did not meet its minimum net capital requirement and failed to provide information requested by NASD staff. Benz and his brother filed a timely answer to the complaint in which they denied the substantive allegations. On January 8, 2003, a Hearing Panel held a hearing in Woodbridge, New Jersey. Christopher Benz failed to appear for the hearing and the Hearing Officer issued a default decision against him on March 20, 2003.

On March 4, 2003, the Hearing Panel issued its decision as to Benz. The Hearing Panel found that Benz allowed his Firm to engage in a securities business when it did not meet its minimum net capital requirement and failed to respond timely to NASD information requests. For sanctions, the Hearing Panel imposed two 30-day suspensions in a principal capacity (to be served concurrently) and a fine of \$7,500, and required Benz to requalify as a principal. The Hearing Panel also ordered Benz to pay \$2,502.30 in hearing costs. Benz appealed the Hearing Panel's findings and sanctions.

II. DISCUSSION

A. Net Capital Violation

It is a violation of Exchange Act Rule 15c3-1 for a broker-dealer to conduct a securities business if it does not meet its net capital requirement. The Hearing Panel below found that Benz allowed his Firm to conduct a securities business when it did not meet its net capital requirement under Exchange Act Rule 15c3-1, and he therefore violated Conduct Rule 2110. We affirm the Hearing Panel's finding of violation.

During the months relevant to this action, Beacon Trading had a net capital requirement of \$5,000. On the date when NASD notified Beacon Trading that it should stop conducting a securities business, December 19, 2000, the Firm had negative net capital of more than \$3,000,000. Benz does not dispute that—if Beacon Trading included the unsecured portion of the debit balance from the GlobalNet Trade in its net capital computation—the Firm was well below its required net capital. Benz argues, however, that Beacon Trading was not required to include the debit balance in its net capital computation because Rubin was not Beacon Trading's customer for purposes of the GlobalNet Trade. He contends that Rubin ceased to be Beacon Trading's customer when CCS began to consult with Rubin and his accountant in an effort to negotiate a payment plan for the trade.³

We find that, for purposes of calculating Beacon Trading's net capital, the Firm was required to include the unsecured portion of the debit balance that Rubin created as one of its liabilities. When Rubin placed the order with Beacon Trading, Rubin was the customer of

³ In his appeal brief, Benz asserts that the correspondence between CCS and Rubin created a new contract for payment of the trade, based on an installment payment plan instead of an all-cash on settlement date arrangement. He argues that this new contract constituted a novation of the clearing agreement between Beacon Trading and CCS under California law. This argument focuses on the wrong parties. Any payment plan negotiated between CCS and Rubin is not relevant to determining Beacon Trading's regulatory obligation in calculating net capital, and addresses only the private rights or obligations of Beacon Trading and CCS, which are not at issue here. See William H. Gerhauser, Sr., 53 S.E.C. 933, 939 (1998).

Beacon Trading. Beacon Trading had accepted Rubin as a customer and had opened his account. The clearing agreement between Beacon Trading and CCS provided that Beacon Trading agreed to indemnify CCS from any liabilities, expenses, or costs if "any customer of [Beacon Trading] fails to make payment for securities purchased." The clearing agreement therefore created a liability for Beacon Trading to pay CCS for the debit balance in the Rubin account. The SEC has confirmed that in such a situation, the clearing agreement controls the accrual of a liability to be recorded on the introducing firm's net capital computation. See Gerhauser, 53 S.E.C. at 938 & n.13 (finding that the terms of a clearing agreement required an introducing firm to accrue a net capital liability when a customer failed to deposit sufficient margin upon the clearing firm's request).

We reject Benz' argument that Rubin became CCS's customer for purposes of the GlobalNet trade and was no longer a customer of Beacon Trading. As Benz admits, for Rubin to become CCS's customer, the parties would have had to alter the terms of the clearing agreement. Under NASD Rules, for any amendment to the clearing agreement to be valid, the parties must have submitted the amendment to NASD and have it approved. See Conduct Rule 3230(e). Because Beacon Trading and CCS did not submit an amendment or receive approval, there was no effective amendment to the clearing agreement. See Gerhauser, 53 S.E.C. at 939 (explaining that SRO approval of amendments to clearing agreements is important because approval clarifies net capital obligations). Accordingly, Beacon Trading's net capital position on December 19, 2000 should have included the unsecured portion of the debit balance from Rubin's account.

We turn now to the issue of Benz' liability for his Firm's net capital violation. On December 19, 2000, NASD instructed Benz that his Firm should cease conducting a securities business because it was not in net capital compliance. Benz attempted, but did not fully comply with NASD's instructions. As a result, three of Beacon Trading's day-trading customers effected 19 unsolicited, non-liquidating transactions on December 20, 21, 22, and 26, 2000. Beacon Trading's day traders were able to execute transactions on the four days in question because Benz did not take the necessary steps to prevent CCS from accepting non-liquidating orders. Indeed, on December 19, 2000, Benz should have notified CCS that Beacon Trading could no longer conduct a securities business and instructed CCS to refuse any non-liquidating orders from Beacon Trading's day traders. Benz did not attempt to notify CCS.

Benz argues on appeal that he acted in good faith to cease his securities business and did not intend to violate the net capital rule. The SEC has consistently maintained, however, that a violation of the net capital rule does not require a finding of intent or scienter. See, e.g., Litwin Sec., Inc., 52 S.E.C. 1339, 1334 (1997) (intent to violate net capital rule is irrelevant); First Heritage Inv. Co., 51 S.E.C. 953, 957 n.15 (1994) (rejecting claim that Exchange Act Rule 15c3-1 has an implicit scienter requirement). Benz' argument is not relevant for purposes of liability. We do, however, consider it in assessing sanctions. Accordingly, we affirm the Hearing Panel's finding that Benz violated Conduct Rule 2110.

B. Failure to Respond Timely

The Hearing Panel found that Benz failed to respond timely to Enforcement's requests for information and therefore violated Conduct Rule 2110 and Procedural Rule 8210. We affirm the Hearing Panel's finding.

Procedural Rule 8210 authorizes NASD, in the course of an investigation, to require persons associated with an NASD member to "provide information orally [or] in writing . . . with respect to any matter involved in the investigation." Because NASD lacks subpoena power over its members, a "failure to provide information fully and promptly undermines the NASD's ability to carry out its regulatory mandate." Brian L. Gibbons, 52 S.E.C. 791, 794 (1996), aff'd, 112 F.3d 516 (9th Cir. 1997) (unpublished table decision).

We find that Benz did not respond timely to NASD staff's requests on December 29, 2000 and January 19, 2001 for net capital computations for October and November 2000, the GlobalNet Trade order ticket, and the Firm's unpaid bills. When Benz responded on January 30, 2001, his reply was several weeks past NASD staff's first deadline of January 9, 2001. We also find that Benz did not respond timely to the March 14, 2001 request for his Firm's net capital computation and an outline of steps that Benz took to ensure that the Firm was not conducting a securities business on the relevant dates. Benz called the NASD examiner to respond to this request more than a week after the deadline of March 23, 2001. Benz' responses were several weeks late and NASD staff wrote two follow-up letters before Benz responded.

On appeal, Enforcement argues that Benz did not in fact submit all of the requested documents and that he misrepresented evidence of his responses before the Hearing Panel below. There is nothing in the record, however, to call into question the initial credibility determination that Benz did in fact submit all of the requested documents. Furthermore, it is axiomatic that "[a]n initial fact finder's assessment of credibility deserves special weight." Alderman v. SEC, 104 F.3d 285, 288 n.4 (9th Cir. 1997); Jonathan Garrett Ornstein, 51 S.E.C. 135, 137 (1992) (finding that the Hearing Panel's assessment of credibility is entitled to considerable weight and deference because it is based on hearing the witnesses' testimony and observing their behavior).

Benz argues on appeal that his delay created no excess burden on NASD's investigatory process, and did not endanger the public. This argument fails to address the fact that Benz did not respond timely, which is all that is required to find a violation of Procedural Rule 8210. Benz also submits that certain documents were not relevant to Enforcement's investigation of his misconduct, and related to a problem that was "decisively cold." This argument is not persuasive in light of the well-established policy that persons subject to NASD jurisdiction cannot take it upon themselves to determine whether information requested is material to an NASD investigation of their conduct. See Robert Fitzpatrick, Exchange Act Rel. No. 44956, 2001 SEC LEXIS 2185, at *12 (Oct. 19, 2001) (citing Joseph Patrick Hannan, 53 S.E.C. 854, 860 (1998)).

We conclude that Benz failed to respond timely to NASD requests for information and that this failure violated Conduct Rule 2110 and Procedural Rule 8210.⁴

III. SANCTIONS

The Hearing Panel imposed a \$5,000 fine and a 30-day suspension in a principal capacity, and required Benz to requalify as a principal for his role in the Firm's net capital violation. We affirm these sanctions. For the failure to respond in a timely manner violation, the Hearing Panel imposed a \$2,500 fine and a 30-day suspension in a principal capacity, and required Benz to requalify as a principal. We affirm the Hearing Panel's sanctions for this violation as well.

A. Sanctions for Net Capital Violation

In arriving at appropriate sanctions for the net capital violation, we have consulted the NASD Sanction Guidelines ("Guidelines") for net capital violations⁵ and the Principal Considerations in Determining Sanctions.⁶ The Guideline for net capital violations recommends a fine of \$1,000 to \$50,000 and a suspension of up to 30 days in any or all capacities, or a lengthier suspension or bar in egregious cases. The Guideline also lists the following principal considerations in determining appropriate sanctions: (1) whether the firm continued in business while knowing of deficiencies/inaccuracies or voluntarily ceased conducting business because of the deficiencies/inaccuracies; and (2) whether respondent attempted to conceal deficiencies or inaccuracies by any means, including "parking" of inventory and inflating "mark-to-market" calculations. Guidelines at 33.

In regard to the first principal consideration for determining sanctions, we note the relevance of Benz' argument that he acted in good faith to cease his securities business and did not intend to violate the net capital rule. Although his good faith acts to cease his securities business do not exonerate him from a finding that he violated Conduct Rule 2110, his actions support the imposition of monetary sanctions near the low end of the Guideline. Accordingly, we impose a \$5,000 fine on Benz.

⁴ It is well-settled Commission policy that a violation of another Commission or NASD rule constitutes a violation of Conduct Rule 2110. Stephen J. Gluckman, Exchange Act Rel. No. 41628, 1999 SEC LEXIS 1395, at *22 (July 20, 1999).

⁵ See NASD Sanction Guidelines (2001 ed.) at 33 (Net Capital Violations).

⁶ See NASD Sanction Guidelines (2001 ed.) at 9-10 (Principal Considerations in Determining Sanctions).

We note that the second principal consideration for determining appropriate sanctions does not apply to the facts of this case.

We find that a \$5,000 fine, a 30-day suspension in a principal capacity, and a requirement to requalify as a principal will impress upon Benz the importance of complying with Exchange Act Rule 15c3-1, and the obligations that a principal has for the Firm's compliance with NASD Rules.

B. Sanctions for Failure to Respond Timely

In arriving at appropriate sanctions for Benz' failure to respond timely violation, we have consulted the Guidelines for failure to respond timely to requests made pursuant to NASD Procedural Rule 8210⁷ and the Principal Considerations in Determining Sanctions.⁸ The Guideline for failure to respond timely to requests for information recommends a fine of \$2,500 to \$25,000 and a suspension of up to two years. The Guideline also lists the following principal considerations in determining appropriate sanctions: (1) the nature of the information requested; and (2) whether the requested information has been provided, and if so, consider the number of requests made, the time respondent took to respond, and the degree of regulatory pressure required to obtain a response. Guidelines at 39.

In regard to the first principal consideration, we find that the information NASD requested was important to the computation of Beacon Trading's net capital and whether Beacon Trading conducted a securities business after December 19, 2000. In reference to the second principal consideration, we note that Benz ultimately submitted all of the requested information. This is not a case of a complete failure to respond.

To a certain degree, NASD's follow up requests were attributable to a breakdown in communication between Benz and NASD staff. NASD staff examiner Dennis Azary ("Azary") testified that in requesting documents relevant to Beacon Trading's net capital computation, he "wanted to see the information flow from a general ledger to a trial balance to a balance sheet, and then into an independent computation of net capital." Azary stated that he could not verify Beacon Trading's net capital computation because the information on the FOCUS reports did not correspond to the information that was provided on Beacon Trading's balance sheet. Benz, however, believed he had already supplied the information.

⁷ See NASD Sanction Guidelines (2001 ed.) at 39 (Failure To Respond Or Failure To Respond Truthfully, Completely, Or Timely To Requests Made Pursuant To NASD Procedural Rule 8210).

⁸ See NASD Sanction Guidelines (2001 ed.) at 9-10 (Principal Considerations in Determining Sanctions).

Benz should have communicated more clearly with NASD staff about what part of Beacon Trading's net capital computation NASD staff considered incomplete. As the SEC has stated, "[a]ny problems or concerns that a member firm or its associated persons might have in responding to an information request in a timely or complete manner should be raised, discussed and resolved with the NASD in the cooperative spirit and prompt manner contemplated by [Rule 8210]." Richard J. Rouse, 51 S.E.C. 581, 584, n.9 (1993). Although Benz did not intentionally delay or obstruct NASD's investigation, he did not fully appreciate the subject matter of NASD's requests, and did not take all necessary steps to respond to NASD's investigation.

We believe that a \$2,500 fine, a 30-day suspension in a principal capacity, and a requirement to requalify as a principal will impress upon Benz the importance of responding timely to NASD requests for information.

IV. CONCLUSION

We affirm the Hearing Panel's finding that Benz allowed his Firm to conduct a securities business when it failed to meet its net capital requirement under Exchange Act Rule 15c3-1, and therefore violated Conduct Rule 2110. We also uphold the Hearing Panel's finding that Benz violated Conduct Rule 2110 and Procedural Rule 8210 by failing to respond timely to NASD requests for information. Accordingly, we impose a \$7,500 fine, two 30-day suspensions in a principal capacity (to be served concurrently), and a requirement that Benz requalify as a general securities principal.⁹ In addition, we order Benz to pay hearing costs for the proceeding below in the amount of \$2,502.30 and \$1,649 in appeal costs.

On Behalf of the National Adjudicatory Council,

Barbara Z. Sweeney, Senior Vice President
and Corporate Secretary

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⁹ We also have considered and reject without discussion all other arguments advanced by respondent.

Pursuant to NASD Procedural Rule 8320, any member that fails to pay any fine, costs, or other monetary sanction imposed in this decision, after seven days' notice in writing, will summarily be suspended or expelled from membership for non-payment. Similarly, the registration of any person associated with a member who fails to pay any fine, costs, or other monetary sanction, after seven days' notice in writing, will summarily be revoked for non-payment.