

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DANIEL JAMES GALLAGHER
(CRD No.2092711)

and

VISION SECURITIES INC.
(CRD No. 35001),

Respondents.

Disciplinary Proceeding
No. 2008011701203

Hearing Officer – RSH

HEARING PANEL DECISION

June 13, 2011

Respondent Gallagher was barred for violating: (1) Rules 8210 and 2010 by failing to answer questions during two OTRs; (2) Rules 1021(a) and 2110 by acting as an unregistered principal; and (3) Rule 2110 by circumventing heightened supervision that had been imposed on him by New York, New Jersey, Maryland and FINRA. Because of the bars, sanctions were not imposed against Gallagher for violating: (1) Rules 2110 and 2010 by willfully failing to amend his Form U4 to disclose an SEC complaint and judgment against him and (2) Rules 3012, 3013, and 2110 by failing to adopt and certify Vision’s compliance and supervisory processes. Respondent Vision Securities was censured and fined a total of \$60,000 for violating: (1) Rules 1021(a) and 2110 by allowing Gallagher to act as an unregistered principal; (2) Rules 3010 and 2110 by failing to conduct heightened supervision of Gallagher; (3) Rules 3012, 3013, and 2110 by failing to adopt a supervisory control system and failing to annually certify Vision’s compliance and supervisory processes; (4) Rules 3070 and 2110 by failing to accurately report and maintain Rule 3070 filings and failing to update Forms U4 and U5; (5) Rules 3011(c) and 2110 by failing to conduct independent AML testing; and (6) Rules 1120(B)(2) and 2110 by failing to administer and document Vision’s continuing education program. The Respondents were also ordered to pay costs.

Appearances

For Complainant: Vaishali S. Shetty, Kathleen Lynch, and Jon S. Batterman, Jericho, NY, for the FINRA DEPARTMENT OF ENFORCEMENT

For Respondents: Daniel James Gallagher, *pro se*, Port Washington, NY

DECISION

I. INTRODUCTION

The Department of Enforcement (“Enforcement”) brought this disciplinary proceeding against Respondents Vision Securities Inc. (“Vision” or the “Firm”) and Daniel James Gallagher (“Gallagher”). Gallagher is currently registered as a General Securities Representative (“GSR”) through another FINRA-regulated firm. Between May 2001 and January 2010, Gallagher was registered as a GSR with Vision and was, at various times during the alleged violative conduct, its president and chairman. Visions’s FINRA membership was cancelled in January 2010. Gallagher is currently the part owner, president, and chairman of Vision’s holding company.

Enforcement alleged that between December 2006 and February 2008, the Respondents violated numerous NASD Rules.¹ Enforcement also alleged that in September 2009, Gallagher willfully failed to amend his Uniform Application for Securities Industry Registration or Transfer (“Form U4”) to disclose that the Securities and Exchange Commission (“SEC”) had filed a complaint against him in the United States District Court for the Southern District of New York and that a judgment was later entered against him. Finally, Enforcement alleged that in April 2010, Gallagher failed to answer the staff’s questions during on-the-record testimony

¹ As of July 30, 2007, NASD consolidated with the member firm regulation functions of NYSE and began operating under a new corporate name, the Financial Industry Regulatory Authority (“FINRA”). References in this decision to FINRA include, where appropriate, NASD. Initially, FINRA adopted NASD’s rules and certain NYSE rules, but it is in the process of establishing a consolidated FINRA rulebook. To that end, on December 15, 2008, certain consolidated FINRA rules became effective, replacing parallel NASD rules, and in some cases the prior rules were re-numbered and/or revised. *See* Regulatory Notice No. 08-57, FINRA Notices to Members, 2008 FINRA LEXIS 50 (Oct. 2008). This Decision refers to and relies on the NASD rules that were in effect at the time of the Respondents’ alleged misconduct and cited in the Complaint as the basis for the charges against them.

(“OTR”). For this conduct, Enforcement recommended that Vision be censured and fined, and that Gallagher be barred. The Respondents denied most of the allegations. Although they admitted that they violated some FINRA rules, they contended that the violations were inadvertent, rather than intentional. They argued that the sanctions recommended by Enforcement are excessive and out of proportion to the violations that occurred.

The Hearing Panel found that Enforcement proved all of its allegations by a preponderance of the evidence, and that the sanctions it recommended are reasonable and appropriate.

II. PROCEDURAL HISTORY

Enforcement filed a six-cause Complaint with the Office of Hearing Officers on February 2, 2010. The Respondents filed their Answer to the Complaint on April 12, 2010. On August 9, 2010, Enforcement filed an Amended Complaint to add two causes of action that charge Gallagher with failing to answer questions during two OTRs, and with failing to disclose information on his Form U4. The Respondents did not answer the Amended Complaint; however, at the hearing, Gallagher denied both charges. On December 20, 2010, the Hearing Panel granted Enforcement’s Motion for Summary Disposition with respect to liability on the Seventh Cause of Action, which alleged that Gallagher failed to answer FINRA’s questions during two OTRs. The Hearing Panel deferred its decision on sanctions until the hearing.

The hearing was held on January 11 and 12, 2011, in New York, NY, before a Hearing Panel composed of the Hearing Officer and two current members of FINRA’s District 10 Committee. Enforcement called six witnesses: Margaret Tymon (“Tymon”) (FINRA principal examiner); William A. Mancusi (“Mancusi”) (former head of operations and chief compliance officer at Vision); Frank L. Boccio (“Boccio”) (former financial principal at Vision); Craig Thomson (“Thomson”) (FINRA examinations manager); Michael Gerena (“Gerena”) (FINRA

examiner); and Gallagher. In presenting his case, Gallagher testified, but did not call any other witness. The Hearing Panel accepted into evidence, pursuant to a stipulation by the parties, 88 exhibits submitted by Enforcement. The Respondents did not offer any exhibits during the hearing.²

Based upon a review of the entire record, the Hearing Panel makes the following findings of fact and conclusions of law.

III. BACKGROUND

A. Source of FINRA's Investigation

FINRA began the investigation that led to the filing of the Complaint as a result of a routine cycle examination that started in January 2008.³

B. Respondents

1. Vision Securities Inc.

Vision, based in Port Washington, New York, was a FINRA member firm from approximately March 1994 through January 8, 2010, when Vision's FINRA membership was cancelled for failing to pay outstanding fees.⁴

2. Daniel James Gallagher

Gallagher first became registered with FINRA as a GSR in November 1990, through Stratton Oakmont, Inc. ("Stratton"), where he worked until December 1996. From December 1996 through May 2001, he was registered as a GSR through D.L. Cromwell Investments, Inc. ("Cromwell"). Next, Gallagher was registered as a GSR with Vision from on or about May 17, 2001, through January 8, 2010. From December 12, 2006, through October 1, 2007, Gallagher

² In this decision, "Tr." refers to the transcript of the hearing, and "CX" to Enforcement's exhibits.

³ Tr. at 30.

⁴ CX-2.

served as president of Vision.⁵ Since April 2003, Gallagher has been the secretary of Vision, and since May 2008, he has also been Vision's chairman.⁶ Gallagher is also the part owner and president of Vision's holding company, GCG Holdings, Inc.⁷ He has been registered as a GSR through EKN Financial Services, Inc. since November 2010.⁸

3. Vision and Gallagher's Regulatory History

Gallagher's Form U4 contains numerous disclosures and an extensive disciplinary history. Between 1994 and 2001, while he was employed at Stratton and Cromwell, seven customer arbitrations were filed against Gallagher. The complaints, all alleging sales practice violations, resulted in settlements or awards to the customers of over \$1,000,000.⁹ Because of customer allegations of sales practice violations, the states of Georgia, Illinois, New York, New Jersey, and Maryland fined, suspended, and/or imposed conditions of heightened supervision on Gallagher. The heightened supervision restrictions imposed by New York, New Jersey, and Maryland were in effect through October 2007.¹⁰ In May 2006, as a condition of continuing its membership in NASD, Vision signed a Membership Agreement in which it agreed to enforce heightened supervisory procedures for Gallagher.¹¹

Prior to the current disciplinary proceeding, NASD filed three actions against Gallagher, and one against Vision. In 1997, NASD alleged that Gallagher committed sales practice violations while a broker at Stratton. Gallagher settled that action, and was fined \$15,000, censured, and suspended in all capacities for six months.¹² In January 2005, Vision and Gallagher were charged with violating net capital rules. Pursuant to their settlement with NASD,

⁵ CX-11 at 245; CX-14 at 316; CX-14 at 319; Tr. at 386-388.

⁶ CX-1 at 90; CX-84 at 33:10-13; CX-67 at 1013.

⁷ *Id.*

⁸ CX-1 at 90.

⁹ CX-1 at 102-117.

¹⁰ CX-1 at 119-124, 130, 182; CX-24; CX-26; CX-27; CX-32.

¹¹ CX-32.

¹² CX-1 at 120-121.

Gallagher and Vision were fined \$7,500.00 (\$5,000.00 of which was owed jointly and severally).¹³ In July 2007, Gallagher was suspended for failing to pay an arbitration award owed to a customer. The suspension was lifted after he satisfied the award.¹⁴

Gallagher's Form U4 also discloses two judgments against him that were outstanding as of November 2010. One judgment, in the amount of \$179,718, is owed to the SEC.¹⁵ On September 30, 2008, the SEC filed a complaint in the SDNY against Vision, Gallagher, and others.¹⁶ On August 17, 2009, after a jury trial, a judgment was entered against Vision and Gallagher. Vision was found liable for violating Section 15(b)(7) of the Securities Exchange Act of 1934 ("Exchange Act") by allowing a broker to act in a registered capacity without being registered with the NASD. Gallagher was found liable for aiding and abetting Vision's violation of Section 15(b)(7). Vision and Gallagher were ordered to pay, jointly and severally, disgorgement, prejudgment interest, and a fine totaling \$179,718.¹⁷ The second judgment, in the amount of \$367,333, is owed to one of Gallagher's former customers, who filed a lawsuit in New York State Court.¹⁸

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Gallagher Acted as an Unregistered Principal, and Vision Failed to Require his Registration (First Count, Violation of Rules 1021(a) and 2110)

1. Findings of Fact

One of the conditions of Vision's Membership Agreement with FINRA stated that Gallagher was subject to heightened supervision by Vision.¹⁹ In addition, the states of New

¹³ CX-1 at 125.

¹⁴ CX-1 at 127.

¹⁵ CX-1 at 98-100.

¹⁶ CX-77.

¹⁷ CX-80.

¹⁸ CX-1 at 117.

¹⁹ CX-32.

Jersey, New York, and Maryland restricted Gallagher from holding any supervisory or principal position at Vision.²⁰ Enforcement alleged that despite those restrictions, from at least December 12, 2006, through October 1, 2007, Gallagher was actively engaged in the management of Vision without being licensed as a principal. Although Gallagher denied at the hearing that he acted as a principal of Vision, his testimony at his OTR, testimony from other witnesses, and numerous documents show that he managed Vision as alleged.

Gallagher admitted that he took the title of president in December 2006, when the previous president left the Firm.²¹ Further, in response to FINRA's request for information in February 2008, Vision's then president stated that Gallagher was president of Vision between December 12, 2006, and October 1, 2007.²² During that time period, Gallagher hired and fired numerous individuals at Vision, including compliance officers,²³ a Financial and Operations Principal ("FINOP"),²⁴ and Vision's bookkeeper.²⁵ Gallagher also hired his two successor presidents.²⁶ Gallagher also supervised individuals, including compliance officers.²⁷

Gallagher directed the filing of registered persons' Forms U4 and Uniform Termination Notices for Securities Industry Registration ("Form U5"), and signed them as president of Vision.²⁸ He controlled the Firm's bank account,²⁹ and directed payments to brokers and vendors.³⁰ He also held himself out in correspondence to Vision's clearing firm, customers, and

²⁰ CX-24; CX-26; CX-27.

²¹ CX-84 at 40:7-42:15.

²² CX-11.

²³ CX-85 at 18:6-19:1; CX-86 at 16:19-18:19; 41:6-18; 67:18-24. Tr. at 198:16-22; 199:24-200:9; 207:8-21.

²⁴ CX-5; CX-17.

²⁵ CX-8.

²⁶ CX-84 at 37:6-8; 37:18-38:21.

²⁷ CX-84 at 54:18-55:23; CX-86 at 76:2-77:5.

²⁸ CX-86 at 32:20-33:9; CX-19.

²⁹ CX-84 at 50:2-11;

³⁰ CX-84 at 52:18-53:15; CX-86 at 25:9-22; 29:4-15; Tr. at 202:2-7.

business associates as the president, director, and owner of Vision.³¹ Gallagher testified that, as an owner and president of CGC Holdings (Vision's parent company), he wanted to be "on top of most of the things that were going on at Vision in terms of a macro view," and that "[i]t was important for me to have some sort of ability to be more involved in Vision, other than just being a registered rep...."³²

2. Conclusions of Law

NASD Membership and Registration Rule 1021(a) provides that "[all persons engaged or to be engaged in the investment banking or securities business of a member who are to function as principals shall be registered as such with NASD." Rule 1021(b) defines principals as sole proprietors, officers, partners, and others who are "actively engaged in the management of the member's investment banking or securities business, including supervision, solicitation, conduct of business...." Being "actively engaged in the management" of a firm means "day-to-day conduct of the member's securities business and the implementation of corporate policies related to such business."³³ Other indicia of management include: whether an individual has held himself out to others as someone intimately involved in the management of a firm;³⁴ hiring and firing key personnel;³⁵ controlling the firm's finances; and directing commission payments to brokers and checks to vendors.³⁶

In this case, Gallagher was an owner and the president of Vision's holding company, was Vision's secretary, and for the relevant ten-month period, its president. He directly and indirectly controlled Vision and was actively involved in managing the firm. He recruited, hired,

³¹ CX-21; CX-20.

³² CX-84 at 33:13-34:7.

³³ Notice to Members ("NTM") 99-49 (June 1999).

³⁴ *Department of Enforcement v. Pecaro*, No. C8A960029, 1998 NASD Discip. LEXIS 13, at *17-20 (NBCC Jan. 7, 1998).

³⁵ *Department of Mkt. Regulation v. Yankee Fin. Group, Inc.*, No. CMS030182, 2006 NASD Discip. LEXIS 21 (NAC Aug. 4, 2006).

³⁶ *Dennis Todd Lloyd*, Exchange Act Rel. No. 57655, 2008 SEC LEXIS 819, at *28-34 (Apr. 11, 2008).

and fired key personnel, including chief compliance officers, a FINOP, a bookkeeper, and two presidents. He held himself out to the public as Vision's president, controlled Vision's finances, and directed payments to vendors and firm employees. By engaging in these activities, Gallagher acted as a principal of Vision, and was required to register as such. Vision permitted him to act in this unregistered capacity. Therefore, Vision and Gallagher violated Rule 1021(a). Violations of any NASD Rule also constitute a violation of Rule 2110.³⁷

B. Gallagher Circumvented Heightened Supervision and Vision Failed to Conduct Heightened Supervision of Gallagher (Second Count, Violation of Rules 3010 ad 2110)

1. Findings of Fact

Between December 2006 and October 2007, while president of Vision, Gallagher was under the heightened supervisory requirements of three states: New York, New Jersey and Maryland.³⁸ He was also subject to the heightened supervisory requirements of Vision's membership agreement with FINRA.³⁹ Gallagher executed agreements with the states and with FINRA. Under these agreements, the states and FINRA imposed a number of conditions that Gallagher had to meet in order to maintain his registration in those states and under FINRA's membership agreement. Gallagher and Vision failed to abide by the following conditions and restrictions contained in the heightened supervisory agreements:

- New York, New Jersey and Maryland prohibited Gallagher from acting in supervisory or recruiting capacities;

³⁷ *Department of Enforcement v. Duma*, No. C8A030099, 2005 NASD Discip. LEXIS 46, at *4, n.1 (NAC Oct. 27, 2005) (citing *Stephen J. Gluckman*, 54 SEC 175, 185, 1999 SEC LEXIS 1395, at *22 (Jul. 20, 1999)).

³⁸ CX-24; CX-26; CX-27.

³⁹ CX-32.

- The New York agreement required that all of Gallagher’s written correspondence be approved in advance of transmittal and on receipt. In practice, any reviews that were conducted of Gallagher’s e-mails were done after the e-mails had been transmitted.⁴⁰
- FINRA’s membership agreement with Vision required the Firm to make random calls to Gallagher’s active accounts and to document the discussions. There is no evidence that such calls took place.
- New York and New Jersey required that the states be informed of, among other things, any arbitrations claims, regulatory actions, or the initiation of any investigations against Gallagher. On July 2, 2007, NASD suspended Gallagher for failing to comply with an arbitration award. Vision and Gallagher failed to provide notification to either state.⁴¹
- New Jersey required that any change in Gallagher’s supervisors would have to be approved in advance by the New Jersey Bureau of Securities. Gallagher’s supervisors changed twice during the relevant period; however, he and Vision failed to seek approval for the changes.⁴²
- Vision’s FINRA membership agreement and the New York and New Jersey agreements required Vision to document and report to FINRA and the states any complaints made about Gallagher. Vision received a written customer complaint on August 25, 2007; however, it was not reported to FINRA, New York, or New Jersey.⁴³

Gallagher failed to inform either chief compliance officer (“CCO”) he hired of the special supervision he required. Mancusi was CCO for only six months and was unaware of

⁴⁰ CX-86 at 58:21-24; CX-85 at 35:18-36:15; CX-84 at 112:13-19; 165:3-11; 166:10-18.

⁴¹ CX-1 at 180; CX-25.

⁴² CX-28; CX-29; CX-31.

⁴³ CX-32; CX-24; CX-27; CX-26; CX-46; CX-84 at 177:1-8.

Gallagher's heightened supervision until well into his tenure.⁴⁴ Vision's next CCO was told about Gallagher's heightened supervisory agreements, but not what he was required to do to supervise Gallagher.⁴⁵

2. Conclusions of Law

Conduct Rule 2110 requires registered persons to observe high standards of commercial honor and just and equitable principles of trade. As reiterated by the National Adjudicatory Council in the *Saad* case, "Rule 2110 is an ethical rule...FINRA's authority to pursue disciplinary action for violations of Rule 2110 is sufficiently broad to encompass any unethical business-related misconduct, regardless of whether it involves a security."⁴⁶

From at least December 2006 through October 2007, Gallagher failed to adhere to the heightened supervisory requirements imposed by FINRA and the agreements he entered into with New York, New Jersey and Maryland. Because of his controlling role at Vision, and the transitory nature of supervision at Vision, Gallagher was able to sidestep the requirements of his heightened supervision. His conduct violated Rule 2110.

Vision failed to ensure that Gallagher's heightened supervisory requirements from the states and FINRA were being followed, thus violating Rule 2110. By failing to have a system to adequately monitor Gallagher's compliance with the states' and FINRA's requirements, Vision also violated Rule 3010(a).

⁴⁴ Tr. at 206:3-17.

⁴⁵ CX-85 at 25:25-26:12; 27:9-28:5.

⁴⁶ *Department of Enforcement v. Saad*, No. 2006006705601, 2009 FINRA Discip. LEXIS 29, at *11 (NAC Oct. 6, 2009) (finding that a registered person's submission of false expense reimbursement requests and receipts to his broker-dealer violated Rule 2110).

C. Vision and Gallagher Failed to Adopt a Supervisory Control System and Failed to Annually Certify Vision's Compliance and Supervisory Processes (Third Count, Violation of Rules 3012, 3013, and 2110)

Findings of Fact and Conclusions of Law

Rule 3012(a)(1) requires each member firm to designate and identify to FINRA at least one principal who shall “establish, maintain, and enforce a system of supervisory control policies and procedures.” Rule 3012(a)(1)(B) requires that a firm’s designated principal or principals “submit to the member’s senior management no less than annually, a report detailing each member’s system of supervisory controls, the summary of the test results and significant identified exceptions, and any additional or amended supervisory procedures created in response to the test results.” Rule 3012(a)(2)(C) requires procedures that provide heightened supervision over the activities of each producing manager who (like Gallagher) is responsible for generating 20% or more of the revenue of the business units supervised by the producing manager’s supervisor. Finally, Rule 3013(b) requires that each member firm have its chief executive officer certify annually that the firm has in place processes to establish, maintain, review, test, and modify written compliance policies and written supervisory procedures.

In Vision’s responses to FINRA’s requests for information, some of which were signed by Gallagher, it admitted that between April 2006 and February 2008, it did not comply with Rules 3012 and 3013.⁴⁷ Therefore it violated those rules and Rule 2110. Gallagher testified that during the time at issue, he did not know what the rules were, and did not know whether Vision complied with them.⁴⁸ As president of Vision from December 2006 through October 2007, Gallagher was responsible for the establishment, maintenance and enforcement of a system of supervisory control policies and procedures. During that period, he failed to make

⁴⁷ CX-35; CX-40; CX-41.

⁴⁸ CX-84 at 74:11-76:22.

the necessary designations and certifications required by Rules 3012 and 3013. He therefore violated both of those rules and Rule 2110.

D. Vision Failed to Report Customer Complaints and Failed to Update Forms U4 and U5 (Fourth Count, Violations of Rules 3070 and 2110 and Article V, Sections 2 and 3)

1. Findings of Fact

Between April 2006 and January 2008, Vision failed to report to FINRA, pursuant to Rule 3070, three customer complaints against Gallagher and one customer-initiated lawsuit involving an investment in which Gallagher was named as a defendant.⁴⁹ Vision acknowledged that it failed to report the complaints and lawsuit, and blamed the failure on the fact that they came in during the tenures of three different CCOs.⁵⁰

Also between April 2006 and January 2008, Vision failed to amend the Forms U4 and U5 for two representatives, Keith Connolly (“Connolly”) and Glen Meyer (“Meyer”), to reflect customer complaints, arbitrations and lawsuits.⁵¹ A customer of Connolly’s filed an arbitration in July 2007, alleging that Connolly had engaged in unauthorized trading. The arbitration was never reported on Connolly’s Form U4 or U5. On April 3, 2007, and September 18, 2007, two different customers filed complaints with Vision alleging that Meyer had engaged in unauthorized trading in their accounts.⁵² On April 12, 2007, a third customer filed an arbitration against Meyer, also alleging unauthorized trading.⁵³ Meyer was terminated by Vision on February 19, 2008, and Vision filed a Form U5 on that day.⁵⁴ The customer complaints and the arbitration were never reported on Meyer’s Forms U4 or U5.

⁴⁹ CX-45; CX-46; CX-47; CX-44; CX-48.

⁵⁰ CX-40; CX-41.

⁵¹ CX-49; CX-53.

⁵² CX-54; CX-47.

⁵³ CX-55.

⁵⁴ CX-56.

2. Conclusions of Law

Rule 3070 requires member firms to provide to FINRA statistical and summary information about customer complaints and investment-related lawsuits by the 15th day of the month following the calendar quarter in which customer complaints are received by the firm. By failing to report the three customer complaints and lawsuit filed against Gallagher, Vision violated Rule 3070.

Article V, Section 2(c) of NASD's By-Laws requires that every application for registration (Form U4) "filed with NASD shall be kept current at all times by supplementary amendments which must be filed within 30 days after learning of the facts or circumstances giving rise to the amendment." Article V, Section 3(b) of NASD's By-Laws similarly requires a member to amend a registered person's Form U5 within 30 days of learning of any facts or circumstances causing any information previously set forth in the Form U5 to become inaccurate or incomplete. By failing to amend Connolly's and Meyer's Forms U4 and U5, Vision violated Article V, Sections 2(c) and 3(b), and Rule 2110.

E. Vision Failed to Conduct Independent Anti-Money Laundering Testing (Fifth Count, Violations of Rules 3011(c) and 2110)

Findings of Fact and Conclusions of Law

Rule 3011(c) requires that each member develop and implement a written anti-money laundering ("AML") program to "[p]rovide for independent testing for compliance" with the firm's anti-money laundering obligations.

Vision admitted in its responses to FINRA's requests for information that it failed to conduct any independent testing of its AML program in 2006 and 2007.⁵⁵ It therefore violated Rules 3011(c) and 2110.⁵⁶

F. Vision Failed to Administer a Continuing Education Program or to Maintain Records Documenting Completion (Sixth Count, Violation of Rules 1120(b)(2) and 2110)

Findings of Fact and Conclusions of Law

Rule 1120(b) provides that a member "must maintain a continuing and current education program for its covered registered persons to enhance their securities knowledge, skill, and professionalism. At a minimum, each member shall at least annually evaluate and prioritize its training needs and develop a written training plan." Rule 1120(b) also requires members to maintain records documenting the content of the programs and completion of the programs by covered registered persons.

Vision admitted in its responses to FINRA's request for information that for the year 2007, it failed to conduct and evidence an annual training program or its continuing education program for its covered registered persons. Vision therefore violated Rules 1120(b) and 2110.

G. Gallagher Failed to Respond to FINRA's Questions at His OTRs (Seventh Count, Violation of Rules 8210 and 2010)

1. Findings of Fact

At his OTRs, which were conducted on April 12, 2010, and April 26, 2010, Gallagher was repeatedly told that his testimony was being requested pursuant to FINRA Rule 8210.⁵⁷ The staff asked a series of questions concerning an offering of Nano Acquisition Group LLC

⁵⁵ CX-37; CX-58; CX-85 at 68:6-17.

⁵⁶ Enforcement charged that Vision's failure to test its AML program also violated MSRB Rule G-41. Vision was registered with the MSRB; however, Tymon testified that Vision did not do any municipal bond trading during her review period, and she did not know if Vision had ever done any such business during the ten years it was registered with the MSRB. (CX-38; Tr. 185:21-186:2.) Consequently, the Hearing Panel dismissed the charge that Vision violated MSRB Rule G-41 because there was no evidence that Vision conducted a municipal securities business.

⁵⁷ CX-87 at 11:2-9; 29:7-10; CX-88 at 322:19-22; 324:25-325:11; 327:19-22.

(“NAG”). The staff had concerns about investor solicitation in the NAG offering, and wanted to know whether Vision, through Gallagher, was conducting a securities business. During that time, Vision was subject to a FINRA cease order because it was net capital deficient. FINRA had instructed Vision to cease all securities business, and the staff was concerned that funds from the NAG offering may have been used to fund the broker-dealer or were otherwise misused. The staff also had concerns about potential private securities transactions by Gallagher, since the offering was being sold to individuals who might not have been aware that Vision had been instructed to cease business. At the time of his OTRs, Gallagher was registered with FINRA.

On both dates of his OTR, Gallagher consistently and repeatedly refused to answer questions concerning NAG. At times he asserted that FINRA “lacked jurisdiction” to question him about NAG. At other times, Gallagher refused to answer because he said he distrusted the staff’s ability to keep information about the NAG offering confidential.⁵⁸ In addition, Gallagher refused to answer questions about other matters, including about NAG being an outside business of Gallagher’s, his current sources of compensation, and e-mails he sent from his Vision e-mail account.⁵⁹

2. Conclusions of Law

Rule 8210 requires persons subject to FINRA’s jurisdiction to provide information requested by FINRA and to permit the inspection and copying of books, records, or accounts. Associated persons must cooperate fully in providing requested information. When associated persons register with FINRA, they agree to “abide by its rules, including the requirement to provide information requested by [FINRA] for its investigations.”⁶⁰ Associated persons are not

⁵⁸ CX-87 at 29:7-31:14; CX-88.

⁵⁹ CX-87 at 85:13-86:22; 99:7-12; 311:16-312:25; 124:16-125:6; CX-62.

⁶⁰*Toni Valentino*, Exchange Act Rel. No. 49255, 2004 SEC LEXIS 330, at *14 (Feb. 13, 2004).

permitted to make their own determinations of whether the information sought by the staff is necessary.⁶¹

In this case, Gallagher repeatedly refused to answer a series of questions concerning Vision and the use of investor funds. Among other potential misconduct, the staff's line of questions related to the possible operation of a broker-dealer while under a cease order. Gallagher was obligated to answer the staff's questions, and by failing to do so, he violated Rules 8210 and 2010.

H. Gallagher Willfully Failed to Amend His Form U4 (Eighth Count, Violation of Rules 2110 and 2010)

1. Findings of Fact

On September 30, 2008, the SEC filed a complaint in the United States District Court for the Southern District of New York against Vision, Gallagher, and others.⁶² Gallagher failed to disclose the complaint on his Form U4. On August 17, 2009, after a jury trial, a judgment was entered against Vision and Gallagher. Vision was found liable for violating Section 15(b)(7) of the Exchange Act by allowing a broker to act in a registered capacity without being registered with NASD. Gallagher was found liable for aiding and abetting Vision's violation of Section 15(b)(7). Vision and Gallagher were ordered to pay, jointly and severally, disgorgement, prejudgment interest, and a fine totaling \$179,718.⁶³ Gallagher failed to disclose the judgment on his Form U4.⁶⁴

⁶¹ See *CMG Institutional Trading, LLC*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215 (Jan. 30, 2009); *Department of Enforcement v. Sturm*, No. CAF000033, 2002 NASD Discip. LEXIS 2, at *9 (NAC Mar. 21, 2002).

⁶² CX-77.

⁶³ CX-80.

⁶⁴ FINRA disclosed the judgment by sending a copy of the Court's order to the Central Records Depository ("CRD") on December 14, 2009. See CX-83.

2. Conclusions of Law

Article V, Section 2(c) of FINRA's By-Laws requires that every application for registration (Form U4) be kept current at all times by supplementary amendments. The amendments must be filed not later than thirty days after learning of the facts or circumstances giving rise to the amendment. Question 14H(2) of Form U4 requires an applicant to disclose any pending investment-related civil actions that could result in a court finding that he was involved in the violation of an investment-related statute. Question 14M of Form U4 asked, "[d]o you have any unsatisfied judgments or liens against you?" Gallagher was required to disclose both the SEC complaint and judgment on Form U4. By failing to do so, he violated Rules 2110 and 2010.

The Hearing Panel also finds that his failure to amend his Form U4 was willful. The standard for determining willfulness is whether the respondent "voluntarily committed the act that constituted the violation."⁶⁵ Gallagher testified that he did not believe he was required to report the SEC complaint or judgment; however, the Hearing Panel did not find his testimony credible. Because of his extensive regulatory history, it is unlikely that Gallagher did not understand his obligation to amend his Form U4 to report investment-related lawsuits such as the SEC's. Gallagher knew about the SEC complaint and subsequent judgment and failed to make the required disclosures. He knew that disclosing the SEC action would likely bring increased scrutiny from state regulators. For example, the agreement he signed with the Maryland Securities Commissioner provided that, for a four-year period (until October 2010), any sanction, such as the one imposed by the SEC action, would "result in [Gallagher's and Vision's] entire

⁶⁵ *Department of Enforcement v. Kraemer*, No. 2006006192901, 2009 FINRA Discip. LEXIS 39, at *16-17 (NAC Dec. 18, 2009).

matter being reviewed by Maryland.”⁶⁶ His agreement with New Jersey likewise required him to notify the New Jersey Attorney General of any “civil or regulatory action.” Gallagher knew or reasonably should have known that he was required to disclose the SEC action and unsatisfied judgment on his Form U4. The Hearing Panel finds that his failure to do so was willful.

V. SANCTIONS

1. Gallagher Failed to Answer Questions at Two OTRs

Since FINRA lacks subpoena power, it must rely upon Rule 8210 “to police the activities of its members and associated persons.”⁶⁷ “[A member’s] failure to respond to [FINRA’s] information requests frustrates [FINRA’s] ability to detect misconduct, and such inability in turn threatens investors and markets....”⁶⁸ Because compliance with Rule 8210 is necessary for FINRA to carry out its regulatory functions, the FINRA Sanction Guidelines (“Guidelines”) provide that for failure to respond to requests for information made pursuant to Rule 8210, a bar is the standard sanction.⁶⁹ Gallagher argued that because he answered most of the staff’s questions, he should be sanctioned for providing a partial response, rather than for failing to respond. This argument is unavailing. The Guidelines, as recently amended, make clear that where a person provided a partial but incomplete response, a bar is standard unless the person can demonstrate that the information provided “substantially complied with all aspects of the request.” In this case, the information Gallagher provided did not substantially comply with the Rule 8210 request; failed to respond to any of the staff’s questions about NAG.

Further, the Principal Consideration specific to determining sanctions for this violation—the importance of the information requested as viewed from FINRA’s perspective-- also supports

⁶⁶ CX-26.

⁶⁷ *Joseph Patrick Hannan*, Exchange Act Rel. No. 40438; 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

⁶⁸ *PAZ Sec.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *aff’d sub nom*, *PAZ Sec. v. SEC*, 566 F.3d 1172, 2009 U.S. App. LEXIS 11500 (May 29, 2009.)

⁶⁹ *FINRA Sanction Guidelines* 33 (2011), <http://www.finra.org/sanctionguidelines>.

the imposition of a bar. The nature of the information FINRA sought from Gallagher was important and goes to the heart of its regulatory obligation—investor protection. FINRA staff was attempting to determine whether Vision was operating a securities business while under a cease order which prohibited such activity, and whether Gallagher was engaged in any private securities transactions or outside business activities. Most importantly, the staff’s questions sought information about the use and whereabouts of investor funds raised in an offering that they suspected had been conducted through Vision. The staff gave Gallagher numerous opportunities, over the course of two OTRs, to answer their questions. Each time, he refused to answer. His excuse for failing to answer—that he did not trust the staff to keep the information confidential, and that the staff “lacked jurisdiction” to question him about his business activities outside of Vision—are without merit. As the SEC explained in *PAZ Securities*, the seriousness of a failure to respond to Rule 8210 necessitates the imposition of a bar and may have a deterrent effect on all current and future FINRA members and associated persons.⁷⁰

For failing to answer questions at two OTRs, Gallagher is barred from associating with any FINRA-regulated firm in any capacity.

2. Gallagher Acted as an Unregistered Principal

For registration violations, the Guidelines recommend a fine of \$2,500 to \$50,000 for firms and individuals. For individuals, suspensions of up to six months are recommended, with lengthier suspensions or a bar in egregious cases.⁷¹ Enforcement argued that Gallagher’s violation is egregious and merits a bar. The Hearing Panel agrees.

Gallagher engaged in activity at Vision that required a principal’s license. Gallagher’s conduct is egregious because he was aware that several states and FINRA had specifically

⁷⁰ *PAZ Sec.*, 2008 SEC LEXIS 820, at *11.

⁷¹ *Guidelines* 45 (2011).

prohibited him from acting in a principal or supervisory capacity. He chose to ignore those restrictions. His conduct is similar to situations in which a broker violates a principal bar or suspension and he should be similarly sanctioned. A fine or a suspension would serve little purpose in deterring Gallagher's conduct; he has already been fined, suspended and restricted, all to no avail. Accordingly, the Hearing Panel finds that a bar is the only appropriate sanction for Gallagher.⁷² With respect to Vision, the Hearing Panel finds that a \$10,000 fine is the appropriate sanction for allowing Gallagher to act as an unregistered principal.⁷³

3. Gallagher and Vision Circumvented Gallagher's Heightened Supervision

The Guidelines do not contain a provision for violations related to circumventing state securities rules; however, because Gallagher also violated undertakings contained in Vision's membership agreement with FINRA, the Hearing Panel looked to those Guidelines. The Guidelines for member agreement violations recommend a fine of \$2,500 to \$50,000, and individual suspensions for up to six months. In egregious cases, the Guidelines recommend suspensions of up to two years or a bar.⁷⁴ The Hearing Panel finds that Gallagher's violation is egregious. Vision's membership agreement with FINRA and the agreements Gallagher entered into with New York, New Jersey, and Maryland specifically required him to comply with conditions of heightened supervision. Gallagher and Vision failed to adhere to the conditions and restrictions contained in the agreements.

⁷² See *Department of Enforcement v. Usher*, No. C3A980069, 2000 NASD Discip. LEXIS 5, at *13 (NAC Apr. 18, 2000) (barring a broker and firm president who, after being suspended for non-payment of an arbitration award, effected securities transactions); see also *Gordon Kerr*, Exchange Act Rel. No. 43418, 2000 SEC LEXIS 2132 (Oct. 5, 2000) (barring respondent who violated a principal bar previously imposed by SEC order).

⁷³ *Department of Enforcement v. Beerbaum & Beerbaum Fin.*, No. C01040019, 2006 NASD Discip. LEXIS 5 (NAC May 19, 2006) (taking into consideration the member firm's small size and fining the firm \$15,000 for allowing the broker to act as unregistered principal).

⁷⁴ *Guidelines* 44 (2011).

With respect to its supervisory violations, Vision did not have a system in place to monitor Gallagher's adherence to the heightened supervisory requirements of the states and FINRA. The compliance officers tasked with Gallagher's heightened supervision initially were unaware of the requirements. In large part, this was due to Gallagher's control of the firm, and his deliberate circumvention of the requirements. Accordingly, the Hearing Panel bars Gallagher for this violation. Vision is fined \$20,000.

4. Gallagher Willfully Failed to Disclose the SEC Complaint and Judgment

The accuracy of an applicant's Form U4 "is critical to the effectiveness" of a self-regulatory organization's ability "to monitor and determine the fitness of securities professionals."⁷⁵ The Guidelines recommend a fine of \$2,500 to \$50,000 and a suspension in all capacities for five to 30 days. In egregious cases, the Guidelines recommend a suspension of up to two years or a bar.⁷⁶ In this case, the information that Gallagher was named in and subsequently fined for federal securities law violations was significant. Gallagher already had an extensive disciplinary history, and several states had imposed restrictions on his activities. The SEC action and the resulting judgment would have been of interest to regulators, customers and potential employers. The Hearing Panel finds that Gallagher's failure to disclose the SEC case was willful. An appropriate sanction would be a one-year suspension in all capacities and a fine of \$10,000.⁷⁷ Because of the bars, however, additional sanctions would serve no remedial purpose and so will not be imposed.

⁷⁵ *Rosario R. Ruggiero*, 52 S.E.C. 725, 728 (1996) (citing *Alton*, 52 S.E.C. at 382); see also *Guang Lu*, Exchange Act Rel. No. 51047, 2005 SEC LEXIS 117, at *19-20 (Jan. 14, 2005) (recognizing that "the candor and forthrightness of applicants is critical to the effectiveness of the screening process").

⁷⁶ *Guidelines* 71 (2011).

⁷⁷ *Department of Enforcement v. Zayed*, No. 2006003834901, 2010 FINRA LEXIS 13 (NAC Aug. 19, 2010) (respondent suspended for nine months and fined \$10,000 for willfully failing to disclose a civil complaint and judgments on his Form U4).

5. Gallagher and Vision Failed to Adopt a Supervisory Control System or to Annually Certify Compliance

There are no Guidelines directly addressing violations of Rules 3012 and 3013; however, the Guideline for having deficient written supervisory procedures under Rule 3010(b) is analogous. That Guideline recommends a fine of \$1,000 to \$25,000. The principal considerations are whether the deficiencies allowed violative conduct to occur or to escape detection, and whether the deficiencies made it difficult to determine the individuals responsible for specific areas of supervision or compliance.⁷⁸ In this case, Vision's failure to maintain supervisory control procedures pursuant to Rule 3012 contributed to the inadequate supervisory system in place and the resulting violations at the firm, particularly those related to heightened supervision of Gallagher. Vision is therefore fined \$10,000.

During the period that Gallagher was the president of Vision, he was responsible for the establishment, maintenance, and enforcement of the supervisory control policies and procedures at Vision. Under Rule 3013, he was responsible for certifying that Vision had in place adequate processes to establish, maintain, review, test, and modify written compliance policies and written supervisory procedures. For failing to comply with those responsibilities, the Hearing Panel finds that an appropriate sanction would be a \$10,000 fine. However, because of the bars already imposed, additional sanctions would serve no remedial purpose and so will not be imposed.

6. Vision Failed to Report Customer Complaints (3070 and Forms U4 and U5)

For failure to report events as required by Rule 3070, the Guidelines recommend a fine of \$5,000 to \$100,000. The relevant principal consideration is whether events not reported would

⁷⁸ *Guidelines* 106 (2011).

have established a pattern of potential misconduct.⁷⁹ Here, Vision failed to report three customer complaints and a customer's lawsuit to the Rule 3070 reporting system. The firm's failure to report this information deprived FINRA staff of an opportunity to make a timely assessment of the need for investigation and possible disciplinary action. The allegations in the complaints and lawsuit were similar and suggest a pattern of misconduct at the firm.

For late filing of amendments to Forms U4 and U5, the Guidelines recommend a fine of \$5,000 to \$50,000 for the firm. For failing to file, the Guidelines recommend consideration of a fine of \$5,000 to \$100,000. Among the principal considerations are the nature and significance of the information at issue.⁸⁰ In this case, Vision failed to amend the Forms U4 and U5 of two registered representatives at the firm to reflect two customer complaints and two arbitrations. In addition, with respect to one of the registered representatives, Vision failed to timely update his Form U4 to reflect an additional customer complaint. The nature of the information is significant because the failure to file the amendments within the prescribed times deprived FINRA and the public of information concerning a pattern of problems at the firm and with the registered representatives. Vision is fined \$10,000 for both its Rule 3070 failures and its failures to amend and timely amend Forms U4 and U5.

7. Vision Failed to Conduct Independent AML Testing

There are no specific Guidelines for AML violations; however the Guideline for deficient supervisory procedures under Rule 3010(b) is instructive and suggests a fine in the amount of \$1,000 to \$25,000.⁸¹ Vision's failure here is not egregious. There is no indication that the firm's failure to conduct independent AML testing allowed suspicious trading activity to occur, or that

⁷⁹ *Guidelines* 76 (2011).

⁸⁰ *Guidelines* 71-72 (2011).

⁸¹ *Guidelines* 106 (2011).

it would have turned up inadequacies in the AML procedures at Vision. Accordingly, Vision is fined \$5,000 for this violation.

8. Vision Failed to Administer and Maintain Records of a Continuing Education Program

The Guidelines suggest a fine of \$2,500 to \$20,000 for violation of the firm element of continuing education.⁸² Vision's violation of Rule 1120 was related to its failure in 2007 to document the content of its continuing education program, or the completion of such a program by the firm's registered persons. For this violation, the Hearing Panel fines Vision \$5,000.

VI. ORDER

Respondent Daniel James Gallagher is barred for violating: (1) Rules 8210 and 2010 by failing to answer questions during his OTRs; (2) Rules 1021(a) and 2110 by acting as an unregistered principal; and (3) Rule 2110 by circumventing heightened supervision that had been imposed on him by New York, New Jersey, Maryland, and FINRA. Because of the bars, sanctions are not imposed against Gallagher for violating: (1) Rules 2110 and 2010 by willfully failing to amend his Form U4 to disclose an SEC complaint and judgment against him and (2) Rules 3012, 3013, and 2110 by failing to adopt and certify Vision's compliance and supervisory processes.

Respondent Vision Securities Inc. is censured and fined a total of \$60,000 for violating: (1) Rules 1021(a) and 2110 by allowing Gallagher to act as an unregistered principal; (2) Rules 3010 and 2110 by failing to conduct heightened supervision of Gallagher; (3) Rules 3012, 3013, and 2110 by failing to adopt a supervisory control system and failing to annually certify Vision's compliance and supervisory processes; (4) Rules 3070 and 2110 by failing to accurately report and maintain Rule 3070 filings and failing to update Forms U4 and U5; (5) Rules 3011(c) and

⁸² *Guidelines* 41 (2011).

2110 by failing to conduct independent AML testing; and (6) Rules 1120(B)(2) and 2110 by failing to administer and document Vision's continuing education program.

If this decision becomes FINRA's final disciplinary action, Gallagher's bars and Vision's censure shall be effective immediately. The Respondents are also ordered to pay, jointly and severally, costs in the amount of \$4,137.00, which includes a \$750.00 administrative fee and the cost of the hearing transcript. Vision's fine and both Respondents' costs shall be payable on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action in this matter.⁸³

Rochelle S. Hall
Hearing Officer
For the Hearing Panel

Copies to:

Daniel J. Gallagher (*via electronic and first-class mail*)
Vision Securities, Inc. (*via electronic and first-class mail*)
Vaishali S. Shetty, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

⁸³ The Hearing Panel has considered and rejects without discussion all other arguments of the parties.