FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. STEVEN E. LARSON (CRD No. 2422755), Respondent.	Disciplinary Proceeding No. 2014039174202 Hearing Officer–DRS **EXTENDED HEARING PANEL DECISION** June 14, 2018

Respondent is (1) suspended for 18 months for submitting materially misleading Continuing Membership Applications to FINRA; (2) fined $37,000 and suspended for two years for failing to provide complete and timely responses to FINRA document and information requests; (3) suspended for 18 months for falsifying firm records by backdating supervisory documents and then submitting some of them to FINRA; and (4) ordered to pay costs. Respondent shall serve the suspensions concurrently.

Enforcement failed to prove by a preponderance of the evidence that Respondent made fraudulent misrepresentations and omissions to customers about their church bond holdings and in connection with church bond cross trades he arranged; therefore, those charges are dismissed.

One Hearing Panelist dissents from the Panel majority's finding that Respondent falsified firm records by backdating supervisory documents and then submitting some of them to FINRA. The Hearing Officer dissents from the Panel majority's finding that Respondent made no fraudulent misrepresentations or omissions.

Appearances

For the Complainant: Adam B. Walker, Esq., and J. Loyd Gattis, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: Steven E. Larson, *pro se*.

Decision

I. Introduction

The Department of Enforcement charged Steven E. Larson, a former brokerage firm owner, chief executive officer, and chief compliance officer, with engaging in various types of deceptive conduct toward his customers and FINRA. Specifically, Enforcement alleged that Larson (1) omitted material information from a regulatory filing seeking a change in the firm's ownership; (2) gave incomplete and untimely responses to FINRA's document and information requests about a former registered representative of Larson's firm; (3) falsified firm records by backdating supervisory documents and then submitting some of them to FINRA; and (4) made fraudulent misstatements and omissions to customers about their church bond holdings and in connection with church bond cross trades he arranged. Enforcement claims that this alleged wrongdoing was connected by a common thread: Larson engaged in deceptions when he considered it useful in achieving his goals, whether it was encouraging customers not to sell their church bonds, shielding supervisory lapses from regulatory oversight, or ensuring that FINRA would approve a change in ownership for his firm.

Larson denied any wrongdoing, and a nine-day hearing was held before a FINRA Extended Hearing Panel in April and August 2017.[1] After reviewing the evidence and the parties' post-hearing submissions, the Panel finds that Larson intentionally gave incomplete and untimely responses to FINRA's requests for documents and information and intentionally omitted material information from a regulatory filing. Further, a majority of the Panel finds that he falsified firm records by backdating supervisory documents and then submitted some of them to FINRA.[2] As explained below, we impose sanctions for those violations. However, a majority of the Panel finds that Enforcement failed to prove the fraud charges.[3] Therefore, those charges are dismissed.

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[1] Near the end of the hearing in April, Enforcement revealed that it had just become aware it had failed to produce to Larson all of the documents he was entitled to receive in discovery under FINRA rules. As a result, the Hearing Officer required Enforcement to review its document production, directed it to immediately produce to Larson any additional documents that he was entitled to receive, and adjourned the proceedings. As it turned out, Enforcement determined that it had failed to produce a substantial number of documents. Remedying this failure delayed the completion of the hearing by four months. After Enforcement produced the remaining documents, and Larson reviewed them, he moved for sanctions and to dismiss the proceeding based on Enforcement's non-compliance with its discovery obligations. The Hearing Officer denied the motions, and the hearing reconvened and was completed in August 2017. Due to the size of the record, Enforcement's scheduling conflicts, and Larson's health issues, post-hearing briefing was not completed until January 3, 2018.

[2] One Hearing Panelist dissents from the Panel majority's finding. *See* Hearing Panelist Dissent at Section V., p. 76.

[3] The Hearing Officer dissents from the Panel majority's finding. *See* Hearing Officer Dissent at Section VI., p. 77.

II. Findings of Fact and Conclusions of Law

A. Respondent Steven E. Larson

Larson entered the securities industry in 1994 and, over the next 17 years, was associated with several FINRA member firms. Then, from August 2011 until May 2016, he was associated with Oakbridge Financial Services, Inc. ("Oakbridge" or "the Firm"),[4] the firm at which the alleged wrongdoing occurred.

During his association with Oakbridge, Larson was registered as a general securities representative, a general securities principal, and an operations principal.[5] From December 2012 to May 2015, Larson was the Firm's chief executive officer and chief compliance officer.[6] He also served as chairman of the board[7] and was a 50 percent owner.[8] Since leaving Oakbridge, Larson has not been registered with another FINRA member firm.[9] But at the time of the hearing, Larson was an independent contractor for Private Label Money Management ("PLMM"), a registered investment advisory firm that he owns.[10]

B. Larson Omitted Material Information from Continuing Membership Applications

Shortly after Larson joined the Firm, he and two business colleagues, MS and KW, began negotiations to buy it. To accomplish this, Larson had to file documentation with FINRA, including a Continuing Membership Application ("CMA") that provided details regarding the change in ownership. Enforcement charged Larson with omitting material information from the CMAs about financial transactions relating to the Firm involving Larson and his two colleagues.

KW, who had a FINRA disciplinary history, loaned funds to Larson and MS and bought an option to buy stock in the Firm. A portion of her funds were used to provide working capital for the Firm. None of this, however, was disclosed in the CMAs, thereby rendering them misleading, according to Enforcement. Larson testified that this information was irrelevant and did not need to be disclosed. We focus below on the CMAs and the undisclosed financial transactions.

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[4] Stipulations ("Stip.") ¶¶ 1–4. Before April 23, 2013, Oakbridge was known as Forsyth Securities, Inc. Stip. ¶ 5. References in this decision to the Firm or Oakbridge before that date refer to Forsyth Securities.

[5] Stip. ¶ 6; Answer ("Ans.") ¶ 7.

[6] Stip. ¶ 7; Ans. ¶ 7. FINRA expelled Oakbridge from membership in August 2016. Stip. ¶ 29.

[7] Hearing Transcript ("Tr.") 80.

[8] Tr. 69.

[9] Tr. 68. The Complaint was filed on May 11, 2016, while Larson was still registered with Oakbridge, and the alleged wrongdoing occurred while he was associated with the Firm. Accordingly, FINRA has jurisdiction over Larson in this disciplinary proceeding. On May 31, 2016, Enforcement filed a First Amended Complaint.

[10] Tr. 66–67.

1. The First CMA—July 25, 2011

In 2011, Larson, MS, and KW began negotiations to buy Oakbridge.[11] On July 25, 2011, Oakbridge filed a CMA with FINRA to change the Firm's ownership to them ("First CMA").[12] The next month, while the application was pending, FINRA suspended KW from associating with any member firm for six months for failing to disclose private securities transactions and making unsuitable recommendations to customers.[13]

Then, in September 2011, KW made a series of payments to MS and Larson totaling $41,000.[14] Specifically, on September 12, 2011, KW paid $11,000 to PLMM, the investment advisory firm owned by Larson and MS, in exchange for a one-third interest in PLMM.[15] Three days later, on September 15, 2011, she invested $30,000 in the Firm,[16] apportioned as follows: (1) $10,000 represented the purchase of her "right to own 33 1/3 % of the stock [MS] owns" in the Firm, and "33 1/3% of stock owned by Steven Larson for $1.00 each"[17] (also described as "dedicated to [KW] 33 1/3 interest in Oakbridge")[18] and (2) $20,000 was "dedicated as a loan to [MS] and Steven Larson for their shares of 33 1/3 each in" the Firm (collectively, the "September payments").[19]

A portion of KW's funds was deposited into a Firm escrow account jointly owned by Larson and MS.[20] The account, which Larson described as a "holding pot for money,"[21] received funds from multiple sources.[22] Its purpose was to provide a source of capital to the Firm, if needed.[23]

2. The Second CMA—September 30, 2011

While the First CMA was pending, a FINRA staff member informed Larson that given KW's disciplinary history, FINRA would likely not approve a CMA that included her as an

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[11] Ans. ¶ 92; Stip. ¶ 31; Tr. 899.

[12] Ans. ¶ 93; Stip. ¶ 32; Tr. 1174.

[13] Tr. 902, 1174–75.

[14] Joint Exhibit ("JX-") 197, at 11; JX-200, at 3, 5.

[15] JX-197, at 11; JX-200, at 3.

[16] JX-197, at 11.

[17] JX-197, at 11; JX-200, at 3.

[18] JX-197, at 11.

[19] JX-197, at 11; JX-200, at 3.

[20] Tr. 933–35.

[21] Tr. 934.

[22] Tr. 946.

[23] Tr. 935.

owner.[24] As a result, KW withdrew from the proposed ownership.[25] And on September 30, 2011, before FINRA rendered a decision on the First CMA, Larson filed a second CMA seeking approval to change the Firm's ownership to Larson and MS ("Second CMA").[26] As of that date, Larson intended that KW would re-associate with the Firm after her suspension ended.[27] Also as of that date, there had been, in Larson's words, "an agreement between friends" that KW would become an owner of a one-third interest in Oakbridge.[28] Notwithstanding this agreement and payment of funds by KW, the Second CMA disclosed only Larson and MS as owners; it did not identify KW as having any ownership interest or anticipated interest in the Firm, or that her funds would be used to capitalize the Firm.[29] The Second CMA represented the source of the funds in the escrow account as MS's and Larson's investments and savings; it omitted any reference to funds provided by KW.[30]

3. The Third CMA—March 23, 2012

On November 18, 2011, Larson, MS, and KW entered into a written agreement memorializing their verbal agreement governing KW's September payments ("November 18, 2011 Agreement").[31] The agreement was drafted by KW,[32] who, according to Larson, wanted evidence of their earlier agreement in case anything happened to him and MS.[33] The written agreement included a confidentiality provision precluding the parties from sharing the agreement with anyone not a party to it.[34] The next month, Larson withdrew the First CMA.[35] Also, in December 2011, he and MS finalized the purchase of the Firm from its former owner, who had been barred from the securities industry.[36]

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[24] Stip. ¶ 33; Tr. 1175–76.

[25] Stip. ¶ 33; Ans. ¶ 96; Tr. 915–16.

[26] JX-192; Stip. ¶ 33; Tr. 904.

[27] Tr. 916–17.

[28] Tr. 916–17, 930–31.

[29] JX-192, at 5–6; Tr. 951–52, 1178–80.

[30] JX-192, at 5–6; Tr. 1180.

[31] JX-200, at 3; Tr. 925–27, 933.

[32] Tr. 930, 932–33.

[33] Tr. 933.

[34] JX-200, at 3.

[35] Stip. ¶ 35.

[36] Stip. ¶ 36.

Then, beginning in January or February 2012, funds from the escrow account—including those from KW—were deposited into the Firm's operating account to capitalize the Firm.[37] And on March 12, 2012, Larson withdrew the Second CMA.[38] Between the filing of the Second CMA and its withdrawal, Larson did not inform FINRA that he had an agreement with KW by which she could become an owner of the Firm,[39] or that her funds were used to capitalize the Firm's operations.[40]

On March 23, 2012, Larson filed a third CMA ("Third CMA"), again seeking approval for Larson and MS to become owners of the Firm.[41] The Third CMA did not mention KW as a proposed or anticipated owner.[42] It represented that the Firm had transferred the balance of its escrow account into the working capital of the Firm, and again identified the source of the funds as MS's and Larson's investments and savings.[43] The Third CMA did not disclose that KW had helped fund the escrow account.[44] Nor did Larson ever disclose to the FINRA examiner assigned to review the CMA that KW had provided funding for the escrow account.[45] In late 2012, FINRA approved the Third CMA.[46]

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[37] Tr. 947–48. When questioned about whether KW helped fund the escrow account, and whether her funds were used to capitalize the Firm, Larson was evasive. He quibbled at length over the distinction between, on the one hand, KW depositing funds directly into the escrow account, and, on the other hand, Larson and MS cashing her checks and then depositing the funds themselves. Tr. 943–45. "The money in the [Firm] Escrow Account, which came from multiple sources, yes, did go eventually to capitalize the firm," he finally conceded. Tr. 946. *But see* Tr. 966 (Larson testifying that "the source of [KW] giving [MS] money had nothing to do with the money that [MS] and I ended up putting out as capital"). Larson's evasiveness undercut his credibility.

[38] Stip. ¶ 37; JX-194, at 1. The Second CMA proposed that MS would be Oakbridge's president, which required a Series 24 license. Stip. ¶ 37. The primary reason the Second CMA was withdrawn was because MS had not completed the requirements for that license. Tr. 1215–16.

[39] Tr. 956.

[40] Tr. 956–57.

[41] Stip. ¶¶ 38, 41; JX-195. Under the Third CMA, MS would be an inactive owner until he passed his Series 24 examination. JX-195, at 1.

[42] JX-195; Tr. 965–66, 1196.

[43] JX-195, at 21.

[44] Tr. 1197.

[45] Tr. 1197.

[46] Tr. 79–80, 979.

Before then, Larson did not provide FINRA with a copy of the November 18, 2011 Agreement,[47] or disclose to FINRA the substance of that agreement.[48] Finally, on November 18, 2015—three years after FINRA approved the Third CMA, and four years after the November 18, 2011 Agreement was executed—KW exercised her right to acquire an ownership interest in the Firm.[49] Eventually, Larson provided the November 18, 2011 Agreement to FINRA. Although it is unclear exactly when that occurred, it was no earlier than at Larson's on-the-record interview ("OTR"), which was taken in connection with the investigation that led to this proceeding.[50]

4. The Importance of the Omitted Information about KW

Larson disputed that he was required to disclose the verbal or written agreements with KW, describing them as just an "agreement between friends,"[51] "a personal debt and a personal commitment between private parties"[52] that "represented no liability to the firm or ownership of the firm,"[53] and "[having] nothing to do with the CMA."[54] The agreements gave KW "a right, she owned a right, an option to own a certain part of [MS]'s shares and my shares."[55] But, he continued, the "CMA deals with what is, not what . . . might be."[56] He added, however, that the parties realized that "once she exercised the option she would have to do a new CMA."[57] In short, according to Larson, he did not disclose the agreements in the CMAs because they were irrelevant.[58] "I didn't disclose if I bought a new car and I had a contractual relationship with a

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[47] JX-200, at 3; Tr. 979–80.

[48] Tr. 980–81. On October 31, 2013, approximately a year after FINRA approved the CMA, KW, MS, and Larson executed a revised agreement that reflected, among other things, the purpose of KW's September 2011 payments. JX-197, at 11. Larson did not inform FINRA about this revised agreement until June 15, 2015, when he transmitted it along with other documents. Tr. 989–90. And, even then, he did not provide the November 18, 2011 Agreement. Tr. 989–90.

[49] JX-200, at 5.

[50] Larson claims that he informed FINRA of the agreement in connection with his investigative interview. Tr. 989–91. There was evidence, however, that Enforcement received the November agreement only later, when an examiner requested it from the Firm in February 2016 after learning about its existence from another regulator. Tr. 1244–46; *see* JX-200, at 1, 3. In fact, the FINRA examiner testified that he never saw the November 18, 2011 Agreement until he was preparing for this disciplinary proceeding. Tr. 1198.

[51] Tr. 917–18, 1913.

[52] Tr. 983.

[53] Tr. 979–80. *See also* Tr. 956 ("As the agreement did not represent any ownership interest, any control or involvement in the CMA and the purchase, it was . . . not necessary for me to [disclose it].").

[54] Tr. 1913.

[55] Tr. 983.

[56] Tr. 917.

[57] Tr. 1913.

[58] Tr. 981.

dealership or another bank," he testified. "[T]here's a lot of things that weren't disclosed because they weren't required."

Nor did Larson see the need to disclose KW's funding of the escrow account. He testified that the source of the funds was irrelevant.[59] In his view, it was no different than if he had funded the account from the sale of his car.[60] Once he received the funds from KW, he explained, they belonged to him.[61] He also never considered whether the fact that KW had been disciplined by FINRA triggered any disclosure obligation in connection with the CMAs.[62]

The FINRA examiner who reviewed the CMAs when they were filed disagreed with Larson's assessment of his disclosure obligations. The examiner testified that the disclosure of those facts would have affected his review of the CMAs in a number of ways:

1) Given KW's disciplinary history, her involvement with Oakbridge would have triggered a rebuttable presumption that the CMAs should be denied;[63]
2) Because FINRA requires firms to provide evidence of their financial wherewithal, including whether they will need a future capital infusion, he would have wanted to know that a source of funds to capitalize the Firm was from a non-disclosed person who had been disciplined by FINRA;[64]
3) He would have investigated whether KW's loan was secured by a pledge of Oakbridge's shares and whether she was effectively an owner of the Firm;[65]

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[59] Tr. 936.; *see also* Tr. 957 ("[I]t was not necessary to end up revealing [the] source of funds.").

[60] Tr. 938.

[61] Tr. 938.

[62] Tr. 1912.

[63] Tr. 1222–23; *see* Tr. 1783. Under NASD Rule 1014(a)(3), FINRA is to consider in the application process whether the applicant and its associated persons are capable of complying with the federal securities laws, the rules and regulations thereunder, and NASD Rules, including observing high standards of commercial honor and just and equitable principles of trade. One of the factors to consider is whether an applicant or associated person is the subject of a pending, adjudicated, or settled regulatory action or investigation by a self-regulatory organization. *See* NASD Rule 1014(a)(3)(C).

[64] Tr. 1179–80, 1224–25 (examiner testifying that one of the things FINRA looks at in the review process is whether the individuals associated with the entity have the financial wherewithal to provide future funding to the broker-dealer, if necessary).

[65] Tr. 1180–81, 1200–01, 1204, 1207–08, 1228–29, 1231, 1777–78. In fact, before actually becoming an owner, KW acted like one in a number of respects—all the more reason for FINRA to have been informed of her transactions with the Firm. For example, (1) she was a signer for Oakbridge's checkbook, tr. 993–94; (2) she signed a corporate resolution identifying herself as an "owner" of Oakbridge with the authority to obligate the Firm by obtaining loans and credit, and pledging the Firm's property as security, JX-197, at 8–9; (3) she guaranteed the payment of certain rents for Oakbridge's home office, tr. 999; and (4) MS and KW wrote to Larson repeatedly describing themselves as "owners" and "partners" of Oakbridge, noting that they had contributed dollars to the Firm even if "some regulator may define it differently," JX-197, at 3–4. Also, the president and others at the Firm regarded KW as an owner. "[W]e just kind of had a general understanding that KW was part of the [ownership] group" the president said. Tr. 606. Indeed, he even proposed solving a problem with one of Oakbridge's audits by having her sign a sublease—which only he or the Firm's owners could do. JX-197, at 20; *see* Tr. 992, 999.

4) He would have wanted to know why KW lent or gave funds to the Firm; Specifically, he would have wanted to know what she was receiving in return;[66]
5) Since it appeared to him that KW had become an owner of the broker-dealer, or shortly would become one, and ownership requires a Series 24 license, he would have wanted to know about the November 18, 2011 Agreement because at that time she was suspended in all capacities from FINRA and could not have properly been an owner;[67]
6) He would have wanted to vet a potential owner because FINRA vets potential owners;[68] and
7) He would have wanted to know if any current or proposed associated person had any events that needed to be reported to FINRA.[69]

We credit the examiner's testimony.[70] And based on that testimony and the other credible evidence, we find that Larson's failure to disclose the November 18, 2011 Agreement as well as KW's funding of the Firm's escrow account made the Second and Third CMAs incomplete or inaccurate so as to be misleading; at a minimum, the omissions could tend to mislead. Also, we reject Larson's self-serving explanations for non-disclosure. Larson understood that disclosing KW's relationship with the Firm would likely doom the CMAs, and it is plain that he decided to keep her name out of them, even if it meant filing inaccurate or misleading CMAs. His hairsplitting and after-the-fact rationalizations for non-disclosure were not persuasive and amount to an attempt to evade responsibility for his misconduct.

5. Conclusions of Law

FINRA Rule 1122 prohibits "fil[ing] with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead . . . ." Applications for "approval of a change in ownership or control" must include "the sources of [the new owners'] funding for the purchase and recapitalization of the member."[71] CMAs are subject to standards including whether "[t]he Applicant and its Associated Persons are capable of complying with" securities laws and rules—a question that depends partly on whether an "Associated Person is the subject of a . . . settled

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[66] Tr. 1179–81, 1237. For example, according to the examiner, if Larson's and MS's stock was pledged and the loan could not be repaid, then KW would own the broker-dealer and the examiner would have wanted to know that that could occur. Tr. 1231.

[67] Tr. 1200–02.

[68] Tr. 1235–36.

[69] Tr. 1229.

[70] The examiner was very experienced in conducting CMA reviews. He joined FINRA in 2001, tr. 1171; he has been a principal examiner in the Membership Application Department since 2011, tr. 1171; and he is responsible for reviewing CMAs. Tr. 1172. At the time of the hearing, he had been reviewing CMAs for eight years. Tr. 1796. His testimony was logical; comprehensive; and was not undermined by cross examination or other credible evidence.

[71] NASD Rule 1017(b)(2)(A).

regulatory action . . . by . . . a self-regulatory organization."[72] In that context, an "Associated Person" is anyone "who will be or is anticipated to be" a partner or employee of the applicant, or engaged in its securities business.[73] If an "Applicant or its Associated Persons are the subject of a [settled regulatory action by a self-regulatory organization], a presumption exists that the application should be denied."[74]

We conclude that under these provisions, Larson should have disclosed KW's relationship with the Firm, Larson, and MS in the Second and Third CMAs, namely, that KW had purchased the right to acquire an ownership interest in the Firm, loaned funds to the Firm, and provided capital as well. As we found above, Larson's failure to include this information rendered the Second and Third CMAs incomplete or inaccurate so as to be misleading; at a minimum, by virtue of these omissions, these two CMAs could tend to mislead. Accordingly, Larson violated FINRA Rule 1122, and, by virtue of that rule violation, he also violated FINRA Rule 2010.[75]

C. Larson Gave Incomplete and Untimely Responses to FINRA Document and Information Requests

FINRA requested documents and information from the Firm in connection with an investigation into its termination of an associated person, Robert Beyer. The termination stemmed from Beyer's outside business activity ("OBA") and the Firm's unsuccessful attempts to meet with Beyer about it. Larson, who responded on behalf of the Firm, failed to provide all requested documents when they were due. Only after FINRA issued four requests over the span of a year did Larson fully respond. Accordingly, Enforcement charged Larson with providing incomplete and untimely responses to FINRA's document and information requests. We begin with Beyer's disclosure of his OBA and his subsequent termination, and then turn to FINRA's requests and Larson's responses to them.

1. Beyer's OBA and Termination

On January 30, 2013, Beyer submitted a form to the Firm disclosing that he had an OBA. On the form, titled "Outside Business Activity Disclosure Form," Beyer: identified the name of his OBA as "Heroic Life Assurance" ("Heroic"); characterized the nature of the OBA as "Life Assurance"; and represented his position/duties as "Agent/owner."[76] Larson, whose Firm duties

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[72] NASD Rules 1014(a)(3), (a)(3)(C).

[73] NASD Rule 1011(b).

[74] NASD Rule 1014(b)(1).

[75] Violations of FINRA Rule 1122 also constitute violations of FINRA Rule 2010. *Dep't of Enforcement v. N. Woodward Fin. Corp.*, No. 2010021303301, 2014 FINRA Discip. LEXIS 32, at *17 (NAC July 21, 2014), *aff'd*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867 (May 8, 2015), *petition for review denied*, No. 15-3729, 2016 U.S. App. LEXIS 24259 (6th Cir. June 29, 2016); *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at *12 (Mar. 15, 2016), *aff'd*, 672 F. App'x 865 (10th Cir. 2016).

[76] JX-176.

included reviewing Oakbridge's associated persons' OBA forms,[77] reviewed and signed the form, dating it January 30, 2013.[78]

In the fall of 2013, events unfolded regarding Beyer and his OBA that led to his termination from the Firm. A person claiming to be an investor in Heroic telephoned Oakbridge and asked to speak with Beyer.[79] The Firm's president ("president") told Larson about the investor's call, which prompted Larson to contact Beyer and demand an explanation.[80] Shortly before September 3, 2013, Beyer responded with a "To whom it may concern" handwritten letter[81] that the president gave to Larson.[82] In that letter, Beyer admitted having "failed to fully disclose all details regarding" Heroic. He went on to say that: (1) he had "been raising capital for the purpose of launching & distributing a Life Assurance product"; (2) he had "not been successful so far in raising sufficient funding"; (3) he had "poor record keeping & no internal controls to handle associate member funds"; (4) he was now "fully disclosing this information as one of the investors has started a lawsuit against the company to retrieve his investment"; (5) and, that the company lacked the funds to repay the investors. He offered "to provide [a] more detailed, clearer, & more concise statement regarding" the company.[83] Attached to Beyer's letter was a list of Heroic investors, which consisted of four persons who had collectively invested a total of $328,000.[84]

Concerned that Beyer might be involved in fraudulent activity,[85] Larson scheduled a meeting with him for September 3, 2013 to discuss the situation.[86] In preparation for the meeting, Larson drafted a meeting agenda based, in part, on Beyer's handwritten letter.[87] The

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[77] Tr. 82–83.

[78] JX-176; Tr. 101. It appears to the Panel majority that Larson backdated his signature on this OBA disclosure form. After Beyer signed the form, dating it January 30, 2013 (the same date Larson also purportedly signed it), the president sent it by email to Larson on February 11, 2013, for his review, approval, and signature. JX-205. The version the president sent to Larson bore Beyer's signature, but not Larson's. Tr. 667. Larson's apparent backdating is not part of the backdating charges alleged against him. But the Panel majority considered this conduct for sanctions purposes.

[79] Tr. 610–12.

[80] Tr. 613–17.

[82] JX-174, at 2.

[83] Tr. 108, 1745. The evidence was conflicting and inconclusive as to who first received the letter and how it was received. Tr. 617–18, 789–90, 812, 1745.

[83] JX-174, at 2.

[84] JX-174, at 3.

[85] Tr. 136–37.

[86] Tr. 107–08. Larson testified that the meeting was prompted by the president, who had learned that Beyer was discussing an investment with some clients and using a brochure. The president began an investigation, which led to the scheduled meeting. Tr. 107.

[87] Tr. 135–36, 138; JX-172, at 3–4.

agenda focused on Beyer's connection with, and activities on behalf of, Heroic. Beyer failed to attend the scheduled September 3 meeting, however, prompting Oakbridge to terminate his association with the Firm.[88]

Afterward, Larson drafted a summary of the circumstances leading to Beyer's termination.[89] By virtue of Beyer's "notification of not complying with reporting of an outside business activity that may result in a lawsuit from one of his investor members," the summary concluded, Beyer had violated the Firm's OBA policies (even though the investor was not an Oakbridge customer).[90] The summary went on to recount the Firm's fruitless efforts to contact Beyer about attending the September 3 scheduled meeting and his lack of response, which, according to the summary, left the Firm with "no alternative but to terminate him."[91]

A few days later, around September 9, 2013, Larson signed a Uniform Termination Notice for Securities Industry Registration ("Form U5") that Oakbridge then filed with FINRA. "Beyer was terminated for cause," according to the Form U5, "when it was discovered that his outside business activity was not consistent with the activities disclosed which is prohibited by firm policies and procedures."[92] This filing triggered a FINRA investigation into the circumstances leading to Beyer's termination.[93] In connection with that investigation, FINRA issued four document and information requests to Oakbridge. We now turn to those requests.

2. The First Rule 8210 Request—September 24, 2013

On September 24, 2013, FINRA sent Oakbridge a request for information and documents ("First Request") under FINRA Rule 8210,[94] which authorizes FINRA to issue such requests. The First Request, which was addressed to the president, notified the Firm that FINRA was investigating the Form U5's allegation that Beyer participated in a prohibited OBA without prior approval. It sought, among other things, "any documentation the firm may have . . . relating to the Outside Business Activity referenced on Beyer's Form U-5."[95] The request set a response deadline of October 4, 2013, and emphasized the FINRA Rule 8210 obligation to respond to the "request fully, promptly, and without qualification." It also informed him that if he withheld "any responsive document or information," he was required to identify the document or

[88] Tr. 139–40.

[89] Tr. 139–41, 143–44; JX-172, at 13.

[90] JX-172, at 13.

[91] JX-172, at 13. The summary was then filed in Beyer's HR file at the Firm. Tr. 142, 626. Hard copies of the meeting agenda and Beyer's handwritten letter were filed there, as well. Tr. 626–27. Beyer's January 30, 2013 OBA disclosure was also filed electronically and in physical copy. Tr. 627–28.

[92] JX-162, at 1; Tr. 144–45. Larson drafted this explanation, according to the president. Tr. 629.

[93] Tr. 1119, 1561.

[94] JX-163.

[95] JX-163, at 1; Tr. 1120.

information withheld and the basis for withholding it. “Any failure on your part to satisfy these obligations,” the request warned, “could expose you to sanctions, including a permanent bar from the securities industry.”[96] The president testified that he forwarded the First Request to Larson,[97] who, under the Firm’s written supervisory procedures (“WSPs”), was responsible for representing the Firm in all matters relating to FINRA.[98]

On October 1, 2013, in a letter he drafted and signed as “CCO and CEO,”[99] Larson responded to the First Request. The letter attached three documents:[100] (1) Beyer’s September 30, 2013 resignation letter;[101] (2) Beyer’s January 13, 2012 Firm Compliance Checklist;[102] and (3) Beyer’s February 7, 2012 OBA Disclosure Form,[103] which, unlike his January 30, 2013 OBA Disclosure Form, described his “Position/Duties” with Heroic merely as “Sales.”

Asked to describe the Firm’s “understanding of the Outside Business Activity referenced on Mr. Beyer’s Form U-5,”[104] the letter responded: “The name of the business activity is Heroic Assurance. We originally understood that it was an outside life insurance company and product, but that is no longer certain. The rest is unknown to us.”[105] Larson also represented that the Firm had no documents relating to the OBA, “as the investigation [into Beyer’s OBA] was never started” because Beyer accepted the termination and the Firm closed its investigation.[106] Finally, addressing the request that the Firm provide any other documents or information it “feels may help [the] staff in its understanding of this matter,” the letter similarly informed FINRA that it “did not discover any documentation to provide to you” because it closed its investigation when Beyer accepted the termination.[107]

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96 JX-163, at 2.

97 Tr. 630. According to the president, although the First Request was addressed to him, he forwarded it to Larson because Larson was “the only one who could correspond with FINRA.” Tr. 630–31. And, the president added, from time to time, Larson sent out directives reminding Firm personnel about that procedure. Tr. 631, 1669–70, 1752.

98 Tr. 2000. Under the WSPs effective as of March 2012, the president was responsible for representing the Firm in all FINRA-related matters. But under the WSPs effective as of October 2013, this became the responsibility of the Firm’s CEO, i.e., Larson. Tr. 1995–96, 1998, 2000.

99 JX-164, at 1–2; Tr. 160.

100 JX-164, at 3–11; Tr. 1121.

101 JX-164, at 3.

102 JX-164, at 4–10.

103 JX-164, at 11.

104 JX-163, at 1.

105 JX-164, at 1. At the hearing, Larson testified that “our understanding” was that Beyer merely owned a Heroic agency consisting of “independent agents selling life insurance products.” Tr. 191–92. *See also* Tr. 194.

106 JX-164, at 1.

107 JX-164, at 1.

The letter did not state, and neither Larson nor anyone else at the Firm indicated to FINRA, that the Firm was withholding any documents from its production. This led the FINRA examiner assigned to the investigation to conclude that Larson had produced all of Oakbridge's responsive documents.[108] But Larson had not done so. The Firm failed to produce (1) Beyer's January 30, 2013 OBA Disclosure Form, which identified his position at Heroic as an "Agent/Owner"; (2) Beyer's handwritten letter about his Heroic activities; (3) Larson's agenda for the September 3, 2013 meeting with Beyer; and (4) Larson's summary addressing Beyer's termination following his failure to attend the September 3, 2013 meeting.

3. The Second Rule 8210 Request—November 1, 2013

In addition to sending the First Request to Oakbridge, the FINRA examiner also sent a FINRA Rule 8210 request to Beyer and spoke with him. Beyer told the examiner that he had sought investors for Heroic; that one investor sought the return of his investment; and that he (i.e., Beyer) faced possible litigation over that situation.[109] After speaking with Beyer, the examiner then spoke with Larson and, on November 1, 2013, sent a follow-up FINRA Rule 8210 request to the Firm, addressed to Larson ("Second Request").[110] Based on the examiner's conversation with Beyer, the Second Request directed Larson, the president, and MS to provide signed written statements setting forth their understanding of Beyer's OBA and whether they knew that Beyer had an ownership interest in Heroic and had sought capital investments in Heroic from others.[111] The Second Request repeated the request for any other documents or information that the Firm "feels may help [the] staff in its understanding of this matter" and reiterated the First Request's instructions and warnings.[112] The Second Request set a response deadline of November 15, 2013.

On November 4, 2013, after receiving the Second Request, but before responding to it, Larson sent an email and letter to the FINRA examiner.[113] Larson informed the examiner that after reviewing Beyer's Form U5, "it was discovered" that the form incorrectly stated the reason for Beyer's termination and that the Firm had corrected it to read: "Mr. Beyer was terminated for not responding and attending a required compliance meeting investigating activities alleged to be inconsistent with those reported to Oakbridge." The amended form added: "His termination is based on his lack of response as activity was not verified to be in breach of company policy and procedures."[114] Larson's letter went on to remind the examiner that "[y]ou have his outside

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[108] Tr. 1123–24, 1126.

[109] Tr. 1125.

[110] Tr. 1125–26; JX-165.

[111] JX-165, at 1–2.

[112] JX-165, at 2.

[113] JX-167.

[114] JX-166, at 1 (Form U5 Amendment). The president signed the U5 electronically on November 4, 2013. JX-166, at 3.

business activity form. He showed no ownership in Heroic." The "form" the examiner had, however, was Beyer's February 8, 2012 OBA Disclosure Form,[115] not the January 30, 2013 one that described Beyer's "position/duties" as "Agent/owner"; Larson had not produced the 2013 form to FINRA in response to the First Request.

On November 7, 2013, Larson responded to the Second Request[116] and attached the requested statement (signed by him, MS, and the president),[117] as well as Oakbridge's termination letter to Beyer.[118] The statement, which Larson drafted,[119] included an apology for corrections made to the Form U5 and reiterated that Beyer had been terminated for failing to cooperate with the Firm's investigation into "rumors of improper activities." As to their understanding of Beyer's activities, the statement represented that they thought "Beyer was just an agent for Heroic"; that they "did not know he was an owner"; and did not "know of his activities with Heroic," or, specifically, of his "solicitation activities." And, they asserted, because they did not know of Beyer's activities, they "took no action."[120] In the email accompanying his response, Larson expressed his "hope this will close the book so we both can move on to more productive duties."[121]

But FINRA was not quite ready to "close the book" and "move on." Three months later, on February 19, 2014, having completed its investigation into the Firm's termination of Beyer, FINRA issued a Letter of Caution to the Firm for not documenting its evaluation of Beyer's "disclosed" OBA in compliance with FINRA Rule 3270, and for failing "to establish, maintain, and enforce adequate Written Supervisory Procedures . . . ."[122] This was the second time in less than a year that FINRA cited the Firm for not complying with that Rule. Earlier, on March 19, 2013, FINRA cautioned the Firm for, among other things, failing to comply with FINRA Rule 3270.1 by not conducting proper reviews in connection with brokers' outside business activities.[123] Shortly afterward, FINRA closed its examination without a finding that Beyer had engaged in OBA violations.[124]

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[115] JX-164, at 11; Tr. 1129–30.

[116] JX-168(a).

[117] JX-168(a), at 2–3.

[118] JX-168(a), at 4; Tr. 1128–31.

[119] Tr. 190–91.

[120] JX-168(a), at 2.

[121] JX-168(a), at 1.

[122] JX-180.

[123] JX-178, at 1, 4.

[124] Tr. 1133–34. Later, however, FINRA barred Beyer for failing to respond to FINRA Rule 8210 requests. Tr. 1151.

4. The Third Rule 8210 Request—July 11, 2014

And there matters stood for several months. Then, the FINRA examiner received a call from another regulator asking about FINRA's review of Beyer's termination from Oakbridge.[125] During that call, it became clear to the examiner that the other regulator had documents about Beyer and his termination that FINRA had not received from the Firm during its investigation.[126] This unexpected turn of events triggered an "additional inquiry" (i.e., a new exam)[127] by FINRA into the Firm's supervision of Beyer's OBA.[128]

On July 11, 2014, FINRA sent another FINRA Rule 8210 request to the Firm ("Third Request"). The Third Request sought twelve categories of documents and information,[129] and focused on specific documents not previously produced. The request directed the Firm to produce documents "relating to the firm's attempt to meet with Mr. Beyer regarding his Heroic OBA, including, but not limited to . . . documentation of the meeting requests sent to Mr. Beyer, any internal summaries created prior to the meeting discussing its purpose, any agendas prepared for the meeting and any post-meeting summaries."[130] The Third Request also sought "[a]ll electronic communications" the Firm sent to, or received from, "Beyer from October 2011 through September 2013."[131] It included the same instructions regarding withholding documents and warnings for non-compliance contained in the earlier requests.[132] The Firm was directed to respond by July 25, 2014.[133]

On July 15, 2014, Larson produced 12 pages of documents relating to, among other things, a regulatory complaint and police report concerning a Heroic customer,[134] and a wire transfer request showing a transfer of $20,000 from an Oakbridge customer account to Heroic.[135] "Please review our response," Larson wrote in his email transmitting the documents. "If in any way it is not sufficient, please give me a call or send an email. I will promptly respond."[136] The

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[125] Tr. 1135.

[126] Tr. 1135–36.

[127] Tr. 1137.

[128] Tr. 1136–37; *see also* JX-169, at 1 (referencing FINRA's "additional inquiry").

[129] JX-169; Tr. 1136–38. The request was addressed to the president. JX-169, at 1. After receiving it, he sent it to Larson. Tr. 651.

[130] JX-169, at 1.

[131] JX-169, at 2 [footnote omitted].

[132] JX-169, at 2–3.

[133] JX-169, at 1.

[134] JX-170, at 1–14.

[135] JX-170, at 11. The First Amended Complaint alleges that this wire transfer request was not produced until July 29, 2014. First Amended Complaint ("Am. Compl.") ¶ 80. But, as stated above, it appears to have been produced as part of the July 15, 2014 production.

[136] JX-170, at 1.

email did not state that Oakbridge was withholding any documents. But, again, for the third time, Larson failed to produce responsive documents to FINRA, including Beyer's January 30, 2013 OBA Disclosure Form reflecting that he was an agent and owner of Heroic; Larson's agenda for the scheduled meeting with Beyer; and Larson's summary following Beyer's failure to attend the scheduled September 3, 2013 meeting.[137]

5. The Fourth Rule 8210 Request—July 25, 2014

After receiving Larson's response to the Third Request, the FINRA examiner concluded that it was deficient.[138] So, on July 25, 2014, he issued yet another FINRA Rule 8210 request ("Fourth Request").[139] The Fourth Request notified Larson that his prior response was deficient and that, as a result, the Firm may have violated FINRA Rule 8210.[140] It also identified the specific deficiencies in the response.[141] And it set a response deadline of August 8, 2014. The request warned the Firm that failing to deliver the requested information by the deadline could result in disciplinary action.[142]

On July 30, 2014, Larson responded by email,[143] attaching a July 29, 2014 letter from him to the examiner referencing 122 files with 43 MBs of information that Larson was also providing. That day (July 30) the president sent FINRA staff an email giving it shared access to a folder so it could review those files.[144] Significantly, Larson finally provided (via access to the folder): (1) the September 3, 2013 meeting agenda;[145] (2) the January 30, 2013 OBA Disclosure Form in which Beyer identified himself as an "Agent/owner" of Heroic;[146] (3) a Firm Compliance Checklist signed by Beyer and dated January 30, 2013;[147] and (4) Larson's summary

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[137] Tr. 1139–40.

[138] Tr. 1140.

[139] JX-171.

[140] JX-171, at 1.

[141] JX-171, at 1–2.

[142] JX-171, at 3.

[143] JX-173.

[144] JX-172; RX-118, at 2.

[145] JX-172, at 3–4.

[146] JX-172, at 5. As discussed above, Larson backdated the signed document, dating it January 30, 2013, even though the president did not send it to him for signature until February 11, 2013. JX-205, at 1–2. Larson testified that he did not know if the January 30, 2013 OBA Disclosure Form had been produced before July 29, 2014. Tr. 1976.

[147] JX-172, at 6–12.

relating to the September 3, 2013 meeting.[148] "This is everything we have on Mr. Beyer," Larson wrote in his July 29 letter.[149]

But that was not true. Larson failed to produce Beyer's handwritten letter[150] for another two weeks (August 14, 2014).[151] "We are currently replying to a second FBI request for information [about Beyer]," he stated in his transmittal email attaching the letter. "In reviewing everything that has been sent, we believe the note [i.e., the letter] . . . that was received from Beyer after his termination was not sent with the other information.[152] We are forwarding it to you at this time," he wrote, "as Mr. Beyer clearly states that he lied to Oakbridge about his involvement with Heroic."[153] Larson's email did not explain why he had not produced the letter earlier. Larson's explanation regarding the late production of the letter, as well as all the other untimely produced documents would come much later. And, as we discuss below, it amounted to blame-shifting.

6. Larson Tries to Shift Blame for the Untimely Production

Larson conceded that "we did not give FINRA documents that would have been required."[154] And he did accept some responsibility for the untimely production, though his acceptance was incomplete and equivocal. For example, regarding the production of only three documents in response to the First Request, Larson acknowledged that "[i]n hindsight I should have said 'wait a minute, there's got to be more than this.'" Explaining why he had not done so, Larson recalled that he just wanted "to get this over with" and "off my desk . . . I had a whole bunch of other fires I was trying to put out. In retrospect, yes . . . I should have recognized that, but at the time, I took what I was given and answered it and that was poor judgment on my part."[155]

Also, while perhaps he should have been more diligent when reviewing the documents that were provided to him by the president, Larson conceded, he "was probably a little more

[148] JX-172, at 13; Tr. 1144–46. Larson testified that he believed this post-meeting summary was sent to FINRA on September 4, 2013. Tr. 1972–73. He admitted however, that he did not identify any emails "enclosing the post-meeting summary that were sent any time before July 29, 2014." Tr. 1973–74. Accordingly, we do not credit Larson's testimony that he produced the post-meeting summary before July 29, 2014.

[149] JX-172, at 1. The president testified he was not involved in preparing the response and was not sure who provided the accompanying documents. Tr. 662–64. The president did recall that he did not determine which documents to send, tr. 664–65, explaining that the general practice was that Larson would "decide and determine which documents would be, should be included" in response to regulatory requests. Tr. 751.

[150] Tr. 1146–47 (referencing JX-174, at 2–3).

[151] JX-174, at 2–3; Tr. 1146–47.

[152] JX-174, at 1.

[153] JX-174, at 1.

[154] Tr. 1885.

[155] Tr. 2005.

concerned about adding those things that I thought were pertinent and needed to be added to them with the assumption that [the president] had included all the other things that were necessary."[156] To the extent Larson accepted some responsibility, he made clear that it was only because, as "CEO of a company, you have to take a certain responsibility for the actions of your people, and unfortunately," he added, "I believe that too deeply, and because of that, allowed myself to accept responsibilities that really didn't belong to me, because I was not the person who had failed to meet FINRA requirements and expectations."[157]

In particular, he blamed the president for the Firm's failure to produce all responsive documents.[158] He began by noting that the First Request was sent to the president.[159] Moreover, because Larson worked off site,[160] he claimed to have reasonably relied on the president to gather the responsive documents, which were located in the main office in Missouri and on the cloud. Specifically, Larson testified that he asked the president to produce what FINRA requested;[161] that he provided to FINRA all documents that the president provided to him,[162] along with written responses that Larson prepared based on the documents gathered by the president;[163] and that he did not review the documents that were produced to FINRA in response to the four requests,[164] instead relying on the president to produce the appropriate documents, including, specifically, the responsive Beyer documents.[165] And, as a result of his reliance on the

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[156] Tr. 215.

[157] Tr. 219.

[158] Tr. 1882.

[159] Tr. 148 (Larson testifying that it was the president's responsibility to respond to the First Request because it was sent to him and he was a Series 24); Tr. 214, 217, 220–21 (Larson testifying that it was the president's responsibility to respond fully to the Third Request because he was president of the Firm and a Series 24).

[160] Tr. 248 (Larson testifying that he did not have access to the Beyer documents).

[161] Tr. 1871. *See also* Tr. 1884 (Larson testifying that, in connection with the First Request, he instructed the president to look at all the documents concerning the termination, including the firing letter).

[162] Tr. 1882–83. "I ended up reviewing and passing on that information. And in the later dates, [the president] provided those documents directly to FINRA," Larson maintained. Tr. 1882–83. Larson testified that except for "a few rare occasions early on," the documents were not actually transmitted to Enforcement, but, rather, the president set up a file on the cloud and granted FINRA access to the documents that the president uploaded. Tr. 1871.

[163] Tr. 87–88, 262–65, 1415, 2002–03. *But see* Tr. 149 (Larson testifying that he signed the response to the First Request after he and the president drafted it).

[164] Tr. 264–65 (Larson testifying that he did not feel it incumbent on him to independently make sure the responsive documents were produced), 1873–74.

[165] Tr. 184, 262–63, 1398–99, 1874, 1885–86, 1976.

president, Larson denied knowing that, among other things, the agenda, post-meeting summary,[166] and Beyer's January 2013 OBA Disclosure Form[167] had not been produced.

Larson testified that with one exception, he "provided all information that was provided to me, or that I knew of."[168] The one exception, according to Larson, was Beyer's handwritten letter. Larson admits that the president gave him the letter and that he (i.e., Larson) decided not to produce it,[169] claiming that he was not convinced it was authentic.[170] Larson said he had doubts because no one at the Firm was sure that Beyer had written the letter, and no one recalled receiving the letter directly from him.[171] Also, Larson added, the letter "was so damning to Beyer" that he feared exposing the Firm to liability by producing the letter and having it turn out later that the document was a forgery.[172]

We do not find Larson's explanation for not producing the Beyer handwritten letter credible. First, the president testified that he never doubted the letter's authenticity.[173] Within a day of receiving the letter, the president explained, he spoke with Beyer, and they referenced the letter and Beyer confirmed to the president that he had written it.[174]And no one else in the group dealing with the Beyer situation—including Larson—expressed doubts about the letter's authenticity, the president recalled.[175] "It was clearly written by Mr. Beyer," the president

[166] Larson denied knowing if the agenda or post-meeting summary was attached to the response to the First Request, as he placed the responsibility for attaching things on the president. Tr. 182–83, 1975–76, 1980–81. This hearing testimony, however, conflicted with Larson's earlier OTR testimony regarding the meeting agenda. At his OTR, Larson testified that the reason the meeting agenda was not produced was because he "did not think it was part of the requested documents." Tr. 1984–85. This inconsistent testimony eroded Larson's credibility. In an attempt to explain the conflicting testimony, Larson testified that at his OTR, he was just "shooting from the hip" and did not "have the background documents." He went on to say that today, his view is that "if it was part of the requested documents, it should have been provided to you, but, . . . I provided what I thought was available on the cloud and in the records. And, yes, this one should have -- it wasn't and it should have been given to you, but I didn't know it was there." Tr. 2004.

[167] As to the response to the Second Request, Larson claimed he did not know if Beyer's January 2013 OBA Disclosure Form was produced, as he relied on the president. Tr. 202. And, he claimed, in any event, the document resided in St. Louis and he did not have access to it. Tr. 204–05. He took the same position regarding the post-meeting summary, tr. 206–07, and conceded that he did not tell the president to produce the meeting agenda. Tr. 205.

[168] Tr. 1398.

[169] Tr. 1874–75.

[170] Tr. 2006–07.

[171] Tr. 108–11, 2006.

[172] Tr. 2006–07.

[173] Tr. 621–22.

[174] Tr. 622–23.

[175] Tr. 622.

concluded.[176] Second, Larson did not share his purported authenticity doubts with FINRA, even though the first three Rule 8210 requests required an explanation if any documents were being withheld. Third, had Larson doubted the letter's provenance, he likely would have included the authenticity issue as a topic in his meeting agenda. Not only did he not do so, but the agenda appears to have been created, in part, by relying on what was in the handwritten letter.[177]

For his part, the president recoiled from Larson's attempt to blame him, testifying that while he assembled the documents for production to FINRA, Larson orchestrated the responses. The president testified that Larson requested the documents he needed to prepare his response to each Rule 8210 request, and the president forwarded them to Larson.[178]

More specifically, in connection with the response to the First Request, the president recalled that he may have "helped gather supporting documents," and that everything was sent to Larson so he could "propose a formal response."[179] The president actually transmitted the response and supporting documents to FINRA,[180] but claimed he did not review them.[181]

As to the response to the Second Request, according to the president, Larson was responsible for responding and "wanted to make sure that all the responses were answered adequately to his -- I guess to his requirement. So we -- at least from my end, everything that he asked for were [sic] sent over to him, not directly to FINRA." He added: "And it was only up until final documents that Mr. Larson had already approved ready to be disseminated to FINRA, that's when he asked me to upload documents or find a way to get documents to FINRA."[182]

And finally, concerning the response to the Third Request, the president testified that he helped prepare the response and retrieved most of the documents. But he maintained that Larson, rather than he, decided what documents to produce to FINRA in response.[183]

We generally found the president credible, but not without some reservations. It is clear that there was bad blood between him and Larson, in part relating to internecine strife among the Firm's management team members regarding control of the Firm.[184] And, the president said,

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[176] Tr. 622; *see also* Tr. 623.

[177] As we discuss in the Conclusions of Law section, if Larson doubted the letter's authenticity, he should have told FINRA about it and shared his doubts, rather than not producing it and saying nothing. Tellingly, Larson explained why he would not have contacted FINRA to ask if they wanted the document: "[T]he minute you ask that question," he stated, "they would request it be sent to them." Tr. 2008–09.

[178] Tr. 1760–61.

[179] Tr. 632.

[180] Tr. 635–36.

[181] Tr. 636–37.

[182] Tr. 1753.

[183] Tr. 651–52.

[184] *See, e.g.*, Tr. 1892–95.

Larson threatened to sue him relating to that conflict.[185] The president also accused Larson of joining forces with others to force him out of the Firm.[186] Further, the president testified that he feared that he might have legal exposure for having helped prepare the incomplete document responses and appeared to view Larson as responsible for it.[187] Moreover, he testified that Larson "lacks certain character."[188] Larson, too, expressed hostility toward the president, suggesting—but without offering any proof—that the president may have withheld documents from FINRA to try and get back at him.[189] Still, the president's testimony was forthright and not evasive (unlike Larson's testimony) and he was more willing than Larson to accept some responsibility for the untimely and misleading responses.[190] Finally, the president's testimony was not undercut by cross examination and was corroborated by other credible evidence.

In sum, although the president was involved in gathering the documents to be produced, and Larson relied on him and others in the Missouri office to perform that task, Larson directed the response effort and was responsible for what was produced. He knew, or chose to disregard, that responsive documents were omitted. As discussed below, in the Conclusions of Law, Larson's failure to provide full, timely production of requested documents violated FINRA Rules 8210 and 2010.

7. Conclusions of Law

FINRA Rule 8210(a)(1) provides that FINRA staff may "require a member, person associated with a member, or any other person subject to FINRA's jurisdiction to provide information orally, in writing, or electronically . . . with respect to any matter involved in the investigation, complaint, examination, or proceeding." Further, under Rule 8210(c), "[n]o member or person shall fail to provide information or testimony or to permit an inspection and copying of books, records, or accounts pursuant to this Rule."

Given FINRA's lack of subpoena power, courts, the Securities and Exchange Commission ("SEC"), and FINRA have emphasized the key role the rule plays in FINRA's discharge of its regulatory responsibilities, calling it "indispensable,"[191] "essential,"[192] and "at

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[185] Tr. 759.

[186] Tr. 760–61.

[187] Tr. 755.

[188] Tr. 760–61.

[189] Tr. 1895.

[190] The president acknowledged that before submitting the signed statement in which they denied knowing that Beyer was an owner of Heroic, Beyer had, in fact, disclosed his ownership. JX-168(a), at 2–3; Tr. 643–45. In the rush to file the statement with FINRA, he "must have overlooked it," the president explained. "So it was my fault, it was my own mistake for signing it." Tr. 645.

[191] *Dep't of Enforcement v. Merrimac Corp. Sec.*, No. 2011027666902, 2017 FINRA Discip. LEXIS 16, at *10–11 (NAC May 26, 2017), *appeal docketed*, No. 3–18045 (SEC June 26, 2017).

[192] *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *12 (Apr. 11, 2008).

the heart of the self-regulatory system for the securities industry."[193] Failure to respond to Rule 8210 requests "impedes [FINRA's] ability to detect misconduct that threatens investors and markets." Therefore, it is "critically important to the self-regulatory system that members and associated persons cooperate with [FINRA] investigations."[194] And, indeed, the rule imposes an "unequivocal" obligation to comply fully and promptly.[195]

But Larson did not comply fully and promptly with the three Rule 8210 requests seeking "any" and "all" documents relating to Beyer's OBA and the Firm's supervision of those activities. Responding to those requests, Larson withheld and omitted relevant information until late July and August 2014, providing the withheld information only after receiving FINRA's Fourth Request, which was issued after FINRA learned about the existence of the withheld documents from another regulator.

Larson attempted to shift responsibility to the president for failing to timely respond, but this is unavailing. Under the Firm's WSPs, Larson was obligated to respond; three requests were addressed to him; and, he drafted and signed the responses. Moreover, he was aware of the existence of the very documents that were not produced but did not ensure their production (and, as to the handwritten letter, explicitly decided not to produce it). While it was appropriate for Larson to obtain assistance in responding to the FINRA Rule 8210 requests, the ultimate responsibility for full and timely compliance rested with him. He cannot abdicate those responsibilities or shift them to others, including the president.[196] As a result of his conduct, Larson violated FINRA Rule 8210, and, by virtue of that violation, he also violated FINRA Rule 2010,[197] which requires FINRA members and associated persons to "observe high standards of commercial honor and just and equitable principles of trade."

D. Larson Falsified Firm Records by Backdating and Then Submitting Some of Them to FINRA

Enforcement charged Larson with backdating certain supervisory review documents related to an associated person that he then supplied and represented as genuine to the president of the Firm and to FINRA. According to Enforcement, Larson altered the documents to create

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[193] *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008).

[194] *Kent M. Houston*, Exchange Act Release No. 71589, 2014 SEC LEXIS 614, at *22 (Feb. 20, 2014) (footnotes omitted).

[195] *Dep't of Enforcement v. N. Woodward Fin. Corp.*, No. 2011028502101, 2016 FINRA Discip. LEXIS 35, at *10 (NAC July 19, 2016).

[196] *See, e.g.*, *Merrimac*, 2017 FINRA Discip. LEXIS 16, at *15–16 (and cases cited therein).

[197] *See CMG Institutional Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *30 n.36 (Jan. 30, 2009) (finding that a violation of FINRA Rule 8210 also constitutes a violation of FINRA Rule 2010). Providing false or misleading information to FINRA during an investigation constitutes an independent violation of FINRA Rule 2010, separate from a violation of Rule 8210. *Dep't of Enforcement v. Fretz*, No. 2010024889501, 2015 FINRA Discip. LEXIS 54, at *40–41 (NAC Dec. 17, 2015) (citing *Dep't of Enforcement v. Ortiz*, No. E0220030425-01, 2007 FINRA Discip. LEXIS 3, at *33 n.26 (NAC Oct 10, 2007)).

the false appearance that he had completed certain supervisory reviews more than a year earlier. The alleged wrongdoing came to light as a result of a FINRA examination of the Firm. Thus, we begin with that examination.

1. The 2014 FINRA Exam Uncovers Unsigned OBA Forms

In November 2014, FINRA began an examination of Oakbridge ("2014 Exam").[198] That examination included a review of Oakbridge's supervisory reviews of OBA disclosures by registered representatives and principals.[199] The president provided the requested documents to the FINRA examiners during the on-site exam.[200] While at the Firm, the examiner noted a series of documents that had not been signed by a supervisor or designated principal.[201] These unsigned forms included two OBA Disclosure Forms signed by MT, an associated person, and dated October 29, 2013.[202] The FINRA examiner reviewed paper and electronic copies of the disclosures; they were identical.[203] Although Larson was responsible for reviewing the disclosures,[204] the copies did not bear his signature.[205]

During the exam, the president and the Firm's back office/administrative assistant ("administrative assistant")[206] searched for signed copies but found none.[207] This prompted the examiner, while at the Firm, to notify Larson that the Firm had not found copies of the OBA Disclosure Forms bearing his signature.[208] According to the examiner, he and Larson met during the on-site exam, and Larson "was not able to articulate or provide evidence of any type of review that he had conducted of either one of" the OBAs disclosed on the forms.[209] Further, Larson never told the examiner that he had reviewed the OBA activities identified on the two forms or that he had ever signed them.[210] Notably, the examiner recalled, Larson displayed little, if any, knowledge about the two OBAs and admitted not having reviewed their websites.[211]

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[198] Stip. ¶ 26; Tr. 1251.

[199] Stip. ¶ 27.

[200] Tr. 668–69.

[201] Tr. 1254–55.

[202] JX-185, at 2–3; Tr. 820, 1250–51, 1255.

[203] Tr. 1253, 1265, 1270–71, 1284.

[204] Tr. 90, 820–21.

[205] Tr. 1255, 1265–66.

[206] Tr. 774–75.

[207] Tr. 677–79, 1263–64.

[208] Tr. 1255–56.

[209] Tr. 1258.

[210] Tr. 1259–62.

[211] Tr. 1257–60. *See also* Tr. 831.

Four months later, on March 18, 2015, FINRA issued an examination report notifying Oakbridge that, among other things, by failing to review MT's disclosed OBA it had "not complied with" FINRA Rule 3270.[212] This was the third time in two years that FINRA examinations determined that the Firm had violated Rule 3270.[213]

Larson reacted immediately. That day, he emailed several persons at the Firm, including MS and the president, expressing his displeasure. "[W]e are getting nicked because [MT]'s Outside business were not properly vetted," he began. "I was caught flatfooted as I was unaware of the breath [sic] of services [MT] provides to clients . . . ." And, recognizing that apparently "we need to come up with a better way to make sure that everything is checked out especially when it comes to Outside business," he asked for "ideas on how we can close this dripping facet [sic]????"[214] The email did not dispute FINRA's finding or assert that Larson had, in fact, reviewed and signed off on MT's OBA Disclosure Forms.

2. The Firm's President Sends Larson Forms Lacking His Signature, Which Larson Returns, Signed

Two days later, on March 20, 2015, the president forwarded an email to Larson that the president had previously sent him on October 29, 2013,[215] when MT had signed his OBA Disclosure Forms. Attached to the October 29, 2013 email were MT's so-called "onboarding documents"—documents typically collected from newly hired brokers—which lacked a principal's signature and had been forwarded to Larson for his review and approval.[216] Among those attached documents were the two MT OBA Disclosure Forms that lacked a principal's signature.[217] Up to this point (March 20, 2015), no evidence had surfaced that Larson had previously signed—or claimed to have signed—the two OBA forms on October 29, 2013, when they were originally sent to him.

Then, on March 23, 2015, Larson sent the president an email (copying MS) attaching four documents relating to MT.[218] Among the documents were copies of MT's two OBA Disclosure Forms bearing MT's signature dated October 29, 2013. But unlike earlier copies, these bore Larson's signature, as principal, also dated October 29, 2013.[219] In addition to the two OBA Disclosure Forms, Larson's March 23 transmittal included two other forms bearing Larson's signature dated October 29, 2013: MT's Registered Representative/

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[212] JX-184, at 8–9.

[213] *See* JX-178, at 4–5; JX-180, at 1.

[214] JX-183, at 1.

[215] JX-185, at 1.

[216] Tr. 672–73, 690–91.

[217] JX-185, at 2–3.

[218] JX-187.

[219] JX-187, at 11–12.

Independent Contractor Agreement with the Firm[220] and MT's Personal Brokerage Account Disclosure Form.[221] These two documents had been sent by the Firm's president to Larson on October 29, 2013, without a principal's signature,[222] and were re-sent to Larson on March 20, 2015.[223]

In Larson's March 23, 2015 transmittal email, he explained how he found the documents bearing his signature dated October 29, 2013. Larson claimed to have discovered the documents while searching for information relating to the Firm's annual compliance meetings.[224] "I found these in my paper file copies of what I brought to the compliance meeting that November," he wrote, referring to a compliance meeting the Firm had held in St. Louis in November 2013. "I now remember telling [MT] that he did not have to fill these out on 11/9/2013 which he attendedas [sic] [as] we just had fresh copies from 10.29.2013. These were given to [the administrative assistant], along with the others. Maybe," Larson surmised, "[the administrative assistant] saw that they were already of [sic] the cloud [i.e., the Firm's electronic filing system][225] and did not rescan the finished ones but you should have the hard copies."[226]

After the president received Larson's March 2015 email attachments, he continued searching the Firm's files—including the cloud[227]—but never found any onboarding forms for MT signed by Larson.[228] "Basically, I've turned just about every rock to look for these forms," the president responded by email on March 24, "and could not find a copy other than the signed documents included in your email yesterday."[229]

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[220] JX-187, at 2–10.

[221] JX-187, at 13.

[222] The president's October 29, 2013 email to Larson, RX-141, at 1, attached a number of documents signed by MT that day, including the Oakbridge Registered Representative/Independent Contractor Agreement, RX-141, at 2–10; OBA Disclosure Forms, RX-141, at 17–18, and the Personal Brokerage Account Disclosure Form. RX-141, at 43; Tr. 1633–34.

[223] JX-185, at 1.

[224] JX-187, at 1.

[225] The cloud was an electronic storage system that mirrored the Firm's physical files, which were located in the home office, and whose contents were scanned and filed onto the cloud. Tr. 582, 592, 781–82, 1252–53. The two types of files were intended to be identical and, according to the president, generally speaking, that was the case. Tr. 593.

[226] JX-187, at 1.

[227] The president claimed that Larson had access to "just about all files contained in the cloud," except for the accounting file. Tr. 589–90. The president also testified that Larson did access files stored on the cloud. Tr. 590.

[228] Tr. 694–96.

[229] JX-189, at 1. Tr. 705 (President testifying that he looked through all the Firm's files and never found any OBA forms signed by MT and approved by Larson). *See also* Tr. 791–93 (Administrative assistant testifying that in her search for the OBA and personal information about MT, she located many forms that were not signed by Larson, including the OBA Disclosure Forms, and that she searched for, but never found, OBA Disclosure forms for MT bearing Larson's signature).

3. The Firm's Administrative Assistant Sends Larson Forms Lacking His Signature, Which Larson Returns, Signed

A few hours after the president sent his March 24 email to Larson, the administrative assistant sent Larson several additional forms that, according to her transmittal email, needed to be reviewed and signed by him. "Now I realize," she wrote Larson, "you will be putting them in the file, and someone will check them and retrieve them and file them in the cloud."[230] Four of the forms related to MT and lacked a principal's signature, namely, a New Broker Checklist, bearing MT's signature dated October 29, 2013,[231] and three other forms purportedly signed by MT on November 14, 2014: (1) an Oakbridge Compliance Checklist;[232] (2) a Personal Brokerage Account Disclosure Form;[233] and (3) a Detailed OBA Information Form.[234]

On March 26, 2015, two days after receiving the administrative assistant's email with the attached forms, Larson responded by returning the forms to her. Each of the four forms now bore his signature. Three of them were dated: (1) the New Broker Checklist (bearing Larson's signature dated October 29, 2013);[235] (2) the Firm Compliance Checklist (bearing Larson's signature dated November 17, 2014);[236] and (3) the Personal Brokerage Account Disclosure Form (bearing Larson's signature dated November 15, 2014).[237] One form was undated: Detailed OBA Information Form.[238] "Here are the forms on [MT]," he wrote in his transmittal email, without any explanation about whether he had found these forms with his signature already on them or had signed the copies the administrative assistant had just sent to him.[239]

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[230] JX-188, at 1. The administrative assistant testified that she sent Larson the documents for signature on March 24 because the registered representatives had completed them but Larson had not signed them. Tr. 798–800.

[231] JX-188, at 2.

[232] JX-188, at 25–31.

[233] JX-188, at 32.

[234] JX-188, at 34–35.

[235] JX-190, at 3.

[236] JX-190, at 4–10.

[237] JX-190, at 2.

[238] JX-190, at 12–13.

[239] JX-190, at 1. No documents with Larson's original signature were introduced into the record at the hearing. Additionally, the administrative assistant never saw these documents with Larson's original signature—only copies. Tr. 803–04, 807, 816. Larson testified he did not know the location of the versions of the OBA forms bearing his original signature. Tr. 847. And the examiner said he never saw an original inked version of the OBA Disclosure Forms from October 2013. Tr. 1283.

4. Larson Responds to the 2014 Exam Report

At some point, the Firm responded to the 2014 Exam report.[240] The response included a letter from Larson to FINRA taking exception to a number of the report's findings.[241] The letter contained attachments, including MT's two OBA Disclosure Forms and Personal Brokerage Account Disclosure Form (each bearing Larson's signature dated October 29, 2013),[242] which Larson represented he had signed and approved,[243] as well as MT's Registered Representative/Independent Contractor Agreement (bearing Larson's signature dated October 30, 2013).[244]

In his letter to FINRA, Larson explained the "mix-up" of the Firm originally producing MT's OBA Disclosure Forms unsigned by Larson. Larson represented that he found MT's signed OBA Disclosure Forms in MT's file,[245] which, he clarified at the hearing, meant a file relating to MT that Larson kept in his home office in Minnesota.[246] He further explained that the unsigned forms originally produced to FINRA were the versions contained on the cloud. "If I had seen it before it was provided," he wrote, "I would have asked about the signed ones." He blamed the problem on (1) "incomplete" forms being loaded into MT's "HR" file; and (2) "when the form were [sic] received they were not scanned as it appeared they already were in the file,"[247] apparently implying that he brought the signed versions with him from Minnesota to St. Louis for the compliance meeting but they were not scanned into the system because it appeared that the forms were already in the Firm's file.

Continuing, Larson informed FINRA that he had received the unsigned forms as he was leaving for the Firm's annual compliance meeting in St. Louis and brought those forms with him. At the meeting, he explained, the brokers completed "fresh" OBA forms which were "then added to their files."[248] He did not require MT "to do another form" at the meeting, however, because

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240 JX-191.

241 JX-191, at 17–31. The president testified that although he submitted Larson's letter and attached the documents to the submission, he did not decide which documents to attach. Tr. 702–03. The president reiterated that with respect to the Rule 8210 responses, he pulled supporting documents at Larson's direction to respond to a request, and this was the procedure he followed in connection with the response to the exam report. Tr. 711–13.

242 JX-191, at 41–43. The metadata for the signed versions reflected that they were the same ones Larson had sent to the president on March 23, 2015. Tr. 1276–79.

243 Tr. 1268; JX-191, at 41–43.

244 JX-191, at 32–40.

245 JX-191, at 30. The president testified that he was not involved in drafting this section of the response. Tr. 701.

246 Tr. 834, 837–38.

247 JX-191, at 30.

248 JX-191, at 30. The compliance meeting was held in November, sometime after November 12. *See* RX-156, at 1 (Larson asking in a November 12, 2013 email that the administrative assistant print out a document for him to use at the meeting.).

he had "just added his 'fresh' OBA to be filed with the others."[249] At the end of the letter, he acknowledged that the Firm had not completed "the paperwork," but maintained that MT was not involved in any activity that was not approved or would have been harmful to Firm clients.[250] The letter does not explicitly state when he signed MT's forms. And he never told the administrative assistant that he had found these signed documents in his files.[251]

5. The Panel Majority Finds that Larson Backdated Documents and Produced Some of Them to FINRA

At the hearing, Larson testified at length about the above events. This is his version of events:

After he received MT's unsigned forms on October 29, 2013, he signed them in Minnesota on or around the date he received them, as that would have been his normal practice.[252] But he did not send them back to the Firm, as it was too inconvenient for him to do so from his small home office. Instead, because he would shortly be going to the Firm's annual compliance conference in St. Louis,[253] he decided to bring the forms with him. "[S]mall office, no staff, HP desktop printer, it does not handle large amounts of scans, papers, pages stick together. And it gets to be doing it two or three times or loading them one at a time," Larson elaborated. "It doesn't pay -- especially when within a week I'm heading down to St. Louis anyway."[254] So, Larson claimed, after signing the forms, he brought them to the compliance meeting.[255]

Larson described the general practice at the Firm's annual compliance meeting. The Firm would distribute the FINRA questionnaire and distribute compliance questionnaires, along with one or two other documents. Then, the registered representatives would re-sign those same documents, including OBA forms and outside investment activities,[256] and the administrative assistant would collect the forms that Larson signed and begin the storage process.[257] The system

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[249] *See also* Tr. 83 (Larson testifying that at the Firm's annual compliance meeting, the registered representatives submitted paperwork that was provided to him for his review and signature.).

[250] JX-191, at 30–31.

[251] Tr. 817.

[252] Tr. 850–51, 1899, 1901–02.

[253] Tr. 1899.

[254] Tr. 1899; *see also* Tr. 2015.

[255] Tr. 1901–02.

[256] Tr. 1715–16.

[257] Tr. 1716; *see also* Tr. 92–93.

was not perfect, according to Larson. He recalled having conversations with the president about forms not being stored in the files.[258]

At the compliance meeting in November 2013, between 15 and 18 brokers each signed four or five forms,[259] which, Larson recalls, he then reviewed and gave to the administrative assistant for filing.[260] He handled MT's forms differently, however. According to Larson, he told MT not to redo his recently signed forms because Larson had just brought them with him from home.[261] At the end of the compliance meeting, Larson claims he gathered up the materials from the meeting and went home to Minnesota.[262] It was there, much later on, that he found MT's forms bearing his (i.e., Larson's) signature.[263]

Larson also testified about the MT forms that he sent back to the Firm on March 26, 2015.[264] Any forms signed by MT in November 2014, Larson testified, were signed by MT at the annual compliance meeting held a year after he started, [265] i.e. the conference held on November 14, 2014.[266] As for Larson's signature on the forms, Larson said that he did not remember if he signed the forms before or after the administrative assistant sent them to him two days earlier.[267] But then he changed course, testifying that since it was his usual practice to sign such forms at the compliance conference, he probably signed them at the 2014 compliance conference, gave them to the administrative assistant at that time, she misplaced them, and he re-signed them after she sent them to him.[268]

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The Panel majority did not find Larson's version credible for a number of reasons. Regarding the two MT OBA Disclosure Forms purportedly signed by Larson on October 29, 2013, when Larson met with the FINRA examiner during the on-site exam and discussed the unsigned forms, he never claimed that he had signed them, and he appeared unfamiliar with the OBA disclosed on the OBA forms signed by MT. Then, after the Firm—in his words—"got nicked" again by FINRA for non-compliance with OBA supervision requirements, he still did not mention to FINRA or Firm personnel that he had signed the forms. Only after the president

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[258] Tr. 1717.

[259] Tr. 1900; *see also* Tr. 1716.

[260] Tr. 92–93, 1900.

[261] Tr. 1901.

[262] Tr. 1900–01.

[263] Tr. 1899–1990.

[264] JX-190.

[265] Tr. 876, 881.

[266] S*ee* JX-188, at 25 (reflecting date of annual conference).

[267] Tr. 884, 888.

[268] Tr. 885, 888–90.

re-sent MT's October 2013 on-boarding forms to Larson did Larson claim to have discovered copies with his signature on them. "[S]omehow it just magically just appeared. It was like, boop, there they are," the administrative assistant recalled.[269] Larson then attached MT's OBA forms to his response to the exam report, which essentially admitted that he backdated documents: "[MT]'s OBA deals with his working with seniors on a number of financial issues. These activities where [sic] approved by [the Firm]. The work was done just not memorialized with a manager's signature. Did we fail to complete the paperwork? Yes,"[270] he acknowledged.

Similarly, only after the administrative assistant sent Larson forms to review and sign[271] did he come forward with signed versions. Larson's assertion that the administrative assistant must have lost the forms and wanted him to re-sign them was unsupported and speculative. In her March 24, 2015 email attaching the unsigned forms, the administrative assistant asked Larson to sign—not "re-sign"—the documents. And Larson did not recall the administrative assistant ever telling him that he needed to re-sign the documents she sent to him on March 24, 2015.[272] More likely, Larson never previously signed these forms.

Also, there are reasons specific to the New Broker Checklist—one of the forms Larson returned to the administrative assistant on March 26, 2015[273]—that led the Panel majority to conclude he backdated that form. First and foremost, Larson admitted at his OTR that he had "effectively backdated" the New Broker Checklist.[274] Further, if Larson had found MT's OBA Disclosure Forms in his file in Minnesota, then Larson likely would have also found the New Broker Checklist in that file, because these forms were all dated October 29, 2013. Yet, he did not claim that he found the New Broker Checklist there. And he did not send it back to the Firm along with the signed MT OBA Disclosure Forms. Instead, he returned the New Broker Checklist only after the administrative assistant sent him an unsigned copy along with other unsigned forms that she requested him to review and sign.

Additional circumstances also led the majority to reject Larson's explanations. First, Larson had an obvious motive to try and mitigate the examination report's findings, which cited the Firm for OBA supervisory-related violations for a third time.

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[269] Tr. 793.

[270] JX-191, at 30–31.

[271] JX-188.

[272] Tr. 890. Even under Larson's version of events, he altered the documents when he re-signed them, as he wrote in the date on which he claims to have originally signed them, rather than the date on which he re-signed them.

[273] JX-190, at 3.

[274] JX-190, at 3; Tr. 891–96. Larson attempted to disavow this answer at the hearing, however, claiming it was based on his limited OTR preparation. Tr. 895. We reject this late recantation and credit the OTR testimony, as it was closer in time to the events at issue and consistent with other credible evidence.

Second, Larson had a practice of backdating documents. When asked at his OTR if he typically backdated forms, he responded: "For many years, yeah."[275] And the administrative assistant testified that she had seen Larson backdate documents "a couple of times" regarding OBA paperwork and personal information.[276] Further, Larson explained at the hearing that the date of his signature on a form could represent the date on which he conducted the review and not necessarily the date he signed the form.[277]

Third, Larson was not a generally credible witness. At times, his hearing testimony conflicted with other hearing testimony and his OTR testimony (portions of which were read at the hearing). Also, he was often evasive and otherwise not credible.[278] This undercut his overall credibility.

In sum, the Panel majority found it suspicious and too unlikely a coincidence that Larson would have found forms purportedly bearing his signature right after the Firm sent him unsigned ones for his signature. Instead, the majority finds that what likely happened was simply this: Larson did not sign the forms at issue on the dates next to his signature. Instead, after the Firm received an adverse exam report and the president and the administrative assistant sent him the unsigned MT forms, he signed and backdated them to try and lessen or counter the impact of the exam report, and to avoid further regulatory problems.

More specifically, based on the totality of the credible evidence, the majority finds that Larson backdated the following forms:

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[275] Tr. 896; *see also* Tr. 795.

[276] Tr. 794–96.

[277] Tr. 848–49. Discussing his views on the propriety of backdating the forms at issue, Larson testified that these were just internal documents and what was important was when a review was performed—not the dating—noting that he was approving the document as of the date it was signed. Tr. 895–97.

[278] For example, (1) Larson testified that he did not know where the president and administrative assistant obtained the hard copy of MT's completed OBA Disclosure Form. He also testified that although an incomplete copy of MT's OBA Disclosure Form was "also on the cloud," he claimed the Firm's staff knew "where to find the right one." Tr. 838–40 (referencing his OTR testimony). This testimony, however, conflicted with his assertion that he sent the completed MT OBA Disclosure Forms to the Firm after purportedly finding them in his files in Minnesota; (2) he testified that he did not know what particular words meant in the examination response, even though he drafted the response. Tr. 839–40, 872–74 (referencing his OTR testimony). Then, later, at the hearing, he claimed to recall the meaning of some of those words; (3) he testified that he could not recall if, during the 2014 Exam, the Firm produced MT's OBA forms bearing Larson's signature, tr. 847, even though he met with the examiner during the exam to discuss the Firm's inability to locate principal-signed forms and wrote a response to the exam report explaining why unsigned forms had been produced during the exam; and (4) he testified that he could not recall if he had backdated the documents sent to him by the administrative assistant on March 24, 2015. JX-188; Tr. 888. Then, he changed his testimony and said he had a strong recollection that he had signed the documents (especially the checklist) at the Firm's November 2014 compliance conference. Tr. 888–90.

- The two MT OBA Disclosure Forms (bearing Larson's signature dated October 29, 2013);[279]

- MT's Registered Representative/Independent Contractor Agreement with the Firm (bearing Larson's signature dated October 30, 2013);[280]

- MT's Personal Brokerage Account Disclosure form (bearing Larson's signature dated October 29, 2013);[281]

- New Broker Checklist (bearing Larson's signature dated October 29, 2013);[282]

- Firm Compliance Checklist (bearing Larson's signature dated November 17, 2014);[283] and

- MT's Personal Brokerage Account Disclosure Form (bearing Larson's signature dated November 15, 2014).[284]

Of these backdated documents, the majority finds that Larson submitted the following ones to FINRA as part of his response to the 2014 Exam Report:

- MT's two OBA Disclosure Forms;[285]

- MT's Registered Representative/Independent Contractor Agreement;[286] and

- MT's Personal Brokerage Account Disclosure Form.[287]

6. Conclusions of Law

Rule 4511 requires FINRA members to "make and preserve books and records as required" under FINRA's rules, the Securities Exchange Act of 1934 ("Exchange Act"), and

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[279] JX-187, at 11–12.

[280] JX-187, at 2–10.

[281] JX-187, at 13.

[282] JX-190, at 3. The First Amended Complaint did not charge that this document was backdated, but the majority considered it for sanctions purposes, as it evidenced a pattern of backdating by Larson.

[283] JX-190, at 10. The First Amended Complaint did not charge that this document was backdated, but the majority considered it for sanctions purposes, as it evidenced a pattern of backdating by Larson.

[284] JX-190, at 2. The First Amended Complaint did not charge that this document was backdated, but the majority considered it for sanctions purposes, as it evidenced a pattern of backdating by Larson.

[285] JX-191, at 41–42.

[286] JX-191, at 32–40.

[287] JX-191, at 43.

Exchange Act rules.[288] Causing a firm to maintain false books and records violates FINRA Rules 4511 and 2010. And, specifically, falsifying a firm's required books and records (e.g., by backdating a document) violates FINRA Rules 4511 and 2010.[289] FINRA Rule 140 provides that FINRA Rules apply to member firms and associated persons. Accordingly, as an associated person, Larson has an obligation to comply with Rule 4511. An associated person who violates Rule 4511 also violates Rule 2010's requirement that members observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business.[290] The Panel majority concludes that by backdating Firm documents, Larson caused the Firm's records to be inaccurate; therefore, he violated FINRA Rule 4511 and, by virtue of that violation, FINRA Rule 2010 as well.

Engaging in unethical conduct is inconsistent with just and equitable principles of trade under FINRA Rule 2010.[291] This Rule applies to the obligation of members and associated persons to provide accurate information to FINRA.[292] Hence, providing false documents to FINRA is conduct inconsistent with just and equitable principles of trade,[293] and violates FINRA Rule 2010.[294] To establish this violation, "[t]he most that is required is a finding of bad faith or unethical conduct."[295] The Panel majority concludes that Larson acted in bad faith and engaged

[288] FINRA Rule 4511(a). *See Mitchell T. Fillet*, Exchange Act Release No. 75054, 2015 SEC LEXIS 2142, at *48–49 (May 27, 2015) (stating that FINRA's recordkeeping rules include the requirement that the records be accurate, which applies "regardless of whether the information itself is mandated").

[289] *Fillet*, 2015 SEC LEXIS 2142, at *47–51 (discussing the predecessor to FINRA Rule 4511 and finding that providing a backdated document to FINRA violates FINRA Rules 4511 and 2010).

[290] *See, e.g., Fox & Co. Invs., Inc.*, 58 S.E.C. 873, 891–94 (2005); *Wedbush Sec., Inc*., Exchange Act Release No. 78568, 2016 SEC LEXIS 2794, at *35 n.36 (Aug. 12, 2016) (stating that a violation of FINRA's recordkeeping rules is also a violation of FINRA Rule 2010), *appeal docketed*, No. 16–73284 (9th Cir. Oct. 10, 2016).

[291] *Dep't of Enforcement v. Pierce*, No. 2007010902501, 2013 FINRA Discip. LEXIS 25, at *58 (NAC Oct. 1, 2013) (citing *Dep't of Enforcement v. Skiba*, No. E8A2004072203, 2010 FINRA Discip. LEXIS 6, at *13 (NAC Apr. 23, 2010)).

[292] *Keilen Dimone Wiley*, Exchange Act Release No. 76558, 2015 SEC LEXIS 4952, at *22–23 (Dec. 4, 2015), *petition for review denied*, 663 F. App'x 353 (5th Cir. 2016); *Dep't of Enforcement v. Masceri*, No. C8A040079, 2006 NASD Discip. LEXIS 29, at *35 (NAC Dec. 18, 2006).

[293] *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *17, *22–23 (Aug. 22, 2008); *Dep't of Enforcement v. Taylor*, No. C8A050027, 2007 NASD Discip. LEXIS 11, at *22–23 (NAC Feb. 27, 2007).

[294] *Wiley*, 2015 SEC LEXIS 4952, at *22–23; *Dep't of Enforcement v. Springsteen-Abbott*, No. 2011025675501, 2016 FINRA Discip. LEXIS 39, at *35 n.22 (NAC Aug. 23, 2016) (citing *Ortiz*, 2008 SEC LEXIS 2401, at *23–24), *appeal docketed*, No. 3-17560r (SEC Aug. 14, 2017).

[295] *Robert E. Kauffman*, 51 S.E.C. 838, 839 n.5 (1993).

in unethical conduct when he falsified Firm records and produced some of them to FINRA; therefore, he violated FINRA Rule 2010.[296]

E. Larson Did Not Make Fraudulent Misstatements and Omissions to His Customers in Connection with Their Church Bond Holdings or the Church Bond Cross Trades

Church bonds are debt securities that churches and church-affiliated entities issue to raise funds, typically for use in purchasing, developing, or renovating real estate, or to refinance existing real estate debt.[297] They are usually secured by the issuer's real property.[298] Church bonds are not sold or traded on any exchange, and the secondary market for them is negligible.[299]

Larson sold church bonds to a number of his customers. When he joined Oakbridge in 2011, he brought a number of those customers with him and they transferred their church bond holdings into newly opened Oakbridge brokerage accounts.[300] After becoming associated with Oakbridge, Larson did not purchase any new church bond issues for his customers.[301] Instead, his church bond-related activity while at Oakbridge consisted primarily of advising customers regarding church bonds already in their portfolios.[302] Also, he conducted occasional church bond cross trades.[303]

Enforcement charged Larson with making materially false or misleading statements or omissions when communicating with his customers regarding their church bond holdings. Specifically, Enforcement claims that he painted an overly positive view of the issuers' financial situations, omitted important negative information about their repayment histories, or both.[304] Enforcement also alleges that Larson committed fraud in connection with six sets of church bond cross trades.

Below, we discuss (1) the lack of pricing information for the church bonds, (2) Larson's communications with his customers, and (3) the church bond cross trades.

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[296] FINRA did not issue a Rule 8210 request for the documents that are the subject of this charge. Instead, the documents were "processed" through Request Manager, tr. 1286, which, according to FINRA's website, "facilitates the electronic exchange of information between firms and FINRA . . . [enabling firms] to securely submit, manage and track FINRA information requests." http://www.finra.org/industry/request-manager.

[297] Stip. ¶ 8.

[298] *Id.*

[299] *Id.*

[300] Ans. ¶ 10; Stip. ¶ 9. From 2013 through 2015, approximately two dozen of Larson's customers held one or more church bonds issued by eight religious institutions. Supplemental Stipulations ("Supp. Stip.") ¶ 1.

[301] Stip. ¶ 10.

[302] Ans. ¶ 11; Stip. ¶10.

[303] Ans. ¶ 11; Stip. ¶10.

[304] Am. Compl. ¶ 19.

1. Lack of Pricing Information for the Church Bonds

From 2011 to 2013, Oakbridge's clearing firm, RBC Capital Markets, LLC ("RBC"), issued monthly account statements to Larson's customers.[305] Before April 2013, these account statements included current market values for church bond holdings for Larson's customers.[306] As its source for pricing information, RBC relied on Strongtower Financial, Inc.[307] But in 2012, RBC lost its source for information about the church bonds' current values.[308] And as of April 1, 2013, RBC no longer included market values for any church bonds in the monthly account statements it issued to Oakbridge customers.[309] This resulted in the account statements showing a zero value for the bonds,[310] causing Larson's customers to worry and become impatient and agitated.[311] Larson was unable to find another pricing source.[312]

This put Larson in a quandary. He testified there was no market for the bonds[313] and that his customers had no choice but to hold them.[314] Indeed, holding them was in their best interests, according to Larson. He claimed at the hearing that if they would "[j]ust hang on, wait until this, this all plays out . . . , these bonds will be paying off some valuation."[315] On the other hand, because they were worried, he was called upon to engage in substantial "hand holding" to calm their concerns about what their church bonds were worth.[316] So, he decided to become more pro-active.

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[305] Ans. ¶ 14; Stip. ¶ 13.

[306] Ans. ¶ 14; Stip. ¶ 14.

[307] Tr. 1927.

[308] Stip. ¶ 15.

[309] Ans. ¶ 14; Stip. ¶ 15. Larson then wrote to RBC criticizing its decision to no longer provide pricing. "Not having them priced is a disservice to our mutual customers and a major difficulty for me and the other brokers holding these bonds." JX-122, at 1. When asked about this communication at the hearing, Larson denied that the lack of pricing presented a difficulty for him. "I'm trying to negotiate with a vendor to try to get him to end up pricing it. Am I going to expand the difficulties in order to try to entice him to reconsider his position, yes," adding: "[b]ut does that statement reflect what I was really feeling and how I was really having to deal with things, absolutely not." Tr. 301. In trying to find vendors to provide pricing information, Larson admitted that he exaggerated the difficulties. "[D]id I stretch my feelings a little, did I exaggerate a little talking to vendors[?]," he asked rhetorically. "[A]bsolutely. But these aren't regulators, these aren't customers. I'm not bound to provide them correct and accurate information." Tr. 310; s*ee also* Tr. 317.

[310] Tr. 304.

[311] Tr. 302–03.

[312] Tr. 320, 1849.

[313] Tr. 530–31, 544, 1855, 1929.

[314] Tr. 323–24, 545, 1043.

[315] Tr. 1393; *see also* Tr. 1041 (testifying that they "just had to be patient and find out what was going to happen").

[316] Tr. 303.

2. Larson's Communications Regarding His Customers' Church Bond Holdings

a. The Update

Starting in May 2013, Larson prepared and sent to his church bond customers a "security blanket,"[317]—something to "give comfort"[318]—while they held the bonds.[319] At a minimum, he testified, he wanted them to avoid being "so agitated by what was appearing on their statements."[320] Larson's "security blanket" consisted of a Church Bond Update ("Update")[321] and supplemental account statements[322] that contained issuer and pricing information.

The Update began by explaining why the monthly account statements from RBC would no longer include pricing on church bonds.[323] "The problem that RBC has been having," Larson wrote, "is that since church bonds are not traded, those firms that normally price the bonds are unable to provide reliable consistent pricing."[324] But, he assured his customers, "[w]orking with RBC, issuer, trustees and other church bond houses, we have come up with a pricing methodology based on the underpinning mortgage value of the property, the issuer's ability to make the interest payments and how timely those payments are being paid to bondholders." Larson's statement that he was "[w]orking with RBC, issuer, trustees and other church-bond houses" in connection with his pricing was false and misleading. In fact, they rebuffed his overtures and did not participate in the valuations he sent to customers after May 2013.[325] Instead, Larson priced the bonds without any help.[326]

Next, Larson informed the bond holders that he had enclosed a "supplemental recap" containing prices for church bonds and explained how to interpret those prices:

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[317] Tr. 323.

[318] Tr. 2057.

[319] Stip. ¶ 17.

[320] Tr. 1105.

[321] Larson testified that he sent the Update to his customers to "make them comfortable not to do something, but to do nothing. I suppose that is something," he noted, "but there was no action required from them." Tr. 1854.

[322] Tr. 352–53; *see also* Tr. 323–24.

[323] Ans. ¶ 17; Stip. ¶ 18.

[324] *Id.*

[325] Tr. 319–20, 387–89, 392, 1519, 1848–49; JX-148, at 2.

[326] Tr. 1110, 1970; JX-4 through JX-11.

When you review the enclosed supplemental recap you will find the price of the bond per [hundred].[327] A bond priced at [$120] is solid on payments and property is well worth outstanding principle [sic]. A bond priced at [$100] has solid property value is making payments but is sometime slow [sic]. A bond priced at [$80] to [$95] has solid property value but has gone into default but is still making payments although they are short of fully payments needed [sic]. Those bonds priced below that are issuers that are in bankruptcy or foreclosure. In these cases it may be that with current real estate markets some principle [sic] may be at risk by the time the property is foreclosed or resold.[328]

In the Update, Larson minimized the importance of the pricing:

[B]ond pricing . . . only matters if you are selling. Most good bond buyers buy an interest rate that they will hold until the bond matures and pays back principle [sic] (the original money invested) . . . . They are not looking to sell if [the] bond is worth more than they paid or why would they sell if it is lower? Just wait for maturity and you get the principle [sic] back. For these people the bond is worth what they put in as long as the issuer is in a position to pay.[329]

The Update announced in bold type: **"The thing to remember is, we are like a bank. We have first claim to the real estate,"** and **"Our bonds will always have value."**[330] As to one church bond issuer, New Life Anointed Ministries International, Inc., it was false and misleading for Larson to write that "[w]e have first claim to the real estate." In fact, customers holding the bonds for that issuer no longer had first claim to the real estate securing the bonds. By court order in 2011, bondholders' claims were subordinated to contractors' liens totaling $7.9 million, a ruling that "diminish[ed] the chance of any substantial recovery," according to the trustee for that particular issuer.[331]

Enforcement alleged, but did not prove, that the statement "[o]ur bonds will always have value" was also misleading. While it was generally true that the church bonds held by Larson's customers were secured by underlying real estate, Enforcement maintained that since the bonds' issuance, all or most of the collateral for the bonds had declined substantially in value from what was stated in the bond prospectuses, or had already been sold. Further, according to Enforcement, the real property values stated in the church bonds' prospectuses were generally

[327] In the Update and the supplemental account statements, Larson discussed pricing of customers' church bonds in reference to $1,000 par value or face value for each bond. At other times, however, he discussed pricing of the same bonds in terms of $100 par value. Ans. ¶ 29. For consistency purposes, this decision discusses the church bond values by reference to a par value of $100.

[328] Ans. ¶ 29; Stip. ¶ 19.

[329] JX-1, at 1.

[330] Ans. ¶ 30; Stip. ¶ 20.

[331] Supp. Stip. ¶ 9f.; JX-120, at 13–18.

based on estimates of what the collateral property would be worth after the completion of the construction for which the bonds were issued, and in multiple instances the construction was never completed. Enforcement's expert witness, Dr. Christopher Anderson—whose testimony and report regarding Larson's pricing we address at length later in this decision—also found the statement misleading. It "might mislead investors who might assume their investments in bonds were as secure as an FDIC-insured bank deposit or CD."[332] Also, "suggesting that a bond 'will always have value' appears simplistic and potentially misleading [because] even a defaulted bond on which investors eventually recover but a single penny on each dollar owed could be considered to 'have value.'"[333]

We are not persuaded by these arguments. The Update did not represent that the value of the real estate or the bonds would never decline. As Larson pointed out during his testimony, "[W]hat was said there is they will always have value. It didn't say full value, but will always have value because that property is always going to be worth something."[334] We do not believe that a reasonable church bond investor would interpret the statement otherwise. Rather, reasonable investors would understand that the Update's bank comparison meant only that, like a mortgage held by a bank, the bonds were secured by real estate, which would always have some value.

Larson then went on to tout the benefits he was providing his customers: "You now have consistent pricing of your bonds based on their real value," he told them, adding: "[w]e have spent the last couple of months preparing the research to provide this pricing service," the purpose of which "was to provide you with accurate reporting on all your holdings with us." The Update concluded with the following pronouncement in bold type: **"There is no market for the bonds. They are designed to be held until maturity, call or liquidation."**[335]

Finally, the Update provided a "Quick Recap by Issuer" in which Larson updated the bondholders about the church bond issuers. The "Recap" contained false or misleading statements and omissions about several of these issuers. These statements were overly positive given that the issuers had experienced extensive negative credit events.

As discussed in detail below, before and during the period that Larson sent these communications, a variety of negative events beset the issuers and their bonds. Depending on the particular issuer and bond, these events included payment defaults; restructuring of the bonds' indebtedness; diminished value of the real property securing the bonds; foreclosure by the bonds' trustee; sales of real property collateral at prices far below the originally appraised value of the properties; and debt restructurings that placed the bondholders less well off than under the original terms of the bonds.

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[332] JX-15, at 11.

[333] JX-15, at 12.

[334] Tr. 345.

[335] JX-1, at 3.

Since at least April 5, 2013, information and documents reflecting these events were contained on a website maintained by the bonds' trustee.[336] That website contained prospectuses, forbearance and restructuring agreements, bankruptcy filings, and other documents about the church bonds' terms; letters from the trustee to the bondholders about defaults, bankruptcies, and similar developments; and the trustee's "default status comments" about the issuers' payments, collateral, and financial condition.[337]

Before sending the Update, Larson visited the trustee's website and reviewed some of the documents in the sections relating to seven of the eight church bond issuers identified in the First Amended Complaint.[338] Larson did not remember, however, which documents he reviewed before sending out the Update.[339] He also visited the trustee's website sections relating to these seven issuers periodically after May 2013.[340]

Below, we set out, by issuer, the problematic statements, followed by the omitted information that made the statements false or misleading.

i. Bethel Baptist Institutional Church, Inc. ("Bethel Baptist")

Statement: The Update represented that Bethel Baptist was "[o]ne of the premier rock solid issuers."[341]

Omitted information: (1) Bethel Baptist had been in default since January 2010 because it failed to make sufficient required sinking fund payments to the bond trustee;[342] (2) a June 14, 2012 trustee letter to Larson, which Larson reviewed, included a March 22, 2012 letter the trustee had sent to the bondholders[343] informing them that Bethel Baptist had, among other things, failed to make payments in January 2011, July 2011, and January 2012; was in arrears by $2.9 million; and was making sinking fund payments of $65,000 each month even though it was required to pay over $167,000;[344] and (3) in January 2013, Bethel Baptist entered into a Forbearance and Restructuring Agreement with Reliance Trust Company ("RTC") for the bonds

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[336] Supp. Stip. ¶ 2.

[337] *See* Supp. Stip. ¶¶ 4, 6; Tr. 373–76, 1342–43.

[338] Supp. Stip. ¶¶ 3, 5.

[339] Supp. Stip. ¶ 5.

[340] Supp. Stip. ¶ 3.

[341] JX-1, at 2; Tr. 519–20.

[342] From January 2010 to January 2012, Bethel Baptist missed five consecutive required payments. JX-23; JX-24; JX-25; JX-28; Tr. 1344; *see* JX-14, at 1.

[343] JX-28.

[344] Supp. Stip. ¶ 9j.; JX-120, at 29; Tr. 520. On June 4, 2012, almost a year before issuing the Update, Larson asked the bonds' trustee for a "detailed update on [bonds] currently in foreclosure and bankruptcy." Supp. Stip. ¶ 9. And on June 14, 2012, he received from the trustee "the latest bondholder letter for each issue in default." Supp. Stip. ¶ 9; JX-120.

under which there was a significant reduction in the amount that Bethel Baptist would have to pay the bondholders.[345]

More specifically, in January 2013, when Bethel owed accrued interest of more than $2.7 million, the trustee agreed to reduce Bethel Baptist's monthly payments to $85,000 and the interest rate on its debt to 2.5 percent.[346] The trustee also agreed to forgive 10 percent of Bethel Baptist's accrued interest, or $274,000, for each year that it complied with its restructured obligations, reducing the amount that bondholders would receive.[347] Also, there was a plan for selling several of the parcels of real estate collateralizing the bonds.[348]

These facts about Bethel Baptist and its bonds were reflected on the trustee's website when Larson issued his Update.[349]

ii. Windermere Baptist Conference Center ("Windermere")

Statement: The Update informed bondholders that "[t]he conference center had its best year in the last three. It is still working to open a waste treatment facility to serve the conference center and surrounding community." The Update went on to say that "[t]hey have recently made a large catch-up payment out to bondholders and are consistently sending in payments to the trustee for future payments."[350]

Omitted Information: (1) Windermere had been in default on its sinking fund bond payments since early 2011. And, by the time the Update was issued in May 2013, Windermere had missed sinking fund payments in May 2011[351] and November 2011;[352] (2) the bond trustee had accelerated the bonds, thereby making the full amount of principal and accrued interest immediately due and payable;[353] (3) Windermere and the trustee were, at the time of the Update, negotiating a forbearance agreement and anticipating a future restructuring of Windermere's payment obligations;[354] and (4) the June 14, 2012 trustee letter to Larson, which Larson

[345] JX-32.

[346] Tr. 528–29; JX-32, at 2, 5, 21; JX-17, at 69; JX-18, at 40; JX-14, at 1.

[347] Tr. 555–56; JX-32, at 21.

[348] JX-32, at 6.

[349] Supp. Stip. ¶ 4a. According to Dr. Anderson, because "Bethel Baptist had fallen into default three years prior, and had been making sinking fund payments totaling no more than 40% of what had been specified in the original terms. . . . [n]one of the facts on the ground in 2013 supported the Respondent's rosey [sic] assessment of Bethel Baptist." JX-15, at 19; Tr. 438. As noted above, we will address Dr. Anderson's testimony and report later in this decision.

[350] JX-1, at 2.

[351] JX-14, at 2; JX-105, at 1.

[352] JX-14, at 2; JX-106.

[353] JX-107.

[354] JX-107.

reviewed, included a December 15, 2011 letter to bondholders[355] stating that Windermere had failed to make required sinking payments and was in arrears by $650,000.[356]

These facts were included on the trustee's website, and Larson reviewed the section relating to Windermere before issuing the Update, although he did not recall which documents he reviewed.[357]

iii. Orlando Central Community, Inc. ("Orlando") and Lifepointe Village Southaven LLC ("Lifepointe")

Statements: Larson jointly discussed Orlando and Lifepointe in the Update. "These are both long term/assisted living facilities in great areas," the Update stated, adding: "[b]oth have put together rehabilitation programs to bring them back current with bondholders," and "[b]oth facilities are expected to be sold over the next three years and bondholders paid off."[358]

(a) Orlando

Omitted Information: (1) Orlando went into default in August 1, 2010, at which time the principal balance of the indebtedness was approximately $10.3 million and accrued interest was approximately $366,000;[359] (2) the trustee foreclosed on the real estate securing the bonds and acquired the property at the foreclosure sale held in July 2011;[360] (3) on April 6, 2012, the trustee notified the bondholders that it had agreed to sell the partially constructed property for less than the amount outstanding on the bonds;[361] and (4) the June 14, 2012 trustee letter to Larson, which Larson reviewed, included a letter the trustee had sent to the bondholders and a court filing addressing a contract to sell Orlando's collateral "for a price[] less than the full

[355] JX-106.

[356] Supp. Stip. ¶ 9a.; JX-120, at 4.

[357] Supp. Stip. ¶¶ 3, 5; *see* Tr. 522, 1029–30.

[358] JX-1, at 3.

[359] JX-84; JX-14, at 3. By August 2010, Orlando had defaulted on several obligations, including paying costs of construction and removing a contractor's lien on the collateral, and the trustee suspended distributions to bondholders. JX-84, at 1; *see also* JX-15, at 34 (Dr. Anderson noting that Orlando had "essentially abandoned the incompletely constructed building to the bondholders whose trustee acquired the property in foreclosure in July 2011").

[360] JX-86; JX-14, at 3. The First Amended Complaint alleged, but the evidence did not show, that the foreclosure of the real estate securing the bonds was completed in September 2011, a fact that Enforcement alleges was omitted from the Update. Am. Compl. ¶ 24.

[361] *See* JX-86 (August 30, 2012 trustee letter to the bondholders referencing an April 6, 2012 trustee letter to the bondholders informing them of a contract to sell the property for a sales price of $5.2 million. This sales price, according to a court filing by the trustee, and sent to the bondholders, would "yield less than the full amount due under the Bonds."); JX-120, at 5, 8.

amount due" and a court order based on the trustee's request for authority to sell that collateral.[362]

At the time Larson issued the Update, all of this information was available on the trustee's website.[363]

(b) Lifepointe

Omitted Information: (1) Lifepointe had been in default since September 19, 2010, by failing to make required sinking fund payments to the trustee;[364] (2) Lifepointe filed for bankruptcy protection on May 18, 2012;[365] (3) in the June 14, 2012 trustee letter to Larson, the trustee included a letter it had sent to the bondholders informing them of the bankruptcy filing;[366] (4) although Lifepointe completed construction of the assisted-living facility for which the bond was issued, it lacked money to purchase furnishings and equipment necessary to commence operations;[367] and (5) in January 2013, a federal bankruptcy court confirmed a reorganization plan[368] that reduced the amount of the bondholders' secured claims to approximately 85 percent of the amount owed in principal and interest.[369]

This information was available on the trustee's website in May 2013.[370]

iv. United Pentecostal Church of Modesto, Inc. ("United Pentecostal")

Statement: "They are exceeding payment structure on plan to bring current these bonds."[371]

Omitted Information: (1) The bonds had gone into default in May 2011 because the issuer had failed to make required sinking fund payments to the trustee;[372] (2) the "payment structure" referenced in the Update was set forth in an October 2011 forbearance agreement, under which the trustee agreed not to institute foreclosure for approximately one year in exchange for the issuer agreeing to make monthly payments that were significantly less than the

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362 Supp. Stip. ¶ 9b.; JX-120, at 5–6, 8–10, 23–27.

363 Supp. Stip. ¶ 4f.

364 JX-63; JX-64; *see also* JX-14, at 4.

365 JX-65; JX-66.

366 JX-120, at 11; JX-66.

367 JX-71, at 8.

368 JX-68.

369 JX-67, at 8.

370 Supp. Stip. ¶ 4d.

371 JX-1, at 3.

372 JX-93.

payments that would otherwise have been due under the bonds,[373] and the forbearance agreement was extended through December 2014,[374] after which, the parties had agreed, they would negotiate in good faith toward a restructuring of the bonds;[375] and (3) the June 14, 2012 trustee letter to Larson included a letter from the trustee to the bondholders informing them of United Pentecostal's failure to make required sinking fund payments.[376]

All of this information was available on the trustee's website when Larson issued the Update.[377]

v. Church Fellowship Worship Ministries, Inc. ("Church Fellowship")

Statement: Church Fellowship was "[m]aking payments on agreed plan to rehabilitate the bond," according to the Update. Further, it was "[a]ctively looking to sell or refinance the property," noting that "[t]his becomes more likely as real estate and refinance market becomes more fluid."[378]

Omitted Information: (1) The bonds had been in default since 2010 because the issuer had failed to make required sinking fund payments to the trustee;[379] (2) the trustee and issuer had entered into a forbearance agreement in January 2011,[380] which they extended in April 2013;[381] (3) the June 14, 2012 trustee letter sent to Larson included a letter the trustee had sent to the bondholders in July 2010 informing them that the issuer had defaulted because it had failed to make its required sinking fund payments;[382] and (4) in February 2013, the trustee reported that the pastor's health was impaired and the church's financial condition was not recovering.[383]

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[373] JX-94, at 3. Under the original terms of the bonds, the issuer was to make monthly sinking fund payments of approximately $25,000 beginning in 2012. JX-90, at 32. The forbearance agreement reduced those monthly payment requirements to $11,000 and provided that they would escalate to $15,000 through October 2012. JX-94, at 2–3.

[374] JX-97, at 2. Under the terms of this Third Amendment to Forbearance Agreement, monthly sinking fund payments were to increase from $15,000 for November 2012 to $17,500 per month from May 2013 through April 2014 and to $26,000 per month from May 2014 through December 2014.

[375] JX-97, at 2.

[376] JX-120, at 12; JX-93.

[377] *See* Supp. Stip. ¶ 4g.

[378] JX-1, at 3.

[379] JX-41.

[380] JX-42, at 1.

[381] JX-46.

[382] Supp. Stip.¶ 9i.; JX-120, at 28; JX-41.

[383] JX-49, at 1. The First Amended Complaint also alleged that the statements were false or misleading because Larson failed to disclose "that the most recent appraisal of the real property securing the bonds valued it at $1.053 million, which was less than half of the outstanding amount owed to the bondholders on the bonds." Am. Compl. ¶ 27. While this alleged fact was not disclosed, the evidence did not establish the alleged fact.

By May 2013, all of this information was available on the website.[384]

b. The Supplemental Account Statements

Along with the Update in May 2013, and periodically afterward until February 2014, Larson created and mailed supplemental account statements to certain of his church bond customers.[385] The supplemental account statements included pricing for eight issuers' church bonds: Bethel Baptist, Church Fellowship, Iglesia Cristiana, Lifepointe, Metropolitan Baptist, Orlando, United Pentecostal, and Windermere.[386]

i. Creation of Supplemental Account Statements

Larson created supplemental account statements with no assistance from anyone.[387] He testified that he based his pricing "on property value not on payment . . . [T]he primary determination of putting a price on something was based on what the property value was and . . . the anticipated long range return to my client."[388] He also considered the appraisals in the prospectuses and talked to local realtors about property values.[389] But mostly, Larson said, he relied on the information contained on the bond trustee's website,[390] including information about the ability of the issuers to pay interest, and information about the timeliness of payments.[391]

Larson did not appear to employ a precise methodology. Instead:

> It was done based on my experience of . . . church bond pricing -- pricing on this private placement style of church bonds. My experience with Strongtower pricing from 2004 to 2013. . . . It didn't matter what the economy was doing. It didn't matter whether other bonds were rising or falling, church bonds were provided at par. . . . In 2011, already a number of the bonds had notified of default or had

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[384] Supp. Stip. ¶¶ 4b., 5.

[385] Stip. ¶ 21; Tr. 322, 351; *see* Supp. Stip. ¶ 3; JX-4 through JX-11; *see, e.g.*, JX-134. Larson and Enforcement referred to these statements at various times by different names: "Pricing Statements," "Pricing Reports," "Supplemental Recaps," and "Account Updates." We generally refer to them in this decision as "supplemental account statements" for consistency purposes and because that is how the parties described them in their stipulations.

[386] *See* JX-3(a); *see also* Supp. Stip. ¶ 8 (stipulating that JX-3(a) accurately summarizes Larson's prices on the account statements he created and sent to his customers).

[387] Tr. 364, 1970.

[388] Tr. 382.

[389] Tr. 326, 518.

[390] Tr. 326–29, 348–49.

[391] Tr. 329–30.

> missed payment, which is what default was about. And Strongtower still priced them at par.[392]

Further, in explaining his methodology to one customer, Larson wrote: "The current pricing is based on the value of land that the first mortgage is based on, financial strength of congregation or project, and how timely are payments."[393]

As part of his pricing process, Larson created a spreadsheet.[394] "That spreadsheet," he said, "was based on information I believed to be correct at the time."[395] He then used the pricing from the spreadsheet and applied it to a particular customer's account.[396] Once he created the first spreadsheet, he just corrected the pricing "if there was an upward or a downward movement in it."[397] He personally entered the data included on the supplemental account statements.[398]

Enforcement contends that the stated values for issuers' church bonds listed on various supplemental account statements were false and misleading for three reasons. First, they routinely failed to reflect the bonds' actual market values in light of known and publicly available information regarding the creditworthiness of the bonds' issuers. Simply stated, Larson overvalued the bonds, according to Enforcement. Second, the actual pricing did not correspond to the pricing explanation contained in the Update, set forth above. Third, at times, Larson gave prices for bonds that were inconsistent from one customer to the next.

The supplemental account statements followed a format that included a header, a pie chart, a line graph, and a list of church bonds.[399] The header included the phrase "Oakbridge Update on Church Bonds from RBC [month & year] Statement," and also contained the customer's name, account number, and, in larger print than any other text in the document, the "Total Value of Portfolio."[400] For each church bond listed, the supplemental account statements included the following columns: "Current Price," "Change in Price," "% Change in Price," "Quantity," "Total," "Sector" [i.e., issuer name], and "Open."[401] The supplemental account

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[392] Tr. 1856–57.

[393] Tr. 359; JX-132, at 1.

[394] Tr. 1040.

[395] Tr. 1040.

[396] Tr. 1040–41.

[397] Tr. 1041.

[398] Tr. 351.

[399] Ans. ¶ 35; Stip. ¶ 22; Tr. 353–54.

[400] Ans. ¶ 35; Stip. ¶ 22; *see, e.g.*, JX-4, at 1.

[401] Ans. ¶ 36; Stip. ¶ 22; *see, e.g.*, JX-4, at 1. Although the supplemental account statements used the term "price," Larson testified that these were more in the nature of "valuations," as opposed to "market pricing," because there was no market for the bonds. Tr. 330–31.

statements contained no disclaimers or explanations about the statements' contents, the source of information, or its reliability.[402]

ii. Larson Made False and Misleading Statements to Customers about the Value of the Church Bonds

In evaluating whether Larson's pricing was false and misleading, we relied, in large part, on the analyses and opinions presented by Dr. Christopher Anderson, Enforcement's expert witness. Dr. Anderson received his Ph.D. in financial economics from the University of Pittsburgh. He is a Chartered Financial Analyst, and, for over 16 years, has been a tenured full professor and teaching fellow at the University of Kansas School of Business. He has taught at other major universities and was a financial analyst for a consulting firm. Dr. Anderson reviewed the church bonds at issue in this case, assessed the valuations Larson sent to clients from April 2013 through January 2014 and, "when possible," provided his "own valuation estimates."[403]

We find Dr. Anderson's testimony and report generally credible. Dr. Anderson is well credentialed, as shown above; the analyses and opinions contained in his report appear sound, comprehensive, and well supported. And neither his report nor testimony was undercut by cross examination or other credible evidence.[404]

As a threshold matter, Dr. Anderson testified that there is a well-established standard industry method for valuing bonds,[405] including church bonds.[406] The approach varies depending on certain events. If an issuer is "basically making timely payments as scheduled under the original agreement, most bonds would be valued at the present value of all the future payments and interest and principal that the investor expects to receive. The discount rate that would be used to value [the bonds]," Dr. Anderson stated, "would be commensurate with the risk of the issuer, the quality at issue, and market conditions in the market of fixed income securities in general at that point in time."[407]

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[402] Ans. ¶ 37; Stip. ¶ 23.

[403] JX-15, at 4; Tr. 409–10.

[404] Larson argued that Dr. Anderson lacked experience in private placement bonds, such as church bonds that are not priced by the market but are priced annually by a third party or the issuer. *See* Larson's post-hearing email submission (Dec. 12, 2017). This argument misses the mark. Dr. Anderson testified that he took into account that the church bond secondary market was minimal. Also, he used a standard bond valuation method that also applied to illiquid securities. Tr. 476, 486–87, 501–02; *see also* JX-15, at 8; Tr. 432–34 (Dr. Anderson testifying in detail about his methodology). Larson also asserted that Dr. Anderson's valuations were not realistic because, among other reasons, there was no market for the bonds. Even so, Larson testified that if he had had Dr. Anderson's church bond prices, he "would have had absolutely no problem using them." Tr. 1949–50.

[405] Tr. 417–20.

[406] Tr. 501.

[407] Tr. 418.

By contrast, if an issuer for non-publicly traded bonds "experienced negative credit events and had its credit quality deteriorate . . . anybody determining the value would try to assess the impact of deterioration of credit quality of the bond and try to use [a] higher market discount rate to find the present value. So," he added, "if the bond would go into default, the value would go down."[408] Elaborating, Dr. Anderson explained that

> [I]f a bond got into default, was not making timely payments, had entered some kind of agreement to suspend or restructure its payment, or in the case of secured bonds, secured assets were going to be liquidated in lieu of making promised payments, then the attention should turn to what should the investors actually expect to get; not what they are promised in the beginning, but what can they actually expect to get as they proceed to try to squeeze as much blood as they can out of a turnip of what's left over.[409]

Changes in interest rates and the credit quality of the issuer can also affect bond values, Dr. Anderson stated, including values for non-traded, non-rated bonds, such as church bonds.[410]

Dr. Anderson criticized Larson's pricing methodology. He noted that Larson's "purported method that's described in the church bond update of how these bonds were or should be valued" was "not consistent with what an industry professional would do to really value those bonds."[411] More specifically, he concluded that Larson did not follow standard methods in pricing the bonds: it did not appear that Larson took into account interest rates, changes in those rates, or make valuation adjustments based on the present value of the bonds' future cash flow[412] or "liquidation values of property or what investors are likely to receive for these bonds, many of which are in foreclosure or are in the process of having properties liquidated and proceeds be returned to investors in lieu of promised payment."[413] Further, Dr. Anderson "found several misstatements about some specific bond issues at odds with the facts that should have been well-known at the time that document was written." After performing his own pricing analyses,

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[408] Tr. 418.

[409] Tr. 418–19.

[410] Tr. 422–24.

[411] Tr. 417.

[412] Tr. 426. Dr. Anderson observed that Larson's prices did not vary "over time from one month to the next" even though "market interest rates go up and down throughout 2013," and that "many of these borrowers . . . experienced continuing deterioration of credit quality throughout 2013." Tr. 429. Larson disputed the importance of interest rate changes. "When it comes to the church bonds," he said, "it didn't matter back in when they were first put out that they were extremely over the current level. They went out at par. They were rated at par from 2006 until 2011. Irrespective of the change in interest rates." According to Larson, "with that experience, almost a decade of experience with the bonds, to me interest rates and pricing on church bonds had little effect because they were not marketable." Tr. 530. He claimed that he put more emphasis on collateral value. Tr. 530. And, if he failed to take into account information impacting that value, then, he claimed, it meant he was not aware of the information. Tr. 531–33.

[413] Tr. 426–27.

Dr. Anderson found Larson's pricing "awfully high relevant to the facts on the ground as they were known in early 2013."[414]

Below, we discuss, by issuer, the allegedly problematic pricing contained in the supplemental account statements.

(a) Bethel Baptist

Larson priced Bethel Baptist's bonds at $120 (20 percent above par) in 47 supplemental account statements sent to customers between April 2013 and January 2014.[415] This pricing conflicted with the pricing methodology Larson had sent to his customers in his Update. According to that methodology, "[a] bond priced at [$120] is solid on payments and property . . ." Bethel Baptist, however, was deficient in both respects, as discussed above. Dr. Anderson concluded that various credit events undermined Larson's valuation:

> Bethel Baptist had fallen into default three years prior [to May 2013], and had been making sinking fund payments totaling no more than 40 percent of what had been specified in the original terms. None of the facts on the ground in 2013 supported the Respondent's . . . valuation of $[120] per bond, and later events failed to support that price as well. Restructuring this debt consumed several years, resulted in an exchange of the original bonds for one new bond for principal owed at a considerably lower effective interest rate than originally agreed upon and another bond representing unpaid accrued interest that could eventually be discounted to zero value. The underlying properties that secured this new debt fell to values considerably lower than both the originally appraised values as well as the amount of principal owed bondholders.[416]

Dr. Anderson valued the bonds at $55 to $65 "at best."[417] We accept that valuation as accurate. Accordingly, we find that the valuations of the Bethel Baptist bonds in the supplemental account statements were false and misleading.

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[414] Tr. 417.

[415] The First Amended Complaint alleges that Larson sent the supplemental account statements in August 2013, December 2013, and February 2014. Am. Compl. ¶ 38. But, according to the stipulations, Larson sent the supplemental account statements in April 2013, June 2013, July 2013, August 2013, October 2013, November 2013, and January 2014. JX-3(a); Supp. Stip. ¶ 8. This discrepancy is immaterial, however, given the Panel majority's findings of no liability on the fraud charges pertaining to these bonds.

[416] JX-15, at 19.

[417] Tr. 436–38.

(b) Windermere

Larson priced Windermere's simple interest bonds at $188.80–$189.50 (88–90 percent above par) in seven supplemental account statements between April 2013 and January 2014.[418] He also priced the compound interest bonds at $188.20—$194 (88–94 percent above par) in 28 supplemental account statements during this time period.[419]

This pricing was inconsistent with the Update pricing methodology because Windermere was not "solid on payments and property." Rather, Windermere had been in default on its sinking fund payments since early 2011, as discussed above. Also, as discussed above, the trustee had accelerated the bonds, thereby making the full amount of principal and accrued interest immediately due and payable; and Windermere and the trustee were, at the time of the Update, negotiating a forbearance agreement and anticipating a future restructuring of Windermere's payment obligations.

Looking at the totality of the circumstances, as Dr. Anderson opined, "[p]ricing these bonds at or near their implied face values would be completely at odds with facts on the ground."[420] We find that the valuations in the supplemental account statements were false and misleading.

(c) Metropolitan Baptist

Between June 2013 and January 2014, Larson priced Metropolitan Baptist's bonds at $75 (25 percent below par) in 25 supplemental account statements sent to five customers.[421] During that period, however, he also priced the bonds (or bonds issued in the same series but with different maturities) at $82 (18 percent below par) in 25 supplemental account statements to one of those five customers, and to nine others.[422]

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[418] JX-3(a), at 14–18. He also priced them at $100 (par) in 110 supplemental account statements during that time frame. But because the First Amended Complaint does not allege that these prices were false and misleading, we do not address them.

[419] JX-3(a), at 19–20. The First Amended Complaint alleges, however, that Larson sent the supplemental account statements in August 2013, December 2013, and February 2014. Am. Compl. ¶ 39. This discrepancy is immaterial, however, given the Panel majority's finding of no liability on the fraud charges pertaining to the pricing of these bonds.

[420] JX-15, at 38; Tr. 456.

[421] JX-3(a), at 9–10. The First Amended Complaint alleges that he sent such statements to two customers in February 2014. Am. Compl. ¶ 40. The evidence, however, did not establish that he created any supplemental account statements for any customers for these bonds in February 2014.

[422] JX-3(a) at 9–10. The First Amended Complaint alleges that in February 2014, he priced the bonds at $75 for two customers, while, that same month, pricing the bonds at $85 to three other customers. As noted above in footnote 423, the evidence did not establish that he sent to customers any supplemental account statements pricing these bonds in February 2014.

During the time period he issued the supplemental account statements for these bonds, numerous negative credit events had occurred. For example, by May 2013, as reflected on the website (1) the bonds went into default in June 2011 for failing to make required sinking fund payments;[423] (2) in February 2013, the church stated its intention to market the property for $17.9 million;[424] and (3) by April 3, 2013, the trustee concluded that Metropolitan Baptist's "current financial conditions does [sic] not enable it to service the debt, [or] refinance the debt or construction."[425] At that point, the total amount of principal and interest owed by the issuer on the bonds was approximately $33.9 million.[426] Information on the website after May 2013 indicated that the issuer had been unable to sell the property, and, by December 2013, the trustee wrote on the website that it intended to commence foreclosure in early January 2014.[427]

Also, in October 2012, the bonds sold at approximately four percent of par in six transactions.[428]

Dr. Anderson valued the bonds substantially lower than did Larson. "My pricing estimates would start around [$60] for the supplemental first mortgage series bonds, about [$62.40] for the original mortgage series bonds," said Dr. Anderson, and would be even "lower if I were to account for transactions costs and delays associated with property disposition and pro rata disbursement of proceeds."[429] He based his valuation on Metropolitan Baptist's financial distress. "These bonds were in default and not paying any interest," Dr. Anderson explained. And, "[c]ontrary to the Respondent's characterization, there was no hope of rehabilitation in early 2013, the collateral property value was substantially less than the amounts of principal and accrued interest owed, and the estimated and even not yet realized disposition values only got worse as time went on." Under these circumstances, Dr. Anderson stated, Larson's prices "bear no sensible relation to the pro-rata share of the collateral property value even at what seems in hindsight as a very rosy estimate of disposition value."[430]

[423] Supp. Stip.¶ 4e.; JX-75.

[424] JX-79, at 1.

[425] JX-76.

[426] JX-76, at 1.

[427] JX-79, at 1–2. In January 2014, Larson had offered to sell 110,000 Metropolitan Baptist bonds to a bond trader for $50 per bond. In response, he received a bid of $1.48 on January 6, 2014. JX-139; Tr. 1053–54. Yet, that month, he sent supplemental account statements to customers reflecting that the bonds were worth $75 or $82. JX-3(a), at 10.

[428] JX-80.

[429] JX-15, at 33; Tr. 446 (Dr. Anderson testifying that he "came up with values of between [$59.90] per bond up to perhaps [$62.40] per bond").

[430] JX-15, at 33; Tr. 447.

Given these facts, Larson overvalued the securities. The difference in valuation between Dr. Anderson's pricing—which we adopt—and Larson's pricing was substantial; therefore, Larson's pricing was both false and misleading.

(d) Lifepointe

Larson priced Lifepointe's bonds at or slightly above $100 (par) in 40 supplemental account statements he issued between April 2013 and January 2014.[431] According to the Update methodology, "[a] bond priced at [$100] has solid property value is making payments but is sometime slow [sic]." Larson's pricing was inconsistent with this methodology.

As discussed above, by May 2013 the following events had occurred and were reflected on the trustee's website: (1) Lifepointe had been in default since September 19, 2010, as it failed to make required sinking fund payments to the trustee; (2) Lifepointe filed for bankruptcy protection on May 18, 2012;[432] (3) although Lifepointe completed construction of the assisted-living facility for which the bond was issued, it lacked funds to purchase furnishings and equipment necessary to commence operations; and (4) in January 2013, a federal bankruptcy court confirmed a reorganization plan reducing the amount of the bondholders' secured claims to approximately 85 percent of the amount owed in principal and interest.

According to Dr. Anderson, Larson's pricing for these bonds was "consistent with these being high quality bonds that were not in arrears on payments," even though, Dr. Anderson pointed out, the bonds were in default and "the property securing them appeared to be worth substantially less than [what] the bondholders [were] owed."[433] After considering the relevant circumstances relating to the issuer and its bonds, Dr. Anderson concluded that the value of the bonds was not "at or close to" par.[434] In fact, Dr. Anderson estimated that the bonds were worth in the range of $62.80 to $92.10.[435] We accept that valuation as accurate. Accordingly, we find that the valuations of the Lifepointe bonds in the supplemental account statements were false and misleading.

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[431] JX-3(a), at 7–8. He also issued seven supplemental account statements between May 2013 and January 2014 that priced these securities at $95. JX-3(a), at 7–8. But the First Amended Complaint did not allege that these prices constituted false statements of material fact so we do not consider them. Also, the First Amended Complaint alleges that Larson sent the supplemental account statements between August 2013 and February 2014. Am. Compl. ¶ 42. This discrepancy is immaterial, however, given the Panel majority's findings of no liability on the fraud charge pertaining to the pricing of these bonds.

[432] JX-65; JX-66. In the June 14, 2012 trustee letter to Larson, the trustee included a letter it had sent to the bondholders informing them of the bankruptcy filing; JX-120, at 11; JX-66.

[433] Tr. 448–49.

[434] JX-15, at 29.

[435] Tr. 449–50.

(e) Orlando

Larson priced Orlando's bonds at $100 (par) in 35 supplemental account statements issued between April 2013 and November 2013.[436] This pricing conflicted with the par value pricing explanation in the Update, which described par as meaning that the bond "has solid property value is making payments but is sometime slow [sic]." As reflected on the website by May 2013, and as discussed above, (1) Orlando had been in default since August 1, 2010 (at that time, the principal balance of the indebtedness was approximately $10.3 million and accrued interest was approximately $366,000); (2) the trustee foreclosed on the real estate securing the bonds and acquired the property at the foreclosure sale held in July 2011; and (3) on April 6, 2012, the trustee notified the bondholders that it had agreed to sell the partially constructed property for less than the amount outstanding on the bonds.

Also, the June 14, 2012 trustee letter to Larson, which Larson reviewed, included a letter the trustee had sent to the bondholders and a court filing addressing a contract to sell Orlando's collateral "for a price [] less than the full amount due" and a court order based on the trustee's request for authority to sell that collateral.[437] Finally, an October 29, 2013 trustee letter to bondholders, which was posted on the trustee website, (1) informed bondholders that contracts to sell the property for $5.2 million had fallen through; (2) lamented that "[t]he partially completed building represents a significant challenge for a buyer coming in to complete the build out;" and (3) noted that the partially completed building might have to be torn down, which would cause the overall value to "be greatly diminished."[438]

Dr. Anderson disagreed strongly with Larson's pricing:

> By early 2013 these bonds were in default, had not paid any interest for some time, and the property that was only partially constructed had been foreclosed on and was being marketed at a price equaling only about half of what was owed the A and B series bondholders.

Dr. Anderson further observed that "there was no plan for rehabilitation, partial payments were not being made, the property was foreclosed, and in no way could the bondholders expect to be paid off at a recovery rate that would justify a price at or near $[100]." Thus, he concluded, the bonds' valuation should have been discounted by approximately 50 percent of par, and

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[436] JX-3(a), at 11–12. He also priced the bonds at $90 (10 percent below par) in eight supplemental account statements issued in January 2014. JX-3(a), at 12. But because the First Amended Complaint does not allege that this pricing was false and misleading, we do not address that issue. Also, the First Amended Complaint alleges that in August and December 2013, Larson distributed 12 supplemental account statements to customers that priced the bonds at $100. Am. Compl. ¶ 43. The evidence, however, showed that he issued six such supplemental account statements in August (JX-3(a), at 11) and none in December (JX-3(a), at 12). This discrepancy is immaterial, however, given the Panel majority's findings of no liability on the fraud charges pertaining to these bonds.

[437] Supp. Stip. ¶ 9b; JX-120, at 5–6, 8–10, and 23–27.

[438] JX-87; Supp. Stip. ¶ 6a.

pricing them at par throughout 2013 was "completely untethered from reality."[439] We accept Dr. Anderson's valuation as accurate. We find that the valuations of the Orlando bonds in the supplemental account statements were false and misleading.

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Based on the above findings, we conclude that Larson made false and misleading statements about the prices of certain church bonds as reflected in the supplemental account statements. His valuations failed to reflect the bonds' actual market values (taking into account relevant information about the issuers and their bonds posted on the trustee's website, including information the trustee sent to Larson). And, in some instances, the valuations did not correspond to the pricing explanation contained in the Update. Also, Larson sent different valuations for the same or similar bonds to different customers at or about the same time. That said, making false and misleading statements does not necessarily constitute fraud. As we discuss below in the Conclusions of Law section, we must consider additional factors, among them whether Larson's conduct was intentional or at least reckless.

c. Larson's Correspondence with Customer MF Regarding His Church Bond Holdings

In a March 13, 2014 email to his customer MF, Larson responded to the customer's concerns about her church bond portfolio.[440] Larson stated, among other things, that "Metro Baptist is late in payments but property is worth $50,000,000 and the first mortgage is only for $12,000,000. Quite secure."[441]

But at the time Larson made that statement, MF's investment was hardly secure, in light of the following: (1) In February 2013, the church stated its intention to market the property securing the bonds for $17.9 million; (2) by April 2013, the total amount of principal and interest owed by the issuer on the bonds was approximately $33.9 million;[442] (3) the issuer had been unable to sell the property; (4) by December 2013, the trustee wrote on the website that it intended to commence foreclosure in early January;[443] (5) thereafter, according to the website, the trustee's attorney was authorized to foreclose "as soon as possible";[444] and (6) by March 4, 2014, just before Larson sent his email to MF, the website reflected that the foreclosure pleadings were in "final review."[445]

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[439] JX-15, at 35; Tr. 440–41.

[440] Ans. ¶ 45; Stip. ¶ 24.

[441] Ans. ¶ 45; Stip. ¶ 24; Tr. 1085; JX-141, at 1.

[442] JX-76, at 1.

[443] JX-79, at 2.

[444] JX-79, at 2.

[445] JX-79, at 2.

In short, by the time Larson reassured MF that her church bond holdings were "[q]uite secure," the real estate collateral for the bonds had been unsuccessfully marketed for sale at far less than the amount owed on the bonds and was headed toward foreclosure. These circumstances made Larson's statements to MF false and misleading.[446]

At the hearing, Larson explained that this "statement was based on my belief of the valuation of those bonds."[447] Nevertheless, he conceded that before writing to MF, he should have reviewed the trustee's website to learn the status regarding Metropolitan Baptist.[448]

d. Larson's Defense to the Charges Regarding Fraudulent Communications

At the hearing, Larson claimed that he was acting in the best interests of his customers by sending them the Update and supplemental account statements.[449] He emphasized that he explained to his clients that these communications were a best effort to give them some sort of idea what the valuations were, and he never told them that these were prices at which they could sell their bonds.[450] Larson also denied having any "intent to misrepresent, mislead, cause my clients any kind of harm by what was on the updates."[451] "To mislead somebody," he explained, "you have to be trying to have them do some kind of an action."[452] And, he reiterated, the purpose of the supplemental account statements "was not to motivate the client to do anything." Rather, they were "just to give them a comfort blanket."[453] That said, if this comfort blanket "lull[ed]" them into "inaction," then, as far as he was concerned, that was a "good thing."[454]

Providing pricing to his clients, even if done imperfectly, was, in Larson's view, a "better-than-nothing solution for these clients,"[455] as some pricing was better than no pricing:

> [When] zero pricing comes up, then -- that no pricing, then on the client's statement, that shows up as an unrealized loss. So if it was even 50 percent of what they put in, then the clients at least say, okay, well, fine, and then you have

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[446] The First Amended Complaint also alleged that on January 5, 2015, Larson sent another false and misleading email to MF regarding the status of her church bond holdings. Am. Compl. ¶ 48. But Enforcement abandoned this allegation. *See* Department of Enforcement's Post-Hearing Brief, Appendix, at 72 n.394.

[447] Tr. 1093.

[448] Tr. 1086–87.

[449] Tr. 1043.

[450] Tr. 1941–42.

[451] Tr. 1392.

[452] Tr. 363.

[453] Tr. 364.

[454] Tr. 63 (Larson's opening statement).

[455] Tr. 352 (referencing Larson's OTR testimony).

> the discussion about, well, I don't think that's what you're going to get, I think you're going to get something more, but at least that number is closer to reality than no price at all.[456]

Larson maintained that he had confidence in his pricing, which was based on his understanding of the bonds' value.[457] As discussed above, he testified that he calculated the prices by relying on the value of the underlying property value. According to Larson, the bonds were well secured by the underlying properties. Even with a drop in the real estate market, he explained, there was still plenty of "cushion" to secure the amount outstanding on the bonds, compared to the appraised value of the real estate (as reflected in the prospectuses) and given that by the time of the defaults, a number of the various issuers' earlier bonds had been paid off.[458] Larson claimed that his confidence in his pricing was further justified because, based on conversations he had with various realtors and bond houses about their bonds, it appeared to him that the real estate markets all around the country had rebounded at the time of the defaults.[459]

Larson's confidence in his pricing was further buttressed, he claimed, by Strongtower's pricing and RBC's reliance on that pricing during the period of 2004 to 2013.[460] Larson noted that based on Strongtower's pricing, RBC still carried some of the securities at or not far below par, even after negative events had occurred. "So if the expert on the bonds was discounting this information," he asked rhetorically, "doesn't that kind of lead me in the direction of saying, okay, that that's kind of what is normally done?"[461] As a result, Larson said, he did not question their pricing,[462] and felt comfortable pricing the bonds as he did.[463] Larson also noted that he began pricing the bonds only shortly after Strongtower stopped providing RBC with pricing information.[464] (Notwithstanding this purported general reliance, however, Larson did not claim that he relied on the prices contained on specific RBC account statements to calculate his prices.).[465]

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[456] Tr. 1042.

[457] Tr. 1392–93.

[458] Tr. 1858–60.

[459] Tr. 1859–60.

[460] Tr. 1930. According to Larson, given that these were private placement bonds, Strongtower sent update valuation letters to RBC only once a year. Tr. 1932.

[461] Tr. 1034; *see also* Tr. 1361–62, 1364, 1385–87.

[462] Tr. 1931–32.

[463] Tr. 1946–47.

[464] Tr. 1931.

[465] *See, e.g.*, Tr. 1940 (Larson admitting he did not rely on prior pricing by Strongtower for the Bethel Baptist bonds because his pricing was higher than $90); Tr. 1954–55 (Larson testifying that he did not rely on the account statements in JX-160 to develop his pricing for the supplemental account statements).

Larson's reliance argument, however, is belied by other evidence. In several instances, Larson priced certain church bonds higher than RBC, several months earlier. For example, RBC priced a Bethel Baptist bond at $90 in October 2011.[466] Afterward, additional negative events occurred. Even so, Larson priced that bond at $120 from April 2013 through January 2014.[467] Likewise, RBC priced Orlando bonds at $90 in October 2011.[468] Although additional negative credit events occurred afterward, Larson priced the bonds at $100 in supplemental account statements issued between July 2013 and January 2014.[469] RBC also priced a Windermere compound interest bond at $147.456 in April 2012.[470] But Larson priced the bond at $188.20 in April 2013.[471] Finally, RBC priced two Windemere simple interest bonds at $90 in March 2012,[472] while Larson priced the bonds at $100 throughout 2013.[473]

Larson also testified that he had a discussion about pricing with Strongtower at the time the church bonds were moved into his customers' accounts in 2004 to 2005, and he asked why the pricing was always at par, even when interest rates fluctuated. In response, Larson testified, he was told that these are private placements and valuation was based on the valuation of the property,[474] not on interest rates.[475] Even if these conversations occurred, however, and even if, as Larson claimed, he priced the bonds based in large part on the value of the underlying collateral, the trustee's website reflected that the value of various bonds' real estate collateral had fallen below not only the original appraisal value, but below the outstanding indebtedness on those bonds.

Larson testified that he made his best efforts to ensure that the statements were accurate.[476] At the same time, however, he minimized the importance of their accuracy, claiming that the supplemental account statements were not "something for the client to rely upon to make a sale or a purchase of a bond."[477] If the supplemental account statements were "a sales piece," Larson explained by way of contrast, "the preciseness of the information to entice somebody to

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466 JX-160, at 298 (CUSIP –BR1).

467 JX-3(a), at 1–2.

468 JX-160, at 297 (CUSIP –AN4).

469 JX-3(a), at 11–12.

470 JX-160, at 288 (CUSIP –CH8).

471 JX-3(a), at 19.

472 JX-160, at 91 (CUSIP –BF3 and –AX5).

473 JX-3(a), at 14–18.

474 Tr. 1927–28.

475 Tr. 1938; *see also* Tr. 1928 (Larson testifying that in pricing the bonds, he considered the conversations he had with Strongtower and that Strongtower priced the bonds at par based on the collateral value and the bondholders' positions).

476 Tr. 1104–05.

477 Tr. 1041.

buy or sell would have been a higher priority for me," adding that because "this was just a fluff piece, I wasn't as diligent and worked under my memory and my assumptions."[478] As he explained several times, accuracy was not a high priority or concern to him: "The purpose of the updates was not to motivate the client to do anything, just to give them a comfort blanket. So, if there was an error, there was an error."[479] Put another way, according to Larson, because he was just giving his customers prices "to make them feel comfortable . . . 90 is just as good as 100."[480]

Addressing the Update specifically, he distinguished it from "a piece of advertising that is required with tons of disclosures, which none of this is." And, in his view, such disclosures were unnecessary: "[T]his is a client communication . . . designed to comfort my clients. Not into selling, not into buying, but just doing the only thing that they could do and that was [to be] patient."[481] When asked directly if he "just didn't think it was that important to be that accurate with it," he responded: "That's correct."[482]

Larson's casual attitude toward accuracy was reflected in how he approached the creation of the Update and supplemental account statements. For example, before sending the Update to his customers, Larson did not review the website's section pertaining to Bethel Baptist's bonds.[483] Reviewing it would have been "the logical thing to do," he conceded, adding that it "should have been my next step."[484] He also made the "rock solid" statement without first checking to see if Bethel Baptist had defaulted on its obligations,[485] and without knowing if it had missed payments.[486] "Having received information and recalling that information when I made that statement are two separate items," he explained.[487]

Larson's lax approach also extended to his preparation of the supplemental account statements. For example, he never double-checked the numbers from the spreadsheets he created.[488] And, he conceded, some statements may have reflected different prices than other customers' statements because that was "well within the range of making an error" when he

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[478] Tr. 1950.

[479] Tr. 364.

[480] Tr. 1941.

[481] Tr. 340.

[482] Tr. 1950.

[483] Supp. Stip. ¶ 3.

[484] Supp. Stip. ¶¶ 3, 5; *see* Tr. 522, 1029–30.

[485] Tr. 1104.

[486] Tr. 520. At the hearing, Larson even disputed that Bethel Baptist had missed payments at the time he issued the Update. Tr. 520.

[487] Tr. 521.

[488] Tr. 351–52, 1041.

copied prices from the spreadsheet he created to a customer's account statement.[489] Why was he not careful to double check his numbers? Because, repeating his theme, "this isn't something for the client to rely upon to make a sale or purchase of a bond, all this was created for was to allow them to have some comfort because they just had to be patient and find out what was going to happen."[490]

In conclusion, Larson reminded the Panel that "this was a long time ago," and "what specifically I read or didn't read in order to come up with the pricing, I cannot testify to." But, he continued, "[w]hat I can testify to, that I, at the time of doing it, my belief was that I had done due diligence on providing information, and any statement that I made I believed to be true."[491]

3. The Church Bond Cross Trades

Larson testified that none of his customers told him that they wanted to sell their securities because of the loss in pricing by RBC.[492] They realized, he said, that there was no market for the bonds, that they would just have to hold them, and he reminded them of that reality.[493] Although the bonds were not "actively traded at anything near" their value, it was still possible to sell them, Larson clarified.[494] A customer might be able to "liquidate a position at an extremely low price . . . ," according to Larson, "but that wouldn't be considered a market."[495]

After joining Oakbridge in August 2011, Larson periodically executed cross trades of church bonds between his Oakbridge customers.[496] Larson executed these trades to accommodate customers who needed money and sought to liquidate their church bond positions.[497] At issue here are six sets of cross trades that Larson arranged between January 2012 and July 2014 in three issuers' church bonds (Bethel Baptist, Iglesia Christiana, and Windermere) for four customers. In four of these six sets of cross trades, the sellers did not receive "an extremely low price" for their bonds—they received par or near par pricing.

Enforcement alleges that Larson committed fraud in connection with these six sets of church bond cross trades. According to Enforcement, Larson arranged and executed the trades at

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[489] Tr. 1040–41. Indeed, on 17 occasions, Larson simultaneously provided different prices for the same issuer's bonds to different customers. *See* JX-3(a) at 3, 7–10, 14–20. While conceding that he could "have brought a wrong number across," he steadfastly denied having any "purpose to mislead, or misrepresent, or do harm to my clients." Tr. 1392–93.

[490] Tr. 1041.

[491] Tr. 1040.

[492] Tr. 1047, 1050.

[493] Tr. 1047, 1050.

[494] Tr. 2013–14.

[495] Tr. 1056.

[496] Ans. ¶ 49; Stip. ¶ 25.

[497] Tr. 1047, 1059–60, 1078; Ans. ¶ 49.

above-market prices without disclosing this fact to the purchasers. Enforcement also alleges that Larson acted fraudulently by failing to inform one of the cross trade purchasers that the price he arranged for her to pay was substantially higher than both the prevailing market price/fair market value of the bond and the price he arranged for his wife to pay on the same day, for bonds from the same issuer, in the same series. We discuss these trades below.

a. Larson Arranges Six Cross Trades Between Customers

Larson testified that to find purchasers for the bonds, he probably searched his client list for customers who owned church bonds and were interested in adding more to their portfolio.[498] He solicited the five purchasers for the bonds:[499] GC, DF, JK, TA, and LL (Larson's wife).[500] Larson had discretionary trading authority over three of these accounts: GC, DF, and JK.[501] He also determined the prices for the trades.[502] Four of the six cross trade purchases were executed at or near par (two were executed substantially below par).

The cross trades are reflected on the chart below:[503]

Date	Bond	Quantity	Seller	Sale Price	Purchaser	Purchase Price
January 17, 2012	Bethel Baptist	11,000	SR	100	GC	100
January 17, 2012	Bethel Baptist	15,000	SR	90	GC	98
May 23, 2012	Iglesia Christiana	8,000	SR	95	TA	100
November 5, 2013	Windermere BA-4	6,000	MK	95	DF	100
July 14, 2014	Windermere BG-1	15,000	AF	70	LL	72
July 14, 2014	Windermere BA-4	10,000	RM	82.5	JK	85

Except for the two sets of Windermere cross trades executed on July 14, 2014, the prices paid in these church bond cross trades exceeded the bonds' value, in light of the following facts:

- GC's January 17, 2012 Bethel Baptist bond purchases were executed at $100 and $98, even though the bonds had been in default since 2010;[504]

[498] Tr. 2020–21.

[499] Tr. 1059–60, 1071–72, 2020–21.

[500] LL is Larson's wife. Stip. ¶ 12.

[501] Tr. 1064–65, 1081, 1851–54, 2012, 2021.

[502] Tr. 1082–83, 1943, 1945; 2018–20.

[503] Stip. ¶ 25.

[504] *See* Tr. 1344; JX-23; JX-24; JX-25; *see also* JX-14, at 1 (reflecting four missed payments between January 2010 and July 2011). Larson arranged for GC to pay par even though the December 2011 and January 2012 RBC account statements for one customer reflected that RBC priced a Bethel Baptist bond at $90. JX-160, at 107, 120.

- TA's May 23, 2012 Iglesia Christiana bond purchase was executed at $100, even though (1) the bonds had been in default for more than a year,[505] and (2) according to the trustee's website, an October 27, 2011 appraisal had valued the collateral properties at 36 percent lower than the appraised value of the bond when it was issued, and was approximately 4 percent less than the value of the principal and accrued interest reflected in a March 2011 trustee letter noting the issuer's payment delinquency.[506]

- DF's November 5, 2013 Windermere BA-4 bond purchase was executed at $100, even though (1) the bonds had been in default for two and a half years;[507] (2) in January 2013, the trustee had accelerated the bonds, thereby making the full amount of principal and accrued interest immediately due and payable;[508] and (3) in June 2013, the issuer and trustee executed a forbearance agreement.[509]

Regarding the July 14, 2014 Windermere cross trades, Enforcement alleged that the bonds should only have been bought or sold at a significant discount from par value and that Larson should have informed JK that her purchase price of $85 for Windermere BA-4 was substantially higher than the prevailing market price and the fair market value of the bonds. The evidence, however, did not show that the price JK paid for the Windermere bonds greatly exceeded their value.

To support its allegation that JK overpaid for the Windermere bonds, Enforcement offered evidence that in January 2014, Larson sought and received a bid from a trader of $1.48 for Windermere BA-4 bonds—a nearly 99 percent discount from par.[510] Also, during 2014, sales of Windermere bonds in the open market had all occurred at significant discounts—as low as $2 per bond and no higher than $35.[511] This did not prove, however, that a price of $85—which represented a significant discount from par—was substantially higher than the bond's fair market value. The other trades were sporadic and minimal, and had occurred two months before the cross trades. These other trades, coupled with one bid six months earlier, are insufficient to establish a prevailing market price at the time of the July 2014 cross trades. Also, Dr. Anderson's

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505 JX-53. Larson arranged for TA to pay par even though the April and May 2012 RBC account statements for one customer reflected that RBC priced an Iglesia Christiana bond at $90. JX-160, at 47, 217, 279.

506 JX-15, at 20.

507 In 2011, Windermere twice failed to make required payments. JX-105; JX-106; Tr. 1345; *see* JX-14, at 2.

508 JX-107.

509 Under the June 2013 forbearance agreement, the trustee agreed to reduce Windermere's payments to 25 percent of its monthly revenue for five months. JX-108, at 2; JX-114. *See also* JX-15, at 38; Tr. 456 (Dr. Anderson testifying that in evaluating Larson's pricing for the Windermere bonds during the period April 2013 through January 2014, "[p]ricing these bonds at or near their implied face values would be completely at odds with facts on the ground.").

510 Tr. 1053.

511 JX-113.

valuation of the bonds did not extend to July 2014 and, in any event, did not reflect that a price of $85 was substantially above the fair market value of the bonds. Nevertheless, Larson should have disclosed the preceding months' trading/bid history involving the bonds, as that information would have been important to a reasonable customer's decision about what price to pay for the bonds, given the total mix of information available.

b. Additional Details Regarding Particular Cross Trades

Besides the basic facts about the cross trades set forth above, there was scant evidence presented about the trades and, in particular, Larson's dealings with the purchasers. None of the cross trade purchasers testified. And, for his part, Larson testified that he could not recall the specifics of any discussions he may have had about the trades.[512] Nevertheless, based on Larson's testimony, which at times was vague and contradictory, as well as other evidence, certain additional salient details emerged regarding these trades.

i. GC's January 17, 2012 Purchases of Bethel Baptist Bonds at $100 and $98

Larson testified that these were negotiated sales between a seller and buyer; this is what the purchaser was willing to pay for the bonds; and, the bonds were bought and sold based on his input and what he felt was fair to both sides based on his understanding of the current situation at Bethel Baptist.[513] Larson did not tell GC that RBC priced Bethel Baptist's bonds at $90 just one month before he paid par.[514] According to Larson, he was unaware that RBC had dropped Bethel Baptist's price down to $90.[515] He testified that had he been aware of that price, he would have priced the bond at $90.[516] But to Larson, it made no difference: "90 is just as good as 100," he said.[517]

ii. DF's November 5, 2013 Purchase of Windermere Bonds at Par

Larson's testimony regarding this trade was vague and contradictory. According to Larson, DF paid par because "that's what he agreed to."[518] Larson also testified, however, that

[512] Tr. 2019. For example, Larson testified that he could not recall (1) if he told DF that Windermere's bonds traded for 11 percent of par three months before DF purchased them at par, tr. 1065; (2) if he communicated with GC about the prices for his cross trades, tr. 1082–83, 1945, 2018–20; (3) if he disclosed to TA that Iglesia Christiana was in default or if he discussed its financial condition with her when he arranged her purchase, tr. 1083–84; (4) whether, when placing JK's purchase, he told her that LL (Larson's wife) was paying less that day for a similar bond, tr. 1075; and (5) why GC paid $100 and $98 on the cross trades. Tr. 1082–83.

[513] Tr. 1943–45.

[514] Tr. 1944–45; JX-160, at 200.

[515] Tr. 1944–45

[516] Tr. 1940–41.

[517] Tr. 1941.

[518] Tr. 1064.

because he had discretion over DF's account and made all of DF's investment decisions, the church "bonds could be placed in his account with no discussion"[519] although, Larson claimed, he did not recall whether he exercised discretion in executing the cross trade.[520] Nevertheless, Larson added, if he used discretion, he chose the price that reflected the value he felt the bond was worth at that time.[521] He admitted, however, that at the time he priced the bond at par, he was aware that it was in default.[522]

iii. JK's July 14, 2014 Purchase of Windermere Bonds at $85

At the time of the trade, JK was 82 years old and her mental state was diminished. She had "periods of disconnect" and had medical problems that prompted her to give a power of attorney to Larson just a few weeks after the trade and to move to a nursing home.[523] Larson executed the trade using his discretion and without any discussion with JK.[524] Accordingly, he did not tell her that Windermere's bonds had traded for between 10 percent and 35 percent of par two months before she paid $85.[525] Nor did Larson tell her that he arranged, or was in the process of arranging, for his wife (LL) to buy bonds in the same series at a lower price that same day.[526] In explaining why LL paid less for the Windermere bonds in the same series than did JK, Larson answered: "Because that's the deal between buyer and seller."[527] This implied that the seller was involved in a negotiated sale, contrary to Larson's testimony that he exercised discretion and did not discuss the trade with JK beforehand.

* * * * * *

In sum, the evidence showed that Larson arranged and executed the cross trades, often using discretionary authority, with little, if any, discussion with the purchasers, and did not tell them that in most instances, they were paying prices that exceeded the value of the bonds. Nor did he provide them with other information relevant to the bonds' value.

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519 Tr. 1064–65, 1324, 1852–53.

520 Tr. 1064–66.

521 Tr. 1064–65.

522 Tr. 1065.

523 Tr. 1074–75, 1350–52, 1416–18, 1854.

524 Tr. 2021.

525 Tr. 1073, 1075–77. Larson testified that he did not consider the bids and trades that had been executed in the various church bonds relevant to their valuation. Tr. 1076–77. "[P]ricing in the client's accounts usually have very little to do with what the actual price that they receive when they go to market," he explained. Tr. 1077. We reject this argument and, as we found above, Larson should have disclosed this information as it would have been important to a reasonable purchaser.

526 Tr. 1073, 1075–77; *see* Stip. ¶ 12. The evidence did not establish the relative order in which these trades were placed. Tr. 1075.

527 Tr. 1073–74.

4. Conclusions of Law

In connection with the Update, supplemental account statements, and the cross trades, Enforcement charged Larson with violating Section 10(b) of the Exchange Act[528] and Exchange Act Rule 10b-5 thereunder,[529] as well as FINRA Rules 2020 and 2010, by making material misleading statements and omissions in communications with customers.

"Section 10(b) prohibits individuals from using or employing, in connection with the purchase or sale of any security, any manipulative or deceptive device or contrivance."[530] Rule 10b-5 "prohibits individuals from making any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading . . . in connection with the purchase or sale of any security."[531] To establish a violation of these provisions, Enforcement must prove by a preponderance of the evidence that Larson misrepresented or omitted material facts with scienter and in connection with the purchase or sale of a security.[532]

The courts and FINRA's National Adjudicatory Council ("NAC") have addressed each of these elements. Materiality "depends on the significance the reasonable investor would place on the . . . information."[533] "A fact is considered material if there is a substantial likelihood that a reasonable investor would have considered the misrepresentation important in making an investment decision and disclosure of the misstated fact would have been viewed by the reasonable investor as having significantly altered the total mix of information made available."[534] "Material facts include those facts that may affect the desires of investors to buy,

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528 15 U.S.C. § 78j(b).

529 17 C.F.R. § 240.10b-5.

530 *Dep't of Enforcement v. Escarcega*, No. 2012034936005, 2017 FINRA Discip. LEXIS 32, at *28 (NAC July 20, 2017).

531 *Id.*

532 *Id.*; *see also Dep't of Enforcement v. Luo*, No. 20110263462, 2017 FINRA Discip. LEXIS 4, at *20 (NAC Jan. 13, 2017) (holding that proof of scienter is required to establish a violation of these provisions). "Violations of these provisions also must involve the use of any means or instrumentalities of communication in interstate commerce, the mails, or of any national security exchange." *Id*. at *28 n.18 (citing Exchange Act Section 10 and Exchange Act Rule 10b-5). This requirement is interpreted broadly and includes mail, email, and telephone. *Dep't of Enforcement v. Casas*, No. 2013036799501, 2017 FINRA Discip. LEXIS 1, at *29 (NAC Jan. 13, 2017). This element is satisfied here because Larson used emails, mail, and the telephone to communicate with his customers.

533 *Dep't of Enforcement v. Akindemowo*, No. 2011029619301, 2015 FINRA Discip. LEXIS 58, at *32 (NAC Dec. 29, 2015) (quoting *Basic Inc. v. Levinson*, 485 U.S. 224, 240 (1988)), *aff'd*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769 (Sept. 30, 2016).

534 *Escarcega*, 2017 FINRA Discip. LEXIS 32, at *30 (citing *Basic* 485 U.S. at 231–32) ; *Dep't of Enforcement v. Ottimo*, No. 2009017440201, 2017 FINRA Discip. LEXIS 10, at *14 (NAC Mar. 15, 2017) (citing *Basic*, 485 U.S. at 231–32), *appeal docketed*, No. 3–17930 (SEC Apr. 14, 2017).

sell or hold a particular security."[535] For example, telling a customer that bonds "will be safe" has been found to be a material fact.[536] And misrepresentations about an account's value are material because any reasonable investor would have considered that information crucial.[537]

The "in connection with" requirement has been interpreted broadly to effectuate the remedial purposes of the Exchange Act.[538] The fraud need not precede the actual purchase; it can occur afterwards.[539] For example, it is sufficient if the fraud "coincides" with a securities transaction and the misrepresentations caused investors to hold onto securities,[540] or if the misrepresentation is made to lull the customer into a false sense of security about the investment he made.[541]

Scienter is "a mental state embracing intent to deceive, manipulate, or defraud,"[542] and includes intentional or reckless conduct.[543] Conduct is reckless if it represents "an extreme departure from the standards of ordinary care" such that the [respondent] knew or "must have been aware of the danger of misleading investors."[544] Stated slightly differently, "in a non-disclosure situation, any required element of scienter is satisfied where . . . the defendant had

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[535] *Escarcega*, 2017 FINRA Discip. LEXIS 32, at *30 (citing *Dep't of Enforcement v. Apgar*, No. C9B020046, 2004 NASD Discip. LEXIS 9, at *13 (NAC May 18, 2004) (citing *SEC v. Hasho*, 784 F. Supp. 1059 (S.D.N.Y. 1992)).

[536] *Escarcega*, 2017 FINRA Discip. LEXIS 32, at *30–32.

[537] *Dep't of Enforcement v. Ortiz*, No. 2014041319201, 2017 FINRA Discip. LEXIS 5, at *22–23 (NAC Jan. 4, 2017).

[538] *Id.* at *23.

[539] *Id.* at *24 (citing *Kevin M. Glodek*, Exchange Act Release No. 60937, 2009 SEC LEXIS 3936, at *13–17 (Nov. 4, 2009) (affirming findings that respondent made material misrepresentations to customers who already owned stock at issue, in violation of Exchange Act Section 10(b), Exchange Act Rule 10b-5, and FINRA Rules 2020 and 2010), *aff'd*, 416 F. App'x 95 (2d Cir. 2011)).

[540] *Id.* at *23 (citing *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 574 U.S. 71, 85 (2006)); *United States v. Durham*, 766 F.3d 672, 681–83 (7th Cir. 2014) (finding that Exchange Act Section 10(b) and Rule 10b-5 applied to "lulling statements about the delayed interest payments as well as misrepresentations intended to induce delayed redemptions.").

[541] *Ortiz*, 2017 FINRA Discip. LEXIS 5, at *25 (citing *Apgar*) (finding that respondent violated the federal antifraud provisions and predecessor to FINRA Rule 2020 by making misrepresentations after the customer purchased the security to lull the customer into a false sense of security regarding his investment).

[542] *Dep't of Enforcement v. Meyers Assoc.*, No. 2013035533701, 2017 FINRA Discip. LEXIS 47, at *27 (Bd. of Gov. Dec. 22, 2017) (citing *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976)).

[543] *Ottimo*, 2017 FINRA Discip. LEXIS 10, at *17 (citing *Alvin W. Gebhart, Jr.*, Exchange Act Release No. 58951, 2008 SEC LEXIS 3142, at *26 (Nov. 14, 2008), *aff'd*, 595 F.3d 1034 (9th Cir. 2009)); *Dep't of Enforcement v. Ahmed*, No. 2012034211301, 2015 FINRA Discip. LEXIS 45, at *77 n.78 (NAC Sept. 25, 2015) (citing *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 319 n.3 (2007)), *aff'd*, Exchange Act Release No. 81759, 2017 SEC LEXIS 3078 (Sept. 28, 2017).

[544] *Dep't of Enforcement v. Fillet*, No. 2008011762801, 2013 FINRA Discip. LEXIS 26, at *34–35 (NAC Oct. 2, 2013), *aff'd*, 2015 SEC LEXIS 2142.

actual knowledge of the material information,"[545] or when the omission "presents a danger of misleading investors and is either known to the respondent or is so obvious that the actor must have been aware of it."[546] Scienter is not established, however, if the conduct involves "merely simple, or even inexcusable negligence"[547] or "gross negligence."[548]

"When making affirmative representations with respect to the purchase or sale of a security there is an ever-present duty not to mislead."[549] A registered representative must disclose material facts to prevent another statement from being misleading.[550] But omissions are also actionable when a person is under an affirmative duty to disclose.[551] For example, a duty to disclose material facts (including all material adverse facts) arises if a registered representative occupies a position of "trust and confidence"[552]—such as when a broker has discretionary authority over a customer's account[553]—or when the broker is recommending that a customer purchase a security.[554] In those situations, the broker has an affirmative duty to disclose, among

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[545] *Ottimo*, 2017 FINRA Discip. LEXIS 10, at *17 (quoting *GSC Partners CDO Fund v. Washington*, 368 F.3d 228, 239 (3d Cir. 2003)); *Fillet*, 2013 FINRA Discip. LEXIS 26, at *34–35 (finding that scienter encompasses intent and recklessness or, if fraud is based on an omission, actual knowledge of the information).

[546] *Ottimo*, 2017 FINRA Discip. LEXIS 10, at *18–19 (quoting *GSC Partners CDO Fund*, 368 F.3d at 239).

[547] *Luo*, 2017 FINRA Discip. LEXIS 4, at *25 (quoting *Sundstrand Corp. v. Sun Chem. Corp.*, 553 F. 2d 1033, 1045 (7th Cir. 1977)).

[548] *Dep't of Enforcement v. Reynolds*, No. CAF990018, 2001 NASD Discip. LEXIS 17, at *45 n.28 (NAC June 25, 2001) (finding that the proper standard is intent or recklessness and not gross negligence, although the line between recklessness and gross negligence is a fine one) (citing *Bd. of Cnty. Comm'rs v. Liberty Grp.*, 965 F.2d 879, 883–84 (10th Cir. 1992)); *see also Reiger v. Altris Software, Inc.*, No. 98-CV-528 TW (JFS), 1999 U.S. Dist. LEXIS 7949, at *22–23 (S.D. Cal. May 3, 1999) (gross negligence is not sufficient to prove scienter; conduct must have been at least reckless); *cf. Dep't of Enforcement v. Kunz*, No. C3A960029, 1999 NASD Discip. LEXIS 20, at *45 n.21 (NAC July 7, 1999) (finding that "respondents' conduct—albeit negligent and inconsistent with high standards of commercial honor and just and equitable principles of trade—did not rise to the level of recklessness"), *aff'd*, 55 S.E.C. 551 (2002), *aff'd*, 64 F. App'x 659 (10th Cir. 2003).

[549] *Luo*, 2017 FINRA Discip. LEXIS 4, at *17–19 (citing *Basic Inc.*, 485 U.S. at 241 n.18).

[550] *Ottimo*, 2017 FINRA Discip. LEXIS 10, at *15–16 (finding that a respondent had a duty to disclose facts about a company's losses because he chose to disclose related "positive information").

[551] *Luo*, 2017 FINRA Discip. LEXIS 4, at *17 (citing *Basic Inc.*, 485 U.S. 239 n.17).

[552] *Dep't of Enforcement v. McGee*, No. 2012034389202, 2016 FINRA Discip. LEXIS 33, at *25 (NAC July 18, 2016) ("Liability for failing to disclose material information is premised upon a duty to disclose arising from a relationship of trust and confidence between parties to a transaction.") (citing *Chiarella v. United States*, 445 U.S. 222, 230 (1980)), *aff'd*, Exchange Act Release No. 80314, 2017 SEC LEXIS 987 (Mar. 27, 2017), *appeal docketed*, No. 17-1240 (2d Cir. Apr. 26, 2017).

[553] *Dep't of Enforcement v. The Dratel Group, Inc.*, No. 2008012925001, 2014 FINRA Discip. LEXIS 6, at *58–61 (NAC May 2, 2014), *aff'd*, Exchange Act Release No. 77396, 2016 SEC LEXIS 1035 (Mar. 17, 2016).

[554] *Luo*, 2017 FINRA Discip. LEXIS 4, at *17–19 (citing *De Kwiatkowski v. Bear, Stearns & Co.*, 306 F.3d 1293, 1302 (2d Cir. 2002)); *Dep't of Mkt. Regulation v. Burch*, No. 2005000324301, 2011 FINRA Discip. LEXIS 16, at *23 (NAC July 28, 2011) ("A registered representative owes such a duty to his clients to disclose material information fully and completely when recommending an investment.").

other things, if he stands to benefit or has any other personal interest in the recommended transactions.[555]

In connection with the alleged misrepresentations and omissions, Enforcement also alleged that Larson violated FINRA Rules 2020 and 2010. Rule 2020 proscribes fraud in language similar to Exchange Act Section 10(b), stating: "no member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance."[556] "A violation of Exchange Act Section 10(b) also constitutes a violation of FINRA Rule 2020."[557] FINRA Rule 2010, as discussed above, requires a member, "in the conduct of its business, [to] observe high standards of commercial honor and just and equitable principles of trade," and applies to associated persons as well.[558] "Committing fraud and other violations of law and FINRA rules is inconsistent with the high standards of ethical conduct required by Rule 2010."[559]

Applying the above standards, the Panel majority finds that Enforcement failed to establish that Larson engaged in fraud. As a threshold matter, the Panel finds, as discussed above, that Larson made false and misleading statements and omissions about the church bonds and their issuers, including the financial health of the issuers and the value of the church bonds. These statements and omissions were made to persuade the customers to continue to hold their bonds and were also made in connection with the cross trades. Therefore, Enforcement met the "in connection with" requirement under the federal antifraud provision.

Further, Larson's misstatements and omissions as to the value of the bonds and the financial health of the issuers were material as this information would be important to a reasonable investor in deciding whether to buy, hold, or sell church bonds.

Additionally, in connection with the cross trades, it was material that Larson's wife was buying, or had bought, church bonds in a cross trade at a lower price than another Larson

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[555] *See The Dratel Group*, 2014 FINRA Discip. LEXIS 6, at *63–64 ("A reasonable investor surely would find material Dratel's subordination of discretionary customers' interests to his personal interests.") (citing *SEC v. K.W. Brown & Co.*, 555 F. Supp. 2d 1275, 1280 (S.D. Fla. 2007)); *Affiliated Ute Citizens v. U.S.*, 406 U.S. 128, 153 (1972) (holding that the securities holders "had the right to know that the defendants were in a position to gain financially from their sales"); *Paulson Inv. Co.*, 47 S.E.C. 886, 888 (1983) (noting materiality of a broker's recent personal purchase at one-third the price of stock that he also recommended and sold to customers).

[556] *Escarcega*, 2017 FINRA Discip. LEXIS 32, at *29. While this language is similar to Exchange Act Section 10(b) and Exchange Act Rule 10b-5, FINRA Rule 2020 captures a broader range of activities. *See Ortiz*, 2017 FINRA Discip. LEXIS 5, at *22.

[557] *Casas*, 2017 FINRA Discip. LEXIS 1, at *25 n.14 (citing *William Scholander*, Exchange Act Release No. 77492, 2016 SEC LEXIS 1209, at *15 (Mar. 31, 2016) (finding that omissions of material facts violating Section 10(b) of the Exchange Act also violate FINRA Rules 2020 and 2010)).

[558] "FINRA Rule 0140 provides that all of FINRA's rules shall apply equally to members and associated persons and that associated persons shall have the same duties and obligations as member firms." *Escarcega*, 2017 FINRA Discip. LEXIS 32, at *29 n.19.

[559] *Casas*, 2017 FINRA Discip. LEXIS 1, at *25 n.14.

customer that same day for a bond in the same series. It was also material that other trades had occurred, or bids had been received, at prices much lower than the prices at which Larson would execute certain cross trade purchases. All of this information was material because it would have been important to a reasonable purchaser of the bonds. The need to make these disclosures was especially acute in connection with those accounts where Larson exercised discretionary authority and held a position of trust and confidence.

While the evidence showed that Larson made misstatements and omissions of material facts in connection with the purchase or sale of securities, the Panel majority finds that it did not show that he acted with scienter. The evidence did not reflect that Larson intended to deceive his customers. We found it credible that Larson believed in the accuracy of his valuations and thought it was in his clients' best interest to continue to hold the securities. Nor did the evidence show that Larson knew his statements were false or that he omitted information knowing that doing so would make the statements he made misleading. Thus, the issue for the Panel is whether Larson acted with recklessness.

While the line between recklessness and gross negligence is a fine one,[560] the Panel majority found that Larson's conduct did not rise to the level of recklessness. As an overarching matter, Larson displayed a lax approach to church bond pricing and his disclosure obligations. He admitted that because he viewed his church bond communications as a comfort blanket and not as sales pieces, it was not important for him to be accurate. Larson—untrained and inexperienced in valuing bonds—employed a pricing methodology that was flawed and imprecise. And, coupled with his inattention to detail, it yielded false and misleading prices. His cavalier attitude also contributed to his making the alleged false and misleading statements and omissions. The evidence showed that Larson made statements and omissions often without regard to material information reflected on the trustee's website—information he was likely aware of at one time and later either forgot, ignored, failed to appreciate, or left to the trustee to disclose.

As to this last point, Larson plausibly claimed he did not disclose the negative information on the website to his customers because he relied on the trustee to do so. "Every letter, every item that is on the website . . . was sent to it[] every time there was a change in an agreement, any time that there [were] . . . bond letters, any time that there was something that was a material change in the situation with the bonds," Larson said. He added: "those were sent to the clients directly and were continually updated."[561] Although it was improper for Larson to

[560] *See Reynolds*, 2001 NASD Discip. LEXIS 17, at *45 n.28.

[561] Tr. 1107; *see also* Tr. 331, 340–41 (Larson testifying that he did not write to the clients about the defaults because he understood that the trustee was keeping them apprised of those developments).

omit material facts on this basis,[562] there was no evidence that he tried to hide those facts.[563] This contributed to the Panel majority's conclusion that Larson did not act with scienter.

Further, the Panel majority gave some weight to Larson's claimed reliance on Strongtower/RBC having priced the bonds at or near par, even after certain negative events had occurred. But as explained above, any reliance became unreasonable over time as new negative events occurred after RBC stopped pricing the bonds. Moreover, as also discussed above, Larson's purported reliance does not explain why, in the face of mounting new negative events, Larson priced some bonds above RBC's valuations. That said, unreasonable reliance does not compel a recklessness finding.

In conclusion, taking into account the totality of the circumstances, the Panel majority finds that Larson did not act recklessly in making the alleged misstatements and omissions; therefore, he did not act with scienter. As a result, Enforcement failed to establish a required element of the Section 10(b)/Rule 10b-5 claims. Accordingly, the fraud (and related FINRA Rule 2010) charges are dismissed.

III. Sanctions

In considering the appropriate sanctions to impose on Larson, the Extended Hearing Panel looked to FINRA's Sanction Guidelines ("Guidelines").[564] The Guidelines contain General Principles Applicable to All Sanction Determinations ("General Principles"), overarching

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[562] *See Escarcega*, 2017 FINRA Discip. LEXIS 32, at *36–37 (rejecting argument that because respondent provided customers with other documents that described the risks of the securities in detail, any alleged misrepresentations that he made cannot be considered material in the context of the total mix of information); *Dep't of Enforcement v. Brookstone Sec., Inc.*, No. 2007011413501, 2015 FINRA Discip. LEXIS 3, at *81 (NAC Apr. 16, 2015) (rejecting respondents' argument that a broker's misrepresentations are rendered immaterial when written risk disclosures are made available to customers); *Larry Ira Klein*, 52 S.E.C. 1030, 1036 (1996) ("Klein's delivery of a prospectus to [the customer] does not excuse his failure to inform her fully of the risks of the investment package he proposed."); *Dep't of Mkt. Regulation v. Field*, No. CMS040202, 2008 FINRA Discip. LEXIS 63, at *36 (NAC Sept. 23, 2008). ("[E]ven assuming . . . that he had sent official statements to each customer prior to the customer's purchase, this does not excuse his fraudulent misrepresentations."). *But see Debora v. WPP Group, P.L.C.*, No. 91 Civ. 1775 (KTD), 1994 U.S. Dist. LEXIS 5830, at *13 (S.D.N.Y. May 5, 1994) ("A complaint fails to state a § 10(b) claim when the alleged omission has actually been disclosed.") (citing *Decker v. Massey-Ferguson, Ltd*., 681 F.2d 111, 116–17 (2d Cir. 1982)); *Acme Propane, Inc. v. Tenexco, Inc.*, 844 F. 2d 1317, 1322 (7th Cir. 1988) ("An investor who knew the truth is hard put to say that the inconsistent oral statement significantly altered the total mix of information."); *Seibert v. Sperry Rand Corp.*, 586 F.2d 949, 952 (2d Cir. 1978) ("Although the underlying philosophy of [the] federal securities regulations is that of full disclosure . . . , there is no duty to disclose information to one who reasonably should already be aware of it."); *Acme Propane, Inc.*, 844 F. 2d at 1322 (citing *Teamsters Local 282 Pension Trust Fund v. Angelos*, 762 F.2d 522, 529–30 (7th Cir. 1985)) ("[D]eceitful statements are not material to the investment decision when the investor has been told the truth.").

[563] *Cf. Leaddog Capital Mkts., LLC*, Initial Decision Release No. 468, 2012 SEC LEXIS 2918, at *42–43 (Sept. 14, 2012) (finding omissions about respondent's negative business affiliations were "clearly intentional and intended to keep potential investors from learning information an investor might consider pejorative").

[564] FINRA Sanction Guidelines (2018), http://www.finra.org/industry/sanction-guidelines.

Principal Considerations in Determining Sanctions, as well as guidelines for specific violations. The General Principles explain that "sanctions should be designed to protect the investing public by deterring misconduct and upholding high standards of business conduct."[565] Adjudicators are therefore instructed to "design sanctions that are meaningful and significant enough to prevent and discourage future misconduct by a respondent and deter others from engaging in similar misconduct."[566] Further, sanctions should "reflect the seriousness of the misconduct at issue,"[567] and should be "tailored to address the misconduct involved in each particular case."[568]

Below, we address sanctions for Larson's violations, separately, by cause of action. In determining sanctions, we considered all relevant circumstances, including the seriousness of the violations, any aggravating or mitigating factors, the risk of future harm posed by Larson, and the deterrent value to Larson. The sanctions we impose are appropriate, proportionally measured to address Larson's misconduct, and are designed to protect and further the interests of the investing public, the industry, and the regulatory system.

A. Submitting Misleading CMAs in Violation of FINRA Rules 1122 and 2010

For violations of FINRA Rule 1122, the Guidelines recommend considering a suspension in any or all capacities for up to six months or, in egregious cases, a lengthier suspension of up to two years or a bar. Also, the Guidelines recommend a fine in the range of $2,500 to $73,000.[569]

We find that Larson's violations are egregious. His misconduct (1) occurred in connection with two CMAs, which remained pending for over a year;[570] (2) misled FINRA into approving a CMA it may well not have otherwise approved;[571] (3) was intentional, or, at a minimum, reckless;[572] and (4) resulted in the potential for Larson's monetary gain, because the CMA was approved.[573] Larson also failed to accept responsibility for his actions.[574]

In light of these aggravating circumstances, and because there are no mitigating circumstances, we find that a significant sanction is warranted in order to properly remediate this

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565 Guidelines at 2 (General Principles Applicable to All Sanction Determinations, No. 1).

566 Guidelines at 2 (General Principles Applicable to All Sanction Determinations, No. 1).

567 Guidelines at 2 (General Principles Applicable to All Sanction Determinations, No. 1).

568 Guidelines at 3 (General Principles Applicable to All Sanction Determinations, No. 3).

569 Guidelines at 45. This Guideline does not include any Principal Considerations applicable here ("Whether the respondent has filed a registration application" and the "[n]ature and extent of the unregistered person's responsibilities.").

570 Guidelines at 7 (Principal Considerations in Determining Sanctions, Nos. 8 & 9).

571 Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 10).

572 Guidelines at 8 (Principal Considerations in Determining Sanctions, No. 13).

573 Guidelines at 8 (Principal Considerations in Determining Sanctions, No. 16).

574 Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 2).

misconduct, to lessen the likelihood of a recurrence, and to deter others from engaging in similar misconduct. Therefore, we suspend Larson for 18 months in all capacities from association with any member firm.[575]

B. Failing to Provide Complete and Timely Responses to FINRA's Request for Information in Violation of FINRA Rules 8210 and 2010

The Guidelines for FINRA Rule 8210 violations address three scenarios: (1) failure to respond or respond truthfully; (2) providing a partial but incomplete response; and (3) failure to respond in a timely manner.[576] Given that Larson eventually provided the withheld documents before FINRA brought this proceeding against him, we apply the sanctions recommended for failing to respond in a timely manner.[577] For that type of violation, the Guidelines recommend that the Adjudicators "consider suspending the individual in any or all capacities for up to two years" and imposing a fine in the range of $2,500 to $37,000. The Guidelines also include three Principal Considerations for us to take into account: (1) the "[i]mportance of the information requested as viewed from FINRA's perspective"; (2) the "[n]umber of requests made and the degree of regulatory pressure required to obtain a response"; and (3) the "[l]ength of time to respond."

These considerations weigh in favor of imposing significant sanctions. Larson withheld important information: the requests related to an investigation into Beyer's OBA, and the withheld information related directly to those activities, including the nature and scope of those activities and the Firm's knowledge and supervision of them. Also, FINRA needed to exert substantial regulatory pressure in order to finally obtain the withheld documents: it issued four requests over a one-year period before Larson finally made full production.

Further, there are several additional aggravating factors applicable here: (1) Larson has failed to fully accept responsibility for his actions;[578] (2) his misconduct occurred over an

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[575] In light of this suspension, and in view of the monetary sanctions imposed for Larson's violation of FINRA Rules 8210 and 2010, below, we exercise our discretion and do not impose additional monetary sanctions. *See* Guidelines at 10 ("Adjudicators may exercise their discretion in applying FINRA's policy on the imposition and collection of monetary sanctions as necessary to achieve FINRA's regulatory purposes" and "[i]n all cases, Adjudicators may exercise their discretion.").

[576] Guidelines at 33.

[577] *Cf.* Guidelines at 33 n.1 ("When a respondent does not respond until after FINRA files a complaint, Adjudicators should apply the presumption that the failure constitutes a complete failure to respond."). Enforcement characterized the charge as "somewhat of a hybrid between a complete failure to respond and an untimely response." Tr. 40.

[578] Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 2); *Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *73 (Jan. 30, 2009) (finding that respondent's blame-shifting arguments demonstrate a failure to accept responsibility for his own actions); *Dep't of Enforcement v. Elgart*, No. 2013035211801, 2017 FINRA Discip. LEXIS 9, at *36 (NAC Mar. 16, 2017) (finding respondent's failure to accept responsibility an aggravating factor in imposing sanctions), *aff'd*, Exchange Act Release No. 81779, 2017 SEC LEXIS 3097 (Sept. 29, 2017), *appeal docketed*, No. 17–15283 (11 Cir. Nov. 28, 2017); *see also Brookstone Sec., Inc.*, 2015 FINRA Discip. LEXIS 3, at *132 (finding it "extremely troubling" that respondents "have not during this proceeding accepted any responsibility for their misconduct").

extended period of time;[579] (3) Larson attempted to conceal his and the Firm's knowledge regarding Beyer's relationship with Heroic and attempted to lull FINRA into inactivity or to mislead it about their knowledge;[580](4) he intentionally withheld the Beyer handwritten letter and, regarding the non-production of the other documents, Larson's conduct was at least reckless; and (5) given that Larson was the Firm's Chief Compliance Officer with substantial industry experience, he plainly understood, or was reckless in not appreciating, that he was violating his Rule 8210 obligations by not producing the withheld information.[581] We also find that there are no mitigating circumstances.[582]

Accordingly, to properly remediate this misconduct, to lessen the likelihood of a recurrence, and to deter others from engaging in similar misconduct, we impose a $37,000 fine and a two-year suspension in all capacities from association with any FINRA member firm.

C. Falsification of Firm Documents and Provision of Falsified Documents in Response to a FINRA Regulatory Request in Violation of FINRA Rules 2010 and 4511

The Panel majority found that Larson falsified several Firm documents and produced several of them to FINRA. This conduct violated two rules. Rather than impose separate sanctions for each violation, however, we impose a unitary sanction as the violations are based on the same facts and course of conduct.[583] We begin with the relevant Guidelines and principles governing these violations.

1. Falsification of Firm Documents in Violation of FINRA Rule 2010

Under the Guidelines for falsifying a document without authorization or ratification, in the absence of other violations or customer harm, the Adjudicator should consider suspending

[579] Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 9).

[580] Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 10). As noted above, the initial examination was closed without any findings of a violation by Beyer of OBA. When Larson finally made full production, the examiner's view changed about whether Beyer had engaged in OBA violations. Tr. 1147–48.

[581] Guidelines at 8 (Principal Considerations in Determining Sanctions, No. 13). We do not credit Larson's assertion that even by November 2013, after 13 years' experience in the compliance field, he lacked a strong understanding of what Rule 8210 required of persons associated with broker-dealers. Tr. 199–200. Rather, the Panel majority sees this as an attempt to avoid responsibility for his misconduct.

[582] As discussed above, the president and the administrative assistant were involved in assembling the documents for production. Their participation, however, did not lessen Larson's responsibility to ensure that all relevant documents were produced, nor does it mitigate his sanctions.

[583] *See* FINRA Sanction Guidelines 4 (2017) (General Principles Applicable to All Sanction Determinations, No. 4); *Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at *59 (Sept. 24, 2015) (affirming FINRA's imposition of a single sanction for violations that are based on the same facts); *Dep't of Mkt. Regulation v. Naby*, No. 20120320803-01, 2017 FINRA Discip. LEXIS 27, at *28 (NAC July 24, 2017) (unitary sanction imposed for respondent's falsification of documents that her member firm provided to FINRA in response to a FINRA Rule 8210 request for information).

the respondent for a period of two months to two years and imposing a fine between $5,000 and $146,000. A bar is the standard sanction, however, if the respondent falsifies a document without authorization, in furtherance of another violation, resulting in customer harm or accompanied by significant aggravating factors. The Guideline for this violation lists several Principal Considerations, two of which are applicable here: the "[n]ature of the document(s) signed or falsified," and "[w]hether the respondent had a good-faith, but mistaken belief of express or implied authority."[584]

2. Recordkeeping Misconduct in Violation of FINRA Rules 4511 and 2010

The falsification violation resulted in a violation of FINRA Rule 4511, as discussed above. The Guideline for this violation directs Adjudicators to consider a suspension in any or all capacities for a period of 10 days to three months, and a suspension of up to two years or a bar where aggravating factors predominate. Also, the Guideline recommends a fine of $1,000 to $15,000 or, when aggravating factors predominate, a fine of $10,000 to $146,000. And when significant aggravating factors predominate, Adjudicators should consider a higher fine.[585]

The Guideline for Rule 4511 violations includes five Principal Considerations: (1) the nature and materiality of the inaccurate or missing information; (2) the nature, proportion, and size of the firm records (e.g., emails) at issue; (3) whether inaccurate or missing information was entered or omitted intentionally, recklessly, or as the result of negligence; (4) whether the violations occurred during two or more examination or review periods or over an extended period of time, or involved a pattern or patterns of misconduct; and (5) whether the violations allowed other misconduct to occur or to escape detection.[586]

3. Providing False Documents to FINRA in Violation of FINRA Rule 2010

The Guidelines do not address violations relating to untruthful information provided in response to a request for information not made under Rule 8210. When no Guideline specifically addresses a violation, the Guidelines instruct Adjudicators to look to Guidelines for analogous violations, where possible.[587] We did not find any other Guidelines directly analogous, though we did find instructive a principal consideration contained in the Guideline for Rule 8210 violations: the "[i]mportance of the information requested from FINRA's perspective."[588] We

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[584] Guidelines at 37. The other listed Principal Considerations apply to transactions or to situations in which the falsification consists of forgery or unauthorized use of a signature.

[585] Guidelines at 29.

[586] Guidelines at 29.

[587] Guidelines at 1 ("For violations that are not addressed specifically, Adjudicators are encouraged to look to the guidelines for analogous violations.").

[588] Guidelines at 33 (Principal Considerations in Determining Sanctions No. 1—Failure to Respond or to Respond Truthfully); *Dep't of Enforcement v. Stonegate Partners*, LLC, No. E112005002003, 2008 FINRA Discip. LEXIS 26, at *33 (OHO May 15, 2008) (finding "helpful" two Principal Considerations contained in the Guideline for Rule 8210 violations although the false and misleading information was provided in response to a formal FINRA request that did not cite Rule 8210).

also considered the nature of Larson's misconduct and the Guidelines' Principal Considerations in Determining Sanctions that apply to all misconduct.[589]

4. Discussion

In determining the proportionately remedial sanction for these violations, the Panel majority considered the nature of the falsified documents and the seriousness of the violations. Larson's violations were serious. The backdated documents were supervisory review documents. These are important documents as they evidence a firm's supervisory review—evidence that is used by both FINRA and firms to evaluate the adequacy of a firm's supervision. Therefore, backdating supervisory review documents can impede FINRA's ability to evaluate the adequacy of that supervision.[590]

The Panel majority also considered the predominance of serious, aggregating factors: (1) Larson lacked a good-faith, but mistaken, belief that he was authorized to backdate the documents. To the contrary, he knew, or was reckless in not knowing, that it was improper for him to do so; (2) his misconduct involved several documents and was part of an admitted practice of backdating documents;[591] (3) the falsifications resulted in the Firm's violation of FINRA Rule 4511, namely, maintaining inaccurate books and records; (4) Larson showed no remorse and failed to accept responsibility for his wrongdoing; and (5) Larson submitted the falsified documents in order to deceive FINRA about the timely completion of supervisory forms and to influence a FINRA exam finding.

On the other hand, the evidence did not establish that (1) Larson failed to conduct the reviews reflected on the falsified documents;[592] (2) he tried to deceive FINRA into believing that he had conducted non-existent reviews; (3) he falsified the documents to further another violation; or (4) his misconduct allowed other misconduct to occur or escape detection.

On balance, Larson's willingness to falsify important Firm records and then produce them to FINRA to try and counter an adverse exam finding evidences a serious lack of respect for the rules and regulations governing the securities industry and warrants a significant sanction.

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[589] *See Dep't of Enforcement v. Elgart*, No. 2013035211801, 2017 FINRA Discip. LEXIS 9, at *42–44 (NAC Mar. 16, 2017), *aff'd*, 2017 SEC LEXIS 3097 (Sept. 29, 2017), *appeal docketed*, No. 17–15283 (11th Cir. Nov. 28, 2017) (considering the nature of the misconduct and the Guidelines' Principal Considerations in Determining Sanctions that apply to all misconduct in a case involving a failure to timely update a Form U4 with material information and providing a false answer on a FINRA PAQ).

[590] *Cf. Geoffrey Ortiz*, 2008 SEC LEXIS 2401, at *22–23 ("[E]ntry of accurate information on firm records is a predicate to the NASD's regulatory oversight of its members and a predicate for any firm's internal compliance program.").

[591] Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 8).

[592] *See* Tr. 721 (Enforcement counsel representing that "nowhere in" the charges does it "allege or assert that Mr. Larson failed to conduct" supervisory reviews of OBAs).

Accordingly, we impose an 18-month all-capacities suspension from association with any member firm.[593]

D. Concurrent v. Consecutive Suspensions

As to whether Larson should serve his suspensions concurrently or consecutively, we considered the guidance provided by the NAC on this issue. "In deciding whether to order concurrent or consecutive suspensions, Adjudicators should remain mindful that the purpose of sanctions in NASD disciplinary proceedings is to remedy misconduct." The NAC explained that "in cases involving rule violations of fundamentally different natures, consecutive suspensions specifically discourage *all* types of additional misconduct at issue."[594] That said, the NAC recognized that "consecutive suspensions might exceed what is needed to be remedial, depending on the facts and circumstances."[595]

Further, we took into account that the Guidelines recommend that suspensions not exceed two years "because of the NAC's sense that, absent extraordinary circumstances, any misconduct so serious as to merit a suspension of more than two years probably should warrant a bar."[596] We do not find that the totality of Larson's misconduct warrants a bar. But if Larson were to serve his suspensions consecutively, he would be suspended for five years from the securities industry—far exceeding the two-year suggested maximum for suspensions. We do not consider a suspension of that length proportionally remedial for the violations he committed.

Therefore, under the circumstances presented here, although Larson's violations are of "fundamentally different natures," we determined that he should serve his suspensions concurrently.

IV. Order

Respondent Steven E. Larson is:

1) Suspended for 18 months in all capacities from association with any FINRA member firm for violating FINRA Rules 1122 and 2010 by submitting materially misleading Continuing Membership Applications to FINRA;

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[593] In light of this lengthy suspension, and the fine imposed for the FINRA Rule 8210 and 2010 violations above, we exercise our discretion and decline to impose further monetary sanctions for these violations.

[594] *Dep't of Enforcement v. Siegel*, No. C05020055, 2007 NASD Discip. LEXIS 20, at *53 (NAC May 11, 2007). *See Siegel*, 2008 SEC LEXIS 2459, at *46–47, *aff'd*, Exchange Act Release No. 58737, 2008 SEC LEXIS 2459 (Oct. 6, 2008) (affirming FINRA's imposition of consecutive suspensions in cases where rule violations are of fundamentally different natures), *aff'd in relevant part*, 592 F.3d 147 (D.C. Cir. 2010); *Mitchell H.Fillet*, Exchange Act Release No. 79018, 2016 SEC LEXIS 3773, at *21 n.18 (Sept. 30, 2016) (affirming FINRA's order that respondent serve suspensions consecutively "because the violations involve different types of misconduct and raise separate public interest concerns.").

[595] *Siegel*, 2007 NASD Discip. LEXIS 20, at *53.

[596] Guidelines at 11.

2) Fined $37,000 and suspended for two years in all capacities from association with any FINRA member firm for violating FINRA Rules 8210 and 2010 by failing to provide complete and timely responses to FINRA's document and information requests;

3) Suspended for 18 months in all capacities from association with any FINRA member firm for violating FINRA Rules 2010 and 4511 by falsifying firm records by backdating supervisory documents and then submitting some of them to FINRA; and

4) Ordered to pay costs in the amount of $16,895.68, which includes a $750 administrative fee and the cost of the hearing transcript, $16,145.68.

The suspensions imposed herein shall be served concurrently.

If this decision becomes FINRA's final disciplinary action, the suspensions shall become effective with the opening of business on August 6, 2018. The fines and assessed costs shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.

Enforcement failed to prove by a preponderance of the evidence that Larson violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, or FINRA Rules 2020 and 2010 by making material misrepresentations and omissions in communications with customers (First Cause of Action) and in connection with recommendations of church bond cross trades (Second Cause of Action). Those charges are therefore dismissed.[597]

David R. Sonnenberg
Hearing Officer
for the Extended Hearing Panel

V. Dissenting Opinion by Hearing Panelist

Hearing Panelist dissenting, in part:

I dissent from the Panel majority's conclusion that Larson violated FINRA Rules 2010 and 4511 by backdating Firm documents and then producing some of them to FINRA. I would not have found that Enforcement proved by a preponderance of the evidence that Larson backdated the documents at issue. The evidence of backdating was largely circumstantial, and I did not find it sufficient to prove the charges.

[597] The Extended Hearing Panel considered and rejected without discussion all other arguments of the parties.

The evidence in this case—not just regarding the backdating charges, but regarding all the charges—showed that Larson was not detail oriented, careful, or well organized in how he approached his securities business responsibilities. For example, the Firm's administrative assistant testified that she had difficulty getting Larson to provide paperwork.[598] Further, according to Enforcement, Larson had "[a] proclivity toward a general disregard for compliance with filing paperwork properly, completing it in a timely fashion, completing it at all, things of that nature."[599] I agree with that assessment of the evidence. But given Larson's laxity, coupled with the logistical challenges resulting from working off-site, I conclude that Larson may well have signed the October 2013-dated forms before the 2013 annual conference; later forgot to give them to the administrative assistant at the conference; and inadvertently took them home to his Minnesota office, where they remained, undiscovered, until his focus turned to searching for them. Also, given that there had been prior instances of misfilings and loss of documentation at the Firm,[600] I find it plausible that the administrative assistant may have lost or misplaced the forms Larson purports to have signed at the November 2014 compliance conference and needed Larson to re-sign them.

In sum, while the evidence did not establish that Larson timely signed the documents at issue, I would not have found that Enforcement established by a preponderance of the evidence that he backdated them. Enforcement fails to meet its burden of proof "where the totality of the evidence suggests an equally or more compelling inference than [Enforcement's] allegation."[601] Accordingly, I dissent from the Panel majority's conclusion that Larson violated FINRA Rules 2010 and 4511 by backdating documents and producing some of them to FINRA.

VI. Dissenting Opinion by Hearing Officer

Hearing Officer dissenting, in part:

I am unable to join in the Panel majority's conclusion that Enforcement failed to prove that Larson violated the federal antifraud and related FINRA provisions alleged in the first and second causes of action. While I agree with the Panel majority's findings that Larson made certain material misrepresentations and omissions in communications with his customers, I would have also found that in doing so, he acted with scienter. In my view, the evidence showed that when Larson made the false statements and omissions, he was aware of, or recklessly disregarded, the negative information about the church bonds on the trustee's website (some of which had been sent to him by the trustee) as well as information regarding the prices at which certain church bonds had traded. Also, many of Larson's valuations conflicted with his own

[598] Tr. 788–89.

[599] Tr. 786.

[600] Tr. 890.

[601] *Reynolds*, 2001 NASD Discip. LEXIS 17, at *54 (quoting *SEC v. Moran*, 922 F. Supp. 867, 892 (S.D.N.Y. 1996)). *See* Tr. 814 (Administrative assistant conceding that it was possible the president had sent Larson the MT-signed forms around the time MT signed them and that Larson signed them at that time but did not send them back until she "reminded him of it with the March 24th email".).

Update valuation descriptions, which further supports my conclusion that he acted at least recklessly. Given the length of his experience in the securities industry and in selling church bonds,[602] Larson likely well understood his disclosure obligations—a fact that influenced my conclusion that he acted with scienter.

Larson was obligated to avoid making misleading statements and omissions to try and lull his customers into inaction, even if he believed in good faith that inaction was their best course.[603] His customers were entitled to receive full and accurate information about the bonds and the issuers. Thus, I reject Larson's "some pricing was better than no pricing" argument, and see it as merely an excuse to justify his abdication of responsibility. I also give little weight to his claimed reliance on RBC's pricing or on the trustee to provide his customers with information about the bonds. "A registered representative cannot shift to others his responsibility to refrain from committing fraud."[604] Larson's misconduct was especially troublesome because, as he recognized, his customers trusted him and relied on him for guidance regarding their church bonds,[605] and he had discretionary authority over several of their accounts.

In connection with the cross trades, he preferenced one group of customers (sellers) over another (purchasers). And, as to the two sets of Windermere cross trades on July 14, 2014, he preferenced his wife over another purchaser. Larson certainly knew that he arranged (or was in the process of arranging) for his wife to buy bonds in the same series as another purchaser (JK), but at a lower price, on the same day. Also, he must have realized that that information should have been disclosed to JK. To me, the only reasonable inference is that he arranged a sweetheart deal for his wife, at JK's expense, and chose not to disclose it. Given that he exercised discretion in JK's account to arrange and execute the trade, and given her physical and mental vulnerabilities, this conduct is disturbing.

In short, I conclude that Larson's misrepresentations and omissions constituted such an extreme departure from the standard of care required of securities professionals that he knew or must have been aware of the danger of misleading investors. Therefore, I would have found that he violated the federal and FINRA provisions alleged in the first and second causes of action, and would have imposed appropriately remedial sanctions.

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[602] *Scholander*, 2014 FINRA Discip. LEXIS 33, at *65–66 (holding that an individual's significant industry experience bolsters a finding of recklessness), *aff'd*, 2016 SEC LEXIS 1209, *petition for review denied sub nom. Harris v. SEC*, 712 F. App'x 46 (2d Cir 2017).

[603] In any event, a respondent's "asserted good faith belief is not plausible if he ignores facts that place him on notice . . . of misleading clients or client[]." *Gebhart*, 2008 SEC LEXIS 3142, at *35.

[604] *Dep't of Enforcement v. Gomez*, No. 2011030293503, 2018 FINRA Discip. LEXIS 10, at *52 (NAC Mar. 28, 2018) (citing *Hasho*, 784 F. Supp. at 1107).

[605] Tr. 1104, 1324.

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