BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Market Regulation, Complainant, vs. Robert N. Drake Lakeville, CT, Respondent.	DECISION Complaint No. 20060053785-02 Dated: July 25, 2013

Respondent failed to supervise mark-ups and mark-downs on corporate bond transactions and failed to establish, maintain, and enforce written supervisory procedures reasonably designed to ensure the timely and accurate reporting of corporate bond transactions. Held, findings affirmed and sanctions modified.

Appearances

For the Complainant: Laurie A. Doherty, Esq., James J. Nixon, Esq., Department of Market Regulation, Financial Industry Regulatory Authority

For the Respondent: Pro Se

Decision

Pursuant to FINRA Rule 9311(a), Robert N. Drake ("Drake") appeals a May 3, 2012 Hearing Panel decision. The Hearing Panel found that Drake failed to properly supervise mark-ups and mark-downs, which resulted in Kuhns Brothers Securities Corporation (the "Firm") charging customers excessive and unfair mark-ups and mark-downs on 30 corporate bond transactions. The Hearing Panel determined that this misconduct violated NASD Rules 3010 and 2110.[1] The Hearing Panel also found that Drake failed to establish, maintain, and enforce reasonable written supervisory procedures ("WSPs") to ensure the timely and accurate reporting of the Firm's corporate bond transactions to FINRA's Trade Reporting and Compliance Engine

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

("TRACE"), in violation of NASD Rules 3010 and 2110. The Hearing Panel barred Drake from acting as a supervisor for this misconduct.

After a complete review of the record, we affirm the Hearing Panel's findings. For Drake's misconduct, we bar him in all supervisory and principal capacities and fine him $5,000.

I. Drake's Background

Drake entered the securities industry in 1983 and first registered as a general securities representative in May 1989. He registered as a general securities principal in June 1991 and as a municipal securities principal in February 2010. Drake became associated with the Firm in November 2002.

II. Procedural History

FINRA's Department of Market Regulation ("Market Regulation") filed the complaint in this matter in August 2011. Cause one of the complaint alleged that from May 2004 through July 2006, Drake violated NASD Rules 3010 and 2110 by failing to supervise mark-ups and mark-downs charged by the Firm on corporate bond transactions placed by Robert Quincy Brown ("Brown"), a registered representative at the Firm. Cause two alleged that Drake violated NASD Rules 3010 and 2110 by failing to establish, maintain, and enforce reasonable written supervisory policies and procedures for TRACE reporting and failing to reasonably supervise the reporting of corporate bond transactions to TRACE.

The Hearing Panel conducted a hearing on February 1, 2012. In a decision dated May 3, 2012, the Hearing Panel found that Drake engaged in the misconduct alleged in the complaint and barred Drake in all supervisory capacities. Drake appealed, and neither he nor Market Regulation requested oral argument. Thus, we have considered this case on the basis of the written record.

III. Facts

The parties stipulated to most of the facts alleged in the complaint, and on appeal Drake admits having violated FINRA rules and focuses on the sanctions imposed by the Hearing Panel. We briefly discuss the relevant facts below.

A. Drake Registers at the Firm as a Principal and Is Designated its Chief Compliance Officer

In July 2003, Drake registered with the Firm as a general securities principal and worked at the Firm's Connecticut office. Around that time, the Firm also designated him as its chief compliance officer. The Firm's WSPs designated Drake as the individual responsible for establishing supervisory systems and overall compliance oversight at the Firm. Drake was also responsible for reviewing and updating the Firm's WSPs.

B. The Firm Hires Brown

In September 2003, the new president and part-owner of the Firm, John Starr ("Starr"), recruited and hired registered representative Brown. Brown specialized in fixed income securities, which was a new line of business for the Firm.[2] Starr was responsible for supervising Brown's sales activities, and Drake was responsible for supervising Brown's daily transactions in corporate fixed income securities. Drake was also responsible for reviewing mark-ups and mark-downs on corporate bond transactions at the Firm, and he had the authority to reduce a mark-up that he considered excessive. Drake served as Brown's primary contact at the Firm, and Brown worked from his home in Jacksonville, Florida.

C. Brown's Disciplinary History

At the time the Firm hired Brown, he had an extensive disciplinary history. In 1984, FINRA censured Brown in connection with a complaint alleging that he engaged in unauthorized transactions. In 1991, the SEC, after a hearing on the merits, suspended Brown for six months. The SEC found that Brown willfully violated, and aided and abetted violations of, the antifraud provisions of the federal securities laws in connection with the sale of municipal bonds to customers by concealing material information from customers.

Six states have also disciplined Brown. These states revoked or denied Brown's registration based upon FINRA's 1984 order and the SEC's 1991 suspension. Several states issued orders requiring that Brown be placed under heightened supervision. Most state securities regulators would not approve Brown's registration due to his disciplinary and regulatory history. One state (Georgia) required that Brown be placed on heightened supervision as a condition of its approval of his registration in that state. To obtain Brown's conditional registration in Georgia, Drake represented that he would provide heightened supervision for Brown.[3]

Drake knew of Brown's disciplinary and regulatory history, as he was responsible for reviewing Brown's Central Registration Depository ("CRD"®) history and conducting a background check on Brown prior to him joining the Firm. Although Drake admitted that Brown's disciplinary history raised "significant" red flags, Drake believed that he could not challenge Starr's hiring of Brown. Despite Brown's disciplinary history, Drake did not put into place any heightened supervisory procedures for Brown. Drake testified that he believed such procedures would not have been beneficial because the Firm was small and Brown's activities at the Firm were limited to trading bonds. Drake further testified that heightened supervisory

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[2] Prior to September 2003, the Firm focused mostly on investment banking and did no fixed income business.

[3] In 2008, Brown resigned from the Firm. At the time of his resignation, Brown was scheduled to provide testimony related to the matters described herein at an on-the-record interview with FINRA staff. FINRA subsequently barred Brown for failing to respond to requests for information.

procedures were unnecessary with respect to Georgia's requirement because Brown had no accounts in that state.

D. The Firm Charges Excessive Mark-ups and Mark-downs

From May 2004 through July 2006, the Firm charged customers excessive mark-ups and mark-downs on 30 bond transactions initiated by Brown. The 30 transactions at issue involved five corporate bonds. The Firm did not make a market in any of the five corporate bonds. Each trade was a "riskless" principal transaction that involved virtually simultaneous or same-day purchase and sale of the same bond with a Firm customer involved in one or both legs of each transaction. In connection with these 30 transactions, the Firm usually charged at least double the mark-ups or mark-downs charged by other member firms on similarly sized transactions involving the same bonds, and often six or seven times the mark-ups or mark-downs charged by other firms on such transactions. For example, in one transaction the Firm charged a mark-up of 8.05% to a customer, whereas other firms during the period were charging mark-ups ranging from .42% to 4.06% on transactions of similar size. In another transaction, the Firm charged a mark-up of 5.92%, whereas other firms during the period were charging mark-ups ranging from .32% to 2% on transactions of similar size. The record shows that the Firm did not vary the amount of its mark-up or mark-down with the size of the transaction, whereas other firms decreased the mark-up or mark-down percentage as the size of the transaction increased. In total, the Firm charged mark-ups or mark-downs of more than 5% in 18 of the 30 transactions, 5% in four transactions, and between 4% and 5% in eight transactions.

No one at the Firm reviewed Brown's orders before they were executed, and Brown did not enter his transactions into the Firm's computer systems where Drake could have monitored them in real-time. Rather, Brown communicated directly with the Firm's clearing agent regarding customer orders, and Drake only received information concerning each trade from the clearing firm.[4] At the time, the Firm's policies treated equity and debt securities transactions alike in that they considered any commission or mark-up exceeding 5% to be presumptively unfair and unreasonable.[5] Drake testified that he reviewed Brown's trades at issue by calculating the size of each mark-up or mark-down to ensure that the Firm complied with its mark-up and mark-down policy. Drake could not explain how the mark-ups on 18 of the 30 trades exceeded 5% (which he viewed as a cap), despite his purported review. Drake also had no information that might justify the Firm charging higher mark-ups (e.g., the Firm providing extra services or facilities in any particular transaction), never did an investigation of any mark-up or mark-down beyond his calculation, and never questioned a mark-up or mark-down on any of Brown's transactions. The Firm ultimately paid to customers $120,960 in restitution in connection with the 30 transactions.

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[4] Drake testified that Brown "did his trades in a rather unorthodox fashion."

[5] The Firm's policy treated equity and debt transactions alike, which conflicts with FINRA's guidance on these points. *See* Interpretative Material ("IM") 2440-1(a) (providing that the "5% Policy" is a guide and not a rule and that a markup of less than 5% may be considered unfair or unreasonable). Market Regulation did not charge Drake with responsibility for this Firm policy.

E. The Firm Fails to Report Transactions to TRACE

From January 2004 through December 2004, no corporate bond trades were reported to TRACE by, or on behalf of, the Firm. The Firm, however, executed 34 eligible corporate bond transactions during that period (including a number of transactions executed by Brown).

In October 2004, the Firm executed a TRACE reporting agreement with its clearing firm, after which the clearing firm began to report trades to TRACE on the Firm's behalf. From 2004 until at least the end of 2008, however, the Firm's WSPs did not contain a description of any supervisory review designed to ensure that the Firm's clearing firm was reporting to TRACE the Firm's corporate bond transactions. Further, neither the Firm nor Drake (the principal responsible for establishing and maintaining the Firm's WSPs, including with respect to TRACE reporting), conducted any supervisory reviews to ensure proper reporting to TRACE from 2004 until at least the end of 2005.

IV. Discussion

The Hearing Panel found that Drake failed to reasonably supervise mark-ups and mark-downs in connection with Brown's transactions at the Firm, which resulted in the Firm charging customers excessive and unfair mark-ups and mark-downs. In addition, the Hearing Panel found that Drake failed to establish, maintain, and enforce written supervisory procedures reasonably designed to ensure the timely and accurate reporting of corporate bonds. We affirm these findings.

A. Relevant Supervisory Rules

NASD Rule 3010(a) requires FINRA members to establish and maintain a supervisory system to supervise the activities of registered representatives that is reasonably designed to achieve compliance with applicable securities laws and regulations and FINRA rules. "A supervisor is responsible for reasonable supervision, a standard that is determined based on the particular circumstances of each case." *Dep't of Enforcement v. Pellegrino*, Complaint No. C3B050012, 2008 FINRA Discip. LEXIS 10, at *46-47 (FINRA NAC Jan. 4, 2008), *aff'd*, Exchange Act Release No. 59125, 2008 SEC LEXIS 2843 (Dec. 19, 2008) (internal quotations and citations omitted). NASD Rule 3010(b) requires each member to establish, maintain, and enforce WSPs that are reasonably designed to ensure compliance with the applicable securities laws and regulations and FINRA rules. A violation of NASD Rule 3010 is also a violation of NASD Rule 2110. *See Midas Sec., LLC*, Exchange Act Release No. 66200, 2012 SEC LEXIS 199, at *60 (Jan. 20, 2012). NASD Rule 0115 (now FINRA Rule 0140) provides that FINRA rules apply to all members and persons associated with a member and that such persons have the same duties and obligations as a member under the rules.

B. Drake Failed to Prevent Excessive Mark-ups and Mark-downs

Drake does not dispute, and the record demonstrates, that the Firm charged unfair and excessive mark-ups.[6] NASD Rule 2440 provides that where a member is engaging in a securities transaction for or from its own account, it shall buy or sell at a price that is fair. Rule 2440 directs that, in determining whether a price is fair, all relevant circumstances be considered, including the market for such security at the time of the transaction, the expense involved, and the fact that a member firm is entitled to a profit. A member violates Rules 2440 and 2110 when it enters into a securities transaction with a customer "at any price not reasonably related to the current market price of the security." *See* NASD IM-2440.[7]

FINRA has previously stated that while no definitive answer can be given in connection with what is a fair mark-up or mark-down, FINRA's Board of Governors has over the years adopted what is known as the "5% Policy" to be applied to transactions executed for customers. *See id.* FINRA has cautioned that the 5% Policy "is a guide, not a rule," that "in the absence of other bona fide evidence of the prevailing market, a member's own contemporaneous cost is the best indication of the prevailing market price of a security." *See* IM-2440-1(a). A mark-up of 5% or less may be considered unfair or unreasonable. *Id.*; *see also Investment Planning, Inc.*, 51 S.E.C. 592, 594 (1993) (finding mark-ups ranging from 4% to 7.26% on the sale of corporate bonds to be improper).

Drake, as the designated individual at the Firm responsible for reviewing mark-ups and mark-downs on corporate bond transactions and Brown's sales of corporate bonds, failed to properly supervise Brown and ensure that the mark-ups and mark-downs on the 30 corporate bond transactions at issue were fair and complied with FINRA rules. Notwithstanding Brown's extensive disciplinary history (including misconduct related to the sale of bonds), Drake cursorily reviewed each of Brown's transactions at issue (many of which exceeded the Firm's policy on mark-ups and mark-downs). Drake never questioned any of the unfair and excessive mark-ups or mark-downs charged. *See A.S. Goldman, Inc.*, 55 S.E.C. 147, 165-68 (2001) (finding that principal responsible for prevention and detection of pricing violations, and for supervising the registered representative who charged excessive mark-ups, violated NASD Rule 3010 by failing to implement and enforce adequate supervisory procedures with respect to mark-ups). Drake also did not investigate any of the transactions and could not explain how more than half of the 30 transactions on their face violated even the Firm's 5% policy. *See Andrew P. Gonchar*, Exchange Act Release No. 60506, 2009 SEC LEXIS 2797, at *34 (Aug. 14, 2009)

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[6] Although the parties do not dispute that the Firm charged unfair and excessive markups in connection with Brown's transactions, we note that a "determination that a respondent has violated NASD's supervisory rule is not dependent on a finding of a violation by those subject to the respondent's supervision." *Robert J. Prager*, Exchange Act Release No. 51974, 2005 SEC LEXIS 1558, at *47 (July 6, 2005).

[7] This Interpretative Material was renumbered in the FINRA Consolidated Rulebook and is now IM-2440-1. *See* Securities Exchange Act Release No. 55638, 2007 SEC LEXIS 757 (Apr. 16, 2007) (Order Approving Rule Change).

(stating that 5% is the amount the SEC has "consistently held, with respect to the sale of bonds, as acceptable in only the most exceptional cases") (internal citations and quotations omitted), *aff'd*, 409 F. App'x 396 (2d Cir. 2010).

On appeal, Drake argues that Starr hired Brown and he could "not be expected to override or fail to carry out a directive" by Starr. We reject Drake's attempt to shift blame to the Firm's president. Drake had an obligation to reasonably supervise regardless of his perceptions concerning how the Firm's owner would react to such efforts. *See Pellegrino*, 2008 SEC LEXIS 2843, at *46 & n.36 (collecting cases). Moreover, Drake has no evidence that his supervisory review of Brown's activities was criticized by Starr, or would have been if Drake had supervised more thoroughly. Drake's point is entirely theoretical. Consequently, we find that Drake violated NASD Rules 3010 and 2110.

C. Drake Failed to Establish, Maintain, and Enforce Reasonable WSPs for TRACE Reporting

Member firms must report all TRACE-eligible corporate debt securities transactions to TRACE. *See* NASD Rules 6220 and 6230;[8] *see also NASD Notice to Members 01-18*, 2001 NASD LEXIS 23 (Mar. 2001). Firms may delegate TRACE reporting to a third party by executing an agreement, but they retain primary responsibility for ensuring that all eligible transactions are properly reported to TRACE. *See NASD Notice to Members 98-96*, 1998 NASD LEXIS 121 (Dec. 1998) (stating that with respect to trade reporting of equity securities, although firms "may allow another firm to perform its trade reporting responsibilities, the firm has the ultimate obligation to report trades in compliance with the rules and to supervise its activities"); *cf. Pellegrino*, 2008 SEC LEXIS 2843, at *47 ("[I]t is not sufficient for the person with overarching supervisory responsibilities to delegate supervisory responsibility . . . and then simply wash his hands of the matter until a problem is brought to his attention. . . . Implicit is the additional duty to follow-up and review that delegated authority to ensure that it is being properly exercised." (internal quotation and citation omitted)).

Drake did not execute, on behalf of the Firm, an agreement with the Firm's clearing firm with respect to TRACE reporting until October 2004. From January 2004 through December 2004, no corporate bond trades were reported to TRACE by, or on behalf of, the Firm. The Firm, however, executed 34 eligible corporate bond transactions during that period, which included a number of Brown's transactions purportedly reviewed by Drake. Moreover, from 2004 until at least 2008, the Firm's WSPs did not contain a description of any supervisory review designed to ensure that the Firm's clearing firm was reporting the Firm's corporate bond transactions to TRACE. Drake admitted that the Firm's WSPs with respect to TRACE reporting were outdated, "boiler-plate" procedures that the Firm had purchased from another company. Drake was responsible for these WSPs and ensuring that they were updated and appropriate, even if the WSPs were inadequate prior to Drake taking responsibility for reviewing and keeping them up-to-date. *See id.* at *53 (recognizing that the firm "had a deficient supervisory system

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[8] These rules are now contained in the FINRA Rule 6700 Series. *See FINRA Regulatory Notice 08-57* (Oct. 2008).

before [respondent] joined the firm, but reasonable supervision required that [he] correct the deficiencies promptly"). Drake also failed to conduct any supervisory reviews to ensure proper reporting to TRACE from 2004 until at least the end of 2005. Based upon all of the forgoing, we conclude that Drake violated NASD Rules 3010 and 2110 by failing to establish, maintain, and enforce reasonable WSPs for TRACE reporting.

V. Sanctions

The FINRA Sanction Guidelines ("Guidelines") for supervision failures recommend a fine of $5,000 to $50,000. With respect to nonmonetary sanctions, the Guidelines recommend a suspension of the responsible individual in all supervisory capacities for up to 30 business days or, in egregious cases, all capacities for up to two years or a bar.[9] In determining the proper remedial sanction, the Guidelines for supervisory violations recommend that adjudicators consider whether: (1) the responsible individual ignored "red flag" warnings that should have resulted in additional supervisory scrutiny; (2) the nature, extent, and character of the underlying misconduct; and (3) the quality and degree of the supervisor's implementation of the firm's supervisory procedures and controls.[10]

The Guidelines for deficient written supervisory procedures provide for fines ranging from $1,000 to $25,000.[11] In egregious cases, the Guidelines recommend suspending the responsible individual in any or all capacities for up to one year.[12] The Guidelines for deficient supervisory procedures provide two considerations to determine the appropriate sanctions: (1) whether the deficiencies allowed violative conduct to occur or to escape detection; and (2) whether the deficiencies made it difficult to determine the individual or individuals responsible for specific areas of supervision or compliance.[13]

The Hearing Panel determined that Drake's supervisory failures were egregious, and barred Drake in all supervisory capacities for his misconduct. We agree with the Hearing Panel that this is an egregious case, and find that a bar in all principal and supervisory capacities is appropriately remedial under the circumstances. In addition, we fine Drake $5,000 for his egregious misconduct.[14]

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9 *FINRA Sanction Guidelines* 103 (2011), http://www.finra.org/web/groups/enforcement/documents/enforcement/p011038.pdf [hereinafter *Guidelines*].

10 *Id.*

11 *Id.* at 104.

12 *Id.*

13 *Id.*

14 The Hearing Panel did not impose a fine for Drake's misconduct. Given the numerous aggravating factors described below, as well as the recommendations set forth in the Guidelines

[Footnote continued on next page]

First, a unitary sanction for Drake's violations is appropriate, as Drake's violations of FINRA rules all resulted from Drake's supervisory failures.[15] Second, we find that several factors serve to aggravate Drake's misconduct. Drake ignored numerous red flags regarding Brown and failed to adequately supervise Brown despite knowing that he had an extensive regulatory history, including sales practice violations related to debt securities. Drake did not implement any heightened supervisory requirements and disregarded his representation to Georgia that he would in fact implement heightened supervision for Brown. Drake failed to do more than a cursory review of Brown's transactions, which resulted in the Firm charging excessive mark-ups and mark-downs to customers in numerous transactions during an extended period of time.[16] Indeed, Drake could not explain how he failed to recognize that most of Brown's trades exceeded even the Firm's flawed mark-up and mark-down policy. Drake's failure to supervise Brown's mark-ups and mark-downs resulted in customers paying unfair and excessive prices for corporate bonds.[17] Moreover, Drake failed to establish procedures for monitoring TRACE reporting, which resulted in a complete failure to report TRACE-eligible transactions during 2004. For years the Firm had inadequate procedures regarding TRACE reporting, all under Drake's watch. We concur with the Hearing Panel's finding that "[t]he quality and degree of Drake's exercise of his supervisory authority was extremely poor."

Further aggravating is Drake's disciplinary history. In October 2000, FINRA entered an Order Accepting Offers of Settlement from Drake and several other respondents (the "FINRA Order"). The FINRA Order found that Drake, while working as a compliance officer at another member firm, permitted a statutorily disqualified person to improperly associate with the firm and failed to timely and accurately report to FINRA and certain states customer complaints and other matters. The FINRA Order also found that Drake and his firm failed to comply with the Firm Element of the Continuing Education Requirement. The FINRA Order suspended Drake in all principal capacities for two years.[18]

[cont'd]

for egregious supervisory failures, a $5,000 fine and a bar in all supervisory and principal capacities are appropriately remedial.

[15] *Id.* at 4 (General Principles Applicable to All Sanction Determinations, No. 4); *Dep't of Enforcement v. Fox & Co. Invs., Inc.*, Complaint No. C3A030017, 2005 NASD Discip. LEXIS 5, at *37 (NASD NAC Feb. 24, 2005) (stating that "where multiple, related violations arise as a result of a single underlying problem, a single set of sanctions may be more appropriate to achieve NASD's remedial goals") (citation omitted), *aff'd*, Exchange Act Release No. 52697, 2005 SEC LEXIS 2822 (Oct. 28, 2005).

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

[17] *Id.* (Principal Considerations in Determining Sanctions, No. 11).

[18] The FINRA Order did not impose any monetary sanction against Drake because he received a bankruptcy discharge.

Moreover, in 1997, South Carolina barred Drake for five years and fined him $5,000 for failing to supervise registered individuals while at a member firm by permitting unregistered agents to solicit customers. In late 1996, Indiana also fined Drake and his firm $7,500 (jointly and severally) for similar misconduct.

Drake argues that these matters should not be considered because they are more than 10 years old and the circumstances of the past disciplinary matters are different. We conclude that Drake's previous misconduct, for which he was severely sanctioned, is similar to the misconduct before us now and demonstrates a pattern of supervisory failures.[19] We also reject Drake's attempt to downplay his prior regulatory issues by blaming others for the misconduct underlying those matters. *See Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *67 (Nov. 9, 2012) (finding that applicant's "attempts to shift blame for his own repeated misconduct cast doubt on his commitment to the high standards of conduct demanded of associated persons").

Drake also argues that the Hearing Panel's consideration of his disciplinary history demonstrated its bias against him. The record does not demonstrate any bias against Drake, and we determine that the Hearing Panel properly considered Drake's disciplinary history in assessing sanctions. *See Guidelines*, at 2 (General Principles Applicable to All Sanction Determinations, No. 2); *see also Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *62 (Jan. 30, 2009) (providing that bias stems from an extrajudicial source that "results in a decision on the merits based on matters other than those gleaned from participation in a case"), *aff'd*, 416 F. App'x 142 (3d Cir. 2010); *Dist. Bus. Conduct Comm. v. Guevara*, Complaint No. C9A970018, 1999 NASD Discip. LEXIS 1, at *39 n.16 (NASD NAC Jan. 28, 1999) (holding that de novo review is intended to insulate proceedings from procedural unfairness), *aff'd*, 54 S.E.C. 655 (2000). Indeed, Drake had prior notice of the consequence of his disciplinary history, as the FINRA Order expressly states that it would become part of Drake's permanent disciplinary record and would be considered in any future FINRA action against him.

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[19] *Id.* at 2 (General Principles Applicable to All Sanction Determinations, No. 2) (stating that adjudicators should always consider a respondent's relevant disciplinary history and consider imposing more severe sanctions when a respondent's disciplinary history includes past misconduct similar to the misconduct at issue); *see also Prager*, 2005 SEC LEXIS 1558, at *59 n.73 ("We reject Alexander's argument that certain of his past disciplinary actions are too stale to be considered for purposes of determining sanctions. His past disciplinary history is important because, as NASD found, it establishes 'a disturbing pattern of disregard for regulatory compliance matters.'"); *Dep't of Enforcement v. Gallagher*, Complaint No. 2008011701203, 2012 FINRA Discip. LEXIS 61, at *40-45 (FINRA NAC Dec. 12, 2012) (considering respondent's disciplinary history, including matters that occurred 14 years prior). Further, it is not mitigating that Drake had no disciplinary history prior to the FINRA Order and the two state matters. *See Rooms v. SEC*, 444 F.3d 1208, 1214 (10th Cir. 2006).

Drake further argues that his supervisory failures related to TRACE reporting were not intentional. Drake, however, was the individual at the Firm responsible for establishing and maintaining the Firm's WSPs, including with respect to TRACE reporting. The Firm's WSPs did not contain a description of any supervisory review designed to ensure that its clearing firm was reporting the Firm's corporate bond transactions to TRACE from 2004 until at least the end of 2008, and Drake did not conduct any supervisory reviews to ensure proper reporting to TRACE from 2004 until at least the end of 2005. We find that under the circumstances and for the reasons stated herein, Drake was at least reckless with respect to his supervisory failures for both corporate debt mark-ups and mark-downs and TRACE reporting. His misconduct evidences a willful disregard for his supervisory obligations.[20]

Finally, Drake argues that he admitted responsibility for his supervisory failures, is remorseful, and cooperated with FINRA in connection with his misconduct. He therefore reasons that a bar in all supervisory capacities is unduly harsh. These factors, however, do not outweigh our determination that, under the circumstances and considering the numerous aggravating factors surrounding Drake's misconduct, a principal and supervisory bar, as well as a $5,000 fine, are necessary to appropriately address Drake's egregious supervisory failures. *See, e.g.*, *Dep't of Enforcement v. Hunt*, Complaint No. 2009018068701, 2012 FINRA Discip. LEXIS 62, at *23 (FINRA NAC Dec. 18, 2012) (rejecting respondent's argument that his cooperation and expressed remorse should warrant a sanction of less than a bar for his egregious misconduct); *Dep't of Enforcement v. DaCruz,* Complaint No. C3A040001, 2007 NASD Discip. LEXIS 1, at *52 (NASD NAC Jan. 3, 2007) ("Subsequent compliance with the federal securities laws and NASD's rules is not mitigating, but conduct consistent with a registered representative's obligations as an associated person"); *cf. Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 12) (instructing adjudicators to consider whether the respondent provided substantial assistance to FINRA in its investigation).

VI. Conclusion

We affirm the Hearing Panel's findings that Drake failed to properly supervise mark-ups and mark-downs on 30 corporate bond transactions, and failed to establish, maintain, and enforce reasonable WSPs for ensuring the timely and accurate reporting of the Firm's corporate bond

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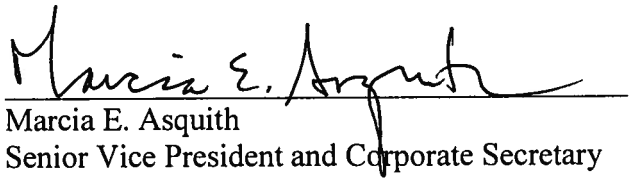
20 *Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 13).

transactions to TRACE. For these violations, we bar Drake in all principal and supervisory capacities, fine him $5,000, and order that he pay $2,000.15 in hearing costs.[21]

On Behalf of the National Adjudicatory Council,



Marcia E. Asquith
Senior Vice President and Corporate Secretary

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[21] We also have considered, and reject without discussion, all other arguments of the parties.

Pursuant to FINRA Rule 8320, the registration of any person associated with a member who fails to pay any fine, costs or other monetary sanction, after seven days' notice in writing, will summarily be revoked for non-payment. The principal and supervisory bar is effective as of the date of this decision.