

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RICHARD HANS BACH
(CRD No. 1011097),

Respondent.

Disciplinary Proceeding
No. 2011025506901

Hearing Officer—LBB

**EXTENDED HEARING PANEL
DECISION**

December 27, 2013

The Extended Hearing Panel finds that Respondent committed multiple violations of FINRA’s Rules, and imposes eight separate bars in all capacities. Respondent is statutorily disqualified for willfully causing his firm to file a false Form BD.

The Extended Hearing Panel finds that Respondent:

- **Violated FINRA Rule 2010 by causing his firm to violate the Net Capital Rule by engaging in securities transactions when it had a net capital deficiency;**
- **Violated FINRA Rule 2010 by causing his firm to violate the Customer Protection Rule by failing to perform reserve calculations and by failing to obtain a “no-lien letter” from the bank where his firm maintained a reserve account;**
- **Violated FINRA Rule 2010 by misrepresenting to a clearing firm that Respondent’s firm would be clearing only proprietary trades, when Respondent intended to deposit customer assets in the account;**
- **Violated FINRA Rules 1122 and 2010 by filing a false Form BD;**
- **Violated NASD Rule 1017 and FINRA Rule 2010 by causing his firm to violate its FINRA membership agreement by failing to obtain FINRA approval for a material change in its business operations;**
- **Violated NASD Rule 3110 and FINRA Rule 2010 by causing his firm to fail to make and keep current order memoranda for trades by the firm’s holding company and others;**

- **Violated FINRA Rules 8210 and 2010 by failing to submit timely and complete responses to requests for documents and information;**
- **Violated FINRA Rules 2150 and 2010 by failing to deliver securities to a customer despite repeated requests;**
- **Violated NASD Rule 2330(b) and FINRA Rule 2010 by failing to maintain physical possession or control of customers' fully paid stock; and**
- **Violated FINRA Rules 2150 and 2010 by refusing to return a free credit balance to a customer despite repeated requests for the funds.**

Appearances

Michael J. Newman, Esq., and Danielle I. Schanz, Esq., for the Department of Enforcement.
Richard Hans Bach, pro se.

DECISION

I. Introduction

The Department of Enforcement filed two complaints against Respondent Richard Hans Bach and his firm, Westor Capital Group, Inc., asserting thirteen causes of action against Bach, and twelve against Westor.¹ The first complaint consists of ten causes of action, including charges for net capital violations, Customer Protection Rule violations, making misrepresentations to a member firm, filing a false Form BD, violating Westor's membership agreement, recordkeeping violations and four causes of action for late or incomplete responses to Rule 8210 requests for information. The second complaint consists of three causes of action, for improper use of customer securities, failure to maintain physical possession of customer securities, and misuse or conversion of customer funds.

¹ Westor defaulted in this proceeding. A separate default decision is being issued with respect to Westor.

The Extended Hearing Panel finds that Enforcement proved that Bach committed all thirteen violations, and bars Bach in all capacities.²

II. Summary of Respondent's Violations

Bach has disregarded FINRA and SEC rules, made material misrepresentations to FINRA and his clearing firm, put customers at risk, and abused his customers. To protect customers and the integrity of the securities industry, the Extended Hearing Panel bars Bach from associating with any FINRA member firm in any capacity.

Bach repeatedly failed to provide timely responses to FINRA's Rule 8210 requests for basic financial and operational documents and information. He eventually provided most of the information after multiple requests from examiners, months after the original requests. He provided some information only when he faced suspension of his and Westor's FINRA registrations, and failed to provide some information at all. He caused his firm to conduct securities transactions when it had insufficient net capital, and to fail to provide basic protections for customer funds and securities that are required by the Customer Protection Rule.

Bach made material misrepresentations to a small clearing firm, opening an account and clearing customer trades through Westor's clearing account after the clearing firm had explicitly told him that it did not clear customer transactions. He made misrepresentations on Westor's Form BD about its clearing arrangements, and caused Westor to violate its membership agreement by failing to obtain approval for a material change in Westor's clearing arrangements.

When a customer attempted to obtain his securities from Westor, Bach caused Westor to fail to deliver the securities until the customer initiated legal action. When another customer had

² As discussed below, the Extended Hearing Panel finds that Enforcement failed to prove one part of the Second Cause of Action in the first complaint, charging a violation of the Customer Protection Rule. The cause of action includes three types of violations of the rule. Enforcement prevails on the cause of action because it proved that Respondent committed two of the three violations charged in the cause of action.

an urgent need for cash and attempted to withdraw his free credit balance held by Westor, Bach refused to return the customer's money until forced to do so by a FINRA temporary cease and desist order ("TCDO").

Bach has engaged in a pattern of disregard of FINRA's Rules, SEC Rules, the regulatory process, and the interests of customers. A bar is the appropriate sanction, and the Extended Hearing Panel imposes eight separate bars in all capacities. In addition, Bach is statutorily disqualified for willfully filing a false Form BD on Westor's behalf.

III. Procedural History

This proceeding involves two related matters that were consolidated by order of the Chief Hearing Officer. For convenience, the matters are identified as "Westor I" and "Westor II." Enforcement filed the ten-cause Complaint in Westor I on August 15, 2012, charging Bach in all ten causes of action. The causes of actions are as follows (using the headings in the Complaint):

First Cause of Action	Net Capital Violations (Westor/Bach) (Section 15(c) of the Exchange Act, Rule 15c3-1 thereunder and FINRA Rule 2010 for Westor, FINRA Rule 2010 for Bach)
Second Cause of Action	Customer Protection Rule Violations (Westor/Bach) (Section 15(c) of the Exchange Act and Exchange Act Rule 15c3-3 for Westor, FINRA Rule 2010 for Bach)
Third Cause of Action	Misrepresentations (Bach) (FINRA Rule 2010)
Fourth Cause of Action	False Form BD Filings (Westor/Bach) (FINRA Rules 1122 and 2010)
Fifth Cause of Action	Membership Agreement Violations (Westor/Bach) (NASD Membership and Registration Rule 1017 and FINRA Rule 2010)
Sixth Cause of Action	Recordkeeping Violations (Westor/Bach) (Exchange Act Rule 17a-3 for Westor; NASD Conduct Rule 3110 and FINRA Rule 2010 for Bach)
Seventh Cause of Action	Failure to Timely Respond to Information Requests (Westor/Bach) (FINRA Rules 8210 and 2010)
Eighth Cause of Action	Failure to Respond Completely to Information Requests (Westor/Bach) (FINRA Rules 8210 and 2010)
Ninth Cause of Action	Failure to Respond Timely to Information Requests (Westor/Bach) (FINRA Rules 8210 and 2010)
Tenth Cause of Action	Failure to Timely Respond to Information Requests (Westor/Bach) (FINRA Rules 8210 and 2010)

The Westor I hearing was scheduled to begin on January 28, 2013. On January 22, 2013, Enforcement filed the Complaint in Westor II, with a notice of the initiation of a proceeding seeking the issuance of a TCDO against Bach and Westor. The Complaint in Westor II consists of three causes of action:

First Cause of Action	Improper Use of Customer Securities (FINRA Rules 2150 and 2010, against Westor and Bach)
Second Cause of Action	Failure to Maintain Physical Possession of Securities (Section 15 of the Exchange Act and Rule 15c3-3(b) thereunder, against Westor, NASD Conduct Rule 2330(b) and FINRA Rule 2010 for Westor, and FINRA Rule 2010 against Westor and Bach)
Third Cause of Action	Conversion/Improper Use of Customer Funds (FINRA Rules 2150 and 2010, against Westor and Bach)

The hearing in Westor I was postponed in order to conduct a hearing on the request for the issuance of a TCDO. On January 30, 2013, prior to the scheduled TCDO hearing, Westor and Bach agreed with Enforcement on the terms of a TCDO, and the Extended Hearing Panel issued a Temporary Cease and Desist Consent Order. Westor I and Westor II were consolidated by order of the Chief Hearing Officer on February 7, 2013. A six-day hearing on the consolidated matters was held in New York City before the Extended Hearing Panel composed of a former member of the District 8 Committee, a former member of the District 11 Committee, and a Hearing Officer.³

³ Enforcement called as witnesses Bach; Kevin Murphy, the president of Electronic Transaction Clearing, and Walter Peczon, Electronic Transaction Clearing's director of client services; FINRA examiners Christopher Rattiner, Catherine Dunn, Paul Ruskowski, and Elena Domasica; William Park, a director in the Department of Enforcement; Joseph Sheirer, director of FINRA's Membership Application Program; Stanley Sheridan, a former Westor employee; customers J.S. and T.T.; and expert witness Susan Demando Scott, Associate Vice President, Financial Operations, at FINRA. Bach was the only defense witness in the case in defense.

IV. Facts Relevant to Multiple Causes of Action

While much of the evidence adduced at the hearing related to specific causes of action, several of the causes of action relate to the types of business in which the firm was permitted to engage and its method of clearing transactions.

A. Bach and Westor

Westor was a small broker-dealer, with its principal office in Bach's home on his farm in upstate New York. CX-1; Tr. 62-63 (Rattiner). The majority of the firm's business was trading in penny stocks for customers. Tr. 118-119, 134 (Rattiner), 841 (Park); CX-51, CX-62.

Bach was first registered with FINRA in 1981, and was registered with several FINRA member firms, with some brief breaks, until 2013. He was registered with Westor from June 2003 until his registration was suspended pursuant to the terms of an agreed-upon order in March 2013. CX-1, CX-110; Tr. 1205, 1628 (Bach); Answer ¶ 10.⁴ Bach was Westor's president, chief compliance officer, and registered financial and operations principal ("FINOP"). Tr. 1262-1263 (Bach); CX-42. Through a holding company, Bach and his wife were the indirect owners of a majority of Westor, and they controlled the firm. CX-42; Tr. 64-65 (Rattiner); Answer ¶ 9. For much of the time relevant to the Complaint, the firm was a "one-man operation." At other times, it had as many as six employees or registered persons. Tr. 1280, 1285, 1325-1330 (Bach).

Bach was Westor's FINOP until the firm ceased doing business. He was responsible for the firm's net capital procedures and filed the FOCUS reports, at least through February 2012. He was also responsible for compliance with the Customer Protection Rule. Tr. 1263, 1410-1411 (Bach), 1163 (Dunn); CX-61; Answer ¶¶ 10, 19. In addition, Bach was responsible for Westor's compliance with FINRA's membership rules. CX-61 at 16; Tr. 1489 (Bach).

⁴ "Answer" refers to the matters admitted in Respondent's Answer to the Complaint in Westor I.

Bach signed Westor's FINRA Membership Agreement on behalf of the firm in November 2005. The Membership Agreement required the firm to maintain a minimum net capital of \$100,000, pursuant to the Net Capital Rule.⁵ The firm also agreed to operate pursuant to Section (k)(2)(ii) of the Customer Protection Rule, Exchange Act Rule 15c3-3(k)(2)(ii), clearing all transactions on a fully disclosed basis through clearing firms. The firm agreed that it would not hold customer funds or safekeep customer securities. The firm also agreed to notify FINRA if it changed its clearing entity, service bureau, or method of clearance. CX-36.

Westor was placed in receivership for liquidation by the Securities Investor Protection Corporation ("SIPC") early in 2013. Tr. 178-179 (Rattiner), 1702 (Bach). Westor was expelled from FINRA in June 2013 for failure to file its annual audit. Tr. 178 (Rattiner), 451 (Domasica).

B. Westor's Clearing Arrangements

Westor entered into a clearing agreement with Penson Financial Services in March 2009. CX-37. Penson terminated the agreement on October 21, 2010, effective in 75 days. CX-37; Tr. 1032-1033 (Ruszkowski). Westor began clearing through Lek Securities in February 2011. Tr. 103 (Rattiner). On May 19, 2011, Lek Securities sent a letter to Bach, notifying him that Lek Securities was terminating its clearing arrangement with Westor, and reminding Bach to amend Westor's Form BD accordingly. CX-38. As of July 11, 2011, when FINRA examiners visited Westor, the firm's Form BD reported that Westor cleared through Lek Securities and Penson. Tr. 64 (Rattiner), 463 (Domasica). FINRA first learned in 2012, during its investigation of Westor and Bach, that Lek Securities had terminated the clearing arrangement. Tr. 464-465 (Domasica).

⁵ The rule requires broker-dealers that engage in more than ten proprietary trades in any calendar year to maintain a minimum net capital of \$100,000. Exchange Act Rule 15c3-1(a)(2)(iii).

In 2011, Bach approached Electronic Transaction Clearing (“ETC”), a small clearing firm, to clear trades for Westor. Tr. 1635-1636 (Bach). At that time, ETC cleared solely for institutional clients engaged in proprietary trading. It did not clear on a fully disclosed basis or on an omnibus basis for introducing brokers.⁶ Tr. 336, 338 (Murphy), 535 (Peczon). The only accounts it maintained for introducing brokers were Proprietary Accounts of Introducing Brokers (“PAIB” accounts). CX-39 at 20-21; Tr. 347-348 (Murphy).

Bach signed a clearing agreement with ETC on Westor’s behalf on September 23, 2011. CX-39, RX-6. Westor’s ETC account was actually opened on November 3, 2012. Tr. 374 (Murphy). Westor had only one account at ETC. Tr. 359, 419 (Murphy). Westor used its ETC account to clear transactions for customers, and for Westor’s proprietary trading as well. The account held dozens of securities, almost all penny stocks, and a substantial amount of cash. Tr. 119 (Rattiner), 1439, 1472 (Bach); CX-51; Answer ¶ 33. Because ETC could not accept certificates or “DWACs,”⁷ some customer securities were kept in an account at Citizens Bank. The account was called “Westor Capital Group.” Tr. 1478-1479 (Bach), 521-522, 531 (Peczon); CX-62 at 5, 39, CX-87.

⁶ “‘Omnibus’ describes a type of relationship between a clearing broker and an introducing broker. The clearing broker ... executes all trades to and from a single account belonging to the introducing broker. A clearing broker is the introducing broker’s agent, and acts on the introducing broker’s behalf, performing those duties delegated in order to fulfill the introducing broker’s obligations to its retail customers.... In an omnibus arrangement, the clearing broker has no knowledge of the identities of the final retail customer for the trades executed....” *Richardt-Alyn & Co.*, Init. Dec. Rel. No. 151, 1999 SEC LEXIS 2074, at *15 n.7 (A.L.J. Sept. 30, 1999); *see also* Broker-Dealer Reports, Exchange Act Rel. No. 34-64676, 2011 SEC LEXIS 2049, at *19 (June 15, 2011); Net Capital Rule, Exchange Act Rel. No. 34-31511, 1992 SEC LEXIS 3163, at *31 n.16 (Nov. 24, 1992).

⁷ “DWAC” refers to “Deposit/Withdrawal At Custodian.” Through the Depository Trust Corporation’s DWAC service, participants are permitted to make deposits and withdrawals directly with a transfer agent for an issue evidenced by a balance certificate registered in the name of Cede & Co. and held for DTC by a transfer agent. Issues eligible under DTC’s Fast Automated Securities Transfer (“FAST”) are eligible for DTC’s DWAC service. Exchange Act Rel. No. 34-64191, 2011 SEC LEXIS 1203, at *5 n.7 (Apr. 5, 2011); *see also* Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Relating to a DTC’s Proposed Deposit and Withdrawal at Custodian Service, Exchange Act Rel. No. 34-30283, 1992 SEC LEXIS 113 (Jan. 23, 1992).

As of January 2012, Westor held approximately 29 penny stocks in its account at ETC, with a value of about \$2.3 million. Answer ¶ 33. In response to an inquiry from FINRA examiners, Westor filed an amended Form BD on January 6, 2012, reporting that Westor had entered into an omnibus clearing arrangement with ETC. FINRA examiners reviewed Westor's clearing agreement with ETC soon after receiving Westor's January 6, 2012 amendment to its Form BD. The examiners contacted ETC because the clearing agreement was unusual, in that the agreement did not refer to customers. ETC told the examiners that it cleared only proprietary trading for brokers. Tr. 112-113 (Rattiner). ETC was not aware that it was clearing trades for Westor's retail customers. ETC told the examiners that Bach had represented that the account was a proprietary account. Tr. 114-115 (Rattiner), 363, 366 (Murphy), 523-525, 528 (Peczon); CX-43.

After learning from FINRA that Westor's account likely included customer assets, ETC discussed with Bach the use of Westor's account as an omnibus account on January 26, 2012. At ETC's request, Bach sent a list of customer positions, and Westor moved the positions out of ETC within a few days, so only proprietary holdings remained in Westor's account at ETC. Tr. 112-113 (Rattiner), 370-371, 376-378 (Murphy), 1314 (Bach); CX-49, CX-50; Answer ¶ 3.

Westor moved the customer assets to an account at Citizens Bank, and later to M&T Bank. Westor maintained custody of the securities in accounts at the bank. It maintained accounts at other broker-dealers in Westor's name, and used those accounts to trade customer securities on a RVP/DVP basis.⁸ Tr. 370 (Murphy), 133, 137, 430 (Rattiner), 843, 845, 883-887, 915, 922 (Park), 1314 (Bach); CX-60, CX-62, CX-95, CX-117.

⁸ RVP/DVP refers to "receipt versus payment" and "delivery versus payment."

Findings of Fact and Conclusions of Law for the Thirteen Causes of Action

The Extended Hearing Panel finds that Enforcement has established that Bach violated FINRA's Rules with respect to each of the thirteen causes of action set forth in the two complaints.

I. First Cause of Action (Westor I): Bach Violated FINRA Rule 2010 by Causing Westor to Conduct a Securities Business with Insufficient Net Capital

The First Cause of Action alleges that on four specific dates, Bach violated FINRA Rule 2010 by causing Westor to conduct a securities business while maintaining insufficient net capital. FINRA Rule 2010, like its predecessor NASD Conduct Rule 2110, states that “[a] member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.” Pursuant to FINRA Rule 0140, FINRA Rule 2010 applies with equal force to associated persons. Rule 2010 “is not limited to rules of legal conduct but [instead] states a broad ethical principle,” giving FINRA the authority to impose sanctions for violations of “moral standards” even if there is no “unlawful” conduct.⁹ FINRA Rule 2010 applies broadly to all business-related misconduct.

The Net Capital Rule¹⁰ requires broker-dealers to maintain minimum net capital that is the greater of a fixed dollar amount prescribed in the rule, or an amount computed using one of two financial ratios. The primary cause of Westor's violation of the Net Capital Rule was its use of the statutory fixed dollar amount of \$100,000, for a firm that does proprietary trading but does not hold customer funds or securities, when it should have used \$250,000, the statutory

⁹ *John Joseph Plunkett*, Exchange Act Rel. No. 69766, 2013 SEC LEXIS 1699, at *21-22 (June 14, 2013); *Dep't of Enforcement v. Correro*, No. E102004083702, 2008 FINRA Discip. LEXIS 29, at *12-13 (N.A.C. Aug. 12, 2008).

¹⁰ Exchange Act Rule 15c3-1, 17 C.F.R. ¶ 240.15c3-1.

minimum for a firm that was clearing on an omnibus basis and holding customer funds and securities.

The principal purposes of the Net Capital Rule are to “protect customers and other market participants from broker-dealer failures and to enable those firms that fall below the minimum net capital requirements to liquidate in an orderly fashion without the need for a formal proceeding or financial assistance from the Securities Investor Protection Corporation.”¹¹

Engaging in securities transactions while a firm’s net capital is below the required amount is a violation of FINRA Rule 2010, both by the firm and the persons responsible for compliance.¹²

Bach caused Westor to engage in a securities business despite having insufficient net capital on four dates. Elena Domasica, a FINRA examiner who was FINRA’s principal regulatory coordinator for Westor, prepared a table that accurately summarizes Westor’s required net capital, actual net capital, and net capital deficiency, on those four dates:

Date	Required Net Capital	Firm’s Net Capital	Deficiency
11/30/2011	\$250,000	\$ 82,534.28	\$167,465.72
12/31/2011	\$250,000	\$ 64,967.14	\$185,032.86
01/31/2012	\$250,000	\$136,613.00	\$113,387.00
02/29/2012	\$250,000	\$241,166.00	\$ 8,834.00

CX-47; Tr. 641-642, 1083 (Domasica).

For Westor’s monthly FOCUS filings for November 2011 through February 2012, the firm calculated its excess net capital based on the assumption that the firm’s required minimum

¹¹ *Fox & Co. Inv., Inc.*, Exchange Act Rel. No. 52,697, 2005 SEC LEXIS 2822, at *18 (Oct. 28, 2005) (citations omitted).

¹² *Fox & Co.*, 2005 SEC LEXIS 2822, at *27 n.29; *Paul Joseph Benz*, Exchange Act Rel. No. 51,046, 2005 SEC LEXIS 116, at *10 (Jan. 14, 2005); *Joseph Ricupero*, Exchange Act Rel. No. 62891, 2010 SEC LEXIS 2988, at *17-18 (Sept. 10, 2010) (citation omitted).

net capital was \$100,000, and reported excess net capital for the last day of each month. CX-40, CX-41, CX-44, CX-46. By November 30, 2011, and throughout this period, Westor was clearing on an omnibus basis through ETC. Under the Net Capital Rule, a firm that clears on an omnibus basis has a minimum required net capital of \$250,000.¹³ Tr. 286 (Demando Scott).¹⁴

Domasica recalculated the firm's net capital position for the last days of November 2001 through February 2012 by starting with the firm's FOCUS reports and making adjustments. She increased the minimum required net capital to \$250,000 because the firm was clearing on an omnibus basis. Tr. 1084 (Domasica). She made certain adjustments to correct Bach's errors in the firm's reported net capital position that reduced the calculated net capital. One adjustment was to reduce the firm's calculated net capital because a substantial portion of the firm's net capital consisted of its investment in a company called United Consortium ("UCSO"). Domasica examined public sources and determined that UCSO stock was not traded at all during the period under examination, or for the previous three months. Tr. 455-456, 650, 652-653 (Domasica); *see also* Tr. 571-572, 614 (Sheridan). The absence of trading for UCSO stock shows that there was no ready market¹⁵ for the stock, and it should not have been included in Westor's net capital calculation. Westor should have incurred a "blockage charge" in calculating its net capital,

¹³ Enforcement did not address the effect on Westor's net capital requirement of its custody of customer securities at Citizens Bank during the period that it was clearing through ETC. As noted above, Westor kept certain customer securities at Citizens Bank. This would appear to be an independent basis for finding that Westor's net capital requirement was \$250,000.

¹⁴ As noted above, Enforcement called Susan Demando Scott, FINRA's Associate Vice President, Financial Operations, as an expert witness. The Extended Hearing Panel found her to be a very credible witness, and found her testimony helpful and persuasive. In addition, her conclusions were consistent with caselaw and regulatory pronouncements. *See, e.g.*, Broker-Dealer Reports, 2011 SEC LEXIS 2049, at *94.

¹⁵ See Net Capital Rule, Rule 15c3-1(c)(11)(i).

excluding the UCSO stock from the calculation of Westor's net capital.¹⁶ Thus, Domasica imposed the blockage charge in recalculating the firm's net capital. Tr. 647, 650 (Domasica).¹⁷

Domasica found that Westor had insufficient net capital on the dates shown in the table, in those amounts. She also found that the firm had insufficient net capital on the dates examined even accepting Bach's numbers on the FOCUS reports because of the error in the required net capital. CX-40, CX-41, CX-44, CX-46, CX-47; Tr. 1086-1097 (Domasica). Bach and Westor were engaged in the securities business on November 30, 2011, December 31, 2011, January 31, 2012, and February 29, 2013, conducting securities transactions on each of those dates. Tr. 651, 1085-1086, 1092, 1095 (Domasica); CX-51.

By causing Westor to engage in the securities business while it had insufficient net capital, Bach violated FINRA Rule 2010.

II. Second Cause of Action (Westor I): Bach Violated FINRA Rule 2010 by Causing Westor to Violate the Customer Protection Rule

The Second Cause of Action charges Bach with causing Westor to violate Section 15(c) of the Exchange Act, Exchange Act Rule 15c3-3¹⁸ (the "Customer Protection Rule"), and FINRA Rule 2010, by failing to establish a reserve account, perform reserve calculations, or obtain a written notification from the bank that was holding customer funds of restrictions on the use of funds in the reserve account.

The Customer Protection Rule was promulgated pursuant to the Exchange Act to protect the customers of broker-dealers if a broker-dealer becomes insolvent, by generally segregating

¹⁶ Paragraph (c)(2)(vii) of the Net Capital Rule requires a broker-dealer to deduct 100% of the carrying value of securities it holds in its proprietary account for which there is no ready market. See, Reg. Notice 12-58; 17 CFR 240.15c3-1(c)(2)(vii) (Dec. 2012); Broker-Dealer Reports, 2011 SEC LEXIS 2049, at *19 n.27.

¹⁷ Domasica reduced the undue concentration charge that Westor had taken for the UCSO stock, since she found that the stock should not be included in net capital at all. CX-40; Tr. 647, 650 (Domasica).

¹⁸ 15 U.S.C. § 78o(c)(3); 17 C.F.R. § 240.15c3-3.

customer assets from the broker-dealer's proprietary business activities.¹⁹ Among other requirements, the Rule requires broker-dealers that receive, acquire, or hold customer funds to establish a "Special Reserve Bank Account for the Exclusive Benefit of Customers."²⁰

Broker-dealers must determine the amount that must be kept in the account using a formula specified in the Rule. The calculation must be made weekly or monthly, depending on certain criteria specified in the Rule.²¹

Broker-dealers are also required to obtain a written notification from each bank at which such an account is maintained, certifying that the bank was informed that all cash or qualified securities deposited in the bank are being held for the exclusive benefit of customers of the broker or dealer and are being kept separate from any other accounts maintained by the broker or dealer with the bank.²²

Westor should have been making reserve calculations by about October or early November 2011, when it opened the account at ETC and kept customer funds and securities at banks. Tr. 1144 (Domasica). Westor first began making reserve calculations in April 2012. RX-16 at 10, 12; Tr. 636 (Domasica); Respondents' Pre-Hearing Brief at 9. Westor also should have obtained a written notification from Citizen's Bank, where it maintained a reserve account, certifying that the bank was informed that all cash or qualified securities deposited in the bank were being held for the exclusive benefit of customers of the broker or dealer and were being

¹⁹ *SEC v. Goble*, 682 F.3d 934, 941 (11th Cir. 2012); *Upton v. SEC*, 75 F.3d 92, 96 (2d Cir. 1996); Amendments to Financial Responsibility Rules for Broker-Dealers, Exchange Act Rel. No. 55431, 2007 SEC LEXIS 467 (Mar. 9, 2007); Broker-Dealer Reports, 2011 SEC LEXIS 2049, at *20-21.

²⁰ 17 C.F.R. § 15c3-3(3); Broker-Dealer Reports, File No. S7-23-11, Exchange Act Rel. No. 34-64676, 2011 SEC LEXIS 2049, at *20-21 (June 15, 2011).

²¹ Rule 15c3-3(e)(3); Broker-Dealer Reports, 2011 SEC LEXIS 2049, at *19; Amendments to Financial Responsibility Rules for Broker-Dealers, Exchange Act Rel. No. 55431, 2007 SEC LEXIS 467 (Mar. 9, 2007). Because Bach did not do the calculation at all for the period in which the violation occurred, it is not necessary to determine whether it should have been performed weekly or monthly.

²² The examiner referred to this mandatory notification as a "no-lien letter" throughout her testimony.

kept separate from any other accounts maintained by the broker or dealer with the bank. Westor first received the written notification from Citizens Bank in May 2012. RX-16 at 12, 23; Tr. 633-634, 1139 (Domasica).

Bach asserts that Westor was exempt from the requirements of the Customer Protection Rule under Section (k)(2)(i) of the Rule because it established the reserve bank account at Citizens Bank. Under Exchange Act Rule 15c3-3(k)(2)(i), a broker-dealer is exempt from the requirements of the Customer Protection Rule if it meets certain requirements. The exemption applies to a broker-dealer that does not carry margin accounts, promptly transmits all customer funds and delivers all securities received in connection with its activities, does not otherwise hold funds or securities for, or owe money or securities to, customers, and effectuates all financial transactions between the broker-dealer and its customers through one or more bank accounts that are each designated as a “Special Account for the Exclusive Benefit of Customers of (the name of broker or dealer).”

However, the exemption is available only to firms that self-clear but do not carry customer securities. Under the Customer Protection Rule, the Section (k)(2)(i) account is a conduit account. Essentially, the exemption applies to firms that transact their business on an RVP/DVP basis, in which the firm takes in a customer’s securities and takes in money; so at the end of the trade the buyer has its securities, the seller has its money, and the (k)(2)(i) firm holds neither money nor securities. The Rule was designed to cross money and securities. The exemption is not available if the firm maintains funds under its control. The Rule is not available to an introducing firm that clears its transactions through an omnibus account. Tr. 289-290, 307-312 (Demando Scott). Westor did not qualify for the exemption. Tr. 293 (Demando Scott).

The Complaint also charges that Westor failed to establish a reserve account in which to deposit customer funds from November 2011 until February 2012. The evidence shows that by October 2011, Westor had an account at Bank of America named “Westor Capital Group Special Account for Exclusive Benefit of Customers of Westor Capital Group.” CX-69; Tr. 127, 143 (Rattiner).²³ Domasica’s testimony that the firm did not actually have such an account until February 2012 is inconsistent with Rattiner’s testimony and the bank statement that Enforcement put in evidence. Tr. 633-634 (Domasica); CX-63. Enforcement has failed to prove that Westor did not establish a reserve account to hold customer funds, as alleged in the Second Cause of Action.

The Extended Hearing Panel finds that Bach caused Westor to violate the Customer Protection Rule by failing to perform reserve calculations. Bach also caused Westor to violate the Customer Protection Rule by failing to obtain a “no-lien letter,” i.e., a written notification from each bank at which Westor maintained a reserve account, certifying that the bank was informed that all cash or qualified securities deposited in the bank were being held for the exclusive benefit of customers of the broker or dealer and were being kept separate from any other accounts maintained by the broker or dealer with the bank. Bach thereby violated FINRA Rule 2010.

III. Third Cause of Action (Westor I): Bach Violated FINRA Rule 2010 by Making Material Misrepresentations to ETC

The Third Cause of Action charges Bach with violating FINRA Rule 2010 by making misrepresentations to ETC, a FINRA member firm, by falsely representing to ETC that Westor was seeking clearing services only for the firm’s proprietary account, and that Westor did not maintain customer accounts, when he was seeking clearing services in order to effect penny

²³ This account is also discussed in Enforcement’s Pre-Hearing brief. *See* Brief at page 3.

stock transactions for customers. Making misrepresentations in a business context, even when the misrepresentations are not made to investors, violates FINRA Rule 2010.²⁴

Prior to opening the Westor account at ETC, Bach talked to Kevin Murphy, ETC's president, and Walter Peczon, ETC's director of client services. Bach told Murphy and Peczon that he wanted ETC to clear for Westor on an omnibus basis. Murphy and Peczon told Bach that ETC did not handle omnibus accounts, and ETC could only accept proprietary business. Tr. 339, 396, 416 (Murphy), 513-514 (Peczon). Bach indicated that he understood that ETC cleared only proprietary trades. Based on their conversation, ETC understood that Bach would be using ETC only for proprietary transactions. Bach never said ETC would clear customer trades for Westor. Tr. 513-514 (Peczon), 341 (Murphy). Knowing that ETC did not accept omnibus accounts, Bach opened an account in Westor's name, and used the account as an omnibus account, as discussed above.

ETC's practice was to require its customers to sign a "proprietary certification letter," attesting to the fact that the customer's ETC account was for the purpose of proprietary trading. ETC sent a proprietary certification letter to Bach twice after opening Westor's account, and Bach did not sign it. Bach represented that he would sign the letter, but wanted language changed to reflect that Westor was a broker-dealer. Bach eventually signed the proprietary certification several months after opening the Westor account at ETC, after being confronted about the use of the ETC account as an omnibus account, and after ETC had required Bach to withdraw all customer assets from the ETC account. Tr. 369, 371 (Murphy), 515-517 (Peczon).

²⁴ *Dep't of Enforcement v. Davenport*, 2003 NASD Discip. LEXIS 4, at *8-10 (N.A.C. May 7, 2003); *Gregory O. Trautman*, Exchange Act Rel. No. 61667A, 2009 SEC LEXIS 4173, at *61 (Dec. 15, 2009) (corrected decision); *John Edward Mullins*, Exchange Act Rel. No. 66373, 2012 SEC LEXIS 464, at *45 (Feb. 10, 2012); *see also Dep't of Enforcement v. T.T.*, No. 20070094468, 2011 FINRA Discip. LEXIS 17, at *20 (N.A.C. Aug. 5, 2011); *Dep't of Enforcement v. Conway*, No. E102003025201, 2010 FINRA Discip. LEXIS 27, at *30-32 (N.A.C. Oct. 26, 2010), *aff'd*, 2013 SEC LEXIS 3527 (Nov. 7, 2013).

By opening the Westor account while knowing that ETC did not accept omnibus accounts, Bach implicitly represented to ETC that the account would be used only for proprietary trading.²⁵ Bach's intention to mislead ETC is shown both by the fact that he opened the account while knowing that ETC accepted only proprietary assets and did not accept customer assets, and by his evasion of ETC's requirement to provide a proprietary certification letter.

Bach's misrepresentation of the nature of Westor's account was material. The fact that ETC refused to accept omnibus or fully disclosed accounts shows that ETC regarded a representation that it was receiving only proprietary assets as material. In fact, ETC's board had made a decision not to accept customer assets because it did not want the regulatory scrutiny that comes with handling customer assets. Tr. 348 (Murphy). For example, customer assets and proprietary assets, cannot be commingled. ETC does not establish separate accounts for the benefit of customers. Tr. 349 (Murphy). Because acceptance of customer assets violated ETC's express policies, would cause ETC to have additional regulatory requirements for holding customer assets, and would expose ETC to potential liabilities to customers, the representation that Westor was depositing only proprietary assets was material.

Bach violated FINRA Rule 2010 by falsely representing to ETC that Westor was seeking clearing services only for Westor's proprietary account when he was seeking clearing services in order to effect penny stock transactions for customers.

IV. Fourth Cause of Action (Westor I): Bach Violated FINRA Rule 2010 by Submitting a False Form BD to FINRA

The Fourth Cause of Action charges Bach with willfully misrepresenting on Westor's Form BD Amendment that Westor's clearing agreement with Lek Securities had been terminated

²⁵ Alternatively, the failure to inform ETC that Westor was clearing customer transactions through ETC in direct contravention of ETC's policies was a material omission, in violation of FINRA Rule 2010. *See, e.g., Dep't of Enforcement v. Myers*, No. C3A040023, 2007 NASD Discip. LEXIS 4, at *18 n.6 (N.A.C. Jan. 23, 2007); *Dep't of Enforcement v. Kesner*, No. 2005001729501, 2010 FINRA Discip. LEXIS 2, at *32 (N.A.C. Feb. 26, 2010).

on December 1, 2011, when it actually had been terminated on May 19, 2011, and that Westor had an agreement with ETC to clear trades on an omnibus basis. In addition, the Complaint alleges that Bach falsely represented on the Form BD that Westor did not hold or maintain any funds or securities, when Westor actually held customer funds and securities.

Article IV, Section 1(c) of FINRA's By-Laws requires members to ensure that their membership applications are kept current. Filing a false Form BD or failing to disclose material information on a Form BD is conduct inconsistent with just and equitable principles of trade, and violates FINRA Rule 2010.²⁶

On January 5, 2012, FINRA sent Bach a letter inquiring about an issue concerning Westor's November 2011 FOCUS filing. On its FOCUS Report, Westor had changed the basis of its exemption from the Customer Protection Rule from one for a firm that introduced on a fully disclosed basis under Section (k)(2)(ii), to one that maintained a reserve account under Section (k)(2)(i).²⁷ Tr. 93 (Rattiner). On January 6, 2012, Westor filed an amendment to its Form BD, reporting that the firm was clearing with ETC on an omnibus basis, and had terminated its clearing arrangement with Lek Securities on December 1, 2011. This was Westor's first report of the use of ETC and the termination of its relationship with Lek Securities. Tr. 92, 95, 98 (Rattiner); CX-42. At that time, Westor held approximately 29 penny stocks in its ETC account, worth approximately \$2.3 million. The vast majority of the assets belonged to firm customers. Answer ¶ 33.

The Form BD contained two material misrepresentations. First, the Form BD reported that the clearing arrangement with Lek Securities had terminated on December 1, 2011. In fact,

²⁶ *Dep't Enforcement v. Harvest Capital Inv., LLC*, No. 2005001305701, 2008 FINRA Discip. LEXIS 45, at *41 (N.A.C. Oct. 6, 2008).

²⁷ See discussion above in section on the Second Cause of Action, relating to violations of the Customer Protection Rule.

Lek Securities had terminated the clearing arrangement on May 19, 2011. CX-38.²⁸ Second, Bach represented that the firm had a clearing arrangement with ETC to clear on an omnibus basis. While Westor was surreptitiously clearing on an omnibus basis through ETC, there was no arrangement for omnibus clearing. The omnibus method of clearing was based on deception and concealment, not an arrangement.²⁹

Bach violated FINRA Rule 2010 by submitting a materially false Form BD to FINRA. The Extended Hearing Panel also finds that the false filing was willful. Under the securities laws, a violation is willful if a respondent voluntarily committed the act that constituted the violation. A finding that a violation was willful does not require proof that the respondent intended to violate the laws or rules.³⁰ Bach knew that the clearing arrangement with Lek Securities terminated in May 2011, not in December, and that Westor did not have an arrangement to clear through ETC on an omnibus basis. The violation was willful.

V. Fifth Cause of Action (Westor I): Bach Violated NASD Rule 1017 and FINRA Rule 2010 by Causing Westor to Violate Its FINRA Membership Agreement

The Fifth Cause of Action charges Bach with causing Westor to violate its FINRA membership agreement, in violation of NASD Rule 1017 and FINRA Rule 2010, by failing to seek and obtain FINRA approval before effecting material changes in the firm's business

²⁸ Bach asserts that the Form BD was accurate because assets remained at Lek Securities until December 2011. He testified that Westor was "doing transactions with Lek, liquidating positions, and there were positions at Lek." Tr. 1305, 1315, 1437 (Bach); RX-16 at 6. Other than statements from Bach, there is no verification of this assertion. Even if true, there is no evidence that Lek Securities was clearing transactions, or that there was a clearing arrangement with Lek Securities, as Bach stated in the Form BD.

²⁹ Although the account was an omnibus account in the sense that ETC maintained one account for multiple Westor customers, it was not a true omnibus account because ETC did not treat it as such. Not knowing the nature of the account, ETC commingled proprietary and customer assets, and did not take measures to protect customers that would have been required for a true omnibus account. Tr. 347-348 (Murphy). In a true omnibus account, the clearing firm establishes the account for the benefit of the customers of the introducing firm, and not, as with Westor, in the name of the introducing firm. Tr. 284 (Demando Scott).

³⁰ *Robert D. Tucker*, Exchange Act Rel. No. 68210, 2012 SEC LEXIS 3496, at *41 (Nov. 9, 2012); *Richard A. Neaton*, Exchange Act Rel. No. 65598, 2011 SEC LEXIS 3719, at *20-21 (Oct. 20, 2011).

operations. The Complaint charges that Westor, acting through Bach, failed to seek and obtain FINRA's approval before holding customer funds and securities, changing its net capital category from fully disclosed to an omnibus relationship, and changing its Exchange Act Rule 15c3-3 exemptive status from Exchange Act Rule 15c3-3(k)(ii) to 15c3-3(k)(i).

NASD Rule 1017(a)(5) requires FINRA member firms to file an application with FINRA's Department of Member Regulation for approval of any material change in the firm's business operations. A firm cannot implement any material change in its business operations unless FINRA has approved the change.³¹ FINRA's rules define certain specific changes as material, including adding business activities that require a higher minimum net capital under SEC Rule 15c3-1.³² Whether a change in a firm's method of business constitutes a material change is evaluated based on the facts and circumstances of the change.³³

Bach executed Westor's membership agreement on behalf of the firm on November 16, 2005. CX-36; Answer ¶ 44. The membership agreement required the Westor to "obtain the prior approval of [FINRA] pursuant to Rule 1017 ... before effecting a material change in business operations." CX-36. The Agreement provided that Westor would "maintain a minimum net capital of \$100,000." As Westor's president, Bach agreed that Westor would "[o]perate pursuant to SEC Rule 15c3-3(k)(ii) (the Customer Protection Rule), clearing all transactions on a fully disclosed basis through its clearing firm. Westor Capital Group, Inc. will not hold customer funds or safekeep customer securities." CX-36.

³¹ *Dep't of Enforcement v. Merrimac Corp. Sec.*, No. 2007007151101, 2012 FINRA Discip. LEXIS 43, at *17 (Bd. of Gov. May 2, 2012) (citing NASD Rule 1017(g)(i)).

³² NASD Rule 1011(k).

³³ *Dep't of Enforcement v. Merrimac Corp. Sec.*, 2012 FINRA Discip. LEXIS 43, at *17-18 (citing NASD Notice to Members 00-73, 2000 NASD LEXIS 82, at *7 (Oct. 2000)).

Westor began clearing through ETC on an omnibus basis in about early November 2011, which caused the firm's minimum net capital requirement to increase to \$250,000. In about May 2012, Joseph Sheirer, director and counsel for FINRA's Member Application Program, learned that Westor was holding customer funds and securities through its account at ETC, which constituted carrying activities. Tr. 1054-1058 (Sheirer). On May 25, 2012, Sheirer wrote to Bach, as president of Westor, advising him that the firm must file a continuing membership application ("CMA") pursuant to Rule 1017, and must cease unapproved activities. Westor's counsel responded, asserting that a CMA was not required. FINRA then issued a Notice of Suspension pursuant to FINRA Rule 9552, notifying Westor and Bach that the firm's FINRA membership would be suspended on June 21, 2012, for failure to seek and receive FINRA approval "before commencing to clear and/or carry customer accounts and/or to receive or hold customer funds or securities," unless Westor filed a CMA by that date. Tr. 1058-59 (Sheirer); CX-58, CX-94 at 21. Westor requested a hearing, which stayed the suspension.

Westor filed a CMA, signed by Bach, on October 2, 2012. Tr. 1061 (Sheirer); CX-60. The CMA stated, "Westor has increased its net capital to \$250,000 and has changed its manner of clearing so that it clears its customer securities and places them in custody accounts with Federally chartered banks that hold the securities pursuant to the requirement of SEC Rule 15c3-3." CX-60. Westor failed to provide a significant amount of information that FINRA requested in connection with the CMA. FINRA denied Westor's application based on FINRA's determination that Westor was not capable of operating as a clearing or carrying firm. Tr. 1066-1069 (Sheirer); CX-94.

The change from an introducing firm that cleared on a fully disclosed basis to one that was clearing customer transactions and maintaining custody of the securities was clearly

material. The change substantially changed Westor's regulatory responsibilities, including responsibilities under the Customer Protection Rule for segregation and safekeeping of customer assets. It increased Westor's minimum net capital requirement from \$100,000 to \$250,000, which is one of the specific changes that is presumptively material under NASD Rule 1011. Westor's change violated its FINRA Membership Agreement.

By causing Westor to violate its FINRA Membership Agreement by holding customer funds and securities, changing its net capital category from fully disclosed to an omnibus relationship, and changing its Exchange Act Rule 15c3-3 exemptive status from Exchange Act Rule 15c3-3(k)(ii) to 15c3-3(k)(i), Bach violated NASD Rule 1017 and FINRA Rule 2010.

VI. Sixth Cause of Action (Westor I): Bach Violated NASD Rule 3110 and FINRA Rule 2010 by Failing to Maintain Required Records

The Sixth Cause of Action charges Bach with failure to make and keep order memoranda for approximately 50 transactions in UCSO stock, in violation of NASD Rule 3110 and FINRA Rule 2010.

The Exchange Act requires members and associated persons to create and maintain records of business operations in conformity with SEC rules.³⁴ SEC rules mandate that FINRA member firms create and maintain a memorandum of each order for a minimum of three years.³⁵ NASD Rule 3110(a) makes members responsible for complying with these SEC recordkeeping rules. A failure to create and maintain order memoranda constitutes a violation of NASD Rule

³⁴ Exchange Act § 17(a)(1).

³⁵ Exchange Act Rule 17-3(a)(7) ("A memorandum of each purchase and sale for the account of the member, broker, or dealer showing the price and, to the extent feasible, the time of execution...."); Exchange Act Rule 17a-4(b)(1).

3110 and FINRA Rule 2010.³⁶

A substantial part of Westor's net capital was composed of its UCSO stock. FINRA began an investigation of whether Bach had engaged in market manipulation with respect to UCSO stock, and requested a transaction blotter that would show the time of order entry for transactions in UCSO stock, which the examiner regarded as important in an investigation of market manipulation. Bach provided a blotter that did not include the information on time of order entry. Tr. 1004, 1007 (Ruszkowski).

On August 26, 2011, the examiner sent a letter to Bach, pursuant to Rule 8210, requesting copies of order memoranda for UCSO transactions for May 2010 through August 2010. CX-33. Counsel for Westor responded on September 8, 2011, stating that the order memoranda did not exist. CX-34. Because Bach and Westor never provided order memoranda, the examiner had to make his determinations based on incomplete information. Tr. 1008, 1011-1012 (Ruszkowski).

Bach violated NASD Rule 3110 and FINRA Rule 2010 by failing to create and maintain transaction memoranda for transactions in UCSO stock.

VII. Causes VII – X (Westor I): Bach Violated FINRA Rules 8210 and 2010 by Failing to Provide Timely and Complete Responses to Information Requests

The Seventh, Ninth, and Tenth Causes of Action charge Bach with failing to provide timely responses to FINRA staff's requests for information, issued pursuant to FINRA Rule 8210. The Eighth Cause of Action charges Bach with failing to provide complete responses to FINRA staff's requests for information. Enforcement filed a motion for summary disposition

³⁶ *Edward S. Brokaw*, No. 2007007792902, 2012 FINRA Discip. LEXIS 53, at *52-53 (N.A.C. Sept. 14, 2012), *aff'd*, Exchange Act Rel. No. 70883, 2013 SEC LEXIS 3583, at *58 (Nov. 15, 2013); *Dep't of Enforcement v. Correro*, No. E102004083702, 2008 FINRA Discip. LEXIS 29, at *12-14 (N.A.C. Aug. 12, 2008).

with respect to the four Rule 8210 causes of action on December 10, 2012. Bach and Westor filed an opposition to Enforcement's motion on December 31, 2012. Bach and Westor admitted most of the facts underlying Enforcement's motion, but alleged that Enforcement's demands were unreasonable because of Westor's limited size and resources. The Extended Hearing Panel granted Enforcement's summary disposition motion in an order dated January 18, 2013, with respect to liability for the Seventh, Ninth, and Tenth Causes of Action, but denied the motion with respect to the Eighth Cause of Action.³⁷

A. The Duty to Provide Timely and Complete Responses to Rule 8210 Requests for Documents and Information

Since FINRA lacks subpoena power, it must rely upon Rule 8210 "to police the activities of its members and associated persons."³⁸ "[A member's] failure to respond to [FINRA's] information requests frustrates [FINRA's] ability to detect misconduct, and such inability in turn threatens investors and markets...."³⁹ A failure to provide documents or information requested pursuant to FINRA Rule 8210 is a violation of FINRA Rules 8210 and 2010.⁴⁰

An alleged lack of resources is not a defense to a disciplinary action for violations of Rule 8210. As the National Adjudicatory Council has stated, member firms and associated

³⁷ The membership of the Extended Hearing Panel at the hearing was different from the membership of the Extended Hearing Panel that granted summary disposition on the Seventh, Ninth, and Tenth Causes of Action. The documents that were submitted in support of Enforcement's summary disposition motion were also offered and received in evidence at the hearing. The Extended Hearing Panel that presided at the hearing would also grant summary disposition on the three causes of action based on the documentary evidence that was received in evidence at the hearing. The findings and conclusions on liability set forth below for the Seventh, Ninth, and Tenth Causes of Action are based on the evidence submitted by the parties in support of their positions on the summary disposition motion. Transcript citations in the discussion of those three causes of action are considered only for purposes of sanctions. The findings and conclusions for the Eighth Cause of Action are based on all the evidence submitted at the hearing.

³⁸ *Joseph Patrick Hannan*, Exchange Act Rel. No. 40438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

³⁹ *PAZ Sec., Inc.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *aff'd* 566 F.3d 1172, 2009 U.S. App. LEXIS 11500 (May 29, 2009).

⁴⁰ *Dep't of Enforcement v. Gallagher*, No. 2008011701203, 2012 FINRA Discip. LEXIS 61, at *11 n.9 (N.A.C. Dec. 12, 2012).

persons should “assign the utmost priority to responding to FINRA’s Rule 8210 requests.”⁴¹ If Bach was unable to comply with the request, he should have gotten sufficient assistance to submit timely responses to FINRA.⁴²

B. Seventh Cause of Action (Westor I): Bach Violated FINRA Rules 8210 and 2010 by Failing to Provide Timely Responses to Requests for Documents and Information

The Seventh Cause of Action charges Bach with failing to submit a timely response to a request for information issued by FINRA staff on September 21, 2011, a related request issued on October 19, 2011, and follow-up requests for the information that was initially requested, in violation of FINRA Rules 8210 and 2010.

1. Failure to Provide Timely Responses to September 2011 Request

On September 21, 2011, FINRA staff sent a letter to Bach, as president of Westor, requesting information and records relating to several topics, including financial and operational information, anti-money laundering documents, supervisory documents, communications, and underwriting documents and information. The letter was sent in connection with the staff’s examination of Westor. It required a response no later than October 5, 2011. Answer ¶ 51; CX-2; Undisputed ¶ 3.⁴³ The letter requested standard documentation and information that are necessary to conduct a routine examination of the firm. Tr. 74 (Rattiner), 1150-1153 (Dunn). On October 5, 2011, Bach sent an e-mail to the staff stating, “We are waiting for some of the reports from the clearing firms but will start delivering materials to you tomorrow.” The only

⁴¹ *Dep’t of Enforcement v. Plunkett*, No. 2006005259801, 2012 FINRA Discip. LEXIS 1, at *27 (N.A.C. Feb. 21, 2012), *remanded for reconsideration of sanctions*, Exchange Act Rel. No. 69766, 2013 SEC LEXIS 1699.

⁴² *Dep’t of Market Reg. v. Ryan & Co.*, No. FPI040002, 2005 NASD Discip. LEXIS 8, at *16 (N.A.C. Oct. 3, 2005).

⁴³ “Undisputed” refers to the response from Bach and Westor to Enforcement’s motion for summary disposition. Respondents did not dispute this fact in their response.

responsive documents Bach and Westor provided the following day were trade blotters from one of Westor's clearing firms. CX-3, CX-4; Undisputed ¶ 4.

On October 12, 2011, FINRA staff sent a second letter to Bach requesting the documents and information that had been requested in September but not provided in the October 6 submission. The letter requested a response by November 2, 2011. Undisputed ¶ 5; Answer ¶ 54; CX-4. Over the next month, Bach provided some of the requested documents and information to FINRA staff on a rolling basis. There were no responses to several requests for documents and information, including some relating to financial and operational matters, anti-money laundering issues, supervision, communications, and underwriting. CX-5, CX-10; Undisputed ¶ 6; Answer ¶ 53.

On November 23, 2011, FINRA staff sent a third Rule 8210 letter to Bach, requesting the remaining items sought in the September 21, 2011 letter by November 30. Bach and Westor did not respond by November 30, 2011. CX-5; Undisputed ¶ 7; Answer ¶ 54; Tr. 1152-1153 (Dunn). As discussed below, the documents and information were provided only under threat of suspension.

2. Failure to Provide Timely Responses to October 2011 Request

On October 19, 2011, the staff sent an e-mail with an attached Rule 8210 request letter to Bach, as president of Westor, requesting that the firm provide thirteen additional items, including additional financial information. The letter directed the firm to submit the response by November 2, 2011. Bach and Westor did not respond to the request by November 2, 2011. Undisputed ¶ 8; CX-6, CX-11; Answer ¶ 55; Tr. 1152 (Dunn).

FINRA staff sent a second Rule 8210 letter to Bach and Westor on November 7, 2011, requesting the same information requested in the October 19 letter. The letter requested the information by November 11, 2011. Bach responded on November 7, representing that Westor

would provide the requested documents and information the following week. Bach and Westor did not provide the documents and information the following week. CX-6, CX-7, CX-11; Answer ¶ 55; Undisputed ¶ 9; Tr. 85 (Rattiner).

The staff sent a third letter to Bach and Westor, pursuant to Rule 8210, on November 23, 2011, again requesting the documents and information that had been requested in the October 19 letter. The letter directed Bach and Westor to submit the documents and information by November 30, 2011. They did not submit the documents and information by that date. Undisputed ¶ 10; CX-8, CX-11; Answer ¶ 57. The documents and information were ultimately provided when Bach and Westor faced a FINRA suspension, discussed in the next section.

3. After the Staff Initiates Suspension Proceedings, Bach and Westor Provide the Documents and Information Requested in September and October 2011

On January 13, 2012, FINRA staff issued a Notice of Suspension to Westor and Bach, pursuant to FINRA Rule 9552, informing them that their FINRA registrations would be suspended on February 6, 2012, unless they complied with the outstanding requests for documents and information from the September 11 and October 19, 2011 letters. Undisputed ¶ 11; CX-9; Answer ¶ 57. On February 3, 2012, Bach and Westor provided the documents and information responsive to the Rule 8210 request of September 11, 2011. On February 24, 2012, Bach and Westor provided the documents and information responsive to the Rule 8210 request of October 19, 2012. Undisputed ¶¶ 12, 13; CX-9, CX-10, CX-11; Answer ¶¶ 59, 60; Tr. 79-80, 86 (Rattiner), 468 (Domasica).

By failing to submit the documents and information within the time required by FINRA's requests for information, Bach violated FINRA Rules 8210 and 2010.

C. Eighth Cause of Action (Westor I): Bach Violated FINRA Rules 8210 and 2010 by Failing to Respond Completely to Requests for Documents and Information

The Eighth Cause of Action charges Bach with failure to submit a complete response to the staff's request for information of January 6, 2012.

In December 2011, FINRA examiner Domasica noticed that Westor had changed its exemptive status under the Customer Protection Rule in its FOCUS report for November 2011. The firm had previously checked off that it was exempt from the Customer Protection Rule under Section (k)(2)(ii), for a firm that cleared through another broker-dealer on a fully disclosed basis. On the report for November, Bach checked off Section (k)(2)(i), for a firm that maintained a "Special Account for the Exclusive Benefit of Customers." The change caused Domasica to be concerned that Westor might be out of net capital compliance. Tr. 468, 488 (Domasica); CX-40. On January 6, 2012, due to Domasica's concerns, FINRA staff sent a request for documents and information to Bach and Westor, pursuant to FINRA Rule 8210, requesting financial records and information, information about Westor's exemptive status under the Customer Protection Rule, information about where the firm's securities were being held, and an explanation regarding the change in the nature of Westor's business leading to the increase of its net capital requirement from \$5,000 to \$100,000. The letter directed Bach and Westor to provide the documents and information by January 30, 2012. CX-12; Tr. 475-477 (Domasica).

Westor's law firm provided an incomplete response to the request on January 12, 2012, representing that additional documents and information would be provided soon. CX-13; Tr. 483 (Domasica). On January 20, 2012, FINRA staff sent another letter to Westor and Bach, noting that the staff believed that Westor's response of January 12 had failed to include much of the financial information requested in the January 6 letter, and also omitted the explanation

concerning the change in status under the Customer Protection Rule. CX-14. Bach and Westor failed to respond to the January 20 letter. Answer ¶ 66. FINRA has not received a complete response to either the January 5 or the January 20, 2012 letters. Tr. 442-443 (Rattiner), 487-488, 1146 (Domasica). In particular, the examiners have never received an explanation of why the firm changed its exemption from (k)(2)(ii) to (k)(2)(i), and have never received a readable general ledger. CX-12; Tr. 1140, 1144, 1146 (Domasica).

By failing to provide complete responses to the January 6 and January 20, 2012 requests for documents and information, Bach violated FINRA Rules 8210 and 2010.

D. Ninth Cause of Action (Westor I): Bach Violated FINRA Rules 8210 and 2010 by Failing to Provide Timely Responses to Rule 8210 Information Requests

The Ninth Cause of Action charges Bach with violating FINRA Rules 8210 and 2010 by failing to submit timely responses to a series of requests for documents that began with a Rule 8210 request on September 21, 2010.

In about April or May 2010, FINRA received a regulatory tip that Bach was manipulating the market for the stock of UCSO, a thinly traded Pink Sheet stock. The staff began an investigation. In furtherance of that investigation, FINRA staff sent a letter to Bach and Westor on September 21, 2010, pursuant to FINRA Rule 8210, requesting documents and information relating to the activities of Westor and related entities with respect to UCSO. The request directed Westor to provide e-mails related to UCSO in “PST format.”⁴⁴ The letter requested a response by October 2, 2010, but Westor did not provide the e-mails by that date. CX-15; Undisputed ¶ 18; Answer ¶ 69; Tr. 978-986 (Ruszkowski).

⁴⁴ The staff requested the e-mails in PST format because most e-mails are created in that format, and it is the format used by FINRA. Tr. 985 (Ruszkowski).

On December 14, 2010, the staff sent another letter to Westor, pursuant to FINRA Rule 8210, directing the firm to provide records and information, including the e-mails related to UCSO that had been requested in the September 21 letter. The letter requested a response by December 28, 2010, but Bach and Westor failed to provide the e-mails by that date. Undisputed ¶ 19; CX-16, CX-17; Answer ¶ 69.

On January 5, 2011, the staff sent an e-mail to Bach asking about the status of Westor's response to the request for information of December 14. Bach supplied the staff with all of the requested items, except the e-mails, on January 25, 2011. Undisputed ¶ 20; CX-17; Answer ¶ 71. The staff sent another letter to Bach and Westor on February 3, 2011, requesting, pursuant to Rule 8210, the e-mails related to UCSO. The letter directed Bach and Westor to provide the e-mails by February 17, 2011. Undisputed ¶ 21; CX-18; Answer ¶ 72.

Westor provided the requested e-mails on February 23, 2011, but in PDF format, rather than PST format as the staff had requested. Undisputed ¶ 22; CX-20; Tr. 988-990 (Ruszkowski). Many e-mails and attachments could not be opened. Tr. 990-991 (Ruszkowski). On April 4, 2011, FINRA staff sent a letter to Bach and Westor requesting, pursuant to Rule 8210, that the firm provide certain documents and information, including the UCSO e-mails in PST format. The letter directed Bach and Westor to provide the requested documents by April 18, 2011. They did not provide the e-mails in PST format by that date. Undisputed ¶ 23; CX-20.

On April 21, 2011, the staff sent another letter to Bach and Westor, repeating the requests in the April 4 request, including the request for the e-mails in PST format. The letter directed Bach and Westor to provide the documents and information by May 6, 2011. Undisputed ¶ 24; CX-21. Bach and Westor provided some of the documents and information on April 28, 2011, but did not provide the e-mails. Bach also sent a letter to FINRA staff on April 28, stating that

Westor was unable to convert the e-mails from PDF to PST format. Undisputed ¶ 25; CX-22.

Bach did not provide the e-mails by May 6. Tr. 993 (Ruszkowski). On May 18, 2011, Bach and Westor provided a CD to FINRA staff containing a partial production of the e-mails in PST format. Undisputed ¶ 26; CX-23.

On June 7, 2011, FINRA staff sent a letter to Bach and Westor noting that they had not provided all responsive UCSO e-mails in the PST format. Undisputed ¶ 27; CX-24. Bach and Westor provided the rest of the requested e-mails in PST format on June 13 and June 20, 2011. Undisputed ¶ 28; CX-25; Answer ¶ 79.

By failing to provide timely responses to FINRA's requests for information, Bach violated FINRA Rules 8210 and 2010.

E. Tenth Cause of Action (Westor I): Bach Violated FINRA Rules 8210 and 2010 by Failing to Provide Timely Responses to Information Requests

The Tenth Cause of Action charges Bach with violating FINRA Rules 8210 and 2010 by failing to submit timely responses to a series of requests for documents and information that began on January 31, 2011.

On January 31, 2011, FINRA staff sent a letter to Bach and Westor, requesting documents and information pursuant to Rule 8210. One of the requests directed Bach and Westor to provide "all trade confirmations for UCSO stock for the period May 2010 – August 2010." The letter directed Bach and Westor to provide the documents and information by February 14, 2011. Bach and Westor did not provide the trade confirmations by that date. Undisputed ¶¶ 29, 32; CX-26, CX-29; Answer ¶ 82; Tr. 999 (Ruszkowski). Trade confirmations were important because FINRA staff was investigating allegations that Bach had manipulated the market for UCSO stock. The staff wanted to review the trade confirmations to see if the trades had been solicited or unsolicited. Tr. 997 (Ruszkowski).

On April 4, 2011, FINRA staff sent a second letter to Bach and Westor, pursuant to FINRA Rule 8210, requesting certain records and information, including the trade confirmations that had been requested in the January 31 letter. The letter directed Bach and Westor to provide the documents and information by April 18, 2011, but they failed to provide the documents and information by that date. Undisputed ¶¶ 30, 32; CX-27, CX-29; Answer ¶ 83; Tr. 1001 (Ruszkowski).

On April 21, 2011, the staff sent a third letter to Bach and Westor, pursuant to FINRA Rule 8210, directing them to provide the documents and information requested in the January 31 and April 4 letters. The April 21 letter directed Bach and Westor to provide the documents and information by May 6, 2011. Respondents did not provide the documents and information by that date. Undisputed ¶¶ 31, 32; CX-28, CX-29; Answer ¶ 83.

On June 7, 2011, FINRA staff sent a fourth letter to Bach and Westor, addressed to their counsel, requesting the trade confirmations and other items that had been previously requested but not yet produced. Bach and Westor provided the trade confirmations in June 2011. Undisputed ¶ 32; CX-24, CX-29; Answer ¶¶ 85, 86; Tr. 1002 (Ruszkowski).

By failing to submit timely responses to FINRA's requests for documents and information, Bach violated FINRA Rules 8210 and 2010.

VIII. First Cause of Action (Westor II): Bach Misused Customer Securities by Failing to Deliver Securities to the Customer Upon Request

The First Cause of Action of the Westor II Complaint charges Bach with violating FINRA Rules 2150 and 2010 by improper use of the securities of Customer J.S. The Complaint charges that Bach intentionally failed to deliver J.S.'s shares of TNI Biotech ("TNIB") because Bach needed to cover a shortfall in the inventory of TNIB stock in Westor's account caused by

the sale of TNIB shares on behalf of Customer W.W., who did not actually own any TNIB shares.

FINRA Rule 2150 provides that no member or person associated with a member shall make improper use of a customer's securities or funds. A violation of FINRA Rule 2150 also constitutes a violation of FINRA Rule 2010.⁴⁵

Customer J.S. opened an account at Westor on May 7, 2012. J.S. deposited certificates for 65,000 shares of TNIB in his Westor account. Tr. 675, 679, 681-682 (J.S.); CX-81, CX-82. On September 12, 2012, J.S. asked Westor to return the certificates. Tr. 681 (J.S.); CX-84 at 2. J.S. received a response from Jonathan Leinwand, Westor's outside general counsel, asking for more information. Leinwand said the TNIB shares were already in electronic form so there might be a charge for certificates. J.S. had not asked to have certificates converted to electronic form. Tr. 734 (J.S.).

J.S. exchanged correspondence with Leinwand, receiving a story that changed as time went on. Leinwand first told J.S. that he would receive the shares in two weeks, then three to five weeks. After J.S. complained to FINRA about Westor's failure to deliver the shares and after his attorney threatened legal action, Leinwand said it would take eight weeks to deliver the shares, but they could be delivered faster electronically. CX-84; Tr. 685-686, 689-693 (J.S.). J.S.'s attorney sent another letter to Leinwand on November 8, 2012. CX-83; Tr. 700-701 (J.S.). J.S. finally received his shares of TNIB stock on December 5, 2012, almost three months after his initial request. CX-97; Tr. 705 (J.S.).

J.S. never dealt with directly with Bach. Tr. 730 (J.S.). Bach testified that he had instructed Leinwand to send the stock to J.S. and did not believe that Westor was short in TNIB

⁴⁵ *Mission Sec. Corp.*, Exchange Act Rel. No. 63453, 2010 SEC LEXIS 4053, at *2 n.2 (Dec. 7, 2010).

stock. Tr. 1544-1545, 1547 (Bach).⁴⁶ However, as discussed in more detail in the next section, Westor had sold TNIB shares on behalf of a customer who did not own them, resulting in a shortage of TNIB stock in Westor's account at Citizen's Bank. By October 9, 2012, soon after J.S. asked for his stock, and two months before J.S. received his stock, Westor was trying to cover the shortage. Tr. 905 (Ruszkowski). As Westor's president, FINOP, and chief compliance officer, it is not credible that Bach did not know that Westor was short TNIB stock, or that he was unaware that the firm did not promptly deliver the stock to J.S., especially given that the firm began spending substantial sums to cover the shortage of TNIB stock by October 2012. The Extended Hearing Panel finds that Bach and Westor did not deliver the TNIB stock to J.S. because of Westor's short position in the stock.

By failing to deliver J.S.'s TNIB stock despite repeated customer requests, Bach misused customer securities, in violation of FINRA Rules 2150 and 2010.

IX. Second Cause of Action (Westor II): Bach Caused Westor to Violate the Customer Protection Rule by Failing to Maintain Physical Possession or Control of Securities

The Second Cause of Action of the Westor II Complaint charges Bach with violating FINRA Rule 2010 by causing Westor to violate Section 15 of the Exchange Act and the Customer Protection Rule, by failing to maintain physical possession of fully paid shares of TNIB, from August through September 2012. The Extended Hearing Panel finds that Bach caused Westor to violate the Rule.

The Customer Protection Rule requires a carrying broker-dealer, such as Westor, to maintain physical possession or control over customers' fully paid and excess margin securities.

⁴⁶ If Bach's testimony is accurate, the failure to know of the shortage of TNIB stock is a violation of the Customer Protection Rule. 17 C.F.R. §240.15c3-3(d); Broker-Dealer Reports, 2011 SEC LEXIS 2049, at *19-20.

The broker-dealer must hold these securities in one of several locations specified in the Rule.⁴⁷ In addition, the broker-dealer must make a daily determination from its books and records (as of the preceding day) of the quantity of fully paid and excess margin securities in its possession or control, and the quantity of fully paid and excess margin securities not in its possession or control. If the amount in the broker-dealer's possession and control is less than the amount indicated as being held for customers on the broker-dealer's books and records, the broker-dealer generally must obtain possession of securities sufficient to cover the shortfall.⁴⁸

From July 30 to September 10, 2012, Westor sold \$81,000 of TNIB stock from customer W.W.'s account that was not in the account. CX-115; Tr. 905. FINRA examiners obtained records of the holdings in Westor's securities accounts for the last days of July through October, 2012. CX-81; Tr. 876 (Park). The records showed that an account belonging to W.W. was short 1,000 shares of TNIB at the end of July 2012. The account was short 28,000 shares at the end of August; 63,000 shares at the end of September; and 5,000 shares at the end of October 2012. CX-81, CX-120; Tr. 878-882 (Park). During these months, Westor did not have enough shares of TNIB stock to return them to all customers if the customers owning the TNIB stock had requested their shares. Tr. 895-900 (Park); CX-81, CX-120. Because of the negative share balance in W.W.'s account, shares must have been delivered from the four other accounts that owned TNIB shares when they were sold from the account. Tr. 888, 890, 895-898 (Park); CX-81, CX-116.⁴⁹ Westor first attempted to cover by purchasing TNIB shares on October 9, 2012. By that time, the price had risen. Tr. 905 (Park).

⁴⁷ Financial Responsibility Rules for Broker-Dealers, Exchange Act Rel. No. 34-70072, 2013 SEC LEXIS 2240 (July 30, 2013).

⁴⁸ Broker-Dealer Reports, 2011 SEC LEXIS 2049, at *19-20.

⁴⁹ All the accounts were cash accounts. The customers had not authorized the use of their accounts for short sales. Tr. 903-904 (Park).

Westor failed to maintain physical possession and control of shares of customers' TNIB stock, in violation of Section 15 of the Exchange Act and the Customer Protection Rule, Exchange Act Rule 15c3-3. By causing Westor to commit these violations, Bach violated FINRA Rule 2010.

X. Third Cause of Action (Westor II): Bach Misused Customer Funds by Refusing to Return a Customer's Free Credit Balance Upon Request

The Third Cause of Action in Westor II charges Bach with conversion or improper use of the funds of Customer T.T., by refusing to return a free credit balance to the customer despite repeated requests. The Complaint alleges that by holding Customer T.T.'s funds and refusing to pay them on demand, Bach "converted, or at a minimum, made improper use of customer funds," violating FINRA Rules 2150 and 2010. The Extended Hearing Panel finds that Bach made improper use of the customer T.T.'s funds, in violation of Rules 2150 and 2010.

A free credit balance is a liability of a broker or dealer to customers "which [is] subject to immediate cash payment to customers on demand, whether resulting from sales of securities, dividends, interest, deposits or otherwise. ..." ⁵⁰ FINRA Rule 2150 provides that no member or person associated with a member shall make improper use of a customer's funds. Failure to return funds to customers who are entitled to receive the funds constitutes misuse of the customer's funds. ⁵¹ A violation of FINRA Rule 2150 is also a violation of Rule 2010. ⁵²

T.T. opened an account at Westor in November 2011 to trade microcap and penny stocks. Tr. 743-744 (T.T.); CX-73. On August 16, 2012, T.T. deposited 100,000 shares of TNIB stock

⁵⁰ Customer Protection Rule, § 15c3-3(a)(8).

⁵¹ *Dist. Bus. Conduct Comm. v. Roach*, No. C02960031, 1998 NASD Discip. LEXIS 11, at *15-16 (Jan. 20, 1998); *Bernard D. Gorniak*, Exchange Act Rel. No. 35996, 1995 SEC LEXIS 1820 (July 20, 1995); *Daniel Joseph Alderman*, Exchange Act Rel. No. 35997, 1995 SEC LEXIS 1823 (July 20, 1995), *aff'd*, 104 F.3d 285 (9th Cir. 1997); *Robert L. Johnson*, Exchange Act Rel. No. 33217, 1993 SEC LEXIS 3161, at *9 (Nov. 18, 1993) and *John C. Gebura*, Exchange Act Rel. No. 14204, 1977 SEC LEXIS 302 (Nov. 23, 1977).

⁵² *Dep't of Enforcement v. Patel*, No. C02990052, 2001 NASD Discip. LEXIS 42, at *24-25 (N.A.C. May 23, 2001).

in his Westor account. Tr. 753-754, 757 (T.T.); CX-100. T.T. was subject to a court order that required him to make periodic payments to the IRS, as part of the terms of his probation in a criminal tax matter. Tr. 748-749 (T.T.). Bach knew about T.T.'s IRS issue. Tr. 761, 768-769 (T.T.). T.T. asked for the entire cash balance of \$80,000 that was in his Westor account on October 5, 2012. A few days later, the cash balance grew to \$97,000. Tr. 764, 780 (T.T.); CX-73 at 54, CX-74 at 21. On about October 12, 2012, Bach told T.T. that he was freezing T.T.'s Westor account so Bach could conduct an investigation of TNIB. The freeze was complete – T.T. could not withdraw securities or funds from the account. Tr. 766-768, 820, 827 (T.T.).

T.T. believed that Westor was short on TNIB stock. He offered to sell his stock to Westor or Bach at \$4 per share, although the stock was trading a little above that price. In response, Bach offered to buy the TNIB stock at \$2 per share. Tr. 771, 774, 778 (T.T.); CX-100 at 19. At the time, T.T. had 32,000 shares of TNIB in his account. Tr. 770 (T.T.). Despite the freeze, Westor wired a small amount of money to T.T. in October 2012 after receiving a letter from T.T.'s attorney. Tr. 778 (T.T.). T.T., through his attorney, filed a court action against Westor and Bach on November 5, 2012. CX-73; Tr. 782-783 (T.T.). T.T. finally received his funds in early February 2013, pursuant to FINRA's TCDO entered against Westor and Bach. Tr. 794, 799 (T.T.); CX-104.

Bach testified that he froze T.T.'s account because he was concerned about how T.T. had acquired his TNIB stock. He claimed that he thought the stock would come back to Westor, and Westor would be responsible for the funds. Tr. 1509, 1512 (Bach). He testified that he believed it was right to freeze the account to protect other clients. Tr. 1512, 1520-1521 (Bach). Bach testified that the price of TNIB stock had gone up to \$8, so if Westor had been forced to buy

back TNIB stock, it would have been required to pay a substantial premium, perhaps as much as \$800,000, which would be above the firm's net capital and available cash. He testified that if Westor had to acquire the TNIB stock, it would be a "hit" against Westor's other clients, because the amount required to buy back the stock exceeded the net capital of the firm. Tr. 1521-1522, 1527 (Bach).

Like many of Bach's other explanations, the Extended Hearing Panel finds none of Bach's explanations for his refusal to return T.T.'s free credit balance to be credible. He provided no evidence that he ever conducted an investigation, nor any explanation of what authority he had to freeze a free credit balance. His explanation that he was protecting other customers made little sense, unless, possibly, he was concerned that customer assets were at risk because they had been commingled with Westor's assets.

There is no justification for Bach's refusal to return T.T.'s free credit balance promptly. By refusing to return the funds to T.T. for months, Bach misused customer T.T.'s funds, in violation of FINRA Rules 2150 and 2010.⁵³

Sanctions

Although Enforcement asked for a bar as a unified sanction, the Extended Hearing Panel separately considered sanctions for each of the thirteen causes of action set forth in the two complaints.

I. Sanctions for Net Capital Violations (Cause I, Westor I)

Bach's misconduct in causing Westor to violate the Net Capital Rule was willful and egregious, and the Extended Hearing Panel finds that a bar in all capacities is the appropriate sanction.

⁵³ Because the Complaint charged misuse or conversion, the Extended Hearing Panel finds it unnecessary to determine whether Bach converted T.T.'s funds. Whether misuse or conversion, a bar is the appropriate sanction, as discussed below.

For net capital violations, the FINRA Sanction Guidelines recommend consideration of a suspension of the responsible principal for up to thirty days, and a lengthier suspension or a bar in egregious cases.⁵⁴ The principal considerations are whether the firm continued in business while knowing of the deficiencies or inaccuracies, and whether the respondent attempted to conceal the deficiencies or inaccuracies. As president and FINOP of a small firm, which Bach describes as a “one-man operation” for much of the period, he knew or should have known that Westor was out of net capital compliance. He knew the firm was clearing on an omnibus basis, and should have known that the firm’s net capital requirement had increased to \$250,000 as a result. He also knew the firm was continuing to conduct securities transactions during the period covered by the First Cause of Action.

In fact, Bach continued to operate Westor without change even after being notified of its net capital deficiency. FINRA first informed Bach and Westor in November 2011 that the firm’s net capital requirement was \$250,000, and notified the firm in writing that it had insufficient net capital due to inaccurate net capital calculations and the increased net capital requirement, yet Bach ignored the warnings. Westor’s first FOCUS report with the \$250,000 net capital requirement was filed in May 2012. It never filed the required notices of net capital deficiencies with FINRA and the SEC.⁵⁵ CX-43, CX-45; Tr. 492, 495, 632 (Domasica).

Bach’s disciplinary history is an additional aggravating factor. He signed a letter of Acceptance, Waiver and Consent in 2003 for causing a previous firm to violate the Net Capital Rule and failing to designate a FINOP. He was censured and fined \$10,000. CX-1, at 68.

⁵⁴ FINRA Sanction Guidelines at 28 (2011) (“Sanction Guidelines”), the Guidelines may be found at www.finra.org/sanctionguidelines.

⁵⁵ Exchange Act Rule 17a-11.

The Extended Hearing Panel finds that Bach's net capital violations were egregious, and imposes a bar in all capacities for this violation.

II. Sanctions for Violations of Customer Protection Rule (Cause II in Westor I and Westor II)

Because the violations are related, the Extended Hearing Panel imposes a unitary sanction for the violations of the Customer Protection Rule charged in the Westor I Complaint and the Westor II Complaint.

For causing violations of the Customer Protection Rule, the Sanction Guidelines recommend consideration of a suspension in any or all capacities for up to 30 business days. In egregious cases, the Guidelines recommend consideration of a lengthier suspension (of up to two years) or a bar.⁵⁶ The principal consideration is the extent to which the respondent exposed customer funds to potential risk or loss.

Bach's conduct put customers at risk. Because he failed to perform reserve calculations, he did not know if Westor's reserve account had sufficient funds to protect customers. By failing to obtain the "no-lien letter," he did not ensure that the assets were adequately protected from creditors. When Westor violated the Customer Protection Rule by failing to maintain a sufficient number of shares of TNIB stock in its physical possession or control, customer's assets were at risk. The substantial risk is shown by Westor's experience with TNIB stock, when it was forced to cover the shortage at a higher price. Bach showed no remorse for these violations. Instead, he made contrived arguments about why the firm was not short, but only "short the box," and argued that W.W.'s sale of a security he did not own was not a short sale because his

⁵⁶ Sanction Guidelines at 27.

firm had erroneously credited W.W.'s account with ownership of the stock.⁵⁷ Tr. 1406, 1546-1547, 1549 (Bach).

The Extended Hearing Panel finds that Bach's violations of the Customer Protection Rule were egregious, and imposes a bar in all capacities.

III. Sanctions for Misrepresentation to ETC (Cause III, Westor I)

The Extended Hearing Panel finds that a bar is appropriate for Bach's misrepresentations to ETC. For intentional misrepresentations, the Sanction Guidelines recommend a suspension for ten business days to two years, and a bar in egregious cases.⁵⁸ The principal considerations are those applicable to all violations.

Like his other violations, Bach has not accepted responsibility for this violation.⁵⁹ In fact, he argues that ETC always knew the account was an omnibus account and that the ETC witnesses were not testifying truthfully. The Extended Hearing Panel found both ETC witnesses credible, and finds that their testimony was truthful and accurate. Their testimony was consistent and reasonable, and both appeared to be attempting to answer the questions from both parties fairly. In addition, Bach was not credible, as shown by his concealment of the true nature of Westor's ETC account by failing to complete the proprietary certification.⁶⁰

⁵⁷ Although Bach repeatedly argued that Westor was only "short the box," he never explained what he meant by the phrase. According to the SEC website, "A short sale against the box of a stock is where the seller actually owns the stock, but does not want to close out the position." www.sec.gov/answers/shortbox.htm. If that is the meaning he intended, it does not apply because W.W., the seller, did not own any TNIB stock.

⁵⁸ The Guideline applies to misrepresentations to firms as well as to customers. See *Dep't of Enforcement v. Pierce*, No. 2007010902501, 2013 FINRA Discip. LEXIS 25, at *94 (N.A.C. Oct. 1, 2013).

⁵⁹ Principal Consideration No. 2.

⁶⁰ Principal Consideration No. 10. Furthermore, Bach's objection to signing the proprietary certification was not that it was inaccurate, but that certain language in the form was inappropriate for a brokerage firm. If Bach had believed that ETC knew that Westor's account was an omnibus account, the language would have been irrelevant.

Although there was no actual injury to ETC or customers, Bach's misrepresentation put ETC and customers at risk of injury.⁶¹ By maintaining customer assets and Westor's proprietary assets in a single account, and not knowing that it held customer assets, ETC was exposed both to regulatory scrutiny and liability to customers. Customer assets were not properly protected because ETC did not set up a reserve account, which it would have done if it had knowingly accepted customer assets. Tr. 347-348 (Murphy). The misrepresentation benefited Bach and Westor because the firm needed a clearing firm after Lek Securities had terminated its clearing arrangement with Westor, and it could only use ETC as a clearing firm by hiding the true nature of the account.⁶²

Bach's misrepresentation to ETC was egregious. The Extended Hearing Panel imposes a bar in all capacities.

IV. Sanctions for Filing False Form BD (Cause IV, Westor I)

The Extended Hearing Panel bars Bach for submitting a false Form BD to FINRA. In addition, because the violation was willful, the Extended Hearing Panel finds that Bach is statutorily disqualified.

A. Respondent Is Barred for Submitting a False Form BD

For filing a false Form BD, the Extended Hearing Panel considered the Sanction Guideline for filing a false Form U4. For filing a false Form U4, the Sanction Guidelines recommend a suspension of five to 30 business days, or a longer suspension or a bar in egregious cases.⁶³ One principal consideration is the nature and significance of the information at issue. Here, the false information was highly significant. The false filing concealed the true nature of

⁶¹ Principal Consideration No. 11.

⁶² Principal Consideration No. 17.

⁶³ Sanction Guidelines at 69-70.

Westor's clearing arrangement, suggesting that the firm had been clearing on a fully disclosed basis through Lek Securities until it switched to ETC, when the relationship with Lek Securities had actually ended months earlier. The statement that the firm cleared through ETC on an omnibus basis would have misled FINRA into believing that ETC knew of the omnibus basis, and therefore would take the required steps to protect customer assets. The Form BD also falsely represented that Westor did not maintain any customer funds or securities, which would cause FINRA not to inquire into Westor's compliance with all regulatory requirements implicated by holding customer funds and securities.

An additional aggravating factor is that Bach failed to acknowledge any responsibility for the false filing. Instead, he claimed that he had no role in the Form BD filings, and blamed Westor's counsel for any errors. Tr. 1263-1264, 1409-1415, 1420-1421 (Bach). In fact, the Form BD lists Bach as the president and chief compliance officer, as well as the contact person and authorized signatory. CX-42. The Extended Hearing Panel does not find it credible that Bach did not know and authorize the contents of the Form BD when it was filed, whether Bach or counsel actually performed the filing.

The Extended Hearing Panel finds that Bach knowingly submitted a false Form BD, and that a bar in all capacities is the appropriate sanction.

B. Respondent is Statutorily Disqualified for Willfully Submitting a False Form BD

Section 3(a)(39)(F) of the Exchange Act states that a person who files an application for association with a member of a self-regulatory organization, and who willfully omits any material fact in that application, is statutorily disqualified from participating in the securities

industry.⁶⁴ The Extended Hearing Panel found above that Bach's submission of a false Form BD was willful. Accordingly, Bach is statutorily disqualified.

V. Sanctions for Causing Westor to Violate Its FINRA Membership Agreement (Cause V, Westor I)

For causing a member firm to violate its FINRA membership agreement, the Sanction Guidelines recommend a suspension of the responsible individual for up to two years, or in egregious cases, a bar.⁶⁵ The most relevant principal consideration that is specific to Bach's violation is whether the breach of the membership agreement was material.

Here, the breach was material. A change from clearing on a fully-disclosed basis to holding customer funds and securities, clearing on an omnibus basis, and claiming an exemption from the Customer Protection Rule because the firm maintained a reserve account raised many issues, including whether the firm was in net capital compliance, and whether it had the ability to manage the responsibilities of its new methods of operation. In fact, the examiners determined that the firm was not capable of managing its responsibilities, a determination that is borne out by the numerous violations of FINRA's Rules set forth in this decision, especially Westor's violation of the Customer Protection Rule when it did not have possession or control of sufficient TNIB stock, as well as other deficiencies identified during the hearing.⁶⁶

The breach of the Membership Agreement was at least reckless, and likely intentional. Bach's knowledge of the violation is shown by the efforts he made to conceal the nature of the changes. While he changed the FOCUS report to disclose the establishment of the reserve account, the false Form BD concealed the other changes.

⁶⁴ See 15 U.S.C. § 78c(39)(F); see also FINRA By-Laws Art. III, Sec. 4.

⁶⁵ Sanction Guidelines at 44.

⁶⁶ As Examiner Park testified, Westor had no systems in place to keep track of customer securities. Tr. 897-898 (Park). The examiners testified to a number of other deficiencies in Westor's operations that demonstrate that it could not safeguard customer assets. See, e.g., Tr. 171 (Rattiner), 1170-1171 (Dunn), 847, 856-858, 874-875 (Park).

An additional aggravating factor is that Bach submitted a CMA only when Westor was facing a hearing on a Notice of Suspension. Worse still, he continued to operate Westor in the same manner, in violation of the Membership Agreement, after FINRA rejected the CMA. Tr. 137-138, 147-148 (Rattiner), 1690, 1700-1701 (Bach); CX-62, CX-81, CX-112, CX-116, CX-120. The continued violation even after the CMA was rejected shows that Bach is unwilling to abide by FINRA's rules.

The Extended Hearing Panel finds that Bach's violation of NASD Rule 1017 and FINRA Rule 2010, by causing Westor to violate its FINRA Membership Agreement, was egregious, and bars Bach in all capacities.

VI. No Sanction Is Imposed for the Recordkeeping Violation (Cause VI, Westor I)

Bach's violation for failure to create and maintain order memoranda is less serious and egregious than other violations. In light of the multiple bars imposed for other violations, no additional sanction is imposed for the failure to make and keep current order memoranda.

VII. Sanctions for FINRA Rule 8210 Violations (Causes VII – X, Westor I)

The Extended Hearing Panel bars Bach for his late and incomplete responses to numerous requests for documents and information pursuant to Rule 8210. His conduct shows a pattern of delay and evasion.

The Sanction Guidelines recommend a suspension of an individual for up to two years, and a fine of \$2,500 to \$25,000, for failure to provide timely responses to requests for information. For the failure of a firm to provide timely responses to requests for information, the Sanction Guidelines recommend suspension of the responsible individual, as well as a fine of \$2,500 to \$25,000.

For a partial but incomplete response to Rule 8210 requests for information the Sanction Guidelines recommend a bar as the standard sanction unless the person can demonstrate that the information provided substantially complied with all aspects of the staff's requests.

The Sanction Guidelines set forth three specific principal considerations for failure to respond to Rule 8210 requests for information in a timely manner:

1. Importance of the information requested as viewed from FINRA's perspective.
2. Number of requests made and the degree of regulatory pressure required to obtain a response.
3. Length of time to respond.

For providing partial but incomplete responses to Rule 8210 requests for information, the Sanction Guidelines set forth three specific principal considerations:

1. Importance of the information requested that was not provided as viewed from FINRA's perspective, and whether the information provided was relevant and responsive to the request.
2. Number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response.
3. Whether the respondent thoroughly explains valid reason(s) for the deficiencies in the response.

These principal considerations all support the imposition of a bar. The information sought was extremely important financial and operational information, necessary to determine whether the firm was putting customers at risk and operating lawfully. Bach's failures to provide information for months after it was requested impeded the completion of a routine examination, a determination of whether Westor had sufficient net capital, was safeguarding customer assets, and whether Bach personally was manipulating the market for UCSO stock. The information in

one of a series of requests was supplied only after Bach and Westor faced immediate suspension, the maximum regulatory pressure available.⁶⁷

For Bach's repeated and egregious violations of FINRA Rules 8210 and 2010, the Extended Hearing Panel bars him from associating with any member firm in any capacity.

VIII. Sanctions for Improper Use of Customer Securities (Cause I, Westor II)

For improper use of a customer's funds or securities, the Sanction Guidelines suggest consideration of a bar. Where the improper use resulted from the respondent's misunderstanding of his or her customer's intended use of the funds or securities, or other mitigation exists, the Sanction Guidelines suggest consideration of a suspension in any or all capacities for a period of six months to two years, and thereafter until the respondent pays restitution.⁶⁸

Bach did not misunderstand the customer's request for the return of his securities. Rather, he delayed delivering the customer's securities by a series of excuses, conveyed to the customer through Leinwand, while Westor was in a short position on TNIB stock. The only apparent explanation for the failure to return the stock is that Westor did not have sufficient TNIB stock in its account at Citizens Bank to cover the positions of all customers who owned the stock, and the withdrawal of J.S.'s shares would have left it with very little in the account. Although there is no evidence that Westor knowingly allowed customer W.W. to sell stock he did not own, Westor's mistake does not excuse Bach's failure to deliver J.S.'s stock to him promptly upon request.

The appropriate sanction for Bach's improper use of customer J.S.'s securities is a bar.

⁶⁷ FINRA and the SEC have often stated that FINRA should not have to initiate disciplinary action to elicit a response to its Rule 8210 requests. *Ricupero*, 2010 SEC LEXIS 2988, at *12.

⁶⁸ Sanction Guidelines at 36. The Sanction Guidelines also suggest imposition of a fine of \$2,000 to \$50,000. However, because the Extended Hearing Panel is imposing a bar, the fine is unnecessary. *See* Sanction Guidelines at 10.

IX. Sanctions for Improper Use of Customer Funds (Cause III, Westor II)

Bach's improper use of Customer T.T.'s funds was egregious, and a bar is the appropriate sanction. He had no right to withhold a customer's free credit balance. Bach's misconduct is especially reprehensible because he knew that T.T. had a desperate need for the funds or would violate the terms of his probation if he did not receive his money. Bach sought to use T.T.'s dire predicament to force him to sell the TNIB stock to Bach at less than half its market value. He refused to return the funds even after T.T. filed a court action against him, and finally returned T.T.'s funds only when he was facing a hearing on a TCDO, and agreed to a TCDO that required him to remit the funds to T.T. Bach's explanations of his conduct were unsupported and nonsensical, and clearly pretextual.

The Extended Hearing Panel imposes a separate bar for Bach's misuse of Customer T.T.'s funds, in violation of FINRA Rules 2150 and 2010.

Order

The Extended Hearing Panel finds that Respondent Richard Hans Bach committed each violation charged in the Westor I and Westor II Complaints, and imposes the following sanctions:

- Bach violated FINRA Rule 2010 by causing his firm to violate the Net Capital Rule by conducting a securities business while it had insufficient net capital. The Extended Hearing Panel imposes a bar in all capacities for this violation.
- Bach violated FINRA Rule 2010 by causing his firm to violate the Customer Protection Rule, by failing to perform reserve calculations, and by failing to obtain a written notification from each bank at which Westor maintained a reserve account, certifying that the bank was informed that all cash or qualified securities deposited in the bank were being held for the exclusive benefit of customers of the broker or dealer and were being kept separate from any other accounts maintained by the broker or dealer with the bank. Bach also violated NASD Rule 2330(b) and FINRA Rule 2010 by failing to maintain physical possession or control of customers'

fully paid stock. The Extended Hearing Panel imposes a bar in all capacities for these violations.

- Bach violated FINRA Rule 2010 by misrepresenting to a clearing firm that Respondent's firm would be clearing only proprietary trades. The Extended Hearing Panel imposes a bar in all capacities for this violation.
- Bach violated FINRA Rules 1122 and 2010 by filing a false Form BD. The Extended Hearing Panel imposes a bar in all capacities for this violation. In addition, the Extended Hearing Panel finds that this violation was willful, and finds that Bach is statutorily disqualified.
- Bach violated NASD Rule 1017 and FINRA Rule 2010 by causing his firm to violate its FINRA membership agreement, and failing to obtain FINRA approval for a material change in business operations. The Extended Hearing Panel imposes a bar in all capacities for this violation.
- Bach violated NASD Rule 3110 and FINRA Rule 2010 by causing his firm to fail to make and keep current order memoranda for trades by Westor's holding company and others. In light of the multiple bars imposed for other violations, the Extended Hearing Panel does not impose a separate sanction for this violation.
- Bach violated FINRA Rules 8210 and 2010 by failing to submit timely and complete responses to requests for documents and information. The Extended Hearing Panel imposes a bar in all capacities for these violations.
- Bach misused customer securities, in violation of FINRA Rules 2150 and 2010, by failing to return securities to a customer despite repeated requests. The Extended Hearing Panel imposes a bar in all capacities for this violation.
- Bach misused customer funds, in violation of FINRA Rules 2150 and 2010, by refusing to return free credit balances to a customer despite repeated requests for the funds. The Extended Hearing Panel imposes a bar in all capacities for this violation.

Bach is also ordered to pay the costs of the hearing in the amount of \$13,933.07, which includes a \$750 administrative fee and the cost of the transcript. The costs shall be payable on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action in this matter. The bars shall become effective immediately if this decision is FINRA's final disciplinary action in this disciplinary proceeding.

EXTENDED HEARING PANEL

By: Lawrence B. Bernard
Hearing Officer

Copies to: Richard Hans Bach (*via overnight courier and first-class and electronic mail*)
Michael J. Newman, Esq. (*via electronic and first-class mail*)
Danielle I. Schanz, Esq. (*via electronic mail*)
Jeffrey D. Pariser (*via electronic mail*)