

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

NORTH WOODWARD FINANCIAL CORP.
(CRD No. 104097),

and

DOUGLAS A. TROZAK
(CRD No. 2219763),

Respondents.

Disciplinary Proceeding
No. 2011028502101

Hearing Officer—Andrew H. Perkins

HEARING PANEL DECISION

May 16, 2014

Respondents North Woodward Financial Corp. and Douglas A. Troszak (1) failed to respond in a timely manner to FINRA requests for information and denied FINRA access to the firm's premises in connection with a scheduled cycle examination (and Troszak failed to respond completely to a separate request for information), in violation of FINRA Rules 8210 and 2010; (2) failed to establish and maintain adequate written supervisory procedures, in violation of NASD Rule 3010 and FINRA Rule 2010; (3) failed to prepare required reports and certifications, in violation of NASD Rule 3012, and FINRA Rules 3130 and 2010; (4) failed to establish and implement appropriate AML procedures, in violation of NASD Rule 3011(b), and FINRA Rules 3310(b) and 2010; (5) failed to conduct an independent AML test in a timely manner, in violation of FINRA Rules 3310(c) and 2010; and (6) failed to provide customers with an adequate privacy notice, in violation of Regulation S-P, NASD Rule 2110, and FINRA Rule 2010.

North Woodward is suspended from FINRA membership for one year for its failures to comply timely with FINRA's Rule 8210 requests; suspended from FINRA membership for 30 business days for its supervisory violations, and fined a total of \$25,000 (\$10,000 for its supervisory violations, \$5,000 for its failure to timely update Troszak's Form U4, and \$10,000 for its failure to provide customers with an adequate privacy notice).

Troszak is barred from associating with any member firm in all capacities for his failures to comply with FINRA's Rule 8210 requests. In addition, Troszak is barred from associating with any member firm in any principal or supervisory capacity for his supervisory violations. In addition, Respondents are jointly and severally ordered to pay costs.

Appearances

Dale A. Glanzman, Esq., and Heather L. Freiburger, Esq., Chicago, Illinois, for the Department of Enforcement, Complainant.

Douglas A. Troszak, Birmingham, Michigan, pro se and representative for North Woodward Financial Corp., Respondents.

DECISION

I. INTRODUCTION

North Woodward Financial Corp. is a general securities broker-dealer and a FINRA member firm. Douglas A. Troszak owns and controls the firm. He is the firm's president and chief financial officer. He also is registered with FINRA through North Woodward in multiple capacities. He holds several key positions with the firm by which he is responsible for the firm's compliance with the rules, regulations, and laws that govern broker-dealers in the securities industry.

Troszak is also a certified public accountant ("CPA"), and he conducts a tax preparation business from North Woodward's office. Many of Troszak's brokerage clients retain him to prepare their tax returns. Troszak does not maintain entirely separate client records for his securities business and his CPA business. He commingles his clients' brokerage records with their other financial records when he prepares their tax returns.

In February 2011, FINRA notified Troszak that it would soon begin the 2011 cycle examination of North Woodward's books and records. Troszak objected to the timing of the examination because he was busy with his tax preparation business at that

time of year. At Troszak's request, FINRA then moved the examination date until after the tax filing deadline. Nonetheless, Troszak refused to allow FINRA access to North Woodward's premises. Accordingly, FINRA was not able to begin the examination on the scheduled date.

Troszak also refused to produce copies of some of North Woodward's books and records that FINRA staff requested before the rescheduled on-site examination. FINRA staff requested the documents to expedite the on-site examination. Troszak told the staff that he would not produce the requested documents because he was prohibited by law from divulging client information used to prepare tax returns unless the client consented to the access request.

After multiple unsuccessful attempts to secure Troszak's cooperation, FINRA issued a Notice of Suspension to North Woodward. The notice advised North Woodward that its FINRA membership would be suspended unless it produced the requested documents. When North Woodward did not comply by the specified deadline, FINRA suspended its membership.

After North Woodward was suspended, Troszak relented. North Woodward and Troszak produced the requested documents. North Woodward's suspension was lifted as a result. They also eventually permitted FINRA staff to conduct the on-site examination of North Woodward's books and records.

In the course of the cycle examination, FINRA staff uncovered evidence that North Woodward and Troszak had committed a number of rule violations. One area of concern was that Troszak had borrowed money from some of North Woodward's

customers.¹ The staff tried to obtain information and documents about the loans, but Troszak refused to cooperate. After further investigation, the Department of Enforcement initiated this disciplinary proceeding.²

In addition to charging North Woodward and Troszak with failing to provide documents timely, the complaint alleges that they (i) failed to establish and maintain adequate written supervisory procedures, (ii) conducted a securities business while North Woodward was suspended,³ (iii) failed to prepare required reports documenting the testing and review of North Woodward's written supervisory procedures ("WSPs"), (iv) failed to amend Troszak's Uniform Application for Securities Industry Registration or Transfer (Form U4) to report an unsatisfied money judgment, (v) failed to establish and implement appropriate anti-money laundering ("AML") procedures, (vi) failed to conduct timely independent tests of North Woodward's AML compliance program, (vii) failed to comply with information requests made by the Financial Crimes Enforcement Network ("FinCEN"), and (viii) failed to provide customers with adequate privacy notices.

North Woodward and Troszak generally denied the charges, but they focused their defense on the charges that they failed to provide documents timely. In summary, Troszak argued that they could not be charged with failing to provide the requested documents because state law and federal regulations prohibited Troszak from releasing any tax preparation documents without his clients' consent, which consent he lacked. Troszak also argued that FINRA lacked jurisdiction to request documents relating to his personal loans.

¹ The discovered loans were distinct from the borrowing activity the staff had uncovered in 2010.

² Enforcement filed the complaint with the Office of Hearing Officers on January 10, 2013.

³ Enforcement dismissed this cause of action at the commencement of the hearing.

The Hearing Panel rejected Respondents' defenses and concluded that, with the exception of the second and ninth causes of action, Troszak and North Woodward committed each violation alleged in the complaint.⁴

II. FAILURES TO RESPOND AND REFUSAL TO ALLOW FINRA STAFF ACCESS TO NORTH WOODWARD'S OFFICE

The first cause of action alleges that North Woodward failed to respond timely to FINRA staff's requests for information and documents to facilitate North Woodward's 2011 cycle examination and failed to permit timely inspection of North Woodward's books and records.⁵ The third cause of action alleges that Troszak failed to respond to a separate request for information and documents related to loans Troszak obtained in February 2011 from a number of individuals, four of whom were North Woodward customers. As explained below, North Woodward and Troszak thereby violated FINRA Rules 8210 and 2010.

A. Background

Troszak has been a registered securities broker since 1992. In 2000, he left the broker-dealer with which he had been associated and established North Woodward as a registered broker-dealer. Troszak owns and controls North Woodward. He is the firm's president, chief financial officer, and chief compliance officer.⁶ In addition, he is the

⁴ The hearing was held on October 30 and 31, 2013.

⁵ Although the requests are directed to North Woodward and Troszak, the first cause of action charges only the firm with failing to provide a timely response and denying the staff access to North Woodward's premises.

⁶ CX-1, at 2.

firm's only FINRA registered principal.⁷ Troszak is solely responsible for maintaining North Woodward's books and records.

B. Facts

In setting the cycle examination plan for FINRA's Chicago office in 2011, Shawn O'Neill, an Associate District Director for that office, determined that North Woodward's examination should be conducted in the first quarter of 2011. In part, O'Neill assigned an early date because North Woodward and Troszak had refused to provide documents FINRA staff had requested in connection with an ongoing investigation of Troszak's suspicious customer loan activity.⁸ FINRA staff had uncovered the allegations during a 2010 examination of North Woodward, and the staff was still reviewing the activity when O'Neill set the schedule for North Woodward's 2011 cycle examination. O'Neill determined that the examination team should visit North Woodward early in 2011 to determine if there were any other issues or red flags of possible misconduct.⁹

To facilitate the field work portion of the cycle examination, FINRA staff repeatedly requested Troszak and North Woodward to provide information and documents. As discussed below, North Woodward and Troszak refused to supply the requested information and documents until more than three months after the initial scheduled examination date and not until after North Woodward was suspended pursuant to FINRA Rule 9552. North Woodward and Troszak did not permit FINRA staff to

⁷ CX-2, at 2. Troszak has been registered as a General Securities Principal, Introductory Broker-Dealer/Financial and Operations Principal, and Operations Principal, as well as a General Securities Representative.

⁸ Tr. 103-04 (O'Neill).

⁹ *Id.* 104.

examine North Woodward's books and records at the firm's office for more than four months after the initial scheduled examination date.

1. The First Request For Information And Documents

On February 7, 2011, Shan Cinnamon, the FINRA Regulatory Coordinator assigned to North Woodward's 2011 cycle examination, called Troszak and left him a message that FINRA planned to visit North Woodward on March 7, 2011.¹⁰ The next day, Cinnamon sent Troszak an email advising him that the on-site examination of North Woodward would begin on March 7 and directing Troszak to complete an online Information Request Cinnamon had prepared to assist the examination team with the upcoming examination.¹¹ Cinnamon made the access and information request pursuant to Rule 8210, which requires members and their associated persons to provide complete and accurate information with respect to any matter involved in an investigation, complaint, examination, or proceeding.¹² Troszak responded by email the same day, stating he would not be available for the scheduled on-site examination because he was busy preparing corporate tax returns for his CPA clients and was scheduled to be away from his office.¹³ Troszak requested that Cinnamon provide alternative dates for the site visit.

In addition, FINRA's Senior Regional Director in FINRA's Chicago office sent Troszak a letter dated February 10, 2011,¹⁴ introducing the examiners who would conduct the Financial/Operational and Sales Practice examination of his firm on March 7, 2011, as well as the responsible examination manager. The letter informed Troszak of the

¹⁰ Tr. 30-31 (Cinnamon).

¹¹ CX-5. Cinnamon also attached a printout of the Information Request to his email.

¹² See Rule 8210.

¹³ CX-6.

¹⁴ CX-7 (Letter from Carlotta A. Romano to Douglas A. Troszak dated Feb. 10, 2011).

objectives of the examination and summarized the process the staff would follow.

Finally, the letter emphasized that he must complete the online Information Request (WebIR) in advance of the examination fieldwork.¹⁵

FINRA granted Troszak's postponement request and rescheduled the site visit to April 18, 2011.¹⁶ Cinnamon advised Troszak of the new date by telephone and email on March 18, 2011.¹⁷ Cinnamon also renewed his request that Troszak complete the online Information Request located on FINRA's Internet site.¹⁸ The March 18 email adjourning the cycle examination start date to April 18 included a copy of the February 8, 2011, request that had been issued pursuant to Rule 8210.¹⁹

On March 24, 2011, FINRA staff sent North Woodward and Troszak a Pre-Exam Records Request.²⁰ The staff directed North Woodward and Troszak to provide the documents on or before April 1, 2011. The staff requested copies of essential documents directly related to North Woodward's broker-dealer operations. They included:

1. the firm's Purchase and Sales Blotter;
2. the firm's Securities Received and Delivered Blotter;
3. the firm's Wire Transfers Blotter;
4. the firm's Checks Received and Forwarded Blotter;
5. a list of all firm and customer accounts;
6. exception reports generated by North Woodward's clearing firm;

¹⁵ CX-7, at 1. A printout of the Information Request was included with the letter.

¹⁶ Tr. 361-62 (Troszak). Troszak requested a further postponement to have some "recovery time" after the April 2011 tax filing deadline. Tr. 473 (Troszak). The staff then set the on-site examination for Tuesday, April 19, 2011.

¹⁷ Tr. 34 (Cinnamon); CX-8.

¹⁸ CX-8. Cinnamon also attached a printout of the Information Request to his email.

¹⁹ CX-5.

²⁰ CX-9. Although the initial Pre-Exam Records Request does not specifically reference Rule 8210, the request was incorporated into the Rule 8210 request dated April 27, 2011 (CX-15, at 2).

7. the firm's written AML program;
8. the firm's financial records;
9. the firm's business continuity plan; and
10. the firm's written supervisory procedures.²¹

FINRA staff did not request copies of Troszak's clients' tax records.

Neither North Woodward nor Troszak produced any of the requested documents or explained why they would not produce them by the deadline. FINRA staff followed up with Troszak by email on April 8, 2011, and requested that the documents be provided by April 11, 2011.²² The staff also requested Troszak to provide a written explanation if the firm could not provide the records by April 11. Neither North Woodward nor Troszak responded to the staff's request.²³

William Berger, one of the FINRA examiners assigned to the North Woodward examination, spoke to Troszak on April 13, 2011, and asked about Troszak's progress on compiling the requested documents.²⁴ Troszak told Berger that he had started preparing a response, but he had not been able to complete it. Troszak said that he did not object to providing certain documents, such as the firm's financial records, but he did have an issue regarding documents such as the firm's Purchase and Sales Blotter because he used it to prepare his clients' tax returns.²⁵ Troszak concluded by saying that "he could not provide documents he used to prepare tax statements to a third party."²⁶ Berger explained to Troszak that FINRA had requested documents that broker-dealers are required to

²¹ CX-9.

²² CX-11.

²³ Tr. 67 (Berger).

²⁴ Tr. 67-68 (Berger).

²⁵ Tr. 68 (Berger).

²⁶ *Id.*

create and maintain by FINRA and Securities and Exchange Commission rules, not his clients' tax records. Berger finished the conversation by confirming that he and another FINRA examiner would visit North Woodward's office on April 19, 2011, to review the firm's books and records.²⁷

2. The Second Request For Information And Documents

On April 14, 2011, Berger sent North Woodward and Troszak a second Rule 8210 document request for the same documents FINRA staff had requested on March 24 and April 8, 2011.²⁸ Berger directed Troszak and North Woodward to have the documents available for review upon his arrival at the firm on April 19, 2011.²⁹

On April 18, 2011, the day before the rescheduled on-site examination, Troszak sent an email to FINRA staff. Troszak informed the staff that they should reschedule the examination until he can address his concerns [about the examination] with FINRA management.³⁰

Upon receipt of Troszak's email, O'Neill and Mark Tomlin, another Associate District Director in FINRA's Chicago office, called Troszak to tell him that the on-site examination would proceed the following day as scheduled notwithstanding Troszak's April 18 email.³¹ O'Neill told Troszak that he was expected to have all of the previously requested documents available for inspection, and failure to comply could result in FINRA taking disciplinary action against him and North Woodward.³² Troszak then told

²⁷ *Id.* 69.

²⁸ CX-12.

²⁹ *Id.*

³⁰ CX-13.

³¹ Tr. 96 (O'Neill). Berger also joined for the call. Tr. 95 (O'Neill).

³² Tr. 96-97 (O'Neill).

O'Neill that he would not allow FINRA staff access to North Woodward's office on April 19.³³ When asked why, Troszak did not explain further.³⁴

3. Denial Of Access To North Woodward's Office

On April 19, 2011, FINRA staff arrived at North Woodward's office, but the office was locked and unoccupied. The staff made repeated attempts throughout the day to gain entrance to North Woodward's office, but each time they appeared the office was locked.³⁵ As a result, FINRA staff could not conduct the on-site examination on April 19, 2011.

4. The Third Request For Information And Documents

On April 27, 2011, O'Neill sent Troszak a letter that summarized the efforts his examination staff had made to obtain copies of documents for the 2011 cycle examination and demanded that Troszak and North Woodward produce the documents at North Woodward's office on May 4, 2011.³⁶ Troszak responded by email on May 2, 2011, reaffirming that he would not allow FINRA staff "access to our office or documents."³⁷ Troszak also objected to O'Neill's characterization that he and North Woodward had been uncooperative despite his unconditional refusal to allow FINRA to inspect his firm's books and records. Troszak wrote that he did not "wish to impede FINRA's investigation of the [loan] transaction brought to my attention over a year ago." But Troszak did not address why he would not allow the staff to perform the 2011 cycle examination other than to state that he could not allow FINRA to physically inspect any

³³ *Id.*

³⁴ Tr. 97 (O'Neill).

³⁵ Tr. 74 (Berger).

³⁶ CX-15. The letter incorrectly states that it is the second Rule 8210 request.

³⁷ CX-16.

file or business record at North Woodward's office out of "concern to protect the private and confidential information regarding [his] clients' tax and other financial matters."³⁸

Based on Troszak's email, O'Neill concluded that it would serve no purpose to make another trip to North Woodward's office on May 4 because it was clear that Troszak would not allow the staff to inspect North Woodward's books and records.³⁹

5. The Notice Of Suspension And Respondents' Response

Faced with Troszak's refusal to allow FINRA to examine North Woodward's books and records, FINRA staff sent North Woodward a Notice of Suspension pursuant to Rule 9552.⁴⁰ The notice informed North Woodward that it would be suspended on June 6, 2011, unless, before that date, it took corrective action and produced all of the documents FINRA staff had previously requested in connection with the firm's 2011 cycle examination. North Woodward did not produce the requested documents, and FINRA suspended the firm effective June 6, 2011.⁴¹

Nine days later, an attorney for Troszak and North Woodward sent the requested documents to FINRA's Chicago office.⁴² FINRA lifted North Woodward's suspension on June 16, 2011.⁴³

FINRA staff conducted the on-site examination on July 18, 2011.

³⁸ *Id.*

³⁹ Tr. 100 (O'Neill).

⁴⁰ CX-17.

⁴¹ *See* CX-18.

⁴² CX-19, at 2.

⁴³ Tr. 102 (O'Neill). At the hearing, the Hearing Officer granted Enforcement's motion to correct the suspension termination date in the complaint to conform to the evidence. Tr. 134.

6. The Request For Information Regarding Troszak's Loan Activity

In addition to refusing to cooperate and timely produce documents FINRA staff needed for North Woodward's 2011 cycle examination, Troszak also refused to comply fully with a separate investigation into his loan activity with North Woodward customers. Troszak did not contest any of the material facts pertaining to this violation.

In February 2011, Troszak borrowed money from nine individuals to redeem two condominium units he owned in Harbor Springs, Michigan, that was in foreclosure.⁴⁴ FINRA staff opened an investigation to determine the facts and circumstances surrounding the loans.⁴⁵ The staff sought to determine if any of the lenders were North Woodward customers and whether Troszak had the ability to repay the loans in light of his apparent financial problems.⁴⁶

FINRA staff began the investigation into Troszak's borrowing from customers with a Rule 8210 information request dated October 4, 2011. On October 6, 2011, Troszak, through his attorney, made a partial response.⁴⁷ Troszak's attorney informed the staff that some of the individuals mentioned in the request were not North Woodward customers.⁴⁸ Troszak's attorney confirmed that there were no securities account

⁴⁴ CX-27 (copy of mortgage and promissory notes).

⁴⁵ This investigation is identified by matter number 20110293661 and was separate from both the cycle examination and a 2010 investigation into other customer loan activity. Tr. 247 (Westcomb).

⁴⁶ Tr. 247, 251 (Westcomb).

⁴⁷ CX-28.

⁴⁸ One of the listed individuals, Rhonda I. Wentworth, is Troszak's wife. She also is registered with FINRA as a General Securities Representative.

documents relating to them.⁴⁹ As to the others, he provided some documents.⁵⁰ The letter does not give a description of the documents produced, nor does it identify the documents Troszak promised to collect and provide at a later date.⁵¹

On November 1, 2011, Troszak testified at an on-the-record interview regarding the loans he received in February 2011.⁵² Troszak testified that his bank had foreclosed on the condominium units and that he had borrowed \$289,900 to redeem the property. The loans were secured by a mortgage dated February 22, 2011.⁵³ The promissory notes were due on December 31, 2011.⁵⁴

In furtherance of this investigation, on May 25, 2012, FINRA staff sent Troszak and North Woodward a follow-up document request pursuant to Rule 8210. Generally, FINRA staff requested Troszak and North Woodward to produce documents relating to any payments of principal and interest made to the lenders.⁵⁵ The staff also asked North Woodward and Troszak to produce all documents related to any refinancing of the condominium units.⁵⁶ Westcomb explained that he had sent the request in connection with the open investigation to determine whether Troszak had the financial ability to

⁴⁹ CX-28, at 1.

⁵⁰ Nathan Westcomb, the FINRA examiner conducting the loan investigation, testified that he understood from Troszak's response that five of the lenders had brokerage accounts at North Woodward. Tr. 249.

⁵¹ See CX-28. Nor does the record contain a copy of the October 4, 2011 document request.

⁵² CX-26 (transcript excerpt).

⁵³ CX-27.

⁵⁴ CX-27, at 6-13. Troszak testified that he did not believe he signed a promissory note for two of the loans secured by the mortgage despite the fact that the mortgage referred to a promissory note for each loan. CX-26, at 10.

⁵⁵ CX-29.

⁵⁶ *Id.*

repay the loans, if he had made the required interest payments, and if he had borrowed money from any other North Woodward customers.⁵⁷

North Woodward and Troszak did not respond to the May 25 document request, and on June 11, 2012, FINRA staff sent North Woodward and Troszak another Rule 8210 request for the same documents.⁵⁸ The request also notified North Woodward and Troszak that they were in violation of Rule 8210 because they had not responded to the May 25 request. FINRA staff warned them that if they failed to deliver the requested documents to FINRA staff by June 22, 2012, they may be subject to disciplinary action.⁵⁹

Instead of providing the requested documents, Troszak sent Westcomb an email on June 22, 2012, questioning FINRA's jurisdiction to investigate the condominium loans because the promissory notes evidencing the loans were not securities.⁶⁰ Troszak also informed Westcomb that the refinancing of the condominium units was complete, he had retitled the condominium units in his wife's name, and he would provide FINRA with copies of the publically recorded documents evidencing the refinancing.⁶¹ Troszak refused to produce any other documents because he claimed that federal regulations prohibited him from disclosing any of the lenders' non-public personal information without their prior written consent.

Westcomb followed up with Troszak by telephone on July 26, 2012, and again by letter on July 30, 2012. Westcomb advised Troszak that his June 22 email was not a

⁵⁷ Tr. 251 (Westcomb).

⁵⁸ CX-30.

⁵⁹ *Id.* at 1.

⁶⁰ CX-31.

⁶¹ *Id.*

sufficient response to the May 25 document request and that he therefore would refer the matter to Enforcement for the apparent violation of Rule 8210.⁶²

Neither North Woodward nor Troszak ever provided FINRA with copies of the documents requested in the May 25 and June 11 Rule 8210 requests.⁶³

C. Discussion

FINRA Rule 8210(a) provides, in pertinent part, that for the purpose of an investigation or examination authorized by the FINRA By-Laws or rules, FINRA staff shall have the right to “require a member, person associated with a member, or any other person subject to FINRA’s jurisdiction to provide information ... in writing ... or electronically ... with respect to any matter involved in the investigation ... [or] examination” The rule further authorizes FINRA staff to “inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in the investigation ... examination, or proceeding.” FINRA Rule 8210(c) provides that “[n]o member or person shall fail to provide information ... or to permit an inspection and copying of books, records, or accounts pursuant to this Rule.”

FINRA Rule 8210 “provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations.”⁶⁴ The rule “is at the heart of the self-regulatory system for the securities industry.”⁶⁵ The

⁶² Tr. 254-55 (Westcomb); CX-32.

⁶³ Tr. 256 (Westcomb).

⁶⁴ *Richard J. Rouse*, 51 SEC 581, 584, 1993 SEC LEXIS 1831, at *7 (1993).

⁶⁵ *Howard Brett Berger*, Exchange Act Rel. No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008), *pet. denied*, 347 Fed. App’x. 692 (2d Cir. 2009).

failure to respond to FINRA information requests “frustrates [FINRA]’s ability to detect misconduct, and such inability in turn threatens investors and markets.”⁶⁶

“Delay and neglect” in responding to Rule 8210 requests likewise “undermine the ability of [FINRA] to conduct investigations and thereby protect the public interest.”⁶⁷ “If an associated person ‘cannot readily provide the information . . . , such person ha[s] an obligation to explain, as completely as possible, his efforts, and his inability to do so.’”⁶⁸ “If there is a problem meeting any deadlines set by FINRA, applicants should raise and resolve such problem with FINRA staff in a cooperative and prompt manner.”⁶⁹

1. Cycle Examination Information And Documents

FINRA staff first asked North Woodward and Troszak for information and documents to assist the staff with performing North Woodward’s 2011 cycle examination that was scheduled to begin on March 7, 2011. Troszak requested that the staff postpone the on-site examination because he would not be available that day because of his tax business. FINRA staff granted Troszak’s postponement request and extended the deadline for North Woodward and Troszak to provide the requested information and documents. The staff first rescheduled the examination to April 18 and then at Troszak’s further request to April 19.

⁶⁶ *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008) (citation omitted), *petition for review denied*, 566 F.3d 1172 (D.C. Cir. 2009).

⁶⁷ *Berger*, 2008 SEC LEXIS 3141, at *13-14; *see also Joseph Ricupero*, Exchange Act Release No. 62891, 2010 SEC LEXIS 2988, at *25-26 (Sept. 10, 2010) (explaining the importance of “timely cooperation” and barring respondent who responded to request for information only after a complaint was filed), *petition for review denied*, 436 F. App’x 31 (2d Cir. 2011).

⁶⁸ *Dep’t of Enforcement v. Lane*, No. 20070082049, 2013 FINRA Discip. LEXIS 34, at *68-69 (NAC Dec. 26, 2013) quoting *CMG Institutional Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *23-24 (Jan. 30, 2009).

⁶⁹ *Id.* at 69.

Instead of providing the information and documents requested on April 19, 2011, Troszak objected to the staff's request. He contended that unspecified state law and federal regulations governing the protection of clients' tax records and related financial information prohibited him from allowing FINRA to examine North Woodward's books and records.

Troszak's objection to the staff's information requests was baseless. FINRA staff had not requested access to any of Troszak's clients' personal tax records. All of the information and documents FINRA staff requested related to North Woodward's securities business.⁷⁰ Moreover, neither before nor at the hearing did Troszak provide any evidence to support his contention that his compliance with the Securities and Exchange Act of 1934 ("Exchange Act") and FINRA rules would cause him to violate any applicable law or regulation.⁷¹

The specious nature of Troszak's argument is further evidenced by the fact that he and North Woodward had produced many of the same categories of information in connection with North Woodward's 2008 cycle examination.⁷² Nor did Troszak renew his objection after FINRA suspended the firm in June 2011 pursuant to Rule 9552. The transmittal letter from their attorney makes no mention of Troszak's purported concern of conflicting legal obligations.

Further, when the Hearing Panel asked Troszak to explain what had occurred in the 2009 time frame that caused him to change his approach and deny FINRA staff

⁷⁰ For example, the staff requested a copy of North Woodward's supervisory procedures, AML procedures, and business continuity plan. Respondents offered no reason for their failure to produce these documents when the staff requested them.

⁷¹ Troszak also did not present evidence that he obtained a legal opinion from an attorney that responding to the requests for information would violate any law or regulation.

⁷² Tr. 94-95 (O'Neill).

access to the firm's books and records in connection with a scheduled examination, Troszak did not cite his concerns about protecting his tax clients' privacy. Instead, he voiced his irritation about the timing and manner in which FINRA staff had conducted an earlier examination.

I can't remember the exam, but there were a couple of gentlemen that were really tough, and they demanded. And it wasn't a very nice exam at all. ... The most recent one, the one that was so cordial, it was an excellent group. And what happened was the demand in '08 was to be inside the office, "I want to see this," "I want to see where it's at." And they almost followed my personnel around, and it was just irritating. What we did, the most recent one, we got them their own space in the building. We sat them down. "What would you like? When would you like it?" And we had adequate time to supply. And it wasn't in the middle of the lunacy [referring to his tax season]. It was at a reasonable time. And it was very well engineered with requests for what they were looking for. ... It wasn't, "Give us this, this, this, this, have it on the" — it was a process. ... And it was systematic and rational. ...

And I believe like the timing is now reasonable. Like next week I'm going back after this, we're going to get everything talked about, get it ready for our exam. But I've had time to prepare, how to utilize [my] staff.⁷³

In sum, the Hearing Panel concludes that Troszak's real motivation in refusing to cooperate is his desire to control the timing and methodology of regulatory examinations. He argues that FINRA must adapt to his business model—running a CPA practice alongside a brokerage business—and schedule cycle examinations so that they do not inconvenience him or interfere with his tax preparation practice. When FINRA did not grant him an even longer delay in 2011, he responded in what he characterized as a "heated manner," refusing to grant FINRA access to the firm's books and records.⁷⁴

Based on the totality of the evidence, the Hearing Panel concludes that North Woodward purposely delayed FINRA staff's efforts to perform the 2011 cycle

⁷³ Tr. 465-66 (Troszak).

⁷⁴ Tr. 508 (Troszak).

examination. North Woodward and Troszak did not provide the requested pre-exam documents until June 15, 2011, more than three months after they were first requested, and then only after FINRA had suspended North Woodward for its failure to produce the information. And they unjustifiably refused to grant the staff access to North Woodward's office on April 19, 2011. North Woodward thereby violated FINRA Rules 8210 and 2010.⁷⁵

2. Troszak's Loan Information and Documents

In connection with the separate investigation into the loans Troszak entered into to redeem the condominium units that had been foreclosed upon by his bank, Troszak failed to provide any of the information and documents the staff requested in the May 25 and June 11, 2012 requests. Rather than provide a substantive response, Troszak offered only groundless arguments that challenged the staff's authority and need for the information.

Troszak asserted that FINRA did not have a right to inquire about the loans because they were personal loans that did not constitute securities. However, Troszak knew well that FINRA has jurisdiction to investigate potential violations of its conduct rules, which include Rule 3240. Rule 3240 imposes conditions on the circumstances in which an associated person may borrow from customers, and FINRA has authority to

⁷⁵ A violation of Rule 8210 is also a violation of Rule 2010. *See Michael A. Rooms*, Exchange Act Rel. No. 51467, 2005 SEC LEXIS 728, at *13-14 & n.14 (Apr. 1, 2005) (holding that efforts to impede NASD (now FINRA) investigations violate high standards of commercial honor and just and equitable principles of trade), *aff'd*, *Rooms v. SEC*, 444 F.3d 1208 (10th Cir. 2006). *See also Market Surveillance Comm. v. Marowski*, Complaint No. MS-1067, 1992 NASD Discip. LEXIS 107 (NBCC Mar. 30, 1992) (finding that respondent violated the then equivalent of FINRA Rule 2010 by ordering the staff off the broker-dealer's premises in response to a request for production of documents).

investigate whether Troszak complied.⁷⁶ Troszak's failure to provide all of the requested information and documents was a violation of FINRA Rules 8210 and 2010.

III. NORTH WOODWARD AND TROSZAK FAILED TO ESTABLISH AND MAINTAIN ADEQUATE SUPERVISORY PROCEDURES AND CONTROLS

FINRA staff found four separate supervisory deficiencies during North Woodward's 2011 cycle examination. The fifth cause of action alleges that North Woodward and Troszak failed to establish and maintain adequate WSPs. The fourth cause of action alleges that they failed to prepare required annual reports and certifications regarding the firm's WSPs. The seventh cause of action alleges that Respondents failed to establish and implement appropriate AML procedures. And the eighth cause of action alleges that they failed to conduct an independent AML test in 2009. Some of the same deficiencies had been noted on the report from North Woodward's 2008 cycle examination.⁷⁷

A. Facts

North Woodward and Troszak did not dispute the staff's findings, but they argued that no sanctions were warranted because they cured the deficiencies before Enforcement initiated this disciplinary proceeding.

⁷⁶ The Hearing Panel further notes that section 7.9 of North Woodward's written supervisory procedures contains the standard provisions set forth in NASD Rule 2370 (now FINRA Rule 3240) restricting loans between customers and associated persons except under specific limited circumstances. CX-36, at 92. Troszak cannot contend that he implemented the WSPs while denying knowledge of their content.

⁷⁷ See CX-3.

1. North Woodward’s Written Supervisory Procedures were Inadequately Tailored to North Woodward’s Business

Bruce Robbins, one of the FINRA cycle examiners assigned to the North Woodward examination, testified that when the staff reviewed North Woodward’s written supervisory procedures,⁷⁸ the staff found that North Woodward and Troszak had purchased a form set of procedures,⁷⁹ but had not customized the procedures to fit North Woodward’s securities business. The written supervisory procedures cover lines of business that North Woodward does not conduct.⁸⁰ For example, section 12 covers trade desk supervision although North Woodward does not have a trade desk, section 13 covers custody and clearing although North Woodward does not hold or clear customer securities, section 14 relates to investment banking although North Woodward does not do any investment banking, and section 15 covers some types of mutual fund business that North Woodward does not conduct.⁸¹ In addition, there are numerous highlighted instructions throughout the document, directing the user to tailor the form to its business.⁸² For North Woodward’s actual business, the procedures did not describe the process by which the procedures were to be carried out.⁸³ North Woodward and Troszak did not address any of these content issues. Further, there are incomplete procedures in the document. For example, there are optional suitability procedures for the sale of

⁷⁸ CX-36.

⁷⁹ The form is copyrighted by a company called Broker Dealer Compliance. CX-36, at 1. Troszak admitted that he had purchased the “canned procedures” to meet FINRA’s rule requirements. Tr. 149 (Robbins).

⁸⁰ Tr. 144 (Robbins).

⁸¹ CX-36; Tr. 145 (Robbins).

⁸² CX-36; Tr. 146 (Robbins).

⁸³ Tr. 178 (Robbins).

variable life insurance products. North Woodward and Troszak did not edit the document to set forth which approach is applicable.⁸⁴ Finally, the document is not signed or dated.

2. North Woodward and Troszak did not Prepare Required Reports and Certifications Documenting their Review and Testing of the Firm's Written Supervisory Procedures and Policies

In connection with North Woodward's 2011 cycle examination, FINRA staff asked to review the reports and certifications required by Rules 3012 and 3130. The request covered the period October 28, 2008, until July 18, 2011.

NASD Rule 3012 requires each FINRA member to prepare a report, not less frequently than annually, that (i) details the manner, method, and review used for testing and verifying that the firm's system of supervisory policies and procedures are designed to achieve compliance with applicable rules and regulations, (ii) provides a summary of the test results and any gaps in supervision the tests reveal, and (iii) identifies the changes the firm made or will make to its supervisory systems.

FINRA Rule 3130 requires each FINRA member to prepare a report, not less frequently than annually, that identifies the process that the firm follows to establish, maintain, review, test, and modify its written compliance policies and written supervisory procedures. The rule also requires the firm's chief executive officer to certify annually that the firm has processes in place to establish, maintain, review, test, and modify its written compliance policies and supervisory procedures reasonably designed to achieve compliance with applicable securities rules, regulations, and laws.

⁸⁴ CX-36, at 237.

North Woodward and Troszak never prepared the required reports and certifications for the years 2008 and 2009.⁸⁵ They completed the annual certification and report for 2010 on July 11, 2011, one week before FINRA began North Woodward's 2011 cycle examination.⁸⁶

3. North Woodward and Troszak did not Establish and Implement Adequate AML Procedures

In addition to the general deficiencies in North Woodward's written supervisory procedures identified above, the seventh cause of action alleges that North Woodward and Troszak failed to implement adequate AML policies and procedures. Instead of developing and implementing an AML program, Troszak simply printed out a copy of FINRA's Small Firm Template, which is available on FINRA's Internet site.⁸⁷ As with the firm's written supervisory procedures, Troszak did not tailor the template to fit North Woodward's business. Troszak did little more than insert North Woodward's name into the template.⁸⁸ North Woodward's consultant noted this deficiency in the Anti-Money Laundering Report dated July 11, 2011.⁸⁹ In addition, North Woodward and Troszak improperly designated North Woodward as the "independent third party" responsible for testing the AML program.⁹⁰

⁸⁵ Tr. 139 (Robbins). Troszak told Robbins that the documents did not exist for the years 2008 and 2009. Tr. 139-40 (Robbins).

⁸⁶ CX-34; CX-35.

⁸⁷ CX-38.

⁸⁸ Tr. 150 (Robbins).

⁸⁹ CX-39, at 8 n.1.

⁹⁰ CX-38, at 25; Tr. 150 (Robbins).

4. North Woodward and Troszak did not Complete Required Tests of the Firm's AML Program

FINRA Rule 3310(c) requires member firms that execute transactions on behalf of customers to conduct an annual independent test of their AML compliance program. North Woodward and Troszak failed to conduct independent annual tests for the years 2008, 2009, and 2010. When FINRA staff requested copies of the AML test reports for those years, Troszak produced a single report dated July 11, 2011, which reflected that it covered the period January 1, 2009, until December 31, 2010.⁹¹ When Troszak produced this report, Robbins asked him if he had performed the required AML testing for 2008. Troszak told Robbins that the Anti-Money Laundering Report prepared by North Woodward's consultant dated July 11, 2011, was prepared for the 2011 cycle examination and that he had not had any other testing done for 2008 through 2011.⁹²

B. Discussion

NASD Rule 3010(a) requires that each member establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with the federal securities laws and FINRA rules, including written procedures to supervise the types of business in which it engaged.⁹³ The firm's WSPs "should include a description of the controls and procedures used by the firm to deter and detect misconduct and improper

⁹¹ CX-39; Tr. 156 (Robbins).

⁹² Tr. 158 (Robbins).

⁹³ See NASD Rule 3010(a)(1), (b)(1).

activity” and “identify the specific personnel who perform the various supervisory functions.”⁹⁴

“[S]upervisory procedures play a critical role in the self-regulation of the securities industry. Reasonably designed WSPs serve as a ‘frontline’ defense to protect investors from fraudulent trading practices and help to ensure that members are complying with rules designed to promote the transparency and integrity of the market.”⁹⁵ For these reasons, it is essential that member firms adopt WSPs that describe the *actual* supervisory system established by the firm.⁹⁶

1. Respondents Did Not Establish And Maintain Adequate Written Supervisory Procedures

Troszak prepared WSPs that were deficient because he did not tailor the generic, all-inclusive set of procedures he purchased from a third party to apply to North Woodward’s actual business.⁹⁷ Indeed, it is evident from even a cursory examination of the WSPs that Troszak did little more than insert North Woodward’s name into the document and place it on a shelf without any thought to its content or implementation. As discussed above, the WSPs covered many types of business the firm did not conduct. And as for the business it did conduct, the WSPs did not identify the responsible principal or describe the process by which the specific procedures were to be carried out as it relates

⁹⁴ NASD Notice to Members 98-96, 1998 NASD LEXIS 121, at *6 (Dec. 1998).

⁹⁵ *Dep’t of Enforcement v. Lane*, Complaint No. 20070082049, 2013 FINRA Discip. LEXIS 34, at *48 (NAC Dec. 26, 2013) (internal quotes omitted) (quoting NASD Notice to Members 98-96, 1998 NASD LEXIS 121, at *2 (Dec. 1998)).

⁹⁶ *Castle Sec. Corp.*, Exchange Act Rel. No. 52580, 2005 SEC LEXIS 2628, at *7 (Oct. 11, 2005).

⁹⁷ *See Dep’t of Enforcement v. ACAP Fin., Inc.*, Complaint No. 2007008239001, 2012 FINRA Discip. LEXIS 55, at *11-12 (FINRA NAC Sept. 26, 2012) (a firm is required to tailor its supervisory system specifically to its business and to address the activities of all of its registered representatives and other associated persons), *aff’d*, Exchange Act Rel. No. 70046, 2013 SEC LEXIS 2156 (July 26, 2013).

to what the firm was actually doing. In addition, the WSPs were replete with incomplete provisions that included unfollowed instructions, such as “customize if necessary,” “insert name,” “insert the following text if applicable, otherwise delete,” and “revise if applicable.” Untailored WSPs of this nature are not much better than having no procedures at all, and do not meet the requirements of NASD Rule 3010.

Troszak argued in his defense that he and North Woodward should not be sanctioned because they had done what FINRA staff instructed after the 2008 cycle examination when they were cited for having inadequate procedures—they obtained a set of canned procedures that cover “every possible concept.”⁹⁸ He further contended that the staff’s position that he needed to customize the procedures was incorrect.

The procedures don’t have to be customized as long as long they encompass all of the activities that North Woodward performs. The reason we had a voluminous WSP is because FINRA staff at an examination recommended a shotgun approach to having a great deal more than was necessary in case I ever decided to add options or add municipal securities to my business.⁹⁹

Troszak further argued that the problem he now faced was FINRA’s fault. In his estimation, there was a “disagreement within FINRA as to whether the written supervisory procedures should encompass every activity that a securities firm could conceivably do ... or whether the procedures should only include provisions relating to activities [the firm actually conducts].”¹⁰⁰

The Hearing Panel rejected Troszak’s facile defense. As a securities professional with more than two decades of experience, Troszak fully understood the requirement to have appropriately customized WSPs covering the business his firm actually conducts.

⁹⁸ Tr. 177.

⁹⁹ Tr. 339 (Troszak closing argument).

¹⁰⁰ *Id.* 340.

However, even if the Hearing Panel were to credit his story, which we do not, it would not constitute a valid defense. A member may not blame FINRA staff for its failure to comply with FINRA's rules.¹⁰¹

For these reasons, we conclude that North Woodward and Troszak violated NASD Rule 3010 and FINRA Rule 2010 by failing to establish and maintain adequate written supervisory procedures.

2. Respondents did not Prepare Required Reports and Certifications Documenting Required Review and Testing of the Firm's Written Supervisory Procedures and Policies

The uncontroverted evidence establishes that North Woodward and Troszak did not create the reports required by Rules 3012 and 3130 and failed to make the supervisory certifications required by Rule 3130 for the years 2008 and 2009. Troszak's defense was limited to a statement that he believed the charge to be untrue and that in any event they had corrected any noted deficiencies in a timely manner.¹⁰² Troszak presented no evidence to support his contention that the charge was untrue. Indeed, Troszak conceded that he did not produce the required reports and certifications until July 2011. Accordingly, the Hearing Panel concluded that North Woodward and Troszak violated NASD Rule 3012 and FINRA Rules 3130 and 2010.

3. North Woodward's AML Policies And Procedures Were Inadequate

In October 2001, Congress passed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001

¹⁰¹ See, e.g., *Hans N. Beerbaum*, Exchange Act Rel. No. 55731, 2007 SEC LEXIS 971, at *19 n.22 (May 9, 2007) (stating that respondents may not blame FINRA for their own failings to comply with relevant rules); cf. *East/West Sec. Co.*, 54 S.E.C. 947, 951 n.13 (2000) (rejecting as a defense to a rule violation the assertion that FINRA provided inadequate guidance).

¹⁰² Tr. 339 (Troszak).

(“the PATRIOT Act”). Pub. L. No. 107-56, 115 Stat. 272 (2001). Title III of the PATRIOT Act imposes added obligations on broker-dealers under AML provisions and amendments to the Bank Secrecy Act requirements.¹⁰³ In April 2002, the SEC approved NASD Rule 3011, now FINRA Rule 3310, that sets forth the minimum standards required for each FINRA member firm’s AML compliance program.¹⁰⁴ FINRA Rule 3310(b) requires that AML programs, at a minimum, “establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and its implementing regulations.”¹⁰⁵

As early as 2002, FINRA emphasized to its members that to be effective, AML procedures “must reflect the firm’s business model and customer base.”¹⁰⁶ Members were advised that “in developing an appropriate AML program ..., [a firm] should consider factors such as its ... business activities, the types of accounts it maintains, and the types of transactions in which its customers engage.”¹⁰⁷

North Woodward and Troszak failed to develop and implement adequate AML policies and procedures that comply with the requirements of Rule 3310(b). North Woodward’s AML policies and procedures did not reflect the firm’s business model and customer base.¹⁰⁸ Rather, Troszak copied FINRA’S Small Firm Template¹⁰⁹ without

¹⁰³ See 31 U.S.C. §§ 5311 et seq.

¹⁰⁴ See Order Approving Proposed Rule Changes Relating to Anti-Money Laundering Compliance Programs, Exchange Act Rel. No. 45798, 2002 SEC LEXIS 1047 (Apr. 22, 2002).

¹⁰⁵ FINRA Rules 3310(b).

¹⁰⁶ Special NASD Notice to Members 02-21, 2002 NASD LEXIS 24, at *17 (Apr. 2002).

¹⁰⁷ *Id.* at *20.

¹⁰⁸ See CX-38.

¹⁰⁹ The current version of FINRA’s Small Firm Template is available at <http://www.finra.org/Industry/Issues/AML/p006340>.

modification or regard to whether the topics and examples in the template had any application to North Woodward's business and operations. As Troszak had done with the "canned" WSPs he purchased, he left all of the instructions and examples from the Small Firm Template in the AML Program Compliance and Supervisory Procedures he adopted in February 2009. As a result, North Woodward's AML procedures contain inapplicable provisions and fail to provide specific guidance to persons associated with the firm. The Hearing Panel further notes that when Troszak finally had the AML procedures properly reviewed by an independent consultant in June 2011, the consultant noted the same deficiency.¹¹⁰

FINRA published the Small Firm Template to assist small firms in fulfilling their responsibilities to establish an AML program. It is not intended to address every firm's needs or to "create a safe harbor from regulatory responsibility."¹¹¹ FINRA included the following warning in the first paragraph of the template that each firm must tailor its AML program to fit its particular situation.

There is no exemption from the rules for small broker-dealers, and they are required to follow all of the requirements of AML rules. The obligation to develop an AML plan is not a "one-size-fits-all" requirement, and you must tailor your plan to fit your particular firm's situation. This language is provided as a **helpful starting point** to walk you through developing your firm's plan. If this language does not fit your firm's business situation in any respect, you will need to prepare your own language. **You** are responsible for ensuring that your plan fits your firm's situation and that you implement your plan. (Emphasis in the original.)

Troszak did not specifically address the deficiencies the staff noted in North Woodward's AML procedures. He limited Respondents' defense to the contention that he had done what FINRA directed by using the Small Firm Template, and he did not know

¹¹⁰ See CX-39, at 8, Summary Report of Findings (July 11, 2011).

¹¹¹ FINRA's Small Firm Template at 1.

that it had to be customized. The Hearing Panel rejects Troszak's contention. The evidence shows that FINRA staff explicitly advised Troszak in 2009 that he could use the Small Firm Template to assist him in preparing AML procedures for the firm, but that he needed to customize the template to meet the specific nature of North Woodward's business.

In March 2009, FINRA staff sent Respondents a letter of caution with respect to seven exceptions noted in North Woodward's 2008 cycle examination, one of which was that North Woodward had failed to develop and implement an adequate AML compliance program.¹¹² To correct this deficiency, FINRA staff mandated that Respondents implement an AML program that meets all the requirements of NASD Rule 3011. To assist them in preparing an appropriate program, the staff directed the firm to FINRA's AML Small Firm Template that was posted on FINRA's Internet site. The staff concluded by reminding the firm that "the template must be tailored to fit the firm's business."¹¹³ Accordingly, the Hearing Panel finds that Respondents had express notice that adopting the Small Firm Template without modification would not suffice to correct the noted deficiency and comply with NASD Rule 3011 (now FINRA Rule 3310). "In addition, it is well settled that members may not shift their responsibility to FINRA, for compliance with FINRA's rules."¹¹⁴

¹¹² CX-3, at 4 (Exception No. 3).

¹¹³ CX-3, at 5.

¹¹⁴ *Dep't of Enforcement v. Domestic Sec., Inc.*, Complaint No. 2005001819101, 2008 FINRA Discip. LEXIS 44, at *18 (Oct. 2, 2008).

The Hearing Panel concludes that North Woodward and Troszak violated FINRA Rules 3310(b) and 2010 by failing to develop and implement adequate AML policies and procedures.¹¹⁵

4. Respondents did not Conduct Timely an Annual Independent AML Test for 2009

North Woodward and Troszak admitted that they did not conduct a timely independent test of the firm's AML Compliance Program for calendar year 2009. The firm's test for 2009 was not completed until July 11, 2011. Troszak's defense was limited to a statement that the test was done by his outside consultant in 2011.¹¹⁶ Troszak saw this as a documentation problem, ignoring the fact that the test was performed 18 months late.

The Hearing Panel concludes that North Woodward and Troszak violated FINRA Rules 3310(c) and 2010 by failing to conduct the independent AML Compliance Program test for 2009 timely.

IV. NORTH WOODWARD AND TROZAK FAILED TIMELY TO REPORT A JUDGMENT ON TROZAK'S FORM U4

The sixth cause of action charges North Woodward and Troszak with violating FINRA Rules 1122¹¹⁷ and 2010 and Article V, Section 2 of FINRA's By-Laws by willfully failing to amend Troszak's Form U4 timely to report a consent judgment entered against Troszak on June 3, 2010.

¹¹⁵ See *Id.* at *18 (holding that respondent did not establish adequate AML policies and procedures when it failed to tailor the FINRA Small Firm Template to fit the firm's business).

¹¹⁶ See Tr. 341-42 (Troszak).

¹¹⁷ FINRA Rule 1122 provides, "No member or person associated with a member shall file with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof."

A. Facts

In preparation for the on-site component of North Woodward's 2011 cycle examination, Robbins, one of the FINRA cycle examiners assigned to the examination, ran a lien search for Troszak.¹¹⁸ Robbins discovered a \$15,304 consent judgment entered June 3, 2010, that Troszak had not reported on his Form U4.¹¹⁹ The judgment was entered against Troszak after he defaulted on his payment obligations under a settlement agreement, which terminated a lawsuit.¹²⁰

During the on-site examination on July 18, 2011, Robbins asked Troszak about the lien. Troszak explained that it was an unsatisfied judgment for attorneys' fees related to his divorce proceeding.¹²¹ Robbins advised Troszak that he was obligated to update his Form U4 to report the lien promptly. However, Troszak did not update his Form U4 to report the unsatisfied judgment until October 31, 2011.¹²²

B. Discussion

Registered representatives like Troszak must complete and file with FINRA a Form U4 before they can associate with a FINRA member firm. Once filed, FINRA's By-Laws state that registered representatives must keep their Forms U4 current at all times by filing supplementary amendments within thirty days of learning of the facts or circumstances giving rise to the amendment.¹²³ "Form U4 is a critically important

¹¹⁸ Tr. 135 (Robbins).

¹¹⁹ Tr. 136 (Robbins); CX-37, at 2-3 (Consent Judgment).

¹²⁰ CX-37, at 2.

¹²¹ Tr. 137 (Robbins).

¹²² Tr. 136 (Robbins); CX-2, at 5 (Amended Form U4 dated Oct. 31, 2011).

¹²³ FINRA By-Laws, Art. V, § 2(c). To ensure that registrants are aware of this requirement, Form U4 expressly requires registrants to acknowledge their obligation to keep their Forms U4 current by filing timely supplemental amendments.

regulatory tool. ... ‘Form U4 is used by all self-regulatory organizations (including FINRA), state regulators, and broker-dealers to determine and monitor the fitness of securities professionals who seek initial or continued registration with a member firm. ... It ultimately serves as a means of protecting the investing public.’”¹²⁴

The failure of an applicant for FINRA registration to accurately, fully, and timely disclose all information required on the Form U4 violates FINRA Rules 1122 and 2010.¹²⁵

North Woodward and Troszak should have amended his Form U4 to disclose the consent judgment on or before 30 days after the court entered the judgment against him. Specifically, in response to question 14(M) on the Form U4, which requires the disclosure of unsatisfied judgments or liens, Troszak should have responded, “yes,” to disclose that he was subject to an unsatisfied judgment.

Troszak summarily dismissed the seriousness of his failure to disclose the judgment. Troszak testified that “[he] did not have adequate information about the consent judgment and what it relates to in order to make an additional determination as to whether it went on U4.”¹²⁶ He further claimed that he did not fully understand his disclosure obligation until the consultant he hired in connection with North Woodward’s 2011 cycle examination explained what he needed to do.¹²⁷

¹²⁴ *Joseph S. Amundsen*, Exchange Act Rel. No. 69406, 2013 SEC LEXIS 1148, at *23-24 (Apr. 18, 2013) (quoting *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *26 (Nov. 9, 2012) (citing additional authority)).

¹²⁵ *Amundsen*, 2013 SEC LEXIS 1148, at *26-27. See also *Dep’t of Enforcement v. Tucker*, Complaint No. 2007009981201, 2011 FINRA Discip. LEXIS 66, at *12 (Oct. 4, 2011) (holding that failure to amend a Form U4 as changes occur is a violation of Rule 2110).

¹²⁶ Tr. 340 (Troszak).

¹²⁷ Tr. 340-41 (Troszak).

Troszak's testimony is not credible. First, his assertion that he did not have adequate knowledge about the judgment and what it relates to is false. Robbins testified that when he asked Troszak about the judgment, Troszak told him that it was a judgment relating to unpaid attorney's fees that had been assessed against him in his divorce proceeding. At the hearing, Troszak did not dispute Robbins' account. Second, Troszak's contrived ignorance about his duty to update his Form U4 is contradicted by Robbins' uncontroverted testimony. Robbins told Troszak during the cycle examination in July 2011 that he had to update his Form U4 to report the consent judgment. Nonetheless, Troszak did not update his Form U4 for another three months. Finally, it is not credible that Troszak misunderstood his obligation to report the consent judgment. He is a registered principal with more than 20 years' experience in the securities industry. In any event, his claim that he misunderstood his duty to report the judgment on his Form U4 does not excuse his violation because a registered representative is presumed to know and abide by FINRA rules.¹²⁸ Accordingly, North Woodward and Troszak violated FINRA Rules 1122 and 2010, and Article V, Section 2 of FINRA's By-Laws by failing to update Troszak's Form U4 timely to report the June 3, 2010 consent judgment.

C. Troszak Is Subject To Statutory Disqualification

Troszak is subject to statutory disqualification for his failure to update his Form U4 promptly because Troszak's failure to disclose the judgment was willful, and the consent judgment constituted material information.¹²⁹

¹²⁸ *Dep't of Enforcement v. Zayed*, Complaint No. 2006003834901, 2010 FINRA Discip. LEXIS 13, at *22 n.19 (Aug. 19, 2010) (citing *Carter v. SEC*, 726 F.2d 472, 474 (9th Cir. 1983)).

¹²⁹ See Section 3(a)(39)(F) of the Exchange Act; Section 4 of Article III of the FINRA By-Laws; see also *Dep't of Enforcement v. Kraemer*, Complaint No. 2006006192901, 2009 FINRA Discip. LEXIS 39, at *15 (NAC Dec. 18, 2009) (stating that willful omission of material information on Form U4 results in statutory disqualification).

1. Troszak Acted Willfully

We conclude that Troszak’s failure to disclose the judgment was willful. In so holding, we need not find that he intended to violate FINRA’s rules. Rather, we need only find that Troszak knew what he was doing when he did not amend his Form U4 to disclose the judgment.¹³⁰ Here, the record demonstrates conclusively that Troszak knew about the consent judgment, yet he failed to amend his Form U4. Troszak discussed the judgment and his duty to amend his Form U4 with a FINRA examiner in July 2011, but he nonetheless did not amend his Form U4 for another three months. Thus, our finding that he acted willfully is predicated on his intent to commit the act that constitutes the violation—failing to amend the form. By the time he did file the amendment in October 2011, it was approximately 500 days late. Troszak therefore acted willfully.

2. The Information Was Material

“Because of the importance that the industry places on full and accurate disclosure of information required by the Form U4, [it is presumed] that essentially all the information that is reportable on the Form U4 is material.”¹³¹ In this case, the materiality of information about the consent judgment is particularly evident because its disclosure was required by specific questions on the Form U4.¹³² Moreover, applying the traditional materiality standard applied in such cases, we conclude that a reasonable employer, regulator, or investor would have viewed the judgment as extremely

¹³⁰ See *Mathis v. SEC*, 671 F.3d 210, 216-218 (2d Cir. 2012) (finding that respondent was statutorily disqualified where he voluntarily failed to amend Form U4 to disclose tax liens).

¹³¹ *Dep’t of Enforcement v. Tucker*, Complaint No. 2007009981201, 2011 FINRA Discip. LEXIS 66, at *20-21 (Oct. 4, 2011) (quoting *Dep’t of Enforcement v. Knight*, Complaint No. C10020060, 2004 NASD Discip. LEXIS 5, at *13 (NAC Apr. 27, 2004)), *aff’d*, *Robert D. Tucker*, Exchange Act Rel. No. 68210, 2012 SEC LEXIS 3496 (Nov. 9, 2012).

¹³² *Amundsen*, 2013 SEC LEXIS 1148, at *41.

relevant.¹³³ “[Troszak’s] inability to handle his own finances ... presents potentially serious issues regarding his capability with handling the finances of others.”¹³⁴ We further find that Troszak’s failure to disclose the judgment significantly altered the total mix of information available. This is particularly true because FINRA staff was investigating the circumstances surrounding Troszak’s borrowing from his firm’s customers, including his ability to repay those loans. Therefore, this information constituted material information that should have been disclosed timely on Troszak’s Form U4.

V. NORTH WOODWARD AND TROZAK DID NOT PROVIDE CUSTOMERS WITH AN ADEQUATE PRIVACY NOTICE AS REQUIRED BY SEC REGULATION S-P

The tenth cause of action charges North Woodward and Troszak with failing to adopt and provide customers with a privacy notice that complies with the requirements of Regulation S-P.¹³⁵

A. Facts

During North Woodward’s 2011 cycle examination, FINRA staff asked Troszak for a copy of the firm’s privacy notice. The firm did not have one. Instead, Troszak produced a copy of a tax return engagement letter Troszak CPA Group had sent to one of its clients.¹³⁶ Although the engagement letter does not mention North Woodward, and Troszak offered no evidence of how it could cover North Woodward’s customers who were not tax clients of Troszak CPA Group, Troszak took the position that it was

¹³³ See, e.g., *Dep’t of Enforcement v. Toth*, Complaint No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at *34-35 (NAC July 27, 2007), *aff’d*, *Douglas J. Toth*, Exchange Act Rel. No. 58074, 2008 SEC LEXIS 1520 (July 1, 2008), *aff’d*, 319 Fed. App’x. 184 (3d Cir. Apr. 6, 2009).

¹³⁴ *Tucker*, 2011 FINRA Discip. LEXIS 66, at *21-22.

¹³⁵ See Regulation S-P, Privacy of Consumer Financial Information, 17 C.F.R. § 248.

¹³⁶ CX-42; Tr. 167 (Robbins).

sufficient because the engagement letter met IRS regulations, which he argued are superior to those imposed by securities regulators.¹³⁷ He also argued that no violation should be found or sanction imposed because following the 2011 cycle examination he developed a privacy notice for North Woodward that meets FINRA requirements.¹³⁸

North Woodward received a letter of caution at the conclusion of its 2008 cycle examination that included the exception that North Woodward had “failed to create a privacy notice” that complies with Regulation S-P.¹³⁹ The letter of caution and examination report further noted, “[t]he firm is relying on a privacy clause included with engagement letters provided to ... Troszak’s CPA clients, who are the customers of the broker-dealer.”¹⁴⁰

B. Discussion

Regulation S-P governs the treatment of “nonpublic personal information” about consumers and customers by financial institutions, including broker-dealers.¹⁴¹ Under Rule 30 of Regulation S-P, every broker-dealer¹⁴² must adopt written policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information, which must be reasonably designed to

¹³⁷ Tr. 169 (Robbins).

¹³⁸ Tr. 342 (Troszak).

¹³⁹ CX-3, at 6 (Exception No. 7).

¹⁴⁰ Id.

¹⁴¹ Regulation S-P defines “consumer” broadly to mean any individual who obtains a financial product or service from a broker-dealer, among others, that is primarily for personal, family, or household use. 17 C.F.R. § 248.3(g). A “customer” is a consumer who has a continuing relationship with a broker-dealer, among others, in which the broker-dealer provides one or more financial products or services that are primarily for personal, family, or household use. 17 C.F.R. § 248.3(j), (k).

¹⁴² Under FINRA Rule 0140 (formerly NASD Rule 0115), individuals registered with FINRA (formerly NASD) through a firm are subject to the same duties as member firms.

insure the security and confidentiality of customer records and information.¹⁴³ Regulation S-P also specifically prohibits a broker-dealer from disclosing any non-public personal information about a customer to a nonaffiliated third party unless the customer receives notice and a reasonable opportunity to opt out of the disclosure.¹⁴⁴ Rules 4 through 9 of Regulation S-P include requirements concerning the delivery of initial and annual notices about the privacy policies and practices of a financial institution, and about the opportunity and methods for consumers to opt out of their institution's sharing of their nonpublic personal information with nonaffiliated third parties.

Here, North Woodward failed to adopt the privacy notices required by Regulation S-P. Instead, Respondents relied on the notices Troszak provided to his tax clients although they were cautioned in 2009 that they could not do so. Respondents made no effort to explain why they did not correct this deficiency before 2011.

The Hearing Panel concludes that North Woodward and Troszak willfully violated NASD Rule 2110 and FINRA Rule 2010 by failing to adopt and send the privacy notices required by Regulation S-P between October 2008 and July 2011.¹⁴⁵

VI. ENFORCEMENT DID NOT PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT RESPONDENTS FAILED TO RESPOND TO FINCEN INFORMATION SHARING REQUESTS

The ninth cause of action charges North Woodward and Troszak with failing to comply with information sharing requests sent by FinCEN, in violation of NASD Rules 3011(b) and 2110, and FINRA Rules 3310(b) and 2010. For the reasons discussed below,

¹⁴³ See 17 C.F.R. § 248.30.

¹⁴⁴ 17 C.F.R. § 248.10(a)(1).

¹⁴⁵ Cf. *Dep't of Enforcement v. DiFrancesco*, Complaint No. 2007009848801, 2010 FINRA Discip. LEXIS 37 (FINRA NAC Dec. 17, 2010) (violation of Regulation S-P constitutes a violation of NASD Rule 2110 (now FINRA Rule 2010)).

the Hearing Panel concludes that Enforcement failed to prove the alleged violations by a preponderance of the evidence. Accordingly, the ninth cause of action is dismissed with prejudice.

A. Facts

Between October 7, 2008, and July 12, 2011, FinCEN sent 82 information sharing requests to Troszak at his email address, DATCPA75@HOTMAIL.COM, and 44 to two North Woodward employees' email addresses, CORI@TROSZACK.COM and ISABELLA@TROSZACK.COM.¹⁴⁶ It is undisputed that neither Troszak nor anyone else at North Woodward responded to any of the FinCEN information sharing requests. The computer printout of FinCEN's Financial Institution Report for North Woodward lists each transmission sent to North Woodward and shows no other activity for each transmission.¹⁴⁷ None of the transmissions is coded to reflect any action by North Woodward in response to the FinCEN notifications.

Troszak attempted to establish through his questioning of Robbins, the FINRA examiner who testified about the FinCEN information requests, that he never received the emails from FinCEN because his security software blocked the transmissions and he needed to install some equipment to enable him to receive the FinCEN emails.¹⁴⁸ Robbins testified that he recalled asking Troszak if he had evidence of receipt and review of the FinCEN emails and that Troszak revealed he had received a regular newsletter from

¹⁴⁶ CX-40; Tr. 162 (Robbins). One of the employees had left North Woodward by the time of the onsite examination in July 2011.

¹⁴⁷ CX-40.

¹⁴⁸ Tr. 194 (Robbins). Robbins recalled that Troszak told him the problem stemmed from his use of Hotmail for his email account. He did not remember Troszak also mentioning an additional hardware issue, as Troszak's questioning suggested. Tr. 195-96.

FinCEN, but not the information request transmissions.¹⁴⁹ At the staff's request, Troszak searched through his email, but he could not find the FinCEN transmissions.¹⁵⁰ And while the evidence is ambiguous, it appears that Robbins accepted Troszak's representation. Robbins testified, "What in fact was happening was that [Troszak was not] receiving the ... specific transmissions."¹⁵¹ However, there is no evidence that FINRA staff verified Troszak's account or investigated further to determine the reason Troszak had not received the transmissions. There is no evidence that the staff looked at Troszak's computer or any other computer terminal or electronic record at the firm. Nor is there any evidence that the staff interviewed the employee associated with the email address ISABELLA@TROSZAK.COM to determine if she had received the transmissions.¹⁵²

Robbins directed Troszak to contact FinCEN to correct the problem, which he did.¹⁵³

B. Discussion

FinCEN operates a program to assist law enforcement agencies locate accounts and transactions of persons who may be involved in terrorism or money laundering (the "314a Program"). This program is in furtherance of Section 314(a) of the PATRIOT Act, which requires the Secretary of the Treasury to adopt regulations to encourage regulatory and law enforcement authorities to share with financial institutions information regarding individuals, entities, and organizations engaged in or reasonably suspected, based on credible evidence, of

¹⁴⁹ Tr. 194 (Robbins).

¹⁵⁰ Tr. 195 (Robbins).

¹⁵¹ Tr. 194 (Robbins).

¹⁵² In addition, there is no evidence of whether North Woodward had ever in the past received any information sharing requests from FinCEN.

¹⁵³ Tr. 195-96 (Robbins).

engaging in terrorist acts or money laundering activities. FinCEN established the 314a Program through the issuance of a rule (finalized in 2002 and, as amended, now at 31 CFR Part 1010.520), which requires certain financial institutions to search their records and identify if they have responsive information with respect to the particular investigative subject.

FinCEN receives requests from law enforcement and upon review, periodically sends notifications to designated contacts within financial institutions informing them new information has been made available through FinCEN's Secure Information Sharing System's Internet web site. The requests contain subject and business names along with other available identifying data to assist the financial institutions in searching their records. Generally, the section 314(a) information sharing requests ask financial institutions to state whether particular individuals, entities or organizations: (i) maintain a current account with the institution; (ii) have maintained an account with the institution during the preceding twelve months; or (iii) have been involved in any transaction or transmittal of funds by or through the institution during the preceding six months. If a financial institution's check of its records indicates an affirmative response to any of these three questions, the institution must promptly reply to FinCEN. However, if the search does not uncover any matching of accounts or transactions, FinCEN instructs financial institutions *not* to reply to the request.¹⁵⁴

To facilitate the 314a Program, financial institutions must designate at least one point-of-contact person at the institution regarding all section 314(a) requests. Any changes to the point-of-contact information must be promptly reported to FinCEN.¹⁵⁵ A financial institution may have more than one point-of-contact, and additional contact

¹⁵⁴ See FinCEN's 314(a) Fact Sheet (Mar. 18, 2014), *available at* http://www.fincen.gov/statutes_regs/patriot/pdf/314afactsheet.pdf.

¹⁵⁵ 31 C.F.R. 103.100(b)(2)(iii).

persons may be added by contacting the financial institution's primary regulator. FINRA members must update their contacts through the FINRA Contact System, which is accessed through FINRA's Firm Gateway Internet web site.

Here, the evidence supports a conclusion that North Woodward and Troszak properly designated a primary and alternate AML contact. And the evidence shows that the responsible individuals did not log in to FinCEN's Secure Information Sharing System in response to the notifications FinCEN sent to North Woodward between October 7, 2008, and July 12, 2011.¹⁵⁶ But, there is no evidence that anyone at North Woodward ever received the notifications from FinCEN.

In the usual case, it is permissible to presume delivery of information sent by a reliable means, such as email, where the message was properly dispatched.¹⁵⁷ However, the presumption of receipt of delivery is rebuttable.

Troszak swore that he had not received the information sharing notifications because of software or hardware issues. His testimony is unchallenged, and there is evidence that tends to corroborate his testimony. First, the FINRA examiner conducting the on-site examination seemed to accept Troszak's explanation at the time. And, once Troszak followed up with FinCEN he began responding to new information sharing requests. Under these circumstances, the Hearing Panel concludes that Enforcement failed to prove by a preponderance of the evidence that Respondents received the information sharing notifications. Accordingly, the Hearing Panel dismisses the ninth cause of action.

¹⁵⁶ See CX-40.

¹⁵⁷ Cf. *e.g.*, *American Boat Co. v. Unknown Sunken Barge*, 418 F.3d 910, 914 (5th Cir. 2005).

VII. SANCTIONS

A. Failures To Respond And Grant Access To North Woodward's Office

The FINRA Sanction Guidelines (“Guidelines”) prescribe three ranges of sanctions for failures to comply with Rule 8210 requests for information by an associated person. If a person does not respond in any manner, the Guidelines provide that a bar should be the standard sanction.¹⁵⁸ A bar is also the standard sanction where an individual provides a partial but incomplete response unless the individual can demonstrate that the information provided substantially complied with all aspects of the request.¹⁵⁹ Where mitigation exists, or the individual did not respond in a timely manner, the Guidelines direct adjudicators to consider suspending the person in any or all capacities for up to two years.¹⁶⁰

In the case of a firm, the Guidelines direct adjudicators to expel the firm in egregious cases and to suspend the firm for up to two years where mitigation exists. In cases where a firm responds untimely, the Guidelines direct adjudicators to consider suspending the firm for up to 30 business days.¹⁶¹ The Guidelines also suggest fines against individuals and firms ranging from \$2,500 to \$50,000, depending on the nature of the violation.¹⁶²

The Guidelines also set forth principal considerations for adjudicators to assess in determining appropriate sanctions for violations of Rule 8210 in addition to the principal

¹⁵⁸ FINRA Sanction Guidelines 33 (2011), *available at* <http://www.finra.org/sanctionguidelines>.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* But, if the individual did not respond until after FINRA filed a disciplinary complaint, adjudicators should presume that the failure to respond timely constitutes a complete failure to respond. Guidelines 33 n.1.

¹⁶¹ Guidelines 33.

¹⁶² *Id.*

considerations and general principles applicable to all violations. Depending on the nature of the Rule 8210 violation, adjudicators are instructed to consider one or more of the following factors: (1) the importance of the information requested as viewed from FINRA's perspective; (2) the number of requests made and the degree of regulatory pressure required to obtain a response; (3) the length of time it took to obtain a response if one was provided; and (4) whether the respondent provided a thorough explanation with valid reasons for the deficiencies in a response.¹⁶³

1. North Woodward's Refusal To Grant FINRA Access To Its Premises, And Its Late Response To FINRA's Requests For Information And Documents

North Woodward's and Troszak's refusal to cooperate with the staff's Rule 8210 requests to inspect North Woodward's books and records in connection with the firm's 2011 cycle examination is a serious violation of Rule 8210. Although they ultimately provided the requested information and documents, there are numerous aggravating factors that warrant serious sanctions. In reaching this determination the Hearing Panel carefully considered Troszak's motivation for his refusal to cooperate timely and the fact that he is in complete control of the firm. Then, as now, he is North Woodward's only officer and registered principal.

North Woodward's and Troszak's refusal to produce documents and allow the staff access to the firm's premises for the 2011 cycle examination had nothing to do with either the excuses Troszak gave the staff at the time, or the defenses he raised at the hearing. This is not a case where the firm provided information and documents late despite its best efforts to comply timely. Rather, this is a case of deliberate disregard of

¹⁶³ *Id.*

North Woodward's and Troszak's obligation to abide by FINRA's rules.¹⁶⁴ Nor did Troszak act out of confusion or ignorance. Troszak refused to comply because he believed then—and now—that he has the right to disregard any regulatory requirement that he considers unnecessary, inapplicable, inadequate, or inconvenient. Both in his hearing testimony and in an email he sent to three members of FINRA's Board of Governors five days after he locked the staff out of North Woodward's office, Troszak made clear that he had not let the staff into his firm's office because FINRA is not a governmental agency, he disapproves of FINRA's structure and management, and he believes that he holds himself and his firm to a higher standard than FINRA requires.¹⁶⁵ Troszak criticized the staff's behavior as "tortious" and called FINRA's Chicago office a "Star Chamber."¹⁶⁶ Disingenuously, Troszak wrote that he was "having a very tough time trying to understand what FINRA is" although he had been registered with FINRA for nearly 20 years and his firm was a FINRA member, an argument he reiterated at the hearing.¹⁶⁷ In the end, Troszak believes that he need not cooperate unless he is satisfied

¹⁶⁴ See Guidelines, at 7 (Principal Considerations in Determining Sanctions, Nos. 12, 13) (directing adjudicators to consider whether the respondent "attempted to delay FINRA's investigation [or] conceal information from FINRA" and whether the respondent's misconduct "was the result of an intentional act, recklessness or negligence").

¹⁶⁵ See *Dep't of Enforcement v. CMG Institutional Trading, LLC*, Complaint No. E8A20050252, 2008 FINRA Discip. LEXIS 3, at *35 (FINRA NAC Feb. 20, 2008) (respondent is obligated to cooperate fully with FINRA investigations regardless of disagreements with FINRA staff) (citing *Joseph Patrick Hannan*, 53 S.E.C. 854, 859-60 (1998)), *aff'd CMG Institutional Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215 (Jan. 30, 2009); *Richard J. Rouse*, 51 S.E.C. 581, 584 n.9 (1993) (holding that "[a]ny problems or concerns that a member firm or its associated persons might have in responding to an information request in a timely or complete manner should be raised, discussed and resolved with the NASD in the cooperative spirit and prompt manner contemplated by [NASD Rule 8210].").

¹⁶⁶ CX-14. In modern usage, the term "Star Chamber" refers to any judicial or quasi-judicial action, trial, or hearing which so grossly violates standards of due process that a party appearing in the proceedings is denied a fair hearing. When questioned at the hearing about his use of the term, he was unable to explain what he meant.

¹⁶⁷ CX-14; Tr. 493 (Troszak closing).

that FINRA is operating in accord with his standards and in a manner that does not adversely impact his accounting business.

The Hearing Panel carefully considered Troszak's protestations that he never intended to impede the staff and that he just overreacted to the pressure to comply. The Hearing Panel found these statements insincere and contradicted by the evidence. Troszak's demeanor at the hearing was smug and defiant. He did not acknowledge his wrongdoing.¹⁶⁸ He blamed FINRA staff for provoking his obstinate conduct and attempted to trivialize his defiance as nothing more than an "old football player" who still has the "drive to get excited."¹⁶⁹ But his refusal to cooperate was not a momentary overreaction, as he suggests.

Respondents' incomplete and late responses to FINRA's requests appear to be part of a larger pattern.¹⁷⁰ A FINRA staff member testified that North Woodward and Troszak had failed to comply with Rule 8210 requests in connection with the staff's investigation of Troszak's borrowing activity in 2010. In fact, it was this conduct that led a FINRA manager to expedite North Woodward's 2011 cycle examination. In addition, despite the regulatory pressure required to secure his cooperation with that investigation, and North Woodward's suspension in June 2011 for failing to permit the staff to conduct the cycle examination, Troszak refused to respond completely to FINRA's 2011

¹⁶⁸ See Guidelines, at 6 (Principal Considerations in Determining Sanctions, No. 2) (directing adjudicators to consider whether the respondent accepted responsibility for and acknowledged the misconduct prior to detection).

¹⁶⁹ Tr. 510-11 (Troszak closing).

¹⁷⁰ See Guidelines, at 6 (Principal Considerations in Determining Sanctions, No. 8).

investigation into the loans he secured from customers and others in February 2011, as is discussed more fully below.¹⁷¹

The Hearing Panel next considered the principal considerations in the Guidelines for an untimely response. Each factor is aggravating. First, the information and documents sought were extremely important to FINRA. It is essential that FINRA be able to examine a member's books and records to ensure compliance with securities laws, regulations, and FINRA rules. FINRA's cycle examination program is critical to FINRA's mission to protect investors. A firm's failure to cooperate with its scheduled cycle examination adversely impacts FINRA's exam schedule for other firms, as a FINRA examiner testified. Second, North Woodward and Troszak did not produce the requested information and documents and permit the FINRA staff to conduct a site visit until after North Woodward had been suspended after it locked the staff out of its office. FINRA had to resort to instituting an expedited proceeding pursuant to Rule 9554 to secure North Woodward's cooperation. Third, the length of time it took North Woodward to comply was material under the facts and circumstances of this case. As discussed above, the staff was concerned about respondents' failure to disclose information about potential improper borrowing practices by Troszak. The staff had good cause to schedule the 2011 cycle examination when it did.

In summary, Troszak reserves to himself and his firm the absolute right to decide if, how, and when they will comply with FINRA Rule 8210. Troszak's statements and

¹⁷¹ See *Enforcement v. CMG*, 2008 FINRA Discip. LEXIS 3, at *33 (considering the appearance of a "larger pattern" of noncompliance with Rule 8210 in assessing sanctions).

conduct cannot be excused as nothing more than poor taste and rash impertinence.¹⁷²

Indeed, Troszak presented no evidence that his approach to regulatory compliance would be any different in the future if he again disagreed with either the content or timing of the staff's information requests, and there is no other evidence in the record to support such a conclusion. A registered entity or individual with this degree of intransigent hostility to regulatory compliance presents too great a risk to investors to remain in the industry. This risk is not sufficiently mitigated by the fact that Respondents eventually permitted the staff to complete the 2011 cycle examination when it was convenient to Troszak.

In light of the foregoing, and under the particular facts and circumstances of this case, the Hearing Panel determines that North Woodward's and Troszak's untimely responses to the staff's requests for information and their refusal to permit the staff access to North Woodward's office to conduct the scheduled 2011 cycle examination warrant a one-year suspension from FINRA membership on North Woodward, and a two-year suspension in all capacities and a \$25,000 fine on Troszak. We impose the sanction on North Woodward, but we do not impose the sanctions on Troszak in light of the bar we impose on him for his failure to respond completely to the Rule 8210 requests regarding his borrowing from customers.

The sanction we impose is appropriately remedial under the circumstances and reflects the serious nature of the violations. Further, the sanction we impose reflects that Respondents' misconduct subverted FINRA's ability to carry out its self-regulatory

¹⁷² Cf. *Dep't of Enforcement v. CMG*, 2008 FINRA Discip. LEXIS 3, at *35-36 (finding respondent's generally hostile and unnecessarily antagonistic voice mail messages that he would not produce requested information were quickly contradicted by his production of information and therefore a bar was not warranted).

functions, including its ability to protect investors. Finally, such sanction will discourage others from engaging in similar misconduct.

2. Troszak's Incomplete Rule 8210 Response

The Guidelines list principal considerations for adjudicators to assess in determining sanctions for providing a partial but incomplete response to a request for information made pursuant to Rule 8210. The Hearing Panel first considered the nature of the information requested and its importance from FINRA's perspective. Here, FINRA staff had undertaken a second investigation into allegations that Troszak had borrowed money from North Woodward customers. The staff sought information about his application of the loan proceeds, any payments he had made to the lenders, and whether he had reflected the promissory notes as securities in the customers' accounts. This information was highly significant to FINRA because the staff had learned during Troszak's on-the-record interview that not all of the loans were properly documented. At least two of the lenders were not given promissory notes evidencing their loans.¹⁷³ And, as a FINRA examiner testified, Troszak's refusal to fully respond to the staff's Rule 8210 requests impeded the staff from determining whether Troszak had violated any FINRA rules.¹⁷⁴

Next, the Hearing Panel considered the fact that Troszak lacked a valid reason for his refusal to provide all of the requested information and documents. Troszak refused to supply all of the requested information about the loans because he contended that FINRA lacked jurisdiction to inquire about his personal loans and he was required to keep the lenders' information private. Troszak's arguments were frivolous. First, the staff sought

¹⁷³ CX-26, at 9-10.

¹⁷⁴ Tr. 256 (Westcomb).

information from North Woodward and Troszak, not the lenders. Second, as an experienced securities principal, Troszak knew that he was obligated to provide information concerning his interactions with his securities customers.¹⁷⁵ Troszak intentionally miscast the staff's information requests in an attempt to justify his refusal to comply. Moreover, Troszak could not condition his compliance with the Rule 8210 requests on his assessment of the ultimate validity of the underlying inquiry.¹⁷⁶

Finally, the Hearing Panel considered the Guidelines' directive that a bar is standard where an individual provided a partial but incomplete response unless the individual demonstrates that he substantially complied with all aspects of the request.¹⁷⁷ Troszak did not. Indeed, the record shows that he failed to provide the highly critical information concerning the nature of his financial dealings with the North Woodward customers who lent him money. Accordingly, the Hearing Panel affirmatively concluded that he did not substantially comply with all aspects of the two requests.

Troszak's violation of Rules 8210 and 2010 warrants a bar in all capacities. Troszak intentionally sought to delay FINRA's investigation and conceal information regarding the nature of his borrowing activity.¹⁷⁸

¹⁷⁵ See *Dep't of Enforcement v. Houston*, Complaint No. 2006005318801, 2013 FINRA Discip. LEXIS 3, at *26 (FINRA NAC Feb. 22, 2013) citing *Morton Bruce Erenstein*, Exchange Act Rel. No. 56768, 2007 SEC LEXIS 2596, at *19 (Nov. 8, 2007).

¹⁷⁶ See *Charles R. Stedman*, 51 S.E.C. 1228, 1232 (1994) (holding that even if respondent were innocent of any wrongdoing that was the subject of inquiry, the obligation to respond to Rule 8210 requests for information is independent of his obligation to refrain from misconduct with respect to his customer's accounts).

¹⁷⁷ Guidelines 33.

¹⁷⁸ See Guidelines 7 (Principal Considerations in Determining Sanctions, Nos. 12, 13) (directing adjudicators to consider whether the respondent "attempted to delay FINRA's investigation [or] conceal information from FINRA" and whether the respondent's misconduct "was the result of an intentional act, recklessness or negligence")

B. Supervision Violations

The Hearing Panel determined to aggregate the four supervisory violations¹⁷⁹ because they all stem from North Woodward's and Troszak's intentional disregard of FINRA's rules.

The Guidelines for deficient written supervisory procedures provide for fines ranging from \$1,000 to \$25,000.¹⁸⁰ In egregious cases, the Guidelines recommend suspending the responsible individual in all capacities for up to one year and suspending the firm with respect to any or all relevant activities for up to 30 business days and thereafter until the supervisory procedures are amended to conform to rule requirements.¹⁸¹ The Guidelines for deficient supervisory procedures provide two considerations to determine the appropriate sanctions: (1) whether the deficiencies allowed violative conduct to occur or to escape detection; and (2) whether the deficiencies made it difficult to determine the individual or individuals responsible for specific areas of supervision or compliance. Neither factor applies to this case. Accordingly, the Hearing Panel considered the principal considerations applicable to all sanction determinations.

The Hearing Panel concludes that North Woodward's and Troszak's supervisory violations were egregious. Over a period of years, they refused to adopt proper

¹⁷⁹ The four supervisory violations are: (1) failure to establish and maintain adequate WSPs (Cause 5); (2) failure to prepare reports and certifications required by NASD Rule 3012 and FINRA Rule 3130 (Cause 4); failure to establish and implement appropriate AML procedures (Cause 7); and failure to conduct an independent AML test required by FINRA Rule 3310(c) (Cause 8).

¹⁸⁰ Guidelines 104. Although there is no specific guideline related to violations of NASD Rule 3012 and FINRA Rule 3120, the guideline concerning deficient written supervisory procedures under NASD Rule 3010 is sufficiently analogous to facilitate our determination of sanctions for this violation. *See* Guidelines 1 (recommending use of analogous guidelines).

¹⁸¹ *Id.*

supervisory procedures, and they failed to conduct the required testing and certifications required by FINRA rules.¹⁸² In 2009, FINRA directed Respondents to address numerous problems that had been uncovered during the firm's 2008 cycle examination.

Significantly, Respondents received a letter of caution because (1) they had an inadequate compliance program; (2) they had an inadequate supervisory control system; and (3) they were not in compliance with Regulation S-P. Two years later, North Woodward and Troszak still had failed to correct these noted deficiencies, which FINRA staff discovered when it was finally able to conduct North Woodward's 2011 cycle examination. Indeed, rather than make a serious effort to adopt appropriately tailored WSPs and AML procedures following the 2008 cycle examination, Respondents simply adopted unmodified templates as the firm's procedures, which they did in the face of clear instructions that the procedures must be tailored to fit the firm's business.

The Hearing Panel also considered Respondents' refusal to accept responsibility for their misconduct.¹⁸³ Indeed, Troszak impermissibly blamed FINRA staff for some of the problems. For example, Troszak disingenuously argued that he should not be held accountable for any shortcomings in the firm's WSPs and AML procedures because FINRA staff had instructed him to use "canned" WSPs and FINRA's Small Firm Template. However, as discussed above, the staff told Troszak he needed to customize the WSPs and the Small Firm Template for AML procedures expressly warns that it must be customized.

¹⁸² See Guidelines 7 (Principal Considerations in Determining Sanctions, No. 13) (directing adjudicators to consider whether the respondent's misconduct "was the result of an intentional act, recklessness or negligence").

¹⁸³ Guidelines 6 (Principal Considerations in Determining Sanctions, No. 2).

Troszak offered no explanation for these violations or his delay in correcting the deficiencies. Respondents' defense centered on the fact that they ultimately took corrective action after the problems came to light during the 2011 cycle examination. However, a firm's employment of "subsequent corrective measures" to revise procedures to avoid the recurrence of misconduct can be mitigating, but only where the firm does so "prior to detection or intervention ... by a regulator."¹⁸⁴ Here, Respondents did not revise the procedures until after FINRA staff detected the problems during the 2011 cycle examination.

In determining the appropriate remedial sanctions for these violations, the Hearing Panel also considered Troszak's hostility to compliance with the regulatory structure designed to protect the investing public. As noted above, Troszak intentionally refused to comply with FINRA rules because he did not care for the FINRA examiners and FINRA. He concluded that he had the right to disregard any regulatory requirement that he considered unnecessary, inapplicable, inadequate, or inconvenient. Given Troszak's resolve to reserve to himself the right to dictate when, if, and how he would comply with FINRA rules in the future, the Hearing Panel concludes that Troszak presents too great a risk to the investing public to remain a registered principal or supervisor.

The Hearing Panel determines that North Woodward's and Troszak's supervisory violations warrant a 30 business day suspension from FINRA membership and a \$10,000 fine on North Woodward, and a bar in all principal and supervisory capacities and a

¹⁸⁴ Guidelines 6 (Principal Considerations in Determining Sanctions, No. 3); see also, Dennis Todd Lloyd Gordon, Exchange Act Rel. No. 57655, 2008 SEC LEXIS 819, at *68 (Apr. 11, 2008) ("Remedial action taken after the initiation of an examination has little mitigative value.").

\$10,000 fine on Troszak. We impose the sanctions on North Woodward and the principal and supervisory bar on Troszak. However, we do not impose the fine on Troszak in light of the bar that we have imposed on him for his failure to comply with FINRA’s Rule 8210 requests for information.

C. Failure To Amend Form U4 Timely

The Guidelines for misconduct involving a Form U4 recommend a fine of between \$2,500 and \$50,000 and a suspension of five to thirty business days.¹⁸⁵ In egregious cases, such as those involving repeated failures to file, untimely filings, or false, inaccurate, or misleading filings, the Guidelines recommend considering a longer suspension of up to two years, or a bar, for the responsible individual.¹⁸⁶ In evaluating the appropriate sanctions to impose, the Guidelines provide three principal considerations specific to Form U4 violations, only one of which—the nature and significance of the information at issue—is relevant here.¹⁸⁷ These considerations are in addition to the principal considerations contained within the Guidelines that apply in every disciplinary case.

The nature of the information Troszak failed to disclose is significant. The information related to his unpaid consent judgment, implicating Troszak’s financial

¹⁸⁵ Guidelines 69.

¹⁸⁶ *Id.* at 70.

¹⁸⁷ *Id.* There are two other principal considerations applicable to Form U4 violations: whether the failure resulted in a statutorily disqualified individual becoming or remaining associated with a firm; and whether a firm’s misconduct resulted in harm to a registered person, another member firm, or any person or entity. Neither consideration applies in this case.

stability, judgment, and ability to manage his own finances as well as presenting a concern about Troszak's ability to handle the finances of others.¹⁸⁸

The Hearing Panel also found the following aggravating factors. First, Troszak intentionally withheld the requested information, all of which was in his possession and control.¹⁸⁹ Second, the evidence shows that this was not an isolated occurrence.¹⁹⁰ FINRA staff testified that Troszak had refused to provide information in 2010 about similar activity. Third, Troszak has not acknowledged his misconduct.¹⁹¹ Instead, he falsely testified that he lacked adequate information about the consent judgment to enable him to determine what went on the Form U4. He also falsely claimed that it was not until his outside consultant explained his reporting requirement that he understood what was required. But a FINRA examiner testified that in July 2011 he explained to Troszak that he needed to report the consent judgment. Troszak did not counter the examiner's testimony. Nonetheless, Troszak did not amend his Form U4 for approximately three months thereafter. Troszak's willful misconduct was not the result of a momentary lapse of judgment, aberrant behavior, or negligence that could establish mitigation.

North Woodward's and Troszak's willful violations of Article V, Section 2 of FINRA By-Laws and FINRA Rules 1122 and 2010 warrant a \$5,000 fine on North Woodward, and a six-month suspension in all capacities and a \$5,000 fine on Troszak. We impose the fine on North Woodward, but do not impose the sanctions on Troszak in light of the bar that we have imposed on him for his failure to comply with FINRA's

¹⁸⁸ See *Dep't of Enforcement v. Tucker*, Complaint No. 2007009981201, 2011 FINRA Discip. LEXIS 66, at *30 (FINRA NAC Oct. 4, 2011).

¹⁸⁹ Guidelines 7 (Principal Considerations in Determining Sanctions, No. 13).

¹⁹⁰ *Id.* at 6, 7 (Principal Considerations in Determining Sanctions, Nos. 8, 15).

¹⁹¹ *Id.* (Principal Considerations in Determining Sanctions, No. 2).

Rule 8210 requests for information, and the bar in all principal or supervisory capacities that we have imposed on him for his supervisory violations.

D. Regulation S-P

The FINRA Sanction Guidelines do not contain recommended sanctions for the specific misconduct at issue. We therefore considered the recommendations included in the Guidelines' Principal Considerations in Determining Sanctions and other relevant factors in setting appropriately remedial sanctions.

The Hearing Panel concludes that Respondents willfully failed to adopt and provide the privacy notices required by Regulation S-P. Respondents received a letter of caution at the conclusion of North Woodward's 2008 cycle examination that specifically directed Respondents to adopt appropriate notices and to cease their reliance on the language included in Troszak's CPA engagement letters. Respondents deliberately disregarded this warning and refused to correct the deficiency. The Hearing Panel also considered the duration of their misconduct—more than 32 months. Finally, the Hearing Panel considered Troszak's failure to recognize the applicability and importance of Regulation S-P.

Considering the foregoing factors and the lack of any mitigating factors, the Hearing Panel concludes that North Woodward's and Troszak's violations of NASD Rule 2110 and FINRA Rule 2010 warrant a \$10,000 fine on North Woodward, and a ten business day suspension in all principal capacities and a \$10,000 fine on Troszak. We impose the fine on North Woodward, but do not impose the sanctions on Troszak in light of the bar in all capacities that we have imposed on him for his failure to comply with FINRA's Rule 8210 requests for information, and the bar in all principal or supervisory capacities that we have imposed on him for his supervisory violations.

VIII. ORDER

The Hearing Panel concludes that (1) North Woodward and Troszak violated FINRA Rules 8210 and 2010 in a number of respects; (2) failed to establish and maintain adequate WSPs, in violation of NASD Rule 3010 and FINRA Rule 2010; (3) failed to prepare required reports and certifications, in violation of NASD Rule 3012, and FINRA Rules 3130 and 2010; (4) failed to establish and implement appropriate AML procedures, in violation of NASD Rule 3011(b), and FINRA Rules 3310(b) and 2010; (5) failed to timely conduct an independent AML test, in violation of FINRA Rules 3310(c) and 2010; and (6) failed to provide customers with an adequate privacy notice, in violation of Regulation S-P, NASD Rule 2110, and FINRA Rule 2010.

The Hearing Panel dismisses the second cause of action at Enforcement's motion, which charged North Woodward and Troszak with effecting securities transactions while North Woodward was suspended, and the ninth cause of action, which charged North Woodward and Troszak with failing to respond to FinCen information sharing requests.

Troszak is barred from associating with any member firm in all capacities for his failures to comply with FINRA's Rule 8210 requests. In addition, Troszak is barred from associating with any member firm in any principal or supervisory capacity for his supervisory violations.

North Woodward is suspended from FINRA membership for one year for its failures to comply timely with FINRA's Rule 8210 requests; suspended from FINRA membership for 30 business days for its supervisory violations, and fined a total \$25,000 (\$10,000 for its supervisory violations, \$5,000 for its failure to timely update Troszak's Form U4, and \$10,000 for its failure to provide customers with an adequate privacy notice). North Woodward's suspensions from FINRA membership shall run concurrently.

In addition, North Woodward and Troszak are jointly and severally ordered to pay costs in the amount of \$4,719.09, which amount includes the hearing transcript fees and an administrative fee of \$750.

If this decision becomes FINRA's final disciplinary action, the bars against Troszak shall become effective immediately. North Woodward's suspensions shall commence at the opening of business on July 7, 2014, and its one-year suspension shall end on July 6, 2015. The fines and assessed costs shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.¹⁹²

Andrew H. Perkins
Hearing Officer
For the Hearing Panel

Copies to:

Douglas A. Troszak (by FedEx and email)
Dale A. Glanzman, Esq. (by first-class mail and email)
Heather L. Freiburger, Esq. (by email)
Jeffrey Pariser, Esq. (by email)

¹⁹² The Hearing Panel considered and rejected without discussion all other arguments of the parties.