FINRA
Financial Industry Regulatory Authority

# Sanction Guidelines

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# Overview

The regulatory mission of FINRA is to protect investors and strengthen market integrity through vigorous, even-handed and cost-effective self-regulation. FINRA embraces self-regulation as the most effective means of infusing a balance of industry and non-industry expertise into the regulatory process. FINRA believes that an important facet of its regulatory function is the building of public confidence in the financial markets. As part of FINRA's regulatory mission, it must stand ready to discipline member firms and their associated persons by imposing sanctions when necessary and appropriate to protect investors, other member firms and associated persons, and to promote the public interest.

The National Adjudicatory Council (NAC), formerly the National Business Conduct Committee, has developed the *FINRA Sanction Guidelines* for use by the various bodies adjudicating disciplinary decisions, including Hearing Panels and the NAC itself (collectively, the Adjudicators), in determining appropriate remedial sanctions. FINRA has published the *FINRA Sanction Guidelines* so that members, associated persons and their counsel may become more familiar with the types of disciplinary sanctions that may be applicable to various violations. FINRA staff and respondents also may use these guidelines in crafting settlements, acknowledging the broadly recognized principle that settled cases generally result in lower sanctions than fully litigated cases to provide incentives to settle.

These guidelines do not prescribe fixed sanctions for particular violations. Rather, they provide direction for Adjudicators in imposing sanctions consistently and fairly. The guidelines recommend ranges for sanctions and suggest factors that Adjudicators may consider in determining, for each case, where within the range the sanctions should fall or whether sanctions should be above or below the recommended range. These guidelines are not intended to be absolute. Based on the facts and circumstances presented in each case, Adjudicators may impose sanctions that fall outside the ranges recommended and may consider aggravating and mitigating factors in addition to those listed in these guidelines.

These guidelines address some typical securities-industry violations. For violations that are not addressed specifically, Adjudicators are encouraged to look to the guidelines for analogous violations.

In order to promote consistency and uniformity in the application of these guidelines, the NAC has outlined certain **General Principles Applicable to All Sanction Determinations** that should be considered in connection with the imposition of sanctions in all cases. Also included is a list of **Principal Considerations in Determining Sanctions**, which enumerates generic factors for consideration in all cases. Also, a number of guidelines identify potential principal considerations that are specific to the described violation.

## General Principles Applicable to All Sanction Determinations

1. **Disciplinary sanctions are remedial in nature and should be designed to deter future misconduct and to improve overall business standards in the securities industry.** The overall purposes of FINRA's disciplinary process and FINRA's responsibility in imposing sanctions are to remediate misconduct by preventing the recurrence of misconduct, improving overall standards in the industry, and protecting the investing public. Toward this end, Adjudicators should design sanctions that are significant enough to prevent and discourage future misconduct by a respondent, to deter others from engaging in similar misconduct, and to modify and improve business practices. Depending on the seriousness of the violations, Adjudicators should impose sanctions that are significant enough to ensure effective deterrence. When necessary to achieve this goal, Adjudicators should impose sanctions that exceed the range recommended in the applicable guideline.

   When applying these principles and crafting appropriate remedial sanctions, Adjudicators also should consider firm size[1] with a view toward ensuring that the sanctions imposed are not punitive but are sufficiently remedial to achieve deterrence.[2] (Also see General Principle No. 8 regarding ability to pay.)

2. **Disciplinary sanctions should be more severe for recidivists.** An important objective of the disciplinary process is to deter and prevent future misconduct by imposing progressively escalating sanctions on recidivists beyond those outlined in these guidelines, up to and including barring registered persons and expelling firms. Adjudicators should always consider a respondent's disciplinary history in determining sanctions. Adjudicators should consider imposing more severe sanctions when a respondent's disciplinary history includes (a) past misconduct similar to that at issue; or (b) past misconduct that evidences disregard for regulatory requirements, investor protection or commercial integrity. Even if a respondent has no history of relevant misconduct, however, the misconduct at issue may be so serious as to justify sanctions beyond the range contemplated in the guidelines; *i.e.*, an isolated act of egregious misconduct could justify sanctions significantly above or different from those recommended in the guidelines.

   Certain regulatory incidents are not relevant to the determination of sanctions. Arbitration proceedings, whether pending, settled or litigated to conclusion, are not "disciplinary" actions. Similarly, pending investigations or the existence of ongoing regulatory proceedings prior to a final decision are not relevant.

   In certain cases, particularly those involving quality-of-markets issues, these guidelines recommend increasingly severe monetary sanctions for second and subsequent disciplinary actions. This escalation is consistent with the concept that repeated acts of misconduct call for increasingly severe sanctions.

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1 Factors to consider in connection with assessing firm size are: the firm's financial resources; the nature of the firm's business; the number of individuals associated with the firm; the level of trading activity at the firm; other entities that the firm controls, is controlled by, or is under common control with; and the firm's contractual relationships (such as introducing broker/clearing firm relationships). **This list is included for illustrative purposes and is not exhaustive. Other factors also may be considered in connection with assessing firm size.**

2 Adjudicators may consider firm size in connection with the imposition of sanctions with respect to rule violations involving negligence. With respect to violations involving fraudulent, willful and/or reckless misconduct, Adjudicators should consider whether, given the totality of the circumstances involved, it is appropriate to consider firm size and may determine that, given the egregious nature of the fraudulent activity, firm size will not be considered in connection with sanctions.

3. **Adjudicators should tailor sanctions to respond to the misconduct at issue.** Sanctions in disciplinary proceedings are intended to be remedial and to prevent the recurrence of misconduct. Adjudicators therefore should impose sanctions tailored to address the misconduct involved in each particular case. Section 15A of the Securities Exchange Act of 1934 and FINRA Rule 8310 provide that FINRA may enforce compliance with its rules by: limitation or modification of a respondent's business activities, functions and operations; fine; censure; suspension (of an individual from functioning in any or all capacities, or of a firm from engaging in any or all activities or functions, for a defined period or contingent on the performance of a particular act); bar (permanent expulsion of an individual from associating with a firm in any or all capacities); expulsion (of a firm from FINRA membership and, consequently, from the securities industry); or any other fitting sanction.

   To address the misconduct effectively in any given case, Adjudicators may design sanctions other than those specified in these guidelines. For example, to achieve deterrence and remediate misconduct, Adjudicators may impose sanctions that: (a) require a respondent firm to retain a qualified independent consultant to design and/or implement procedures for improved future compliance with regulatory requirements; (b) suspend or bar a respondent firm from engaging in a particular line of business; (c) require an individual or member firm respondent, prior to conducting future business, to disclose certain information to new and/or existing clients, including disclosure of disciplinary history; (d) require a respondent firm to implement heightened supervision of certain individuals or departments in the firm; (e) require an individual or member firm respondent to obtain a FINRA staff letter stating that a proposed communication with the public is consistent with FINRA standards prior to disseminating that communication to the public; (f) limit the number of securities in which a respondent firm may make a market; (g) limit the activities of a respondent firm; or (h) require a respondent firm to institute tape recording procedures. **This list is illustrative, not exhaustive, and is included to provide examples of the types of sanctions that Adjudicators may design to address specific misconduct and to achieve deterrence. Adjudicators may craft other sanctions specifically designed to prevent the recurrence of misconduct.**

   The recommended ranges in these guidelines are not absolute. The guidelines suggest, but do not mandate, the range and types of sanctions to be applied. Depending on the facts and circumstances of a case, Adjudicators may determine that no remedial purpose is served by imposing a sanction within the range recommended in the applicable guideline; *i.e.*, that a sanction below the recommended range, or no sanction at all, is appropriate. Conversely, Adjudicators may determine that egregious misconduct requires the imposition of sanctions above or otherwise outside of a recommended range. For instance, in an egregious case, Adjudicators may consider barring an individual respondent and/or expelling a respondent member firm, regardless of whether the individual guidelines applicable to the case recommend a bar and/or expulsion or other less severe sanctions. Adjudicators must always exercise judgment and discretion and consider appropriate aggravating and mitigating factors in determining remedial sanctions in each case. In addition, whether the sanctions are within or outside of the recommended range, Adjudicators must identify the basis for the sanctions imposed.

4. **Aggregation or "batching" of violations may be appropriate for purposes of determining sanctions in disciplinary proceedings.** The range of monetary sanctions in each case may be applied in the aggregate for similar types of violations rather than per individual violation. For example, it may be appropriate to aggregate similar violations if: (a) the violative conduct was unintentional or negligent (*i.e.*, did not involve manipulative, fraudulent or deceptive intent); (b) the conduct did not result in injury to public investors or, in cases involving injury to the public, if restitution was made; or (c) the violations resulted from a single systemic problem or cause that has been corrected.

   Depending on the facts and circumstances of a case, however, multiple violations may be treated individually such that a sanction is imposed for each violation. In addition, numerous, similar violations may warrant higher sanctions, since the existence of multiple violations may be treated as an aggravating factor.

5. **Where appropriate to remediate misconduct, Adjudicators should order restitution and/or rescission.** Restitution is a traditional remedy used to restore the status quo ante where a victim otherwise would unjustly suffer loss. Adjudicators may determine that restitution is an appropriate sanction where necessary to remediate misconduct. Adjudicators may order restitution when an identifiable person, member firm or other party has suffered a quantifiable loss proximately caused by a respondent's misconduct.[3]

   Adjudicators should calculate orders of restitution based on the actual amount of the loss sustained by a person, member firm or other party, as demonstrated by the evidence. Orders of restitution may exceed the amount of the respondent's ill-gotten gain. Restitution orders must include a description of the Adjudicator's method of calculation.

   When a member firm has compensated a customer or other party for losses caused by an individual respondent's misconduct, Adjudicators may order that the individual respondent pay restitution to the firm.

   Where appropriate, Adjudicators may order that a respondent offer rescission to an injured party.

3 Other avenues, such as arbitration, are available to injured customers as a means to redress grievances.

6. **To remediate misconduct, Adjudicators should consider a respondent's ill-gotten gain when determining an appropriate remedy.** In cases in which the record demonstrates that the respondent obtained a financial benefit from his or her misconduct, where appropriate to remediate misconduct, Adjudicators may require the disgorgement of such ill-gotten gain by fining away the amount of some or all of the financial benefit derived, directly or indirectly.[4] In appropriate cases, Adjudicators may order that the respondent's ill-gotten gain be disgorged and that the financial benefit, directly and indirectly, derived by the respondent be used to redress harms suffered by customers. "Financial benefit" includes any commissions, concessions, revenues, profits, gains, compensation, income, fees, other remuneration, or other benefits the respondent received, directly or indirectly, as a result of the misconduct.

7. **Where appropriate, Adjudicators should require a respondent to requalify in any or all capacities.** The remedial purpose of disciplinary sanctions may be served by requiring an individual respondent to requalify by examination as a condition of continued employment in the securities industry. Such a sanction may be imposed when Adjudicators find that a respondent's actions have demonstrated a lack of knowledge or familiarity with the rules and laws governing the securities industry.

8. **When raised by a respondent, Adjudicators are required to consider ability to pay in connection with the imposition, reduction or waiver of a fine or restitution.** Adjudicators are required to consider a respondent's *bona fide* inability to pay when imposing a fine or ordering restitution. The burden is on the respondent to raise the issue of inability to pay and to provide evidence thereof.[5] If a respondent does not raise the issue of inability to pay during the initial consideration of a matter before "trial-level" Adjudicators, Adjudicators considering the matter on appeal generally will presume the issue of inability to pay to have been waived (unless the inability to pay is alleged to have resulted from a subsequent change in circumstances). Adjudicators should require respondents who raise the issue of inability to pay to document their financial status through the use of standard documents that FINRA staff can provided. Proof of inability to pay need not result in a reduction or waiver of a fine, restitution or disgorgement order, but could instead result in the imposition of an installment payment plan or another alternate payment option. In cases in which Adjudicators modify a monetary sanction based on a *bona fide* inability to pay, the written decision should so indicate. Although Adjudicators must consider a respondent's *bona fide* inability to pay when the issue is raised by a respondent, monetary sanctions imposed on member firms need not be related to or limited by the firm's required minimum net capital.

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4 Certain guidelines specifically recommend that Adjudicators consider adding the amount of a respondent's financial benefit to the amount of the fine. These guidelines are singled out because they involve violations in which financial benefit occurs most frequently. These specific references should not be read to imply that it is less important or desirable to fine away ill-gotten gain in other instances. The concept of fining away ill-gotten gain is important and, if appropriate to remediate misconduct, may be considered in all cases whether or not the concept is specifically referenced in the applicable guideline.

5 *See In re Toney L. Reed,* Exchange Act Rel. No. 37572 (August 14, 1996), wherein the Securities and Exchange Commission directed FINRA to consider financial ability to pay when ordering restitution. In these guidelines, the NAC has explained its understanding of the Commission's directives to FINRA based on the *Reed* decision and other Commission decisions.

## Principal Considerations in Determining Sanctions

The following list of factors should be considered in conjunction with the imposition of sanctions with respect to all violations. Individual guidelines may list additional violation-specific factors.

Although many of the general and violation-specific considerations, when they apply in the case at hand, have the potential to be either aggravating or mitigating, some considerations have the potential to be only aggravating or only mitigating. For instance, the presence of certain factors may be aggravating, but their absence does not draw an inference of mitigation.[1] The relevancy and characterization of a factor depends on the facts and circumstances of a case and the type of violation. This list is illustrative, not exhaustive; as appropriate, Adjudicators should consider case-specific factors in addition to those listed here and in the individual guidelines.

1. The respondent's relevant disciplinary history (see General Principle No. 2).
2. Whether an individual or member firm respondent accepted responsibility for and acknowledged the misconduct to his or her employer (in the case of an individual) or a regulator prior to detection and intervention by the firm (in the case of an individual) or a regulator.
3. Whether an individual or member firm respondent voluntarily employed subsequent corrective measures, prior to detection or intervention by the firm (in the case of an individual) or by a regulator, to revise general and/or specific procedures to avoid recurrence of misconduct.
4. Whether the respondent voluntarily and reasonably attempted, prior to detection and intervention, to pay restitution or otherwise remedy the misconduct.
5. Whether, at the time of the violation, the respondent member firm had developed reasonable supervisory, operational and/or technical procedures or controls that were properly implemented.
6. Whether, at the time of the violation, the respondent member firm had developed adequate training and educational initiatives.
7. Whether the respondent demonstrated reasonable reliance on competent legal or accounting advice.
8. Whether the respondent engaged in numerous acts and/or a pattern of misconduct.
9. Whether the respondent engaged in the misconduct over an extended period of time.
10. Whether the respondent attempted to conceal his or her misconduct or to lull into inactivity, mislead, deceive or intimidate a customer, regulatory authorities or, in the case of an individual respondent, the member firm with which he or she is/was associated.
11. With respect to other parties, including the investing public, the member firm with which an individual respondent is associated, and/or other market participants, (a) whether the respondent's misconduct resulted directly or indirectly in injury to such other parties, and (b) the nature and extent of the injury.

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1 *See, e.g., Rooms v. SEC*, 444 F.3d 1208, 1214-15 (10th Cir. 2006) (explaining that while the existence of a disciplinary history is an aggravating factor when determining the appropriate sanction, its absence is not mitigating).

12. Whether the respondent provided substantial assistance to FINRA in its examination and/or investigation of the underlying misconduct, or whether the respondent attempted to delay FINRA's investigation, to conceal information from FINRA, or to provide inaccurate or misleading testimony or documentary information to FINRA.

13. Whether the respondent's misconduct was the result of an intentional act, recklessness or negligence.

14. Whether the member firm with which an individual respondent is/was associated disciplined the respondent for the same misconduct at issue prior to regulatory detection. Adjudicators may also consider whether another regulator sanctioned a respondent for the same misconduct at issue and whether that sanction provided substantial remediation.

15. Whether the respondent engaged in the misconduct at issue notwithstanding prior warnings from FINRA, another regulator or a supervisor (in the case of an individual respondent) that the conduct violated FINRA rules or applicable securities laws or regulations.

16. Whether the respondent member firm can demonstrate that the misconduct at issue was aberrant or not otherwise reflective of the firm's historical compliance record.

17. Whether the respondent's misconduct resulted in the potential for the respondent's monetary or other gain.

18. The number, size and character of the transactions at issue.

19. The level of sophistication of the injured or affected customer.

## Applicability

These guidelines supersede prior editions of the *FINRA Sanction Guidelines*, whether published in a booklet or discussed in *FINRA Regulatory Notices* (formerly *NASD Notices to Members*). These guidelines are effective as of the date of publication, and apply to all disciplinary matters, including pending matters. FINRA may, from time to time, amend these guidelines and announce the amendments in a *Regulatory Notice* or post the changes on FINRA's website *(www.finra.org)*. Additionally, the NAC may, on occasion, specifically amend a particular guideline through issuance of a disciplinary decision. Amendments accomplished through the NAC decision-making process or announced via *Regulatory Notices* or on the FINRA website should be treated like other amendments to these guidelines, even before publication of a revised edition of the *FINRA Sanction Guidelines*. Interested parties are advised to check FINRA's website carefully to ensure that they are employing the most current version of these guidelines.

## Technical Matters

**Calculation of days of suspension.** As was the case in prior versions of the *FINRA Sanction Guidelines*, recommendations for the imposition of suspensions contained herein distinguish between suspensions for 30 or fewer days and 31 or more days. In these guidelines, the NAC recommends that a suspension of 30 or fewer days be measured in *business days,* while a suspension of 31 or more days be measured in *calendar days*.

**Censures.** These guidelines do not specifically recommend whether or not Adjudicators should impose censures under any of the individual sanction guidelines for particular violations. In the following two instances, however, Adjudicators generally should not impose censures: 1) in cases in which the total monetary sanction (fines, disgorgement, and restitution) is $5,000 or less and the disciplinary action (regardless of the number of violations alleged) involves the violations indicated in Schedule A to these guidelines; and 2) in cases in which an Adjudicator imposes a bar, expulsion or suspension. Adjudicators should impose censures in cases in which fines above $5,000 are reduced or eliminated due to a respondent's inability to pay or bankruptcy. Adjudicators also may impose censures in cases in which this policy would suggest no censure if the Adjudicator determines that extraordinary circumstances exist.[6]

**Change in terminology; "actions" replaces "violations."** Many of the guidelines recommend progressively escalating monetary sanctions for second and subsequent disciplinary "actions." The term "actions" is used to acknowledge that every violation of a rule will not necessarily rise to the level of a formal disciplinary action by FINRA, and also to reflect that, as discussed herein, multiple violations may be aggregated or "batched" into one "action" (see General Principle no. 4).

> An "action" means a Letter of Acceptance, Waiver and Consent (AWC), a settled case or a fully litigated case. FINRA Regulation staff-issued Cautionary Action Letters and staff interviews are informal actions that are not included for purposes of the *FINRA Sanction Guidelines* in the term "action."

**Fines.** Fines may be imposed individually as to each respondent in a case, or jointly and severally as to two or more respondents.

6 Interested parties are directed to *NASD Notice to Members 99-91* (November 1999) for additional information on FINRA's Censure Policy.

**Monetary sanctions–Imposition and collection of monetary sanctions.** FINRA has identified the circumstances under which Adjudicators generally will impose and FINRA generally will collect monetary sanctions. In that the overriding purpose of all disciplinary sanctions is to remedy misconduct, deter future misconduct and protect the investing public, Adjudicators may exercise their discretion in applying FINRA's policy on the imposition and collection of monetary sanctions as necessary to achieve FINRA's regulatory purposes. **The following lists of violations may not be exhaustive and these recommendations also may be appropriate for other types of cases.**[7]

- Adjudicators generally should not impose a fine if an individual is barred and there is no customer loss in cases involving the following types of misconduct:
  - failure to respond under FINRA Rule 8210;
  - exam cheating; and
  - private securities transactions (if the Adjudicator does not order disgorgement or restitution).
- Adjudicators generally should not impose a fine if an individual is barred and the Adjudicator has ordered restitution or disgorgement of ill-gotten gains as appropriate to remediate the misconduct in cases involving the following types of misconduct:
  - conversion or improper use of funds or securities;
  - forgery; and
  - sales practice and private securities transaction cases (if only one or a small number of customers are harmed).
- Adjudicators generally should impose a fine and require payment of restitution and disgorgement even if an individual is barred in all sales practice cases if:
  - the case involves widespread, significant and identifiable customer harm; or
  - the respondent has retained substantial ill-gotten gains.
- In all cases, Adjudicators may exercise their discretion and, if a bar is imposed, refrain from imposing a fine, but require proof of payment of an order of restitution when a respondent files an application for re-entry into the securities industry.[8] Adjudicators also may, in their discretion, impose a suspension and a fine, but require proof of payment of the fine when the respondent re-enters the securities industry. In this regard, Adjudicators should consider the following factors:
  - whether the respondent is suspended or otherwise not in the securities industry when the sanction is imposed; and
  - the number of customers harmed.

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7 Interested parties are directed to NASD *Notice to Members 99-86* (October 1999) for additional information on FINRA's Monetary Sanctions Policy.

8 Adjudicators have the discretion to impose post-judgment interest on restitution orders.

**Monetary sanctions—payment of monetary sanctions.** Respondents may be permitted to pay fines and costs through an installment payment plan. Installment payment plans generally will be limited to two years (although in extraordinary cases, installment payment plans may be extended to not more than five years). Respondents who are allowed
to utilize an installment payment plan will be required to execute promissory notes that track the installment payment plan.

**Organization.** These guidelines are organized into 11 subject-matter categories and arranged alphabetically by name in each category. In addition, the index lists all the guidelines alphabetically by name.

**Restitution—Payment of interest.** When ordering restitution, Adjudicators may consider requiring the payment of interest on the base amount. Generally, interest runs from the date(s) of the violative conduct and should be calculated at the rate established for the underpayment of federal income tax in Section 6621 of the Internal Revenue Code, 26 U.S.C. Section 6621(a)(2). If appropriate, Adjudicators may order payment to a state escheat fund of any amount that a respondent is not able to pay in restitution because he or she is unable, after reasonable and documented efforts, to locate a customer or other party to whom payment is owed.

**Suspensions, bars and expulsions.** These guidelines recommend suspensions that do not exceed two years. This upper limit is recommended because of the NAC's sense that, absent extraordinary circumstances, any misconduct so serious as to merit a suspension of more than two years probably should warrant a bar (of an individual) or expulsion (of a member firm) from the securities industry. Notwithstanding the NAC's recommendation in these guidelines to impose suspensions that do not exceed two years, under FINRA's rules, an Adjudicator may suspend the membership of a member or the registration of a person associated with a member for a definite period that may exceed two years or for an indefinite period with a termination contingent on the performance of a particular act.

It should be noted that an individual who is barred from associating with a member firm in any capacity generally may not re-enter the industry. Although a barred individual may seek special permission to re-enter the industry via FINRA's eligibility process, to date, the NAC has disfavored applications for re-entry.[9]

9 In Securities Exchange Act Release No. 34720 (September 26, 1994), Securities and Exchange Commission staff indicated in a letter to various self-regulatory organizations, including FINRA, that "[h]enceforth, imposition of an unqualified bar evidences the Commission's conclusion that the public interest is served by permanently excluding the barred person from the securities industry. Accordingly, absent extraordinary circumstances, a person subject to an unqualified bar will be unable to establish that it is in the public interest to permit reentry to the securities industry."

# I. Activity Away From Associated Person's Member Firm

- Outside Business Activities—Failure to Comply With Rule Requirements
- Selling Away (Private Securities Transactions)
- Transactions for or by Associated Persons—Failure to Comply With Rule Requirements

# Outside Business Activities—Failure to Comply With Rule Requirements

FINRA Rules 2010 and 3270

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br>1. Whether the outside activity involved customers of the firm.<br>2. Whether the outside activity resulted directly or indirectly in injury to customers of the firm and, if so, the nature and extent of the injury.<br>3. The duration of the outside activity, the number of customers and the dollar volume of sales.<br>4. Whether the respondent's marketing and sale of the product or service could have created the impression that the employer (member firm) had approved the product or service.<br>5. Whether the respondent misled his or her employer member firm about the existence of the outside activity or otherwise concealed the activity from the firm. | Fine of $2,500 to $50,000.[1] | When the outside business activities do not involve aggravating conduct, consider suspending the respondent for up to 30 business days.<br><br>When the outside business activities involve aggravating conduct, consider a longer suspension of up to one year.<br><br>In egregious cases, including those involving a substantial volume of activity or significant injury to customers of the firm, consider a longer suspension or a bar. |

1 As set forth in General Principle No. 6, Adjudicators may increase the recommended fine amount by adding the amount of a respondent's financial benefit.

# Selling Away (Private Securities Transactions) *(continued)*

FINRA Rule 2010 and NASD Rule 3040

| Principal Considerations in Determining Sanctions[1] | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br>1. The dollar volume of sales.<br>2. The number of customers.<br>3. The length of time over which the selling away activity occurred.<br>4. Whether the product sold away has been found to involve a violation of federal or state securities laws or federal, state or SRO rules.<br>5. Whether the respondent had a proprietary or beneficial interest in, or was otherwise affiliated with, the selling enterprise or issuer and, if so, whether respondent disclosed this information to his or her customers.<br>6. Whether respondent attempted to create the impression that his or her employer (member firm) sanctioned the activity, for example, by using the employer's premises, facilities, name and/or goodwill for the selling away activity or by selling a product similar to the products that the employer (member firm) sells. | ***Associated Person***<br>Fine of $5,000 to $50,000.[1] | ***Associated Person***<br>The first step in determining sanctions is to assess the extent of the selling away, including the dollar amount of sales, the number of customers and the length of time over which the selling away occurred. Adjudicators should consider the following range of sanctions based on the dollar amount of sales:<br>▶ Up to $100,000 in sales: 10 business days to 3 months<br>▶ $100,000 to $500,000: 3 to 6 months<br>▶ $500,000 to $1,000,000: 6 to 12 months<br>▶ Over 1,000,000: 12 months to a bar<br>Following this assessment, Adjudicators should consider other factors as described in the Principal Considerations for this Guideline and the General Principles applicable to all Guidelines. The presence of one or more mitigating or aggravating factors may either raise or lower the above-described sanctions. |

1 As provided for in General Principle No. 6, Adjudicators should increase the recommended fine amount by adding the amount of a respondent's financial benefit.

# Selling Away (Private Securities Transactions)

FINRA Rule 2010 and NASD Rule 3040

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br><br>7. Whether the respondent's selling away activity resulted, either directly or indirectly, in injury to the investing public and, if so, the nature and extent of the injury.<br>8. Whether the respondent sold away to customers of his or her employer (member firm).<br>9. Whether the respondent provided his or her employer firm with verbal notice of the details of the proposed transaction and, if so, the firm's verbal or written response, if any.<br>10. Whether the respondent sold away after being instructed by his or her firm not to sell the type of the product involved or to discontinue selling the specific product involved in the case.<br>11. Whether the respondent participated in the sale by referring customers or selling the product directly to customers.<br>12. Whether the respondent recruited other registered individuals to sell the product.<br>13. Whether the respondent misled his or her employer (member firm) about the existence of the selling away activity or otherwise concealed the selling away activity from the firm. | ***Member Firm***<br><br>Where member firm receives written notice of a private securities transaction, but fails to provide written notice of approval, disapproval or acknowledgement, fine of $2,500 to $10,000.[2] | ***Member Firm***<br><br>Where member firm receives written notice of a private securities transaction, but fails to provide written notice of approval, disapproval or acknowledgement, consider suspending responsible supervisory personnel in any or all capacities for up to two years. |

2 If the allegations involve a member's failure to supervise the selling away activity, then Adjudicators should also consider the Supervision–Failure to Supervise guideline.

# Transactions for or by Associated Persons—Failure to Comply With Rule Requirements

FINRA Rule 2010 and NASD Rule 3050[1]

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br><br>1. Whether violative transactions presented real or perceived conflicts of interest for the employer firm and/or customers.<br>2. Whether violative transaction(s) involved violations of the Restrictions on the Purchase and Sale of Initial Public Offerings (FINRA Rule 5130).<br>3. Whether the respondent provided verbal notice of the violative transactions to the employer member and/or executing member, and whether the employer member verbally acquiesced. | ***Associated Person***<br><br>Fine of $1,000 to $25,000.<br><br>***Executing Member Firm***<br><br>Fine of $2,500 to $50,000. | ***Associated Person***<br><br>In egregious cases, consider suspending the associated person in any or all capacities for up to two years or barring the associated person.<br><br>***Executing Member Firm***<br><br>In egregious cases, consider suspending the firm with respect to any or all activities or functions for up to two years. Also consider suspending the responsible individual at the executing firm in any or all capacities for up to two years or barring the responsible individual. |

1 This guideline also is appropriate for violations of MSRB Rule G-28.

# II. Arbitration

- Arbitration Award—Failure to Honor or Failure to Honor in a Timely Manner

# Arbitration Award—Failure to Honor or Failure to Honor in a Timely Manner

FINRA Rules 2010 and 10330[1]

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br><br>1. Whether the respondent has paid any portion of the arbitration award.<br>2. Whether the respondent has made a good-faith attempt to satisfy the award in whole or in part. Consider the promptness of any such good-faith effort.<br>3. Whether the respondent negotiated a settlement or payment schedule with the arbitration claimant and then failed to abide by the terms of the agreement. | ***Failure to Honor***<br><br>Fine of at least $5,000.<br><br>In egregious cases, consider incorporating a daily escalator into the fine amount.<br><br>***Failure to Honor in a Timely Manner***<br><br>Fine of at least $2,500 | ***Failure to Honor***<br><br>Suspend the respondent in all capacities until the respondent satisfies the arbitration award (by payment or fully paid settlement) plus at least 30 additional business days. In egregious cases, consider a bar.<br><br>***Failure to Honor in a Timely Manner***<br><br>Suspend the respondent in all capacities for up to five business days. |

1 In addition, FINRA Rule 9554 indicates that FINRA also may suspend or cancel the membership of a member or the registration of a person for failure to honor an arbitration award or settlement agreement related to an arbitration or mediation under Article V, Section 3 of the FINRA By-Laws. This guideline also is appropriate for violations of MSRB Rule G-35.

## III. Distributions of Securities

- Corporate Financing Rule—Failure to Comply With Rule Requirements
- Engaging in Prohibited Municipal Securities Business
- Escrow Violations—Prohibited Representations in Contingency Offerings; Transmission or Maintenance of Customer Funds in Underwritings
- Restrictions on the Purchase and Sale of Initial Equity Public Offerings Violations
- Unregistered Securities—Sales of

# Corporate Financing Rule—Failure to Comply With Rule Requirements

FINRA Rules 2010 and 5110

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section*** | ***Failure to Comply with Filing Requirements*** | ***Failure to Comply with Filing Requirements*** |
| ***Failure to Comply with Filing Requirements*** | Fine of $2,500 to $25,000. | In egregious cases, consider suspending the firm with respect to any or all activities or functions for five business days and/or suspending the responsible individual in any or all capacities for a period of 30 business days to two years. |
| ***Unfair or Unreasonable Underwriting Compensation*** | ***Unfair or Unreasonable Underwriting Compensation*** | ***Unfair or Unreasonable Underwriting Compensation*** |
| 1. Percentage and dollar amount of unreasonable compensation as compared to maximum amount of underwriting compensation considered fair and reasonable (*see* FINRA Rule 5110. | Fine of $5,000 to $50,000.[1] | ***Individual*** |
| | | Consider suspending the responsible individual in any or all capacities for a period of 30 business days to two years. |
| | | In egregious cases, consider barring the responsible individual. |
| | | ***Firm*** |
| | | Consider suspending the firm with respect to any or all activities or functions for five business days. |
| | | In egregious cases, consider suspending the firm for a longer period of time. |

1 As set forth in General Principle No. 6, Adjudicators may increase the recommended fine amount by adding the amount of a respondent's financial benefit.

# Engaging in Prohibited Municipal Securities Business

MSRB Rule G-37[1]

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br>1. Position in firm of person making contribution.<br>2. Position of official to whom the contribution was made.<br>3. Nature of prohibited municipal securities business in which respondent engaged.<br>4. Whether the respondent firm knew or should have known of contribution.<br>5. Relative size of the contribution. | ***Firm***<br>Fine of $10,000 to $50,000.[2]<br><br>***Responsible Individual***<br>Fine of $10,000 to $50,000.[3] | In cases involving several prohibited municipal underwritings, or reckless conduct on the part of the firm, consider suspending the firm from engaging in municipal securities business with prohibited issuers for up to two years beyond the time proscribed by MSRB Rule G-37 and consider suspending the responsible individual(s) from acting as municipal principal(s) for a similar time period.<br><br>In egregious cases, consider prohibiting the firm from engaging in any future business with prohibited issuers or with the involved official and barring the responsible individual(s) in any or all principal capacities. |

1 MSRB Rule G-37 prohibits dealers from engaging in municipal securities business with an issuer within two years after any contribution to an official of such issuer made by the dealer, any municipal finance professional associated with the dealer, and any political action committee controlled by the dealer or any municipal finance professional.

2 As set forth in General Principle No. 6, Adjudicators may increase the recommended fine amount by adding the amount of a respondent's financial benefit.

3 As set forth in General Principle No. 6, Adjudicators may increase the recommended fine amount by adding the amount of a respondent's financial benefit.

## Escrow Violations—Prohibited Representations in Contingency Offerings; Transmission or Maintenance of Customer Funds in Underwritings

FINRA Rule 2010; SEC Rule 15c2-4 and SEC Rule 10b-9

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section*** | | |
| 1. Amount of commissions and/or other underwriting compensation retained by the respondent.<br>2. Whether the respondent was affiliated with the issuer or other entity to which customer funds were released.<br>3. Whether subscription funds were released from escrow before the contingency occurred. | | |
| ***SEC Rule 15c2-4*** | ***SEC Rule 15c2-4*** | ***SEC Rule 15c2-4*** |
| 4. Extent to which the customer funds were exposed to risk or loss. | Fine of $1,000 to $10,000. | In egregious cases, consider suspending the firm with respect to any or all activities or functions and/or the responsible individual in any or all capacities for up to 30 business days. |
| ***SEC Rule 10b-9*** | ***SEC Rule 10b-9*** | ***SEC Rule 10b-9*** |
| 5. Extent of failure to satisfy the contingency described in the prospectus or offering circular.<br>6. Whether the respondent used non-*bona fide* sales to give the false appearance that the contingency was satisfied. | Fine of $5,000 to $50,000. | In egregious cases, consider suspending the firm with respect to any or all activities or functions and/or the responsible individual in any or all capacities for up to two years. I0n appropriate cases, consider requiring a rescission offer. |

# Restrictions on the Purchase and Sale of Initial Equity Public Offerings Violations

FINRA Rules 2010 and 5130

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br><br>1. Nature of restricted account(s) involved. Consider whether the account is absolutely or conditionally restricted.<br>2. Whether the respondent has any interest in the restricted account(s).<br>3. Whether the case involves *bona fide* dispute regarding normal investment practice, proportion of allocation or substantiality of allocation.<br>4. Whether the respondent engaged in misconduct for the purpose of improperly conferring financial benefit on another person or entity. | If the respondent is the restricted buyer, a fine of $1,000 to $15,000.[1]<br><br>If the respondent is the selling member firm and/or an associated person of the firm, a fine of $1,000 to $15,000.[2]<br><br>If the restricted buyer is not subject to FINRA jurisdiction, "transaction profit" may be added to the fine for the selling member and/or associated person. In egregious cases or those with evidence of willful misconduct, consider a higher fine of up to three times the "transaction profit." | ***Individual***<br><br>Consider suspending the respondent representative (buyer or seller) in any or all capacities for up to 30 business days.<br><br>In egregious cases, consider a longer suspension (of up to two years) or a bar.<br><br>***Firm***<br><br>Consider suspending the respondent firm with respect to any or all activities or functions for five to 10 business days.<br><br>In egregious cases, consider a longer suspension (of up to two years) or an expulsion. |

# Unregistered Securities—Sales of

FINRA Rule 2010 and Section 5 of the Securities Act of 1933

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br>1. Whether the respondent attempted to comply with an exemption from registration.<br>2. Whether the respondent sold before effective date of registration statement.<br>3. Share volume and dollar amount of transactions involved.<br>4. Whether the respondent had implemented reasonable procedures to ensure that it did not participate in an unregistered distribution.<br>5. Whether the respondent disregarded "red flags" suggesting the presence of unregistered distribution. | Fine of $2,500 to $50,000.[1]<br>In egregious cases, consider a higher fine. | ***Individual***<br>In egregious cases, consider a lengthier suspension in any or all capacities for up to two years or a bar.<br>***Firm***<br>In egregious cases, consider suspending the firm with respect to any or all activities or functions for up to 30 business days or until procedural deficiencies are remedied. |

1. As set forth in General Principle No. 6, Adjudicators may increase the recommended fine amount by adding the amount of a respondent's financial benefit. Where respondent is the beneficial owner or an affiliate of the owner of the unregistered securities, also consider including all sales proceeds or other benefits received by the respondent directly or indirectly (possibly by requiring a rescission offer to the investors).

# IV. Financial and Operational Practices

- Customer Confirmations—Failure to Comply With Rule Requirements
- Customer Protection Rule—Failure to Comply With Rule Requirements
- Net Capital Violations
- Recordkeeping Violations
- Regulation T and Margin Requirements—Violations of Regulation T and/or FINRA Margin Requirements

# Customer Confirmations—Failure to Comply With Rule Requirements

SEC Rule 10b-10[1] and NASD Rule 2230

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br><br>1. Nature and materiality of the inaccurate or missing information.<br>2. Number of affected confirmations. | ***First Action***<br><br>Fine of $1,000 to $5,000.<br><br>***Second Action***<br><br>Fine of $5,000 to $10,000.<br><br>***Subsequent Actions***<br><br>Fine of $10,000 to $100,000. | ***Firm***<br><br>Consider suspending the firm with respect to any or all activities or functions for up to 30 business days.<br><br>In egregious cases, consider a lengthier suspension (of up to two years) or expulsion of the firm.<br><br>***Individual***<br><br>Consider suspending the responsible party in any or all capacities for up to 30 business days.<br><br>In egregious cases, consider a lengthier suspension (of up to two years) or a bar. |

1 This guideline is also appropriate for violations of MSRB Rule G-15.

# Customer Protection Rule—Failure to Comply With Rule Requirements

FINRA Rule 2010 and SEC Rule 15c3-3

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br><br>1. Extent to which the respondent exposed customer funds to potential risk or loss. | Fine of $1,000 to $50,000.<br><br>Repeated violations should carry individual fine for Financial Principal and/or responsible supervisor. | ***Firm***<br><br>Consider suspending the firm with respect to any or all activities or functions for up to 30 business days.<br><br>In egregious cases, consider a lengthier suspension (of up to two years) or expulsion of the firm.<br><br>***Individual***<br><br>Consider suspending the Financial Principal or responsible party in any or all capacities for up to 30 business days.<br><br>In egregious cases, consider a lengthier suspension (of up to two years) or a bar. |

# Net Capital Violations

FINRA Rule 2010 and SEC Rule 15c3-1

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br><br>1. Whether the firm continued in business while knowing of deficiencies/inaccuracies or voluntarily ceased conducting business because of the deficiencies/inaccuracies.<br><br>2. Whether respondent attempted to conceal deficiencies or inaccuracies by any means, including "parking" of inventory and inflating "mark-to-market" calculations. | Fine of $1,000 to $50,000. | ***Firm***<br><br>Consider suspending the firm with respect to any or all activities or functions for up to 30 business days.<br><br>In egregious cases, consider a lengthier suspension (of up to two years) or expulsion of the firm.<br><br>***Individual***<br><br>Consider suspending the Financial Principal or responsible party in any or all capacities for up to 30 business days.<br><br>In egregious cases, consider a lengthier suspension (of up to two years) or a bar. |

# Recordkeeping Violations

FINRA Rule 2010, NASD Rule 3110 and SEC Rules 17a-3 and 17a-4[1]

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br><br>1. Nature and materiality of inaccurate or missing information. | Fine of $1,000 to $10,000.<br><br>In egregious cases, fine of $10,000 to $100,000. | ***Firm***<br><br>Consider suspending the firm with respect to any or all activities or functions for up to 30 business days.<br><br>In egregious cases, consider a lengthier suspension (of up to two years) or expulsion of the firm.<br><br>***Individual***<br><br>Consider suspending the Financial Principal or responsible party in any or all capacities for up to 30 business days.<br><br>In egregious cases, consider a lengthier suspension (of up to two years) or a bar. |

1 This guideline also is appropriate for violations of MSRB Rules G-8 and G-15.

## Regulation T and Margin Requirements—Violations of Regulation T and/or FINRA Margin Requirements

Regulation T; Part 220 Issued by the Board of Governors of the Federal Reserve Board; and FINRA Rules 2010 and 4210

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br><br>1. Extent and nature of the respondent's failure to comply. | Fine of $1,000 to $50,000.<br><br>Repeated violations should carry an individual fine for the responsible individual. | ***Firm***<br><br>Consider suspending the firm with respect to any or all activities or functions for up to 30 business days.<br><br>In egregious cases, consider a lengthier suspension (of up to two years) or expulsion of the firm.<br><br>***Individual***<br><br>Consider suspending the responsible individual in any or all capacities for up to 30 business days.<br><br>In egregious cases, consider a lengthier suspension (of up to two years) or a bar. |

# V. Impeding Regulatory Investigations

- Confidentiality Agreements—Settling With Customer in Exchange for Customer Agreement Not to Cooperate With Regulatory Authorities
- Failure to Respond, Failure to Respond Truthfully or in a Timely Manner, or Providing a Partial but Incomplete Response to Requests Made Pursuant to FINRA Rule 8210
- Settling Customer Complaints Away From the Firm

# Confidentiality Agreements—Settling With Customer in Exchange for Customer Agreement Not to Cooperate With Regulatory Authorities

FINRA Rule 2010

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br>1. Nature of restriction contained in confidentiality clause.<br>2. Whether the respondent voluntarily released the customer from terms of confidentiality agreement without regulatory intervention.<br>3. Whether the respondent released the customer from terms of confidentiality agreement (as applied to cooperation with regulatory authorities) after regulator advised the respondent to do so. | Fine of $2,500 to $50,000. | Consider suspending the individual respondent in any or all capacities or suspending the firm (and/or responsible individual) with respect to any or all activities or functions for a period of one month to two years.<br><br>In egregious cases, expel the firm (and/or bar responsible individual) or bar the individual respondent. |

# Failure to Respond, Failure to Respond Truthfully or in a Timely Manner, or Providing a Partial but Incomplete Response to Requests Made Pursuant to FINRA Rule 8210

FINRA Rules 2010 and 8210

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br><br>***Failure to Respond or to Respond Truthfully***<br><br>1. Importance of the information requested as viewed from FINRA's perspective.<br><br>***Providing a Partial but Incomplete Response***<br><br>1. Importance of the information requested that was not provided as viewed from FINRA's perspective, and whether the information provided was relevant and responsive to the request.<br>2. Number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response.<br>3. Whether the respondent thoroughly explains valid reason(s) for the deficiencies in the response.<br><br>***Failure to Respond in a Timely Manner***<br><br>1. Importance of the information requested as viewed from FINRA's perspective.<br>2. Number of requests made and the degree of regulatory pressure required to obtain a response.<br>3. Length of time to respond. | ***Failure to Respond or to Respond Truthfully***<br><br>Fine of $25,000 to $50,000.<br><br>***Providing a Partial but Incomplete Response***<br><br>Fine of $10,000 to $50,000.<br><br>***Failure to Respond in a Timely Manner***<br><br>Fine of $2,500 to $25,000. | ***Individual***<br><br>If the individual did not respond in any manner, a bar should be standard.[1]<br><br>Where the individual provided a partial but incomplete response, a bar is standard unless the person can demonstrate that the information provided substantially complied with all aspects of the request.<br><br>Where mitigation exists, or the person did not respond in a timely manner, consider suspending the individual in any or all capacities for up to two years.[2]<br><br>***Firm***<br><br>In an egregious case, expel the firm. If mitigation exists, consider suspending the firm with respect to any or all activities or functions for up to two years.<br><br>In cases involving failure to respond in a timely manner, consider suspending the responsible individual(s) in any or all capacities and/or suspending the firm with respect to any or all activities or functions for a period of up to 30 business days. |

1 When a respondent does not respond until after FINRA files a complaint, Adjudicators should apply the presumption that the failure constitutes a complete failure to respond.

2 The lack of harm to customers or benefit to a violator does not mitigate a Rule 8210 violation.

# Settling Customer Complaints Away From the Firm

FINRA Rule 2010

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br>1. Whether the respondent provided the employer with verbal notice of settlement and the employer acquiesced, or whether the respondent deceived his employer.<br>2. Whether the actions delayed or obviated the filing of required Forms U-4 or U-5 or NASD Rule 3070 filings. | Fine of $2,500 to $50,000. | Consider suspending the respondent in any or all capacities for up to two years. In egregious cases, consider barring respondent. |

# VI. Improper Use of Funds/Forgery

- Conversion or Improper Use of Funds or Securities
- Forgery and/or Falsification of Records

# Conversion or Improper Use of Funds or Securities

FINRA Rules 2010 and 2150[1], and NASD Rule 2330 and IM-2330

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| *See Principal Considerations in Introductory Section* | ***Conversion***[2]<br><br>(No fine recommended, since a bar is standard.)<br><br>***Improper Use***<br><br>Fine of $2,500 to $50,000. | ***Conversion***<br><br>Bar the respondent regardless of amount converted.<br><br>***Improper Use***<br><br>Consider a bar. Where the improper use resulted from the respondent's misunderstanding of his or her customer's intended use of the funds or securities, or other mitigation exists, consider suspending the respondent in any or all capacities for a period of six months to two years and thereafter until the respondent pays restitution. |

1 This guideline also is appropriate for violations of MSRB Rule G-25.

2 Conversion generally is an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it.

# Forgery and/or Falsification of Records

FINRA Rule 2010

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br>1. Nature of the document(s) forged or falsified.<br>2. Whether the respondent had a good-faith, but mistaken, belief of express or implied authority. | Fine of $5,000 to $100,000. | In cases where mitigating factors exist, consider suspending respondent in any or all capacities for up to two years. In egregious cases, consider a bar. |

# VII. Qualification and Membership

- Branch Offices—Failure to Register
- Cheating, Using an Impostor, or Possessing Unauthorized Materials in Qualifications Examinations or in the Regulatory Element of Continuing Education
- Continuing Education (Firm Element)—Failure to Comply With Rule Requirements
- Continuing Education (Regulatory Element)—Failure to Comply With Rule Requirements
- Disqualified Person Associating With Firm Prior to Approval; Firm Allowing Disqualified Person to Associate Prior to Approval
- Member Agreement Violations
- Registration Violations

# Branch Offices—Failure to Register

FINRA Rule 2010 and NASD IM-1000-4

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br>1. Number of branch office locations not properly registered.<br>2. Duration of period when branch office(s) were not properly registered.<br>3. The manner and scope of activities conducted in unregistered branch office(s). | Fine of $1,000 to $5,000 plus the dollar amount of registration fees that would have been assessed if the branch had been registered properly. | ***Individual***<br>In egregious cases (including, but not limited to, those in which the firm previously has engaged in similar misconduct), consider suspending the responsible individual in any or all capacities for up to 30 business days.<br>***Firm***<br>In egregious cases (including, but not limited to, those in which the firm previously has engaged in similar misconduct), consider suspending the firm and/or the branch office at issue with respect to any or all activities or functions for up to five business days. Also require demonstrated compliance with the rule. |

# Cheating, Using an Impostor, or Possessing Unauthorized Materials in Qualifications Examinations or in the Regulatory Element of Continuing Education

FINRA Rule 2010[1]

| Principal Considerations in Determining Sanctions[2] | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br><br>1. Whether nature of material indicated that it would not be useful for taking examination; *i.e.*, whether content of material makes it clear that respondent did not intend to cheat. | ***Cheating***<br><br>***Unauthorized Possession That Does Not Rise to the Level of Cheating***<br><br>Fine of $5,000 to $25,000. | A bar is standard. If mitigation is documented (only in cases of unauthorized possession that do not rise to the level of cheating), consider a lesser sanction, such as suspending the individual in any or all capacities for up to two years. |

1 This guideline also is appropriate for violations of MSRB Rule G-3.

2 (a) The Membership and Registration Rules prohibit applicants from receiving assistance while taking an examination; (b) study outlines provided by FINRA Regulation Qualifications Department advise applicants that examinations are "closed book"; (c) examination pamphlet given to applicants advises that unauthorized materials may not be brought by the applicant into the testing center; (d) applicants taking an examination by computer must certify by prescribed keystrokes, to continue computer operation, that they will take the examination in the prescribed fashion and not receive assistance while taking the examination and, for paper examinations, applicants must sign a certification before beginning examination; and (e) proctor instructions before examinations advise applicants that unauthorized materials are not allowed during the examination.

# Continuing Education (Firm Element)—Failure to Comply With Rule Requirements[1]

FINRA Rule 2010[2] and NASD Rule 1120

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br><br>1. Whether the firm's misconduct effectively denied several registered persons access to participation in firm-sponsored continuing education.<br>2. Whether the firm has completed a training needs analysis and/or has developed written training plans aligned with the business activities of the firm. | ***Individual***<br><br>Fine of $1,000 to $5,000.<br><br>***Firm and/or Responsible Principal***<br><br>Fine of $2,500 to $20,000. | ***Individual***<br><br>In egregious cases, such as where there is intentional misconduct and/or repeat violations, suspend the individual in any or all capacities for 30 or more days (up to two years) or consider a bar.<br><br>***Firm and/or Responsible Principal***<br><br>In cases involving multiple violations or a violation of extended duration, where the firm has taken no corrective actions and appears unwilling to comply, consider suspending the firm (and/or responsible principal) with respect to any or all activities or functions for up to five business days and requiring demonstrated compliance with the requirements of NASD Rule 1120.<br><br>In egregious cases, such as where the firm has not conducted a needs analysis or developed a written training plan, consider suspending the firm (and/or responsible principal) for a longer period (up to two years) or expelling the firm (and/or barring responsible principal). |

1 This guideline is intended to apply to member firms that have not developed sufficient continuing education programs and/or made available to registered employees continuing education programs, and to individuals who fail to comply with the firm educational program.

2 This guideline also is appropriate for violations of MSRB Rule G-3.

# Continuing Education (Regulatory Element)—Failure to Comply With Rule Requirements[1]

FINRA Rule 2010[2] and NASD Rule 1120

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br><br>1. Nature and extent of responsibilities of inactive person(s).<br><br>**Violations by Individuals**<br><br>2. Whether the respondent knowingly functioned with inactive registration.<br><br>**Violations by Firms**<br><br>3. Whether the firm knowingly allowed individual to function while registration was inactive. | ***Individual***<br><br>Fine of $1,000 to $5,000.[3]<br><br>***Firm***<br><br>Fine of $2,500 to $20,000.[4] | ***Individual***<br><br>In egregious cases, such as where there is intentional misconduct and/or repeat violations, suspend individual in any or all capacities for 30 or more days (up to two years) or consider a bar.<br><br>***Firm***<br><br>Where the firm has taken no corrective actions and appears unwilling to comply, consider suspending the firm (and/or responsible principal) with respect to any or all activities or functions for up to five business days. In egregious cases, such as those where the firm knowingly allowed a person with lapsed registration to act in a registered capacity and/or in cases with other aggravating factors, consider a longer suspension (of up to two years) of the firm (and/or responsible principal) or expulsion of the firm (and/or bar of the responsible principal). |

1 This guideline is intended to apply to individuals who have not complied with the Regulatory Element and are acting in a registered capacity and to firms that have employed one or more individuals whose registration has lapsed for non-compliance with continuing education requirements and who continue to work in registered capacities.

2 This guideline also is appropriate for violations of MSRB Rule G-3.

3 As set forth in General Principle No. 6, Adjudicators may increase the recommended fine amount by adding the amount of a respondent's financial benefit.

4 As set forth in General Principle No. 6, Adjudicators may increase the recommended fine amount by adding the amount of a respondent's financial benefit.

# Disqualified Person Associating With Firm Prior to Approval; Firm Allowing Disqualified Person to Associate Prior to Approval

FINRA Rule 2010, NASD Rule 1031 and Article III, Section 3 of the FINRA By-Laws[1]

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| *See Principal Considerations in Introductory Section*<br><br>1. Nature and extent of the disqualified person's activities and responsibilities.<br>2. Whether Form MC-400 application was pending.<br>3. Whether disqualification resulted from financial and/or securities misconduct. | *Firm and Supervisory Principals*<br><br>Fine of $5,000 to $50,000.[2]<br><br>*Disqualified Person*<br><br>Fine of $5,000 to $50,000.[3] | *Firm and Supervisory Principals*<br><br>In egregious cases, consider suspending the firm with respect to any or all activities or functions for up to two years and the suspending supervisory principal in any or all capacities for up to two years or barring the supervisory principal, particularly where he or she knowingly allowed a disqualified person to become associated.<br><br>*Disqualified Person*<br><br>In egregious cases, consider a bar. |

1 This guideline also is appropriate for violations of MSRB Rule G-4.

2 As set forth in General Principle No. 6, Adjudicators may increase the recommended fine amount by adding the amount of a respondent's financial benefit.

3 As set forth in General Principle No. 6, Adjudicators may increase the recommended fine amount by adding the amount of a respondent's financial benefit.

# Member Agreement Violations

FINRA Rule 2010

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br>1. Whether the respondent breached a material provision of the agreement.<br>2. Whether the respondent breached a provision of the agreement that contained a restriction that was particular to the firm.<br>3. Whether the firm had applied for, was in the process of applying for, or had been denied a waiver of a restriction at the time of the misconduct. | Fine of $2,500 to $50,000.[1] | In cases involving a serious breach of a restrictive agreement, suspend the firm with respect to any or all activities or functions and/or suspend the responsible individual in any or all capacities for up to two years.<br><br>In egregious cases, consider expelling the firm and/or barring the responsible individual. |

1 As set forth in General Principle No. 6, Adjudicators may increase the recommended fine amount by adding the amount of a respondent's financial benefit.

# Registration Violations

FINRA Rules 2010 and 1122, and NASD Rules 1000 through 1120[1]

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| 1. Whether the respondent has filed a registration application.<br>2. Nature and extent of the unregistered person's responsibilities. | ***Firm and/or Individual***<br><br>Fine of $2,500 to $50,000[2] | ***Firm***<br><br>In egregious cases, consider suspending the firm with respect to any of all activities or functions for up to 30 business days.<br><br>***Individual***<br><br>Consider suspending the individual in any or all capacities for up to six months.<br><br>In egregious cases, consider a lengthier suspension (of up to two years) or bar. |

1 This guideline also is appropriate for violations of MSRB Rules G-2 and G-3.

2 As set forth in General Principle No. 6, Adjudicators may increase the recommended fine amount by adding the amount of a respondent's financial benefit.

# VIII. Quality of Markets

- Extended Hours Trading Risk Disclosure—Failure to Comply With Rule Requirements
- Anti-Intimidation/Coordination—Failure to Comply With Rule Requirements
- Backing Away
- Best Execution—Failure to Comply With Requirements for Best Execution
- ECN Display Rule—Failure to Comply With Rule Requirements
- Failure to Display Minimum Size in NASDAQ Securities, CQS Securities and OTC Bulletin Board™ Securities
- Limit Order Display Rule—Failure to Comply With Rule Requirements
- Limit Order Protection Rule—Failure to Comply With Rule Requirements
- Locked/Crossed Market—Failure to Comply With Rule Requirements
- Marking the Close or Open
- Options Exercise and Positions Limits—Failure to Comply With Rule Requirements
- Options Positions Reporting—Late Reporting and Failing to Report
- Order Audit Trail System (OATS)™—Late Reporting; Failing to Report; False, Inaccurate or Misleading Reporting; and Clock Synchronization Failure
- Passive Market Making Violations
- Prohibition on Transactions, Publication of Quotations or Publication of Indications of Interest During a Trading Halt
- Reports of Execution Quality and Order Routing
- Short Sale Violations
- Trade Reporting and Compliance Engine (TRACE)—Late Reporting; Failing to Report; False, Inaccurate or Incomplete Reporting
- Trade Reporting—Late Reporting; Failing to Report; False, Inaccurate or Misleading Reporting

# Extended Hours Trading Risk Disclosure—Failure to Comply With Rule Requirements

FINRA Rule 2265

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br>1. Whether the firm failed to provide customer(s) with a risk disclosure statement.<br>2. Whether the firm provided its customer(s) with an inadequate risk disclosure statement, or furnished the risk disclosure statement to its customer(s) in an untimely manner or a manner not designed to provide actual notice.<br>3. In all cases, consider the nature, quality and timing of the risk disclosure actually provided to the customer(s).<br>4. Whether extended-hours trading was appropriate for the affected customer(s). | Fine of $5,000 to $100,000 | Consider suspending the responsible individual in any or all capacities for a period of 10 business days to one year.<br>In egregious cases, particularly cases involving numerous customers, consider suspending for a longer period (of up to two years) or barring the responsible individual and suspending the firm with respect to any or all activities or functions for a period of up to two years. |

# Anti-Intimidation/Coordination—Failure to Comply With Rule Requirements

FINRA Rules 2010 and 5240

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br>1. Whether the behavior was collusive or part of a larger manipulation.<br>2. Whether the behavior attempted to affect or actually affected publicly disseminated quotes or otherwise inhibited market transparency.<br>3. Whether the behavior attempted to or actually resulted in late or inaccurate trade reporting.<br>4. Whether the behavior attempted to or actually altered market prices.<br>5. In the case of intimidation or harassment, nature and content of the respondent's speech, communications and/or harassing behavior.<br>6. The general effect of the behavior on the fair and efficient operation of the securities markets.<br>7. Whether the behavior was repetitive or a single impulsive action. | ***Intimidation/Harassment***<br>Fine of $5,000 to $50,000.<br>In egregious cases, consider a fine in excess of $50,000.<br>***Coordination***<br>Fine of $10,000 to $100,000.<br>In egregious cases, consider a fine in excess of $100,000. | ***Intimidation/Harassment***<br>In egregious cases, suspend the individual respondent in any or all capacities and/or the member firm respondent with respect to any or all activities or functions for a period of 10 business days to two years.<br>In egregious cases involving intimidation, consider barring the individual respondent.<br>***Coordination***<br>Suspend the individual respondent in any or all capacities and/or the member firm respondent with respect to any or all activities or functions for a period of 30 business days to two years.<br>In egregious cases, consider expelling the member firm and/or barring the individual respondent. |

# Backing Away

FINRA Rules 2010 and 5220[1]

| Principal Considerations in Determining Sanctions | Monetary Sanction[2] | Suspension, Bar or Other Sanctions |
|---|---|---|
| *See Principal Considerations in Introductory Section*<br><br>1. Whether the respondent offered contemporaneous trades or otherwise remediated the failures to execute.<br><br>2. While the respondents are responsible for the systems that they use and the third-party vendors that they employ, the appropriate level of sanctions will depend on whether the respondent diligently chose, installed and tested a system that nevertheless malfunctioned; the frequency and thoroughness with which the respondent ensured that the system was operating in compliance with applicable rules; and the care that the respondent exercised in undertaking all necessary steps to correct systems-related malfunctions. The same considerations apply to a respondent that has relied on a third-party vendor's products or services. | **First Action**[3]<br>Fine of $5,000 to $10,000.<br><br>**Second Action**<br>Fine of $10,000 to $50,000.<br><br>**Subsequent Actions**<br>Fine of $10,000 to $100,000.[4] | In egregious cases, consider suspending the firm with respect to any or all activities or functions and/or suspending the responsible individual in any or all capacities for up to two years. |

1 This guideline also is appropriate for violations of MSRB Rule G-13.

2 In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second, or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent's compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range.

3 Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.

4 If the respondent's second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

# Best Execution—Failure to Comply With Requirements for Best Execution

FINRA Rule 2010 and NASD Rule 2320[1]

| Principal Considerations in Determining Sanctions | Monetary Sanction[2] | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br><br>1. Nature of the best execution violation; *i.e.*, whether the execution was at an inferior price or was untimely.<br><br>2. While the respondents are responsible for the systems that they use and the third-party vendors that they employ, the appropriate level of sanctions will depend on whether the respondent diligently chose, installed and tested a system that nevertheless malfunctioned; the frequency and thoroughness with which the respondent ensured that the system was operating in compliance with applicable rules; and the care that the respondent exercised in undertaking all necessary steps to correct systems-related malfunctions. The same considerations apply to a respondent that has relied on a third-party vendor's products or services. | ***Negligent Misconduct***<br><br>**First Action**[3]<br>Fine of $5,000 to $50,000.<br><br>**Second Action**<br>Fine of $10,000 to $100,000.<br><br>**Subsequent Actions**<br>Fine of $10,000 to $200,000.[4]<br><br>***Intentional or Reckless Misconduct***<br><br>Fine of $20,000 to $200,000.<br><br>In egregious cases, consider a fine in excess of $200,000. | ***Negligent Misconduct***<br><br>In egregious cases, consider suspending the responsible individual in any or all capacities and/or the firm with respect to any or all activities or functions for up to 30 business days.<br><br>***Intentional or Reckless Misconduct***<br><br>Suspend the responsible individual in any or all capacities and/or suspend firm with respect to any or all activities or functions for a period of 10 business days to two years.<br><br>In egregious cases, consider barring the individual and/or expelling the firm. |

1 This guideline may also be appropriate for violations of MSRB Rules G-18 and G-30 that do not involve a dealer's excessive profit, but do involve unfair pricing based on an inattention to market value. *See* MSRB Notice 2004-3 (Review of Dealer Pricing Responsibilities) (Jan. 26, 2004).

2 In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent's compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range. Adjudicators should order restitution or increase the recommended fine amount by adding the amount of a respondent's financial benefit in all cases in which the best execution violation resulted in a quantifiable loss for the customer. In cases involving best execution violations that arose from intentional or reckless misconduct, Adjudicators may consider imposing a set fine amount per violation rather than in the aggregate.

3 Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.

4 If the respondent's second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

# ECN Display Rule—Failure to Comply With Rule Requirements

FINRA Rule 2010 and Regulation NMS, Rule 602

| Principal Considerations in Determining Sanctions | Monetary Sanction[1] | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br>1. Whether the priced order was a customer order, rather than an order entered for the account of the market maker.<br>2. Whether the priced customer order was executed during the period of non-compliance, while other transactions were executed in the marketplace at prices equal to or better than that priced order.<br>3. Evidence of significant adverse impact on market-price discovery or transparency that occurred because the order was not displayed at all, was displayed only after long delay, or was displayed in a grossly incorrect manner.<br>4. While respondents are responsible for the systems that they use and the third-party vendors that they employ, the appropriate level of sanctions will depend on whether the respondent diligently chose, installed and tested a system that nevertheless malfunctioned; the frequency and thoroughness with which the respondent ensured that the system was operating in compliance with applicable rules; and the care that the respondent exercised in undertaking all necessary steps to correct systems-related malfunctions. The same considerations apply to a respondent that has relied on a third-party vendor's products or services. | **First Action**[2]<br>Fine of $5,000 to $10,000.<br>**Second Action**<br>Fine of $10,000 to $50,000.<br>**Subsequent Actions**<br>Fine of $10,000 to $100,000.[3] | In egregious cases, consider suspending the firm with respect to any or all activities or functions and/or suspending the responsible individual in any or all capacities for up to two years or expelling the firm and/or barring the responsible individual. |

1 In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second, or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent's compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range.

2 Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.

3 If respondent's second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

# Failure to Display Minimum Size in NASDAQ Securities, CQS Securities and OTC Bulletin Board Securities

FINRA Rules 2010, 6170 and 6272, and SEC Rule 144A

| Principal Considerations in Determining Sanctions | Monetary Sanction[1] | Suspension, Bar, or Other Sanctions |
|---|---|---|
| *See Principal Considerations in Introductory Section* | **First Action**[2]<br>Fine of $5,000 to $10,000.<br><br>**Second Action**<br>Fine of $10,000 to $50,000.<br><br>**Subsequent Actions**<br>Fine of $10,000 to $100,000.[3] | In egregious cases, consider suspending the firm with respect to any or all activities or functions for up to 20 business days and/or suspending the responsible individual in any or all capacities for up to 20 business days. |

1 In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second, or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent's compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range.

2 Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.

3 If respondent's second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

# Limit Order Display Rule—Failure to Comply With Rule Requirements

FINRA Rule 2010 and Regulation NMS, Rule 604

| Principal Considerations in Determining Sanctions | Monetary Sanction[1] | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br>1. Whether the customer limit order was executed during the period of non-compliance and whether other transactions were executed at prices equal to or better than that customer limit order.<br>2. Whether the misconduct had a significant adverse impact on market-price discovery or transparency.<br>3. While respondents are responsible for the systems that they use and the third-party vendors that they employ, the appropriate level of sanctions will depend on whether the respondent diligently chose, installed and tested a system that nevertheless malfunctioned; the frequency and thoroughness with which the respondent ensured that the system was operating in compliance with applicable rules; and the care that the respondent exercised in undertaking all necessary steps to correct systems-related malfunctions. The same considerations apply to a respondent that has relied on a third-party vendor's products or services. | **First Action[2]**<br>Fine of $5,000 to $10,000.<br>**Second Action**<br>Fine of $10,000 to $50,000.<br>**Subsequent Actions**<br>Fine of $10,000 to $100,000.[3] | In egregious cases, consider suspending the firm with respect to any or all activities or functions and/or suspending the responsible individual in any or all capacities for up to two years or expelling the firm and/or barring the responsible individual. |

1 In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second, or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent's compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range.

2 Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.

3 If respondent's second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

# Limit Order Protection Rule—Failure to Comply With Rule Requirements

FINRA Rule 2010 and NASD IM-2110-2

| Principal Considerations in Determining Sanctions | Monetary Sanction[1] | Suspension, Bar or Other Sanctions |
|---|---|---|
| *See Principal Considerations in Introductory Section*<br>1. Whether respondent traded ahead of and/or failed to execute a customer limit order.<br>2. While respondents are responsible for the systems that they use and the third-party vendors that they employ, the appropriate level of sanctions will depend on whether the respondent diligently chose, installed and tested a system that nevertheless malfunctioned; the frequency and thoroughness with which the respondent ensured that the system was operating in compliance with applicable rules; and the care that the respondent exercised in undertaking all necessary steps to correct systems-related malfunctions. The same considerations apply to a respondent that has relied on a third-party vendor's products or services. | **First Action**[2]<br>Fine of $5,000 to $10,000.<br>**Second Action**<br>Fine of $10,000 to $50,000.<br>**Subsequent Actions**<br>Fine of $10,000 to $100,000.[3] | In egregious cases, consider suspending the firm with respect to any or all activities or functions and/or suspending the responsible individual in any or all capacities for up to two years. |

1 In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second, or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent's compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range.

2 Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.

3 If respondent's second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

# Locked/Crossed Market—Failure to Comply With Rule Requirements

FINRA Rules 2010, 6170 and 6272

| Principal Considerations in Determining Sanctions | Monetary Sanction[1] | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br><br>1. Whether the locked/crossed market affected the market at a particularly sensitive time, such as at the market open, at commencement of secondary trading or on an expiration date.<br><br>2. While respondents are responsible for the systems that they use and the third-party vendors that they employ, the appropriate level of sanctions will depend on whether the respondent diligently chose, installed and tested a system that nevertheless malfunctioned; the frequency and thoroughness with which the respondent ensured that the system was operating in compliance with applicable rules; and the care that the respondent exercised in undertaking all necessary steps to correct systems-related malfunctions. The same considerations apply to a respondent that has relied on a third-party vendor's products or services. | **First Action[2]**<br>Fine of $5,000 to $10,000.<br><br>**Second Action**<br>Fine of $10,000 to $50,000.<br><br>**Subsequent Actions**<br>Fine of $10,000 to $100,000.[3] | In egregious cases, consider suspending the firm with respect to any or all activities or functions and/or suspending the responsible individual in any or all capacities for up to two years or expelling the firm and/or barring the responsible individual. |

1 In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second, or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent's compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range.

2 Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.

3 If respondent's second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

# Marking the Close or Open

FINRA Rules 2010 and 5210

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br><br>1. Whether the misconduct resulted in protecting a securities position or enhancing size.<br>2. Whether the respondent received a benefit from the misconduct, including but not limited to increased valuation of inventory, avoidance of margin calls or affecting month-end performance.<br>3. Whether the activity affected the market at a particularly sensitive time, such as on an expiration date.<br>4. Whether the misconduct was an isolated incident involving one stock or a systemic pattern of behavior involving multiple stocks. | Fine of $25,000 to $200,000.<br><br>In egregious cases, consider a fine in excess of $200,000. | ***Negligent Misconduct***<br><br>Suspend the individual in any or all capacities and/or suspend firm with respect to any or all activities or functions for up to 30 business days.<br><br>***Intentional or Reckless Misconduct***<br><br>Suspend the individual in any or all capacities and/or suspend firm with respect to any or all activities or functions for up to two years.<br><br>In egregious cases, consider barring the individual and/or expelling the firm. |

# Options Exercise and Positions Limits—Failure to Comply With Rule Requirements

FINRA Rules 2010 and 2360

| Principal Considerations in Determining Sanctions | Monetary Sanction[1] | Suspension, Bar or Other Sanctions |
|---|---|---|
| *See Principal Considerations in Introductory Section* | **First Action**[2]<br>Fine of $5,000 to $10,000.<br><br>**Second Action**<br>Fine of $10,000 to $50,000.<br><br>**Subsequent Actions**<br>Fine of $10,000 to $100,000.[3] | In egregious cases, consider suspending the firm with respect to any or all activities or functions and/or suspending the responsible individual in any or all capacities for up to two years or prohibiting the firm from conducting options transactions. |

1 In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second, or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent's compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range.

2 Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.

3 If respondent's second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

# Options Positions Reporting—Late Reporting and Failing to Report

FINRA Rule 2010 and 2360(b)(5)

| Principal Considerations in Determining Sanctions[1] | Monetary Sanction[2] | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br>1. Size of the positions not reported.<br>2. Whether respondent violated rule requirements during an extended period of days. (Adjudicators should treat as aggravating the fact that a respondent's failure to report or incorrect reporting occurred for more than one week. Adjudicators should treat as egregious misconduct a respondent's failure to report for several weeks.)<br>3. Evidence of respondent's potential for benefit or monetary gain. | ***Late Reporting and Failing to Report***<br>**First Action[3]**<br>Fine of $5,000 to $10,000.<br>**Second Action**<br>Fine of $10,000 to $50,000.<br>**Subsequent Actions**<br>Fine of $10,000 to $100,000.[4]<br>In all egregious cases, whether a first, second or subsequent action, consider a fine greater than or equal to the high end of the range for a first, second or subsequent action. Also consider imposing the fine on a "per violation" basis. | ***Failure to Report***<br>In egregious cases, consider suspending the responsible individual in any or all capacities for up to two years. Also consider suspending the firm from conducting options transactions for up to two years or barring the firm from conducting options transactions. |

1 A respondent's delegation of its reporting responsibilities to a third party who caused or contributed to respondent's violation is not an independent basis for mitigation.

2 In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second, or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent's compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range.

3 Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.

4 If respondent's second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

# Order Audit Trail System (OATS)—Late Reporting; Failing to Report; False, Inaccurate or Misleading Reporting; and Clock Synchronization Failure

FINRA Rules 7400 through 7460

## Principal Considerations in Determining Sanctions[2]

*See Principal Considerations in Introductory Section*

1. Nature of OATS reporting violation.
2. Extent to which violative conduct affected the regulatory audit trail.
3. Whether violation occurred over an extended period of days.
4. Whether reporting violation was readily apparent from a review of FINRA's OATS website.[4]
5. While respondents are responsible for the systems that they use and the third-party vendors that they employ, the appropriate level of sanctions will depend on whether the respondent diligently chose, installed, and tested a system that nevertheless malfunctioned; the frequency and thoroughness with which the respondent ensured that the system was operating in compliance with applicable rules; and the care that the respondent exercised in undertaking all necessary steps to correct systems-related malfunctions. The same considerations apply to a respondent that has relied on a third-party vendor's products or services.

## Monetary Sanction[1]

*Late Reporting, Failing to Report, False, Inaccurate or Misleading Reporting*

**First Action[3]**
Fine of $5,000 to $10,000.

**Second Action**
Fine of $10,000 to $50,000.

**Subsequent Actions**
Fine of $10,000 to $100,000.[5]

In all egregious cases, whether a first, second, or subsequent action, consider a fine greater than or equal to the high end of the range for a first, second, or subsequent action.

*Failure to Synchronize Clocks*

**First Action**
Fine of $5,000 to $10,000.

**Subsequent Actions**
Fine of $10,000 to $50,000.[5]

## Suspension, Bar or Other Sanctions

*For All Types of Violations*

*Firm*

**Subsequent Actions**
Consider suspending the firm with respect to any or all activities or functions for up to 30 business days.

In egregious cases, consider a lengthier suspension (of up to two years) or expulsion of the firm.

*Individual*

**Subsequent Actions**
Consider suspending the responsible individual in any or all capacities for up to 30 business days.

In egregious cases, consider a lengthier suspension (of up to two years) or a bar.

1 In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second, or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent's compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range.

2 A respondent's delegation of its reporting responsibilities to a third party who caused or contributed to respondent's violation is not an independent basis for mitigation.

3 Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.

4 In cases in which the respondent fails for more than one week to detect a failure to report that would have been apparent from a review of data on the OATS website, Adjudicators should consider the respondent's violations to be egregious.

5 If respondent's second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

# Passive Market Making Violations

FINRA Rule 2010 and Regulation M

| Principal Considerations in Determining Sanctions | Monetary Sanction[1] | Suspension, Bar or Other Sanctions |
|---|---|---|
| *See Principal Considerations in Introductory Section* | **First Action**[2]<br>Fine of $5,000 to $10,000.<br><br>**Second Action**<br>Fine of $10,000 to $50,000.<br><br>**Subsequent Actions**<br>Fine of $10,000 to $100,000.[3] | In egregious cases, consider suspending responsible individual in any or all capacities for up to two years or barring responsible individual. Also consider suspending the firm with respect to any or all activities or functions for up to two years. |

1 In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second, or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent's compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range.

2 Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.

3 If respondent's second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

# Prohibition on Transactions, Publication of Quotations or Publication of Indications of Interest During a Trading Halt

FINRA Rules 2010 and 5260[1]

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br><br>1. Whether respondent knew of the trading halt. | Fine of $5,000 to $50,000.<br><br>Adjudicators may consider ordering restitution or disgorgement in appropriate cases.<br><br>In egregious cases, consider a fine in excess of $50,000. | In egregious cases, consider suspending the firm with respect to any or all activities or functions and/or suspending the responsible individual in any or all capacities for up to two years or expelling the firm and/or barring the responsible individual. |

1 This guideline also is appropriate for violations of MSRB Rule G-13.

# Reports of Execution Quality and Order Routing

Regulation NMS, Rules 605 & 606

| Principal Considerations in Determining Sanctions | Monetary Sanction[1] | Suspension, Bar or Other Sanctions |
|---|---|---|
| *See Principal Considerations in Introductory Section*[3]<br><br>1. Whether respondent violated rule requirements during a period of months.[4]<br><br>2. While respondents are responsible for the systems that they use and the third-party vendors that they employ, the appropriate level of sanctions will depend on whether the respondent diligently chose, installed, and tested a system that nevertheless malfunctioned; the frequency and thoroughness with which the respondent ensured that the system was operating in compliance with applicable rules; and the care that the respondent exercised in undertaking all necessary steps to correct systems-related malfunctions. The same considerations apply to a respondent that has relied on a third-party vendor's products or services. | **First Action**[2]<br><br>Fine of $10,000 to $20,000.<br><br>**Second Action**<br><br>Fine of $20,000 to $50,000.<br><br>**Subsequent Actions**<br><br>Fine of $20,000 to $100,000.[5]<br><br>In all egregious cases, whether a first, second or subsequent action, consider a fine greater than or equal to the high end of the range for a first, second or subsequent action. Also consider imposing the fine on a "per violation" basis. | |

1 In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second, or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent's compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range.

2 Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time should be given more weight than less recent events.

3 A respondent's delegation of its reporting responsibilities to a third party who caused or contributed to respondent's violation is not an independent basis for mitigation.

4 Adjudicators should treat as aggravating the fact that a respondent's failure to report or incorrect reporting occurred for more than one month.

5 If respondent's second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

# Short Sale Violations

FINRA Rules 4560, 7230A and 7330, and Regulation SHO

| Principal Considerations in Determining Sanctions | Monetary Sanction[1] | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br><br>1. In cases involving short interest reporting, consider the number of months during which the respondent failed to report short interest or reported short interest incorrectly.[4]<br><br>2. While respondents are responsible for the systems that they use and the third-party vendors that they employ, the appropriate level of sanctions will depend on whether the respondent diligently chose, installed, and tested a system that nevertheless malfunctioned; the frequency and thoroughness with which the respondent ensured that the system was operating in compliance with applicable rules; and the care that the respondent exercised in undertaking all necessary steps to correct systems-related malfunctions. The same considerations apply to a respondent that has relied on a third-party vendor's products or services. | **First Action**[2]<br>Fine of $5,000 to $10,000.<br><br>**Second Action**<br>Fine of $10,000 to $50,000.<br><br>**Subsequent Actions**<br>Fine of $10,000 to $100,000.[5]<br><br>In all egregious cases, whether a first, second or subsequent action, consider a fine greater than or equal to the high end of the range for a first, second or subsequent action. Also consider imposing the fine on a "per violation" basis. | If the short-selling customer is not subject to FINRA jurisdiction, in egregious cases or those with evidence of willful misconduct, consider adding the amount of the short-selling customer's "transaction profit"[3] to the fine for the executing member and/or associated person. In egregious cases, consider suspending the firm with respect to any or all activities or functions and/or suspending the responsible Individual in any or all capacities for up to two years or expelling the firm and/or barring the responsible individual. |

1 In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second, or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent's compliance rate is significantly lower than its peers, Adjudicators may impose a monetary sanction in excess of the recommended range.

2 Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.

3 "Transaction profit" means the profit that the short-selling customer realized. This amount is separate and distinct from the respondent's financial benefit, as described in General Principle No. 6.

4 Adjudicators should treat as aggravating the fact that a respondent's failure to report or incorrect reporting of short interest occurred for more than one month. A respondent's delegation of its reporting responsibilities to a third party who caused or contributed to respondent's violation is not an independent basis for mitigation.

5 If respondent's second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

## Trade Reporting and Compliance Engine (TRACE)—Late Reporting; Failing to Report; False, Inaccurate or Incomplete Reporting *(continued)*

FINRA Rules 2010 and 6730[1]

| Principal Considerations in Determining Sanctions | Monetary Sanction[2] | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***[3]<br><br>1. Extent to which violative conduct affected market transparency, the dissemination of trade information, or the regulatory audit trail.<br>2. While respondents are responsible for the systems that they use and the third-party vendors that they employ, the appropriate level of sanctions will depend on whether the respondent diligently chose, installed, and tested a system that nevertheless malfunctioned; the frequency and thoroughness with which the respondent ensured that the system was operating in compliance with applicable rules; and the care that the respondent exercised in undertaking all necessary steps to correct systems-related malfunctions. The same considerations apply to a respondent that has relied on a third-party vendor's products or services.<br>3. Whether respondent violated rule requirements during an extended period of days. (Adjudicators should treat as aggravating the fact that a respondent's failure to report or incorrect reporting occurred for more than one week. Adjudicators should treat as egregious misconduct a respondent's failing to report for several weeks.)<br>4. Whether a reporting violation was readily apparent from a review of FINRA's TRACE website (or MSRB's website for violations of MSRB Rule G-14).[6] | ***For All Types of Violations***<br><br>**First Action**[4]<br>Fine of $5,000 to $10,000.<br><br>**Second Action**<br>**Fine of $10,000 to $50,000.**<br><br>**Subsequent Actions**<br>Fine of $10,000 to $100,000.[5]<br><br>In all egregious cases, whether a first, second or subsequent action, consider a fine greater than or equal to the high end of the range for a first, second or subsequent action. Also consider imposing the fine on a "per violation" basis. | ***For All Types of Violations***<br><br>***Firm***<br><br>In egregious cases, consider a suspension (of up to two years) or expulsion of the firm.<br><br>***Responsible Individual***<br><br>Consider suspending the responsible individual in any or all capacities for up to 30 business days.<br><br>In egregious cases, consider a lengthier suspension (of up to two years) or a bar. |

*(footnotes continue on next page)*

1 This guideline also is appropriate for violations of MSRB Rule G-14 AND G-17.

2 In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second, or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent's compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range.

3 A respondent's delegation of its reporting responsibilities to a third party who caused or contributed to respondent's violation is not an independent basis for mitigation.

4 Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.

5 If respondent's second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

6 In cases in which the respondent does not detect a reporting failure or violation that would have been apparent from a routine review of data such as, for example, transaction reporting cards on FINRA's TRACE website or MSRB's website, Adjudicators should consider the respondent's violations to be egregious.

# Trade Reporting—Late Reporting; Failing to Report; False, Inaccurate or Misleading Reporting

FINRA Rule 2010 and Equity Trade Reporting Rules

| Principal Considerations in Determining Sanctions | Monetary Sanction[1] | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br>1. Nature of trade reporting violation.<br>2. Whether violative conduct affected market-price discovery data.<br>3. Whether operational problems caused delayed reports.<br>4. Whether respondent violated rule requirements over an extended period of days.<br>5. While respondents are responsible for the systems that they use and the third-party vendors that they employ, the appropriate level of sanctions will depend on whether the respondent diligently chose, installed, and tested a system that nevertheless malfunctioned; the frequency and thoroughness with which the respondent ensured that the system was operating in compliance with applicable rules; and the care that the respondent exercised in undertaking all necessary steps to correct systems-related malfunctions. The same considerations apply to a respondent that has relied on a third-party vendor's products or services. | **First Action**[2]<br>Fine of $5,000 to $10,000.<br>**Second Action**<br>Fine of $10,000 to $50,000.<br>**Subsequent Actions**<br>Fine of $10,000 to $100,000.[3]<br>In all egregious cases, whether a first, second or subsequent action, consider a fine greater than or equal to the high end of the range for a first, second, or subsequent action. | In egregious cases, consider suspending the firm with respect to any or all activities or functions and/or suspending responsible individual in any or all capacities for up to two years.<br>Also consider expelling the firm and/or barring the responsible individual. |

1 In cases in which the violations: (1) involve a pattern or patterns of misconduct; (2) can be quantified by number or percentage; or (3) can be compared to the standard maintained by industry peers, Adjudicators may consider deviating from the fine structure recommended in this guideline for first, second, or subsequent actions. Imposition of monetary sanctions greater than those recommended in this guideline may be particularly appropriate in cases involving violations that occurred during two or more examination or review periods or violations that occurred over an extended period of time. Similarly, in cases in which the respondent acted intentionally or recklessly, and in cases in which the respondent's compliance rate is significantly lower than that of its peers, Adjudicators may impose a monetary sanction in excess of the recommended range.

2 Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time should be given more weight than less recent events.

3 If respondent's second or subsequent action involves a violation that is less serious than a prior violation, includes conduct that demonstrates that respondent is improving its compliance rate, or involves mitigation that did not exist in a prior action, Adjudicators may consider imposing a fine that is less than the fine imposed in the prior action.

# IX. Reporting/Provision of Information

- FOCUS Reports—Late Filing; Failing to File; Filing False or Misleading Reports
- Forms U4/U5—Late Filing of Forms or Amendments; Failing to File Forms or Amendments; Filing of False, Misleading or Inaccurate Forms or Amendments
- MSRB Rule G-36 (Timely Filing of Offering Documents With the MSRB)—Late Filing and Failing to File
- MSRB Rule G-37 Reporting—Late Filing; Failing to File; Filing False or Misleading Reports
- Regulation M Reports—Late Filing; Failing to File; False or Misleading Filing
- Reportable Events Under NASD Rule 3070—Late Reporting; Failing to Report; Filing False, Inaccurate or Misleading Reports
- Request for Automated Submission of Trading Data—Failure to Respond in a Timely and Accurate Manner

# FOCUS Reports—Late Filing; Failing to File; Filing False or Misleading Reports

FINRA Rule 2010 and SEC Rule 17a-5[1]

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br><br>1. Number of days late respondent filed reports.<br>2. Whether respondent filed late to delay reporting a recordkeeping, operational, or financial deficiency. | ***Late Filing***<br><br>Fine of $1,000 to $20,000.<br><br>***Failure to File or Filing False or Misleading Reports***<br><br>Fine of $10,000 to $50,000. | ***Late Filing***<br><br>In egregious cases, consider suspending the firm from all solicited retail business for up to 20 business days; also consider suspending the Financial Principal or other responsible principal in any or all capacities for up to 10 business days.<br><br>***Failure to File or Filing False or Misleading Reports***<br><br>Consider suspending the firm from all solicited retail business for up to 30 business days and thereafter until the firm corrects all deficiencies; also consider suspending the Financial Principal or other responsible principal in any or all capacities for up to two years. |

1 This guideline is intended to apply to FOCUS Reports Parts I, II and IIA.

# Forms U4/U5—Late Filing of Forms or Amendments; Failing to File Forms or Amendments; Filing of False, Misleading or Inaccurate Forms or Amendments *(continued)*

Article V of FINRA By-Laws and FINRA Rule 2010[1]

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br>1. Nature and significance of information at issue.<br>2. Whether failure resulted in a statutorily disqualified individual becoming or remaining associated with a firm.<br>3. Whether respondent member firm's misconduct resulted in harm to a registered person, another member firm or any other person or entity. | **Late Filing of Forms or Amendments**<br>***Individual***<br>Fine of $2,500 to $25,000.<br><br>**Firm and/or Responsible**<br>***Principal***<br>Fine of $5,000 to $50,000. | |
| | **Failure to File or Filing False, Misleading or Inaccurate Forms or Amendments**[2]<br>***Individual***<br>Fine of $2,500 to $50,000. | **Failure to File or Filing False, Misleading or Inaccurate Forms or Amendments**<br>***Individual***<br>Consider suspending individual in any or all capacities for five to 30 business days. |

1 This guideline also is appropriate for violations of MSRB Rule G-7 and for failures to report changes in ownership or control of member firms.

2 As set forth in General Principle No. 6, Adjudicators may increase the recommended fine amount by adding the amount of a respondent's financial benefit.

# Forms U4/U5—Late Filing of Forms or Amendments; Failing to File Forms or Amendments; Filing of False, Misleading, or Inaccurate Forms or Amendments

Article V of FINRA By-Laws and FINRA Rule 2010

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| *See Principal Considerations in Introductory Section* | ***Responsible Principal and/or Firm***<br><br>Fine of $5,000 to $100,000. | ***Responsible Principal at the Firm***<br><br>Consider suspending responsible principal in all supervisory capacities for 10 to 30 business days.<br><br>**In Egregious Cases (such as: those involving repeated failures to file, untimely filings or false, inaccurate, or misleading filings; those involving the failure to disclose or timely to disclose a statutory disqualification event or customer complaint; or where the failure to disclose or timely to disclose delayed regulatory investigation of terminations for cause):**<br><br>***Individual***—Consider a longer suspension in any or all capacities (of up to two years) or a bar.<br><br>***Responsible Principal at the Firm***—Consider a suspension in any or all capacities (of up to two years) of responsible principal or bar of responsible principal in all supervisory capacities.<br><br>***Firm***—Suspend firm with respect to any or all activities or functions until the firm corrects the deficiency. |

# MSRB Rule G-36 (Timely Filing of Offering Documents With the MSRB)—Late Filing and Failing to File

MSRB Rule G-36

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br><br>1. Average number of days late.<br>2. Whether respondent also failed to comply with the recordkeeping requirements of MSRB Rule G-8 concerning the delivery of Official Statements and Advance Refunding Documents to the MSRB.<br>3. Evidence of improper mailing; *i.e.*, by means that do not provide a record of sending.<br>4. Extent to which violative conduct deprived the investors or other market participants of publicly available information regarding the issuer. | ***Late Filing***<br><br>Fine of $5,000 to $10,000. Consider imposing a fine on a per violation basis.<br><br>***Failure to File***<br><br>Fine of $5,000 to $20,000. Consider imposing a fine on a per violation basis. | ***Late Filing***<br><br>In egregious cases, consider suspending the firm from engaging in all municipal underwriting activities for up to 30 business days. Also consider suspending the responsible individual in any or all capacities for up to 30 business days.<br><br>***Failure to File***<br><br>In egregious cases, consider suspending the firm from engaging in all municipal underwriting activities for up to 30 business days. Also consider suspending the responsible individual in any or all capacities for up to 60 business days. |

# MSRB Rule G-37 Reporting—Late Filing; Failing to File; Filing False or Misleading Reports

MSRB Rule G-37

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br>1. Whether the report is inaccurate, outdated or both.<br>2. Whether respondent is active in the municipal underwriting business and generally makes political contributions.<br>3. Whether respondent eventually filed report, albeit late.<br>4. Whether violation involved failing to report political contributions or failing to report participation in an underwriting.<br>5. Extent to which violative conduct deprived the investing public or other market participants of information regarding the issuer.<br>6. With respect to false or misleading reports, whether misconduct was intentional or reckless. | ***Late Filing***<br>Fine of $5,000 to $10,000. Consider imposing a fine on a per violation basis.<br><br>***Failure to File***<br>Fine of $5,000 to $20,000. Consider imposing a fine on a per violation basis.<br><br>***Filing False or Misleading Reports***<br>Fine of $10,000 to $100,000 per violation. | ***Late Filing***<br>In egregious cases, consider suspending the firm from engaging in all municipal underwriting activities for up to 30 business days. Also consider suspending the responsible individual in any or all capacities for up to 30 business days.<br><br>***Failure to File***<br>In egregious cases, consider suspending the firm from engaging in all municipal underwriting activities for up to 30 business days and thereafter until the firm files accurate reports, as required by the rules. Also consider suspending the responsible individual in any or all capacities for up to 60 business days.<br><br>***Filing False or Misleading Reports***<br>Consider suspending the firm from engaging in all municipal underwriting activities for up to two years. Also consider suspending the responsible individual in any or all capacities for up to two years or barring the individual. |

# Regulation M Reports—Late Filing; Failing to File; False or Misleading Filing

FINRA Rules 2010, 5110, 5190, 6275, 6470 and 6540

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br><br>1. Number of days that report is late.<br>2. Whether report contains a significant number of material inaccuracies. | ***Late Filing***<br><br>**First Action**[1]<br>Fine of $1,000 to $2,000.<br><br>**Second Action**<br>Fine of $2,000 to $5,000.<br><br>**Subsequent Actions**<br>Fine of $3,000 to $10,000.<br><br>***Failure to File, or False or Misleading Filing***<br><br>**First Action**<br>Fine of $1,000 to $10,000.<br><br>**Subsequent Actions**<br>Fine of $10,000 to $100,000. | ***Late Filing; Failure to File; False or Misleading Filing***<br><br>In egregious cases, consider suspending the responsible individual in any or all capacities for up to two years or barring the individual. Also consider suspending the firm with respect to any or all corporate financing and/or market- making activities for up to 15 days and thereafter until the firm accurately files the required reports. |

1 Adjudicators should consider actions concerning violative events that occurred within the three years prior to the misconduct at issue. Events that are more recent in time, however, should be given more weight than less recent events.

# Reportable Events Under NASD Rule 3070—Late Reporting; Failing to Report; Filing False, Inaccurate or Misleading Reports

FINRA Rule 2010 and NASD Rule 3070

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| *See Principal Considerations in Introductory Section* | *Late Reporting* | *Late Reporting* |
| *Late Reporting*<br>1. Number and type of incidents not reported.<br>2. Whether events reported in late reports established a pattern of potential misconduct. | Fine of $5,000 to $50,000. | In egregious cases, consider suspending the responsible principal in any or all capacities for up to two years or barring the responsible principal in all supervisory capacities. |
| *Failure to Report or Filing False, Misleading, or Inaccurate Reports*<br>1. Whether events not reported or reported inaccurately would have established a pattern of potential misconduct.<br>2. In cases involving the failure to file or inaccurate filing of a quarterly report, the number and type of incidents not reported or reported inaccurately. | *Failure to Report or Filing False, Misleading, or Inaccurate Reports*[1]<br>Fine of $5,000 to $100,000. | *Failure to Report or Filing False, Misleading or Inaccurate Reports*<br>Consider suspending responsible principal in all supervisory capacities for 10 to 30 business days.<br>In egregious cases, consider suspending the responsible principal in any or all capacities for up to two years or barring the responsible principal in all supervisory capacities. Also consider suspending the firm with respect to any or all activities or functions until the firm corrects the deficiency. |

1 As set forth in General Principle No. 6, Adjudicators may increase the recommended fine amount by adding the amount of a respondent's financial benefit.

# Request for Automated Submission of Trading Data—Failure to Respond in a Timely and Accurate Manner

FINRA Rules 2010, 8211 and 8213[1]

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| *See Principal Considerations in Introductory Section* | ***10 to 15 Days Late***<br>Fine of $100 per day.<br><br>***16 to 30 Days Late***<br>Fine of $500 per day. | |

1 Any automated submission submitted by a member firm more than 30 calendar days late generally is alleged to constitute a violation of Rule 8210. A firm with a history of more than four violations of Rules 8211 and 8213 may be alleged to have violated Rule 8210. The filing of incomplete or inaccurate automated submissions or the filing of manual submissions without prior exemptions may be alleged to constitute a violation of Rule 8210.

## X. Sales Practices

- Churning or Excessive Trading
- Communications With the Public—Late Filing; Failing to File; Failing to Comply With Rule Standards or Use of Misleading Communications
- Customer Account Transfer Contracts—Failure to Comply With Rule Requirements
- Day-Trading Accounts—Failure to Comply With Risk Disclosure Requirements; Failure Appropriatelyto Approve an Account for Day Trading; Failure to Preserve Required Day-Trading Records
- Discretion—Exercise of Discretion Without Customer's Written Authority
- Guaranteeing a Customer Against Loss
- Institutional Sales Material—Failing to Establish and Maintain Written Procedures in Compliance With Rule Standards; Failing to Comply With Rule Standards Regarding Recordkeeping
- Misrepresentations or Material Omissions of Fact
- Penny Stock Rules—Failure to Comply With Rule Requirements
- Pricing—Excessive Markups/Markdowns and Excessive Commissions
- Research Analysts and Research Reports—Failing to Comply With Rule Requirements Regarding (1) Relationships Between Research Department and Investment Banking Department; (2) Compensation for Research Analysts; and (3) Relationships Between Research Analysts and Subject Companies
- Suitability—Unsuitable Recommendations
- Telemarketing—Failing to Comply With Time-of-Day Restrictions and Do-Not-Call Lists; Failing to Establish and Maintain Procedures to Comply With Rule 2212(a)
- Trading Ahead of Research Reports
- Unauthorized Transactions and Failures to Execute Buy and/or Sell Orders

# Churning or Excessive Trading[1]

FINRA Rule 2010[2] and IM-2310-2

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section*** | Fine of $5,000 to $75,000[3] | Suspend respondent in any or all capacities for a period of 10 business days to one year.<br><br>In egregious cases, consider a longer suspension (of up to two years) or a bar. |

1 This guideline also is appropriate for annuity and mutual fund-related violations, including switching.

2 This guideline also is appropriate for violations of MSRB Rule G-17.

3 As set forth in General Principle No. 6, Adjudicators should increase the recommended fine amount by adding the amount of a respondent's financial benefit.

## Communications With the Public—Late Filing; Failing to File[1]; Failing to Comply With Rule Standards or Use of Misleading Communications[2] *(continued)*

FINRA Rules 2010 and 2220[3], and NASD Rules 2210 and 2211(d)

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section*** | | |
| ***Failure to File*** | ***Failure to File*** | ***Failure to File*** |
| 1. Whether failure to file was inadvertent.<br>2. Whether communications with the public were circulated widely without having been filed with the Advertising Regulation Department.<br>3. Whether an individual respondent failed to notify a supervisor of a communication with the public. | Fine of $1,000 to $15,000. | In egregious cases, consider imposing, for a definite period, a "pre-use" filing requirement to obtain an FINRA Regulation staff "no objection" letter on proposed communications with the public.<br><br>Also consider suspending the responsible individual in any or all capacities for up to five business days. |
| ***Late Filing*** | ***Late Filing*** | ***Late Filing*** |
| 1. Whether late filing was inadvertent.<br>2. Whether communications with the public were circulated widely before having been filed with the Advertising Regulation Department.<br>3. Number of days late. | Fine of $1,000 to $10,000. | In egregious cases, consider imposing, for a definite period, a "pre-use" filing requirement to obtain an FINRA Regulation staff "no objection" letter on proposed communications with the public.<br><br>Also consider suspending the responsible individual in any or all capacities for up to 10 business days. |

1 Failing to file includes instances in which a respondent files with FINRA Regulation staff a communication with the public in response to a notice from FINRA Regulation staff that a necessary filing had not been made.

2 This guideline is appropriate for disciplinary actions that name as respondents member firms that have violated FINRA rules or associated persons who have circumvented the firm's procedures or violated FINRA rules.

3 This guideline also is appropriate for violations of MSRB Rule G-21.

## Communications With the Public—Late Filing; Failing to File; Failing to Comply With Rule Standards or Use of Misleading Communications *(continued)*

FINRA Rules 2010 and 2220, and NASD Rules 2210 and 2211(d)

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br><br>***Failure to Comply with Rule Standards/ Misleading***<br><br>1. Whether violative communications with the public were circulated widely. | ***Failure to Comply/Misleading***<br><br>***Failure to Comply with Rule Standards or Inadvertent Use of Misleading Communications***<br><br>Fine of $1,000 to $20,000. | ***Failure to Comply/Misleading***<br><br>***Failure to Comply with Rule Standards***<br><br>In egregious cases, consider suspending the firm with respect to any or all activities or functions for up to one year and thereafter imposing, for a definite period, a "pre-use" filing requirement to obtain FINRA Regulation staff "no objection" letter on proposed communications with the public. Also consider suspending the responsible person in any or all capacities for up to 60 days. |

## Communications With the Public—Late Filing; Failing to File; Failing to Comply With Rule Standards or Use of Misleading Communications

FINRA Rules 2010 and 2220, and NASD Rules 2210 and 2211(d)

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| *See Principal Considerations in Introductory Section* | ***Intentional or Reckless Use of Misleading Communications***<br><br>Fine of $10,000 to $100,000. | ***Use of Misleading Communications with the Public***<br><br>In cases involving inadvertent use of misleading communications, consider suspending firm with respect to any or all activities or functions for up to six months and thereafter imposing, for a definite period, a "pre-use" filing requirement to obtain a FINRA Regulation staff "no objection" letter on proposed communications with the public.<br><br>In cases involving intentional or reckless use of misleading communications with the public, consider suspending the firm with respect to any or all activities or functions for up to two years.[4]<br><br>Also consider suspending the responsible person in any or all capacities for up to two years.<br><br>In cases involving numerous acts of intentional or reckless misconduct over an extended period of time, consider suspending the firm with respect to any or all activities or functions for up to two years, suspending the responsible person in any or all capacities for up to two years, expelling the firm, and/or barring the responsible individual. |

4 If an Adjudicator is considering suspending a firm's ability to execute transactions in the securities referenced in the violative communications, the Adjudicator should consider the potential ramifications to public investors of such a suspension.

# Customer Account Transfer Contracts—Failure to Comply With Rule Requirements

FINRA Rule 11870[1]

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br><br>1. Consider the nature of the violation—consider the respondent's transfer pattern, the number of days late, and whether respondent was late with delivery or validation. | Fine of $1,000 to $10,000.<br><br>In egregious cases, consider a higher fine of up to $50,000. | ***Individual***<br><br>Consider suspending the responsible individual in any or all capacities for up to 30 business days. In egregious cases, consider a lengthier suspension of up to two years.<br><br>***Firm***<br><br>In egregious cases, consider suspending the firm with respect to any or all activities or functions for a period of up to two years. |

1 This guideline also is appropriate for violations of MSRB G-26.

## Day-Trading Accounts—Failure to Comply With Risk Disclosure Requirements; Failure Appropriately to Approve an Account for Day Trading; Failure to Preserve Required Day-Trading Records *(continued)*

FINRA Rules 2130 and 2270

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br><br>***Failure to Comply with Risk Disclosure Requirements***<br><br>1. Whether the firm failed to provide customer(s) with a risk disclosure statement.<br>2. Whether the firm provided its customer(s) with an inadequate risk disclosure statement, or furnished the risk disclosure statement to its customer(s) in an untimely manner or a manner not designed to provide actual notice.<br>3. Whether the firm failed to obtain FINRA approval of an alternative disclosure statement or failed timely to seek FINRA approval.<br>4. In all cases, consider the nature, quality, and timing of the risk disclosure actually provided to the customer(s).<br>5. Whether day trading was appropriate for the affected customer(s).<br>6. The number of affected customers. | ***Failure to Comply with Risk Disclosure Requirements***<br><br>Fine of $5,000 to $100,000. | ***Failure to Comply with Risk Disclosure Requirements***<br><br>Consider suspending the responsible individual in any or all capacities for a period of 10 business days to one year.<br><br>In egregious cases, particularly cases involving numerous customers, consider suspending for a longer period (of up to two years) or barring the responsible individual and suspending the firm with respect to any or all activities or functions for a period of up to two years. |

# Day-Trading Accounts—Failure to Comply With Risk Disclosure Requirements; Failure Appropriately to Approve an Account For Day Trading; Failure to Preserve Required Day-Trading Records *(continued)*

FINRA Rules 2130 and 2270

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| *See Principal Considerations in Introductory Section*<br><br>*Failure Appropriately to Approve an Account for Day Trading*<br><br>1. Whether the firm permitted the customer(s) to engage in a day-trading strategy without the approval required by the rule.<br>2. Whether the firm failed to conduct a meaningful review before approving the customer account(s) for a day-trading strategy.<br>3. Whether the firm's approval of the customer account(s) for a day-trading strategy was inappropriate based on the facts it knew or should have known.<br>4. The timeliness of the approval of the customer account(s) for a day-trading strategy.<br>5. Whether engaging in a day-trading strategy was appropriate for the affected customer(s).<br>6. The number of affected customers. | *Failure Appropriately to Approve an Account for Day Trading*<br><br>Fine of $5,000 to $100,000.[1] | *Failure Appropriately to Approve an Account for Day Trading*<br><br>Suspend responsible individual in any or all capacities for a period of 10 business days to one year. Consider suspending member firm with respect to any or all activities or functions for up to one year.<br><br>In egregious cases, particularly cases involving numerous customers, consider suspending the responsible individual for a longer period (up to two years) or barring the individual.<br><br>Also consider suspending the member firm for a longer period (of up to two years). |

1 As set forth in General Principle No. 6, Adjudicators should increase the recommended fine amount by adding the amount of a respondent's financial benefit.

## Day-Trading Accounts—Failure to Comply With Risk Disclosure Requirements; Failure Appropriately to Approve an Account For Day Trading; Failure to Preserve Required Day-Trading Records

FINRA Rules 2130 and 2270

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| *See Principal Considerations in Introductory Section*<br><br>*Failure to Preserve Required Day-Trading Records*<br><br>1. Whether the firm failed adequately to record its approval of the customer account(s) for day trading.<br>2. Whether the firm failed adequately to preserve the written customer agreement(s) to refrain from engaging in a day-trading strategy.<br>3. Whether the failure enabled problematic practices to occur and/or to escape detection. | *Failure to Preserve Required Day-Trading Records*<br><br>Fine of $1,000 to $25,000. | *Failure to Preserve Required Day-Trading Records*<br><br>In egregious cases, consider suspending the responsible individual in any or all capacities for up to 30 business days and suspending the firm in any or all activities or functions for up to 15 business days. |

# Discretion—Exercise of Discretion Without Customer's Written Authority

FINRA Rule 2010 and NASD Rule 2510[1]

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br>1. Whether customer's grant of discretion was express or implied.<br>2. Whether firm's policies and/or procedures prohibited discretionary trading and/or whether the firm prohibited the respondent from exercising discretion in customer accounts. | Fine of $2,500 to $10,000.[2] | In egregious cases, consider suspending respondent in any or all capacities for 10 to 30 business days. |

1 This guideline also is appropriate for violations of MSRB Rule G-19(d).

2 As set forth in General Principle No. 6, Adjudicators may increase the recommended fine amount by adding the amount of a respondent's financial benefit.

# Guaranteeing a Customer Against Loss

FINRA Rules 2010 and 2150[1]

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br>1. Purpose and timing of the guarantee.<br>2. Whether respondent received a financial benefit from the guaranteed transactions. | Fine of $2,500 to $25,000.[2] | Consider suspending individual respondent in any or all capacities for up to 30 business days. In egregious cases, consider a longer suspension (of up to two years) or a bar.<br><br>Consider suspending member firm with respect to any or all activities or functions for up to 30 business days. In egregious cases, consider a longer suspension (of up to two years) or expulsion. |

1 This guideline also is appropriate for violations of MSRB Rule G-25.

2 As set forth in General Principle No. 6, Adjudicators may increase the recommended fine amount by adding the amount of a respondent's financial benefit.

# Institutional Sales Material—Failing to Establish and Maintain Written Procedures in Compliance With Rule Standards; Failing to Comply With Rule Standards Regarding Recordkeeping

NASD Rule 2211

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| *See Principal Considerations In Introductory Section.*<br><br>*Failure to Establish and Maintain Written Procedures in Compliance with Rule 2211(b)*<br><br>1. Whether deficiencies enabled violations to occur and escape detection.<br>2. Nature, extent, and character of underlying misconduct, if any. | *Failure to Establish and Maintain Written Procedures in Compliance with Rule 2211(b)*<br><br>Fine of $5,000 to $20,000. | *Failure to Establish and Maintain Written Procedures in Compliance with Rule 2211(b)*<br><br>In egregious cases, consider suspending the responsible individual(s) in any or all capacities for up to one year. In egregious cases, also consider imposing a pre-use filing requirement for institutional sales material and suspending the firm with respect to any or all activities or functions for up to 30 business days or until the firm's written procedures are amended to conform to the requirements of Rule 2211(b). |
| *Failure to Comply with Record-Keeping Requirements of Rule 2211(b)*<br><br>1. Nature and materiality of inaccurate or missing information. | *Failure to Comply with Record-Keeping Requirements of Rule 2211(b)*<br><br>Fine of $1,000 to $20,000. In egregious cases, consider a higher fine. | *Failure to Comply with Record-Keeping Requirements of Rule 2211(b)*<br><br>In egregious cases, consider suspending the responsible individual for up to two years and consider suspending the firm in any or all activities or functions for up to 30 days. |

# Misrepresentations or Material Omissions of Fact

FINRA Rules 2010 and 2020[1]

| Principal Considerations in Determining Sanctions | Monetary Sanction[2] | Suspension, Bar or Other Sanctions |
|---|---|---|
| *See Principal Considerations in Introductory Section* | ***Negligent Misconduct***<br><br>Fine of $2,500 to $50,000.<br><br>***Intentional or Reckless Misconduct***<br><br>Fine of $10,000 to $100,000. | ***Negligent Misconduct***<br><br>Suspend individual in any or all capacities and/or suspend firm with respect to any or all activities or functions for up to 30 business days.<br><br>***Intentional or Reckless Misconduct***<br><br>Suspend individual in any or all capacities and/or suspend firm with respect to any or all activities or functions for a period of 10 business days to two years.<br><br>In egregious cases, consider barring the individual and/or expelling the firm. |

1 This guideline also is appropriate for violations of MSRB Rule G-17.

2 In cases involving misrepresentations and/or omissions as to two or more customers, the Adjudicator may impose a set fine amount per investor rather than in the aggregate. As set forth in General Principle No. 6, Adjudicators may increase the recommended fine amount by adding the amount of a respondent's financial benefit.

# Penny Stock Rules—Failure to Comply With Rule Requirements

FINRA Rule 2010 and SEC Rules 15g-1 through 15g-9

| Principal Considerations in Determining Sanctions | Monetary Sanction[1] | Suspension, Bar or Other Sanctions |
|---|---|---|
| *See Principal Considerations in Introductory Section* | ***Negligent Misconduct***<br><br>Fine of $5,000 to $100,000. | ***Negligent Misconduct***<br><br>Consider suspending the firm with respect to any or all activities or functions and/or suspending the responsible individual in any or all capacities for up to two years. |
| | ***Willful Misconduct***<br><br>Fine of the greater of $100,000 or $5,000 per violative transaction.<br><br>For egregious misconduct, require firm to offer rescission of violative trades to each customer. | ***Willful Misconduct***<br><br>Consider suspending the firm with respect to any or all activities or functions and/or suspending the responsible individual in any or all capacities for up to two years.<br><br>In egregious cases, bar the responsible individual and/or expel the firm. |

1 As set forth in General Principle No. 6, Adjudicators should increase the recommended fine amount by adding the amount of a respondent's financial benefit.

# Pricing—Excessive Markups/Markdowns and Excessive Commissions

FINRA Rule 2010, NASD Rule 2440 and NASD IM-2440[1]

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br>1. Whether respondent dominated and controlled the market in the subject security or securities.<br>2. Whether respondent (registered representative) had discretion as to the amount of markups, markdowns or commissions on each trade. | Fine of $5,000 to $100,000 plus (if restitution is not ordered) the gross amount of the excessive markups, markdowns, or excessive commissions. Consider suspending individual respondent in any or all capacities for up to 30 business days and requiring demonstrated corrective action with respect to the firm's markup/markdown policy or commission policy. | In egregious cases, consider suspending individual respondent in any or all capacities for up to two years or barring individual. For the firm, consider suspending with respect to any or all activities or functions for up to two years or expelling the firm. |

1 This guideline also is appropriate for violations of MSRB Rule G-30.

## Research Analysts and Research Reports—Failing to Comply With Rule Requirements Regarding (1) Relationships Between Research Department and Investment Banking Department; (2) Compensation for Research Analysts; and (3) Relationships Between Research Analysts and Subject Companies[1]

NASD Rules 2711(b), 2711(c), 2711(d), 2711(e), 2711(j)

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section.***<br><br>1. Whether misconduct resulted from negligence or intentional/reckless behavior.<br>2. Whether misconduct also resulted in publication of research reports that omitted material information or contained misleading information.<br>3. Whether evidence suggested systemic problems or widespread abuse in the firm. | ***Negligent Misconduct***<br><br>Fine of $5,000 to $100,000.<br><br>***Intentional/Reckless Misconduct***<br><br>Fine of $10,000 to $200,000. In egregious cases, consider a larger fine. | ***Negligent Misconduct***<br><br>Consider suspending the responsible individual(s) in any or all capacities for up to 30 business days.<br><br>***Intentional/Reckless Misconduct***<br><br>**Responsible Individual –** Suspend responsible individual(s) in any or all capacities for a period of 60 business days to two years. In egregious cases, suspend individual(s) for a longer period or bar individual(s).<br><br>**Firm –** Consider suspending firm's research activities for a period of one month to two years. Consider requiring firm to retain an independent consultant to review and make recommendations regarding the adequacy of the firm's supervisory procedures regarding research activities. In cases involving violative relationships between a firm's research department and investment banking department, consider suspending the firm's investment banking activities for a period of three months to two years.<br><br>In egregious cases, suspend firm in any or all activities or functions for up to two years or expel the firm. |

1 For violations of Rule 2711(i) Supervisory Procedures, Adjudicators should refer to the guideline for Supervision – Failure to Supervise.

## Research Analysts and Research Reports—Failing to Comply With Rule Requirements Regarding (1) Restrictions on Publishing Research Reports and Public Appearances of Research Analysts; (2) Restrictions on Personal Trading of Research Analysts; and (3) Disclosure Requirements for Research Reports and Public Appearances of Research Analysts[1]

NASD Rules 2711(f), 2711(g), 2711(h) *(continued)*

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***For All Violations***<br><br>***See Principal Considerations in Introductory Section***<br><br>1. Whether misconduct resulted from negligence or intentional/reckless behavior.<br>2. Whether misconduct also resulted in publication of research reports that omitted material information or contained misleading information.<br>3. Whether evidence suggested systemic problems or widespread abuse in the firm. | ***Failure to Comply With Restrictions on Personal Trading of Research Analysts (Rule 2711(g))***<br><br>Fine of $5,000 to $50,000.[2] In egregious cases, consider a higher fine. | ***Failure to Comply With Restrictions on Personal Trading of Research Analysts (Rule 2711(g))***<br><br>Suspend individual in any or all capacities for a period of 10 business days to one year. In egregious cases, consider a longer suspension or a bar. |

1 For violations of Rule 2711(i) Supervisory Procedures, Adjudicators should refer to the guideline for Supervision – Failure to Supervise.

2 As set forth in General Principle No. 6, Adjudicators may increase the fine amount by adding the amount of the respondent's financial benefit.

| | | |
|---|---|---|
| | *Failure to Comply With Restrictions on Publishing Research Reports, Restrictions on Public Appearances of Research Analysts and Disclosure Requirements for Research Reports and Public Appearances (Rule 2711 (f) and (h))*<br><br>*Negligent Misconduct*<br><br>Fine of $5,000 to $100,000.<br><br>*Intentional/Reckless Misconduct*<br><br>Fine of $10,000 to $200,000. In egregious cases, consider a larger fine. | *Failure to Comply With Restrictions on Publishing Research Reports, Restrictions on Public Appearances of Research Analysts and Disclosure Requirements for Research Reports and Public Appearances (Rule 2711 (f) and (h))*<br><br>*Negligent Misconduct*<br><br>**Responsible Individual –** Consider suspending responsible individual(s) in any or all capacities for up to 60 business days.<br><br>*Intentional/Reckless Misconduct*<br><br>**Responsible Individual –** Suspend responsible individual(s) in any or all capacities for a period of 60 business days to two years. In egregious cases, suspend individual(s) for a longer period or bar individual(s).<br><br>**Firm –** Consider suspending firm's research activities for a period of one month to two years. Consider requiring firm to retain an independent consultant to review and make recommendations regarding the adequacy of the firm's supervisory procedures regarding research activities. Consider requiring firm, for a period of six months to two years, to certify monthly that a general securities principal has conducted a pre-distribution review of all research reports.<br><br>In egregious cases, suspend firm in any or all activities or functions for up to two years or expel the firm. |

# Suitability—Unsuitable Recommendations

FINRA Rule 2010 and NASD Rule 2310[1]

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section*** | Fine of $2,500 to $75,000.[2] | Suspend respondent in any or all capacities for a period of 10 business days to one year.<br><br>In egregious cases, consider a longer suspension (of up to two years) or a bar of an individual respondent. Also consider suspending respondent member firm with respect to any or all activities or functions for up to two years. |

1 This guideline also is appropriate for violations of MSRB Rule G-19 and FINRA Rule 2114.

2 As set forth in General Principle No. 6, Adjudicators should increase the recommended fine amount by adding the amount of a respondent's financial benefit or require respondent to offer rescission to the injured customers.

# Telemarketing—Failing to Comply With Time-of-Day Restrictions and Do-Not-Call Lists; Failing to Establish and Maintain Procedures to Comply With Rule 2212(a) *(continued)*

NASD Rule 2212

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations In Introductory Section.***<br><br>***Failure to Comply with Time-of-Day Restrictions or Do-Not-Call Lists***<br><br>1. Whether violations were widespread within the firm.<br>2. Number of calls that violated restrictions.<br>3. Whether there are patterns of abuses relating to when telephone calls are placed or to the repeated contacting of persons who have previously requested to be placed on a do-not-call list.<br>4. Whether firm made reasonable efforts to establish an effective call-blocking system for any members of the public requesting to be placed on a do-not-call list. | ***Failure to Comply with Time-of-Day Restrictions or Do-Not-Call Lists***<br><br>Fine of $5,000 to $25,000. | ***Failure to Comply with Time-of-Day Restrictions or Do-Not-Call Lists***<br><br>Consider suspending responsible individual for up to 30 business days. In egregious cases, consider suspending the responsible individual in any or all capacities for up to two years. Also, consider suspending the firm with respect to any or all activities or functions, including telemarketing activities, for up to one year. |

# Telemarketing—Failing to Comply With Time-of-Day Restrictions and Do-Not-Call Lists; Failing to Establish and Maintain Procedures to Comply with Rule 2212(a)

NASD Rule 2212

| *Failure to Establish and Maintain Procedures to Comply With Rule 2212(a)* | *Failure to Establish and Maintain Procedures to Comply with Rule 2212(a)* | *Failure to Establish and Maintain Procedures to Comply with Rule 2212(a)* |
|---|---|---|
| 1. Nature and extent of underlying misconduct that resulted from the deficient procedures, if any.<br>2. Whether firm made reasonable efforts to establish an effective call-blocking system for any members of the public requesting to be placed on a do-not-call list.<br>3. Whether there are patterns of abuses relating to when telephone calls are placed or to the repeated contacting of persons who have previously requested to be placed on a do-not-call list. | Fine of $5,000 to $50,000. In egregious cases, consider a higher fine. | Consider suspending responsible individual in any or all capacities for up to 30 business days. Consider limiting activities of appropriate branch office or department for up to 30 business days.<br><br>In egregious cases, consider suspending the responsible individual for up to two years. In egregious cases, also consider limiting activities of appropriate branch office or department for more than 30 days or suspending the firm in any or all activities or functions, including telemarketing activities, for up to one year. |

# Trading Ahead of Research Reports

FINRA Rules 2010 and 5280

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br><br>1. Whether the respondent member firm had developed "Chinese Wall" procedures to prevent the trading department from utilizing advance knowledge of the content and issuance of research reports in making trading decisions. | Fine of $5,000 to $100,000.[1] | ***Firm***<br><br>Consider suspending the firm with respect to any or all activities or functions and/or suspending the responsible individual for up to two years.<br><br>In egregious cases, consider expelling the firm and/or barring the responsible individual.<br><br>***Individual***<br><br>Consider suspending the individual respondent in any or all capacities for up to two years.<br><br>In egregious cases, consider barring the individual. |

1 As set forth in General Principle No. 6, Adjudicators may increase the recommended fine amount by adding the amount of a respondent's financial benefit.

# Unauthorized Transactions and Failures to Execute Buy and/or Sell Orders

FINRA Rule 2010 and NASD IM-2310-2[1]

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br>1. Whether respondent misunderstood his or her authority or the terms of the customer's orders.<br>2. Whether the unauthorized trading was egregious.[2] | Fine of $5,000 to $75,000.[3] | Suspend individual respondent in any or all capacities for a period of 10 business days to one year.<br>In egregious cases,[4] consider a longer suspension (of up to two years) or a bar of an individual respondent. Also consider suspending respondent member firm with respect to any or all activities or functions for up to two years. |

1 This guideline also is appropriate for violations of MSRB Rules G-17 and G-19.

2 The NAC has identified in its decisions the following categories of egregious unauthorized trading: 1) quantitatively egregious unauthorized trading, *i.e.*, unauthorized trading that is egregious because of the sheer number of unauthorized trades executed; 2) unauthorized trading accompanied by aggravating factors, such as, efforts to conceal the unauthorized trading, attempts to evade regulatory investigative efforts, customer loss, or a history of similar misconduct (this list is illustrative, not exhaustive); and 3) qualitatively egregious unauthorized trading. Two factors are relevant to a determination as to whether unauthorized trading is qualitatively egregious: 1) the strength of the evidence, and 2) the respondent's motives; *i.e.*, whether the respondent acted in bad faith or as a result of a reasonable misunderstanding. *See, e.g., In re Daniel S. Hellen*, Complaint No. C3A970031 (NAC June 15, 1999).

3 As set forth in General Principle No. 6, Adjudicators should increase the recommended fine amount by adding the amount of a respondent's financial benefit or require respondent to offer rescission to the injured customers.

4 *See* note 2.

# XI. Supervision

- Disqualified Persons—Failure to Discharge Supervisory Obligations
- Supervision—Failure to Comply With Taping Rule Requirements
- Supervision—Failure to Supervise
- Supervisory Procedures—Deficient Written Supervisory Procedures

# Disqualified Persons—Failure to Discharge Supervisory Obligations

FINRA Rule 2010 and NASD Rule 3010

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br>1. Extent of disqualified person's misconduct and the existence of "red flag" warnings.<br>2. Whether disqualification resulted from financial and/or securities misconduct. | Fine of $10,000 to $100,000. | Consider suspending responsible principal in any or all capacities for up to one year.<br>If disqualified person is involved in egregious misconduct about which the supervisor knew or should have known, consider a longer suspension (of up to two years) or a bar. |

# Supervision—Failure to Comply With Taping Rule Requirements *(continued)*

FINRA Rule 2010 and NASD Rule 3010(b)(2)

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br><br>1. Whether respondents were responsible for an unjustified delay in complying with the requirements of the rule.<br>2. The quality of the taping system that the firm installed.<br>3. The degree of the firm's implementation of follow-up and supervisory procedures.<br><br>In cases in which the failure to comply with tape recording requirements enabled problematic trading practices to occur, consider nature and extent of the underlying problematic conduct and the potential for resulting harm to the public or to a member firm.<br><br>4. In cases involving a failure to report to FINRA or the filing of an inaccurate, untimely or incomplete report, consider whether firm's misconduct concealed from FINRA or other regulatory authorities potential wrongdoing. | ***Failure to Establish, Maintain or Enforce Tape Recording Procedures***<br><br>Fine of $10,000 to $75,000. | ***Failure to Establish, Maintain or Enforce Tape Recording Procedures***<br><br>Consider suspending responsible individual in all principal capacities for 30 business days and limiting the activities of the affected branch office for up to 30 business days. Also consider requiring the firm or affected branch office to comply with the tape recording and reporting requirements of NASD Rule 3010(b)(2) for an additional period equal to the time specified in Rule 3010(b)(2).<br><br>In egregious cases, consider suspending the responsible individual for a longer period in all principal capacities, suspending the responsible individual in all capacities or barring the responsible individual, and limiting the activities of the branch office for a longer period or suspending the firm with respect to any or all activities or functions for a period of up to 30 business days. Also consider requiring the firm or affected branch office to comply with the tape recording and reporting requirements of NASD Rule 3010(b)(2) for an additional period equal to the time specified in Rule 3010(b)(2).<br><br>In cases involving a firm's steadfast refusal to implement, maintain or enforce tape recording procedures, consider barring the responsible individual and suspending the firm in all capacities for a longer period (of up to two years) or expelling the firm. |

# Supervision—Failure to Comply With Taping Rule Requirements

FINRA Rule 2010 and NASD Rule 3010(b)(2)

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| *See Principal Considerations in Introductory Section* | *Failure Timely to Implement Procedures*<br><br>Fine of $5,000 to $50,000. | *Failure Timely to Implement Procedures*<br><br>Consider requiring the firm or affected branch office to comply with the requirements of NASD Rule 3010(b)(2) for an additional period of time equal to the period during which the firm delayed implementation of taping procedures.<br><br>In egregious cases, consider limiting the activities of the affected branch office for up to 30 business days or suspending the firm with respect to any or all activities or functions for a period of up to 30 business days. Also consider suspending the responsible individual in any or all capacities for up to two years or barring the responsible individual. Also consider requiring the firm or affected branch office to comply with the requirements of NASD Rule 3010(b)(2) for an additional period of time equal at least to the period during which the firm delayed implementation of taping procedures. |
| | *Failure to Report to FINRA or Filing of an Inaccurate, Untimely or Incomplete Report*<br><br>Fine of $1,000 to $25,000. | *Failure to Report to the FINRA or Filing of an Inaccurate, Untimely or Incomplete Report*<br><br>In egregious cases, consider suspending the responsible individual in any or all principal capacities for up to 30 business days and limiting the activities of the affected branch office for up to 30 business days. In cases involving the fabrication of a report, consider suspending the responsible individual for a longer period in all principal capacities, suspending the responsible individual in all capacities or barring the responsible individual, and suspending the firm for a lengthier period or expelling the firm. |

# Supervision—Failure to Supervise

FINRA Rule 2010 and NASD Rule 3010[1]

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br><br>1. Whether respondent ignored "red flag" warnings that should have resulted in additional supervisory scrutiny. Consider whether individuals responsible for underlying misconduct attempted to conceal misconduct from respondent.<br>2. Nature, extent, size and character of the underlying misconduct.<br>3. Quality and degree of supervisor's implementation of the firm's supervisory procedures and controls. | Fine of $5,000 to $50,000.[2]<br><br>Consider independent (rather than joint and several) monetary sanctions for firm and responsible individual(s). Consider suspending responsible individual in all supervisory capacities for up to 30 business days. Consider limiting activities of appropriate branch office or department for up to 30 business days. | In egregious cases, consider limiting activities of the branch office or department for a longer period or suspending the firm with respect to any or all activities or functions for up to 30 business days. Also consider suspending the responsible individual in any or all capacities for up to two years or barring the responsible individual. In a case against a member firm involving systemic supervision failures, consider a longer suspension of the firm with respect to any or all activities or functions (of up to two years) or expulsion of the firm. |

1 This guideline also is appropriate for violations of MSRB Rule G-27.

2 As set forth in General Principle No. 6, Adjudicators may increase the recommended fine amount by adding the amount of a respondent's financial benefit.

# Supervisory Procedures—Deficient Written Supervisory Procedures

FINRA Rule 2010 and NASD Rule 3010[1]

| Principal Considerations in Determining Sanctions | Monetary Sanction | Suspension, Bar or Other Sanctions |
|---|---|---|
| ***See Principal Considerations in Introductory Section***<br>1. Whether deficiencies allowed violative conduct to occur or to escape detection.<br>2. Whether the deficiencies made it difficult to determine the individual or individuals responsible for specific areas of supervision or compliance. | Fine of $1,000 to $25,000. | In egregious cases, consider suspending the responsible individual(s) in any or all capacities for up to one year. Also consider suspending the firm with respect to any or all relevant activities or functions for up to 30 business days and thereafter until the supervisory procedures are amended to conform to rule requirements. |

1 This guideline also is appropriate for violations of MSRB Rule G-27.

# Schedule A to the FINRA Sanction Guidelines

# Schedule A to the FINRA Sanction Guidelines

Violations That Generally Are Not Subject to Censure When Monetary Sanctions of $5,000 or Less Are Imposed

## Quality of Markets Violations

- ACT Violations—FINRA Rules 7210A – 7280A, 7310 – 7380 and 7110B – 7170B
- Backing Away
- Best Execution and Interpositioning
- Confirmation of Transactions (SEC Rule 10b-10)
- ECN Display Rule
- Failure to Display Minimum Size in NASDAQ® Securities, CQS Securities, and OTC Bulletin Board® Securities
- Fixed Income Pricing System℠—Trade Reporting and Participant and Quotation Obligations
- Limit Order Display Rule
- Limit Order Protection Rule
- Locked/Crossed Market
- Options Exercise and Positions Limits
- Options Positions Reporting—Late Reporting and Failing to Report
- Order Audit Trail System (FINRA Rules 7400 – 7460)
- Passive Market Making
- Short Sale Violations
- SOES℠ Rules
- Trades Executed During a Trading Halt
- Trade Reporting—Late Reporting; Failing to Report; Inaccurate Reporting
- 1% Rule - SEC Rule 11Ac1-1(c)(1)

## Qualification and Membership Violations

- Continuing Education—Firm Element
- Continuing Education—Regulatory Element
- Registration Violations

## Reporting/Provision of Information Violations

- FOCUS Reports—Late Filing
- Form BD-Y2K Reports—Late Filing
- Forms U-4/U-5—Late Filing; Failing to File; Filing Inaccurate Forms or Amendments
- MSRB Rule G-36—Untimely Filing of Offering Documents with MSRB; Late Filing; Failing to File
- Reportable Events Under NASD Rule 3070—Late Reporting; Failing to Report; Filing Inaccurate Reports
- MSRB Rule G-37 Reporting—Late Filing; Failing to File
- Regulation M Reports—Late Filing; Failing to File
- Request for Automated Transmission of Trading Data (Blue Sheets)—Failure to Respond in a Timely and Accurate Manner

## Financial and Operational Practices Violations

- Customer Protection Rule violations
- Net Capital violations
- Recordkeeping violations
- Violations of SEC Rule 17a-11 (Notification Provisions for Broker-Dealers) Supervision Violations
- Supervisory Procedures—Deficient Written Supervisory Procedures

Additionally, censures generally will not be imposed for violations disposed of under the Minor Rule Violation Plan pursuant to FINRA Rules 9216 and 9217.

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