BEFORE THE NATIONAL ADJUDICATORY COUNCIL

NASD

In the Matter of The Department of Enforcement, Complainant, vs. J. Alexander Securities, Inc. James Alexander Los Angeles, California Robert J. Prager Boca Raton, Florida, Respondents.	DECISION Complaint No. CAF010021 Dated: August 16, 2004

Registered representative who engaged in directed trading, received guaranteed profits, and recklessly disregarded indicia of a market manipulation, Held to have aided and abetted a market manipulation in violation of Conduct Rule 2110.

Firm and its president failed to provide adequate on-site supervision of a trader; failed to provide for heightened supervision of a registered person with an extensive disciplinary history, who was the subject of current investigations and complaints; and ignored red flags indicating significant misconduct, Held firm and its president failed adequately to supervise and failed to implement and enforce adequate written supervisory procedures, in violation of Conduct Rules 2110 and 3010.

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Appearances

For the Complainant Department of Enforcement: Leo Orenstein, Esq., NASD Department of Enforcement.

For the Respondent Robert Prager: Anthony W. Djinis, Esq. and Paul Bazil, Esq., Djinis & Pickard.

For the Respondents J. Alexander Securities, Inc. and James Alexander: Richard Friedman, Esq.

Opinion

NASD's Department of Enforcement ("Enforcement") has appealed a May 7, 2003 decision of an NASD Hearing Panel as to respondent Robert Prager ("Prager"), and Prager has cross-appealed from the same decision. J. Alexander Securities, Inc. ("Alexander Securities" or the "Firm") and James Alexander ("Alexander") (collectively, the "Alexander Respondents") also appealed the Hearing Panel's decision. Enforcement cross-appealed the decision as to the Alexander Respondents.

The Hearing Panel dismissed allegations under cause one of the complaint that Prager engaged in fraudulently manipulative activity in connection with the purchase or sale of the stock of H&R Enterprises, Inc. ("H&R"). The Hearing Panel also dismissed allegations under cause two that, alternatively, Prager aided and abetted the manipulative trading of others. The Hearing Panel found under cause two, however, that Prager had violated just and equitable principles of trade by negligently placing his Firm at risk. The Hearing Panel's finding that Prager acted negligently is superceded by our finding that Prager engaged in directed trading that aided and abetted a manipulative scheme to increase the volume and price of H&R stock.

We vacate the Hearing Panel's imposition of a $5,000 fine against Prager under cause two and order that Prager be barred from associating with any member firm in any capacity. In addition, we assess joint and several hearing costs against Prager.

We affirm in part and modify in part the Hearing Panel's findings as to the Alexander Respondents. We affirm the following Hearing Panel findings: (1) that Alexander Securities, through Alexander, failed to supervise adequately the activities of Jerome Rosen ("Rosen"), by neglecting to appoint an on-site principal to supervise Rosen; (2) that Alexander Securities, through Alexander, failed to supervise adequately the activities of Rosen by failing to establish written procedures to provide for heightened supervision of individuals with disciplinary histories; and (3) that Alexander Securities, through Alexander, failed to detect and prevent Rosen's involvement in a manipulative scheme by disregarding numerous red flags.

The Hearing Panel did not specifically address in its decision the allegation that the Alexander Respondents failed to establish, maintain, and enforce written procedures to prevent and detect violations of the securities laws by failing to provide procedures to ensure that Rosen would be supervised by an on-site principal at the Firm's Aventura, Florida Office of Supervisory Jurisdiction ("OSJ"). We modify the Hearing Panel's decision by finding that the evidence supports that allegation.

We affirm the Hearing Panel's sanctions against Alexander as follows: a two-year suspension in all capacities, a $200,000 fine, and a requirement to requalify as a principal. We also affirm the Hearing Panel's imposition of hearing costs and assess appeal costs.

We modify the Hearing Panel's sanctions against Alexander Securities by deleting the requirement that the Firm's Florida branch cease market-making activities for 60 days. We otherwise affirm the Hearing Panel's sanctions of a $200,000 fine and a requirement to hire an independent consultant acceptable to NASD[1] for a period of three years to review the Firm's supervisory, compliance, and other policies and procedures. We also affirm the Hearing Panel's imposition of hearing costs and assess appeal costs.

I. Background

Prager entered the industry in May 1987 as a general securities representative, and he became a general securities principal in July 1993. He became associated with then-member firm Saperston Financial, Inc. ("Saperston") as a general securities representative and general securities principal in May 1997, and he remained with Saperston until the firm ceased operating in October 1997, which is the period relevant to this matter. He was associated with Alexander Securities for a period just prior to his association with Saperston, from September 1996 to May 1997, and for two periods following his association with Saperston, from October 1997 to February 1998, and from April to December 1998. Since February 1998, Prager has been associated with five member firms, and he is currently associated with a member firm as a general securities representative, general securities principal, and equities trader.

Alexander Securities is, and was during the relevant period, a registered broker-dealer and member of NASD, with its principal place of business and headquarters in Los Angeles, California. The Firm has been a member of NASD since January 17, 1979, and it has four offices: three located in California, and one located in Aventura, Florida. Alexander became registered as a general securities representative and general securities principal in May 1979, at the same time that he became associated with Alexander Securities. Alexander has been the majority owner of Alexander Securities since 1981, and he has owned 100 percent of the Firm since sometime prior to 1997. Alexander is, and was at all times during the relevant period, the president and chief compliance officer of Alexander Securities.

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[1] We add the requirement that the independent consultant have an expertise in market-making activities.

On August 27, 2001, Enforcement filed a complaint, naming as respondents the Alexander Respondents, Prager, Rosen,[2] and Timothy Chamberlain ("Chamberlain").[3] The complaint alleged that Michael Mitton ("Mitton"), a Canadian resident and convicted criminal with a history of securities law violations, and David Heredia ("Heredia"), a stock promoter who at the time of the alleged misconduct was barred from association with any NASD member firm, orchestrated a complex scheme to manipulate the common stock of H&R.[4] The complaint further alleged that in order to implement their scheme, Mitton and Heredia joined forces with traders Prager, who was associated with Saperston; Rosen, who was associated with Alexander Securities; and Chamberlain, who was associated with then-member firm Equitrade Securities Corp. ("Equitrade").

II. Facts

A. An Overview of the Manipulative Scheme

In January 1997, a so-called "shell broker" sold H&R to Charles Wiebe ("Wiebe"), an associate of Mitton, for $250,000 and shares of H&R stock. At the time of the sale, H&R was a shell company that had no business operations.

Through the spring and summer of 1997, H&R, at the direction of Mitton, employed the services of several stock promoters, including Heredia's firm, Alexander Troy Consultants, Inc. ("Alexander Troy"), to promote the company's stock to retail investors. Through the summer and fall of 1997, H&R, at the direction of Mitton, issued nearly three million shares of unrestricted H&R stock to Mitton-controlled nominees and associates at prices of either $0.01 or $0.50 per share.

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2 On September 27, 2002, the Hearing Officer stayed this proceeding as to Rosen because Rosen had filed a bankruptcy petition. On July 11, 2003, the Hearing Officer granted Enforcement's motion to withdraw the complaint against Rosen without prejudice based on Rosen's consent to an SEC administrative order barring him from the industry for manipulative trading activity.

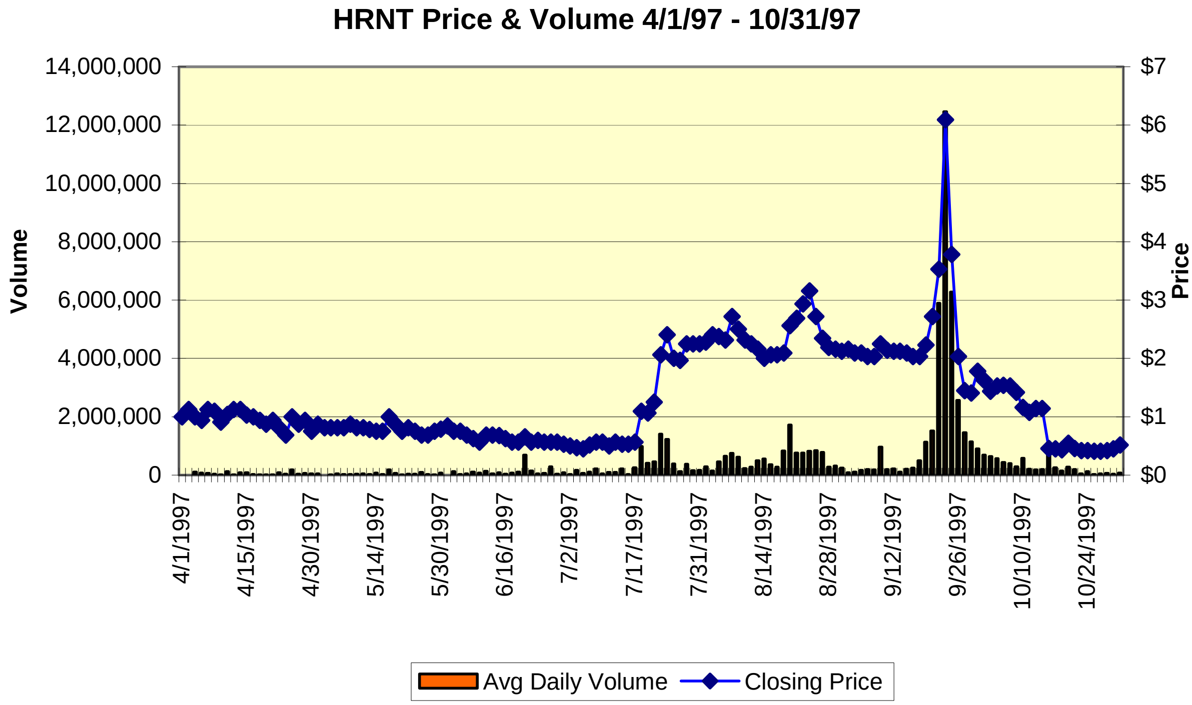
3 Chamberlain entered into a settlement of this proceeding on September 26, 2002, under which he was barred from associating with any member in any capacity.

4 Mitton and Heredia were not respondents in this proceeding. Mitton was barred in 1988 from trading stocks or serving as an officer or director of any company in British Columbia for 20 years, after admitting he engaged in stock manipulation and insider trading. Heredia, a stock promoter, was barred from association with any NASD member in any capacity on March 6, 1998, as a result of allegations involving fraudulent sales practices and unauthorized transactions.

Mitton and Heredia directed the trading of three registered representatives at three different member firms -- Prager at Saperston, Chamberlain at Equitrade, and Rosen at Alexander Securities -- who traded H&R stock, as directed, for guaranteed profits. In addition to these guaranteed profits, Chamberlain and Rosen received free shares of H&R stock in nominee accounts they set up and kept hidden from their employers.

With the participation of traders Prager, Chamberlain, and Rosen, H&R stock traded in a circular fashion, at ever-increasing prices, among the firms of the three traders, the member firm Hill Thompson Magid, L.P. ("Hill Thompson"), and the accounts of Mitton's nominees and associates held at certain Canadian brokerage firms. The trading arrangement allowed Mitton and Heredia to manipulate the market price of H&R from $2.21875 per share to $6.6875 per share, between September 22 and 25, 1997. Mitton's nominees and associates, including Heredia, then sold their shares at higher prices.

The following chart shows the price and volume of H&R stock from April through October 1997, both of which surged upward during the period of the manipulation, and then dropped precipitously once Mitton's nominees and associates sold their shares at an inflated inside bid price[5] and the trading arrangement ceased.



5 The bid price is "the highest price a prospective buyer is prepared to pay at a particular time for a trading unit of a given security." Barron's Dictionary of Finance and Investment Terms (6th ed. 2003). The highest bid price is typically characterized in the industry as the "inside bid price."

On September 24, 2003, Mitton's nominees and associates refused to acknowledge, or "DK'd,"[6] large purchases of H&R stock from Saperston and Alexander Securities, which led to the inside bid price dropping to below $2 per share. As a result, Saperston and Alexander Securities were left holding stock that they had just bought from Mitton's nominees and associates, at an inflated price.

Saperston was left with approximately 1.7 million shares at a total cost of approximately $8.8 million. Because Saperston was unable to absorb a loss of that magnitude, it was forced to cease operating due to insufficient net capital. Saperston's clearing firm, National Financial Services Corp. ("National Financial"), a subsidiary of Fidelity Global Brokerage Group, covered approximately $8,833,646 of Saperston's losses. Alexander Securities, which was left with approximately 600,000 H&R shares for which it had paid approximately $1 million, was able to sustain the loss and continue operating.

B. Rosen and Prager Trade H&R Stock at the Direction of Mitton or Heredia

1. Rosen

Rosen, a trader with Alexander Securities during the relevant period (September 1997), was introduced to Mitton through the individual who sold the H&R shell to Mitton. Rosen then introduced Mitton to Heredia based on Mitton's expressed desire to find a promoter to assist him with marketing the shares of H&R stock. Subsequently, in approximately January 1997, Alexander Securities began making a market in H&R stock. Rosen agreed to trade H&R stock at Mitton's direction for guaranteed profits from the spread between the inside bid and the asked price for H&R stock. Rosen also received free stock from Mitton in exchange for trading H&R stock. Mitton instructed Rosen to let him know if there was any trading volume in H&R stock, and to purchase the stock and report his inventory position and average cost to Mitton. As part of the arrangement, Mitton assured Rosen that he would have a purchaser "take him [Rosen] out" of his position in H&R stock. As directed by Mitton, Rosen purchased shares of H&R stock, and then reported his position and average price to Mitton. Mitton, in turn, had various Canadian firms purchase the stock from Rosen. Telephone records show hundreds of calls between Rosen and Mitton during the relevant period, many immediately preceding the H&R stock transactions.

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[6] The term "DK," or "Don't Know," is used when brokers question a trade and exchange comparison sheets to verify the details of the transaction. See Barron's Dictionary of Finance and Investment Terms (6th ed. 2003).

2. Prager

In May 1997, Prager left Alexander Securities to open a branch office of Saperston in Deerfield, Florida. In June 1997, an individual who had previously been Rosen's assistant trader at Alexander Securities joined Prager at Saperston as his assistant trader. Prager made all of the trading decisions in the office, while his assistant answered telephones, completed trading blotters, sent documents via facsimile, and pursued leads for business prospects.

Prager's business at Saperston consisted of wholesale trading with other broker-dealers. Prager testified that he made a market in approximately 25 to 60 securities at any one time. Approximately 80 percent of the securities he traded were over the counter bulletin board ("OTCBB") stocks, with the remainder consisting of Nasdaq-traded securities.

In July 1997, Prager's assistant contacted Mickey Hobby ("Hobby"), a promoter with Heredia's firm (Alexander Troy), to obtain information about a company whose stock he was researching. During their conversation, Hobby suggested that the assistant speak to Heredia who could give him some business with respect to the stock of H&R. Prior to this time, neither Prager nor his assistant knew of Heredia, or his company, Alexander Troy. In the middle of July 1997, Prager's assistant telephoned Heredia, who identified himself to Prager and his assistant as a representative of some institutions that were interested in buying H&R stock. As a result of conversations with Heredia, Prager agreed to become a market maker for H&R stock. He entered into an oral agreement with Heredia to buy and sell H&R shares at Heredia's direction, and to be paid a guaranteed profit of $0.03 per share. Heredia did not open an account at Saperston, nor did he pay for any of the transactions that Prager executed on Heredia's instructions.

Prager began trading shares of H&R in Saperston's trading account on August 6, 1997, at Heredia's direction. Heredia would call in a market order or a limit order for Prager to buy a certain number of shares of H&R stock. Prager would then buy the designated number of shares of H&R stock and, as directed by Heredia, report his inventory position and average cost per share to Heredia. Heredia then told Prager to sell the H&R shares to Chamberlain at Equitrade, which is where Heredia told Prager he had the institutional account that he represented. Prager testified that Heredia would tell him the price at which to sell the accumulated shares to Equitrade, which was the price Prager had paid for the shares plus his profit of $0.03 per share.

Shortly after advising Heredia about Saperston's purchases on his behalf and its average cost to acquire the H&R shares, Chamberlain, from Equitrade, would contact Prager or his assistant to confirm that Equitrade would purchase the shares at issue. When Prager or his assistant spoke to Chamberlain, he already knew the quantity of shares that he was to purchase and the average price that Saperston had paid to acquire them, information that Prager or his assistant had discussed with Heredia just prior to Chamberlain's call. Prager was able to maintain a relatively flat position with respect to H&R shares as a result of his trading arrangement with Heredia.

From August 6 through September 19, 1997, Saperston's purchases of H&R stock on behalf of Heredia ranged in size from 500 to 25,000 shares. During that period, Heredia instructed Prager to buy increasingly larger quantities of H&R stock. As a result, Prager's trading in the shares of H&R became a major part of his business.

Because of the amount of business Saperston was doing with Heredia, Prager decided to meet Heredia in person. On Friday, September 19, 1997, Prager and his assistant met Heredia and Hobby for dinner at a restaurant in Orlando, Florida. During dinner, Heredia commended Prager and his assistant for their purchases and sales of H&R stock. Heredia also told Prager and his assistant that he represented a $50 million account at a Canadian brokerage firm by the name of Wolverton Securities, Ltd. ("Wolverton"), and that he would be requesting larger purchases of H&R stock through Saperston in the coming weeks.

C. <u>Prager's Trades Were an Essential Link in the Manipulative Trading of H&R Stock</u>

From August through September 21, 1997, Prager's total purchase volume fluctuated from a low of 200 shares to a high of 169,300 shares. The volume of shares of H&R stock that Prager purchased on behalf of Heredia, however, increased to 176,000 shares on Monday, September 22, 1997, the first business day following Prager's dinner meeting with Heredia. In addition, Prager executed a purchase order on that date for 44,000 shares of H&R stock, which was almost double the maximum number of shares that Prager previously had purchased for Heredia in one purchase order.

Heredia's instructions to Prager on September 22, 1997, were to "take the offer." As a result, Prager filled most of Heredia's orders that day from Hill Thompson, the only market maker consistently at the inside offer. Each time Prager purchased H&R shares from Hill Thompson at the inside offer on behalf of Heredia, Hill Thompson upticked the insider offer slightly (up to 1/32 per share). Prager would then uptick his inside bid, in an effort to attract sellers to fill Heredia's orders for larger quantities of H&R stock. The opening inside bid on September 22, 1997 for H&R shares was $2.21 per share. Between 2:07 and 3:33 p.m., the inside bid price for H&R shares increased from $2.25 to $2.68 per share, mostly as a result of Saperston and Alexander Securities' upticks.

On Tuesday, September 23, 1997, Heredia ordered, and Prager bought, more than one million shares of H&R stock from various dealers, including 594,000 shares from Hill Thompson. Prager repeatedly upticked the inside bid to fill Heredia's large purchase orders. The inside bid price for H&R shares increased from $2.71 to $3.53 per share between 9:31 a.m. and 3:55 p.m., based primarily on Saperston and Alexander's upticks. Prager sold 1,090,000 shares of H&R to Equitrade on September 23, 1997, by following the usual pattern. When Prager purchased the shares of H&R stock, he orally confirmed to Heredia the number of shares acquired and the average price of their acquisition. Within minutes of that confirmation, Chamberlain, who already was familiar with the trade details that Prager had discussed with Heredia, contacted Saperston to buy the accumulated shares of H&R at Saperston's average price plus the guaranteed profit of $0.03 per share.

On Wednesday, September 24, 1997, Heredia directed Prager to purchase in excess of five million shares of H&R stock from various dealers. In order to fill such a large purchase order, Prager continually upticked the inside bid price to attract sellers throughout the trading day. As a result, the inside bid price increased substantially on September 24, 1997, as compared to prior trading days, from $3.56 to $6.09 per share between 9:14 a.m. and 3:55 p.m. As before, Saperston and Alexander Securities were responsible for the majority of the upticks to the inside bid price of H&R stock.

By noon on September 24, 1997, Prager had accumulated more than 1.4 million shares of H&R stock. Prager, who up until that time had been trading relatively flat, started to fall behind in selling the stock because of the size and number of transactions involved and the time needed to compute his average cost and report back to Heredia. Nevertheless, he was able to sell 1.2 million shares in four separate transactions to Equitrade shortly after noon on September 24, 1997.

Later in the afternoon on September 24, 1997, Heredia called and instructed Prager to buy back from Equitrade 800,000 of the shares of H&R that Prager had sold to Equitrade earlier in the day, and to sell those shares and the remainder of the H&R stock he was accumulating to Wolverton. Prager's trading blotter confirms that he followed Heredia's directions. After selling 700,000 shares of H&R stock to Wolverton at 2:31 p.m., one minute later, at 2:32 p.m., he bought back 800,000 shares of H&R from Equitrade. Heredia advised Prager that he was now going to hold H&R stock at Wolverton instead of Equitrade. Heredia also told Prager that he would begin paying him $0.06 per share on H&R transactions instead of the $0.03 that he had been paying.

In accordance with Heredia's directions, Prager purchased large amounts of H&R stock on September 24, 1997, primarily from Hill Thompson, and sold those accumulated positions to Wolverton. Each of Prager's sales to Wolverton on that date occurred at prices below the inside bid price, for a total market discount to Wolverton of $1,742,500.[7] Saperston made the following sales to Wolverton on September 24, 1997, at the market discounts indicated:

Date	Time	Inside bid Price	Number of Shares Saperston Sold to Wolverton	Price Wolverton Paid	Amount of Market Discount
9/24/97	2:32 p.m.	$5.15625	700,000	$4.75	$284,375
9/24/97	2:52 p.m.	$5.1875	500,000	$4.75	$218,750
9/24/97	3:09 p.m.	$5.40625	460,000	$4.75	$301,875
9/24/97	4:34 p.m.	$6.09375	2,000,000	$5.625	$937,500

Toward the end of the trading day on September 24, 1997, Prager told Heredia that he still needed to buy 70,000 shares to fill Heredia's order to sell two million shares to Wolverton.

7 The record contains no explanation of whether Prager believed that he would be compensated in some other way for these trades.

Heredia told Prager to buy the 70,000 shares he needed from Rosen at Alexander Securities. Prager bought the final 70,000 shares from Rosen at $6.125 per share at 4:00 p.m. on September 24, 1997, and sold the accumulated two million shares to Wolverton at $5.625 per share at 4:34 p.m. that same day.

From September 22 to September 24, 1997, the inside bid price for H&R stock soared from $2.21875 to $6.09375 per share, an increase of approximately 175 percent. During that period, Prager was responsible for approximately 51 percent of the inside bid upticks, and Rosen was responsible for approximately 40 percent of the upticks, to the inside bid price of H&R stock.[8] Although Saperston ceased upticking the inside bid price of H&R stock on September 25, 1997, Alexander Securities continued to uptick the inside bid price on that date, increasing it from $6.12 to $6.68 per share between 8:55 and 9:32 a.m.

D. Problems Arise with the H&R Transactions

On September 23, 1997, two Canadian brokerage firms that had previously bought H&R shares from Equitrade DK'd those trades. When Chamberlain complained to Heredia about the DK'd trades, Heredia told Chamberlain that he would take care of it. Shortly thereafter, Chamberlain began receiving large purchase orders from Wolverton for shares of H&R stock. On that same date, Equitrade's management directed Chamberlain to close any positions in H&R stock, citing the problem with the DK'd trades.

On Thursday morning, September 25, 1997, Saperston's back office told Prager that sales of about two million shares of H&R stock at $5.625 per share to Wolverton were disputed. The back office also told Prager that there was a problem with some of the Equitrade transactions, which the back office thought it could resolve because it had taped a conversation during which a representative from Equitrade had confirmed the trades.

In an effort to determine the cause of the problem with the Wolverton transactions, Prager's assistant called his contact at Wolverton, who assured him that there was no problem with the trades. The Wolverton contact explained that the trades would take an extra day to compare because trades with Canadian brokerage firms do not go through the Automated Confirmation Transaction Service ("ACT"). Prager and his assistant also notified Heredia, who gave them essentially the same assurances that they had received from the Wolverton representative.

In fact, the transactions were not comparing because Wolverton and Equitrade had DK'd a total of 3.2 million shares of H&R stock of their purchases from Saperston. Later in the day on September 25, 1997, however, Wolverton purchased 700,000 shares of H&R stock from Saperston, leaving approximately 2.5 million shares that did not compare. On the same day,

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[8] We note a slight disparity between our calculation and the Hearing Panel's calculation of the number of upticks effected during the relevant period.

Equitrade finally accepted 800,000 shares of H&R stock from Saperston, leaving Saperston with a total of approximately 1.7 million shares that did not compare.

Before 9:00 a.m. on Friday, September 26, 1997, Saperston's back office in Buffalo, New York called Prager and informed him that 1.3 million shares of H&R sold to Wolverton on September 24, 1997, still had not compared. Prager immediately called and spoke to Saperston's owner and Saperston's compliance officer. He described the trade problem to them, including the potential loss to Saperston. That night, Prager and his assistant flew to Saperston's headquarters in Buffalo to meet the next morning, on Saturday, September 25, 1997, with officials of Saperston and Saperston's clearing firm to report on the problem. During the meeting, Prager, his assistant, Saperston's owner, and Saperston's compliance officer prepared a letter, addressed to the SEC, NASD, and Nasdaq, reporting the H&R stock manipulation and asking for a full-scale investigation. Before sending the letter via facsimile, they telephoned Nasdaq to report that Saperston had been "scammed," and that trading in the shares of H&R stock should be halted.

By the close of trading on Friday, September 26, 1997, the inside bid for H&R stock had dropped below $2 per share. As a result of the approximately 1.7 million shares of H&R stock that Wolverton and Equitrade DK'd, Saperston incurred a loss of approximately $9 million that it was unable to sustain. As a result, Saperston was forced to cease operations because of insufficient net capital. Saperston's clearing firm, National Financial, was obligated to cover Saperston's purchases of H&R stock from Hill Thompson and to absorb a loss of $8,833,646.88. Through settlements and other legal action, National Financial eventually reduced the loss to $2,791,332.[9]

Prager testified at the Hearing Panel hearing that he had not realized that Mitton and Heredia had devised a scheme to manipulate the price of H&R stock until he was en route to Buffalo. Prager testified that during the flight to Buffalo his trading assistant explained to him that they had been involved in circular trading among Saperston, Equitrade, Wolverton, and Hill Thompson. Prager then concluded that the trading pattern and the large amount of volume he was trading for Heredia should have served as red flags to alert him to the manipulation of the price of H&R stock.

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[9] That amount was further reduced by $50,000 as a result of the settlement in October 2003, of an arbitration matter that National Financial had filed against Alexander Securities. The Alexander Respondents filed a motion requesting that the settlement documents from the arbitration matter between National Finance and Alexander Securities be admitted as additional evidence. The Subcommittee of the NAC that considered this matter on appeal ("Subcommittee") granted the motion, finding that the Alexander Respondents had demonstrated the materiality of the documents under NASD Procedural Rule 9346. We ratify the Subcommittee's decision.

E. The Alexander Respondents' Supervision of Rosen

1. Newberg Relinquishes Supervisory Responsibility Over Rosen

Prior to April 1, 1997, Richard Newberg ("Newberg") was the general securities principal responsible for supervising Alexander Securities' Florida OSJ, including Rosen.[10] Newberg testified that he was aware of Rosen's prior disciplinary history during the period that he supervised Rosen.[11] On April 1, 1997, Newberg sent Gordon Kerr ("Kerr"), who was a compliance office employee at Alexander Securities' headquarters in Los Angeles, a memorandum relinquishing all supervisory responsibility over Rosen. The memorandum stated in part:

> I can no longer be responsible for Mr. Rosen. He does not respond to any form of authority and has evidenced this on numerous occasions. I believe his conduct and actions are and will continue to be deleterious to the firm.

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[10] On the issue of supervision, the Alexander Respondents filed a motion seeking to introduce as additional evidence on appeal documents regarding an unrelated disciplinary matter and a version of the Firm's supervisory procedures that were not in effect until after the period at issue in this matter. The Subcommittee denied the Alexander Respondents' request because they failed to demonstrate why the documents were material to the proceeding. We affirm the Subcommittee's ruling and its subsequent ruling to deny the Alexander Respondents' motion to reconsider its earlier denial.

[11] When Rosen joined Alexander Securities in April 1995, he had a record of serious disciplinary violations, which included misconduct for which his supervisors were sanctioned for failing to supervise him properly. In 1980, a federal court permanently enjoined Rosen from violating the registration provisions of the Securities Act of 1933 ("Securities Act") and, in a related administrative proceeding, the SEC entered findings that Rosen had willfully violated Section 5 of the Securities Act by engaging in an unlawful distribution of stock. The SEC suspended him from association with any broker or dealer for 14 days, and ordered that he be subject to enhanced supervisory oversight for a period of two years. In 1985, Rosen entered into a settlement with NASD with respect to allegations that he and others engaged in a scheme to enrich themselves at the expense of the public through improper redemptions of mutual fund shares substantially below the redemption price. Rosen was censured, fined $30,000, and suspended from association with any member of NASD for 30 days. Rosen's supervisors also were sanctioned in that proceeding for failing to supervise him adequately. In 1992, Rosen entered into another settlement with NASD, this time based on allegations that he charged excessive markups in violation of SEC Rule 10b-5 and NASD Rules. Rosen was censured and fined $5,000.

During the preceding three months, beginning in January 1997, Newberg sent Alexander and Kerr a succession of notes and memoranda complaining about Rosen's conduct. On January 28, 1997, Newberg sent Kerr a handwritten note advising him that a representative of NASD had called him to report that NASD had received a number of complaints about Rosen's conduct and unprofessional behavior. Newberg asked for assistance in dealing with Rosen. In February 1997, Newberg wrote two memoranda concerning information he learned about Rosen during a meeting Newberg had with federal authorities on January 21, 1997. The first memorandum, which was dated February 3, 1997, and sent to Alexander, relayed Newberg's concern about having learned from representatives of the Commission, the U.S. Attorney's Office, and the Federal Bureau of Investigation ("FBI") that Rosen was the subject of a joint investigation into the possible manipulation of a variety of securities that Rosen traded, and that Rosen had asserted his Fifth Amendment privilege. In a follow up handwritten note to Alexander, dated February 12, 1997, Newberg urged Alexander to have the Firm's attorney speak to Rosen's attorney about Rosen's assertion of the Fifth Amendment privilege. In March 1997, Newberg sent a handwritten note to Kerr about the continued difficulty he was having supervising Rosen, Rosen's continued failure to comply with applicable rules, and Newberg's need for assistance from Kerr.

On February 18, 1999, Newberg testified on the record that, as indicated in his April 1, 1997, memorandum to Kerr, he ceased having any supervisory responsibility over Rosen as of April 1, 1997. Newberg also testified in his on-the-record testimony that Alexander had accepted his decision to no longer supervise Rosen, and that Alexander also had accepted responsibility for supervising Rosen from that point forward.

In late August or early September 1999, NASD conducted a routine examination of Alexander Securities. As part of that investigation, NASD compliance examiner Steve Thornton ("Thornton") questioned Newberg about his supervisory duties over Rosen in view of the April 1, 1997, note to Kerr. Thornton testified that Newberg stated that as of April 1, 1997, he no longer had any supervisory responsibility over Rosen and that Newberg told him he "really didn't want to have anything to do with [Rosen]."

At the Hearing Panel hearing in this matter, however, Newberg testified that he never actually relinquished his supervisory responsibility over Rosen. When Enforcement questioned him at the hearing about the inconsistency between his hearing testimony and his sworn on-the-record testimony, he claimed that he merely had been "puffing" in his previous testimony and that, in fact, he continued to be responsible for supervising Rosen after April 1, 1997.[12]

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[12] After observing Newberg's demeanor at the hearing, and weighing his hearing testimony against the documentary evidence and the testimony of the former examiner who interviewed Newberg, the Hearing Panel concluded that Newberg's claim of puffery was "preposterous" and "patently not credible." The Hearing Panel also noted that there was no written evidence to show that, after having resigned his responsibility in writing, Newberg ever retracted that resignation.

2. Alexander Assumed a Supervisory Role Over Rosen as of April 1, 1997

Alexander admitted in connection with an SEC matter on October 27, 1999, that he assumed a supervisory role over Rosen in April 1997. In February 11, 2000, on-the-record testimony with NASD, Alexander admitted that he was responsible for supervising Rosen in September 1997, and that sometime during the year prior to that date he and Newberg had a "distinct" discussion with respect to the fact that Alexander was taking over the supervisory responsibility for Rosen.

Following NASD examiner Thornton's routine examination of the Firm in 1999, NASD held a compliance conference with Alexander on December 14, 1999, during which NASD staff discussed, among other issues, its concern about the supervision of Rosen. In a letter to Thornton dated January 12, 2000, Alexander admitted that he was responsible for supervising Rosen.[13]

3. Supervision of Rosen Following Collapse of the Trading Arrangement

After the trading arrangement involving H&R stock collapsed in September 1997, Alexander Securities was left with a loss in excess of $1 million as a result of Rosen's trading activities. Nevertheless, Alexander Securities permitted Rosen to continue trading and to work off the losses the Firm suffered, with no change in the supervisory arrangement.

Thereafter, Newberg continued to send written notes to Alexander and Kerr urging them to do something with regard to Rosen. In October 1997, Newberg proposed that they move Rosen to the Los Angeles office "for regulatory purposes & compliance." On November 6, 1997, Newberg sent Alexander a note about "another" stock that Rosen traded in which the Commission had suspended trading. He wrote, "I do not think for the 1000th time Mr. Rosen is suitable for this industry, no less your firm. He is inherently problematic & unstable." On November 19, 1997, Newberg advised Kerr in writing that Rosen was dealing in another stock with Heredia concluding, "I do not think this portends anything positive." On January 9, 1998, Newberg sent Kerr a note informing him that Rosen was speaking directly with Heredia and Mitton about two other stocks. "This scares the hell out of me," Newberg wrote, "[a]nd I believe the [H&R] fiasco is not over yet. Something has to be done. Do we have a responsibility to notify the regulators?" In a memo dated September 23, 1998, with Rosen still working at the Florida OSJ, Newberg pleaded with Alexander to resolve the situation regarding Rosen.

Thornton testified that he had questioned Alexander about Rosen's supervision as part of his on-site investigation. Thornton testified that, although Alexander claimed that he had heightened his supervision of Rosen by reviewing Rosen's trading blotters and periodically

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[13] The Hearing Panel concluded that Alexander, who was located in California, assumed supervisory responsibility over Rosen (who worked in the Florida OSJ) after Newberg resigned his supervision of Rosen on April 1, 1997.

visiting the Florida OSJ, there was no documentary evidence to show that any heightened supervision was instituted at the Florida OSJ.

III. Discussion

A. Prager Aided and Abetted a Market Manipulation

The three elements necessary to find aiding and abetting liability are: (1) securities law violations by another party; (2) general awareness or knowledge by the aider and abettor that his actions are part of an overall course of conduct that is illegal or improper; and (3) substantial assistance by the aider and abettor in the conduct constituting the violations. See Howard R. Perles, Exchange Act Rel. No. 45691, 2002 SEC LEXIS 847, at *13-14 (Apr. 4, 2002). For the reasons discussed below, we conclude that Prager aided and abetted a scheme to manipulate the price of H&R stock, in violation of Conduct Rule 2110.

1. Primary Violations

We find, and Prager does not dispute, that Mitton and Heredia orchestrated a manipulative scheme to artificially raise the volume and price of H&R stock. The testimonial and documentary evidence demonstrate that Heredia and Mitton directed a majority of the transactions among the participants, including Prager, Chamberlain, and Rosen, which permitted them (Heredia and Mitton) to increase the inside bid price of H&R stock significantly from September 22 through 25, 1997. During that period, the inside bid price increased from $2.21875 to $6.6875 per share, which allowed Mitton and his nominees and associates to sell their shares at artificially inflated prices.

The Commission has defined manipulation as "'the creation of deceptive value or market activity for a security, accomplished by an intentional interference with the free forces of supply and demand.'" Howard R. Perles, 2002 SEC LEXIS 847, at *15 (quoting Swartwood, Hesse, Inc., 50 S.E.C. 1301, 1307 (1992)). Courts and the Commission have recognized directed trading as a vehicle for manipulative activity. United States v. Cohen, 518 F.2d 727, 734-35 (2d Cir. 1975) (stating that directed trades are evidence of manipulation); SEC v. Lorin, 877 F. Supp. 192, 198 (S.D.N.Y. 1995) (noting that directed and controlled trades and guaranteed profits are activities that have consistently supported a presumption of intent to manipulate the market), aff'd in part, 76 F.3d 458 (2d Cir. 1996). A "directed order" has been defined as "a wash sales order where a third party arranges for the buyer of securities to contact the seller, or where a third party pre-arranges a transaction between brokerage firms."[14] United States v. Corr, 543 F.2d 1042, 1046 (2d Cir. 1976). Mitton and Heredia's directed trading, which caused H&R stock to trade in a circular fashion at ever-increasing prices, was manipulative because it interfered

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[14] A wash sale consists of a purchase and sale of a security within a short period of time by a single investor or -- where manipulation is involved -- by two or more parties conspiring to create artificial market activity to profit from a rise in the security's price. See Barron's Dictionary of Finance and Investment Terms (6th ed. 2003).

with the free forces of supply and demand by artificially increasing the volume of trading in, and the price of, H&R stock.[15]

2. Substantial Assistance

The record establishes that Mitton and Heredia's manipulation of the price of H&R stock was successful in large part due to Prager's participation. Between September 22 and September 24, 1997, Prager effected numerous transactions in H&R stock at Heredia's direction. Prager bought approximately 3.9 million shares of H&R stock from Hill Thompson at Heredia's direction, or about 56 percent of the publicly available float.[16] Additionally, in that same period, Prager's role was pivotal in causing the inside bid price to increase approximately 175 percent, from $2.21875 per share to $6.09375 per share. Prager was responsible for approximately 51 percent of the upticks to the inside bid price during the relevant period. Prager's actions had the effect of distorting the market activity in the shares of H&R stock and creating the false appearance of active trading. See Howard R. Perles, 2002 SEC LEXIS 847, at *17. His actions therefore substantially assisted the manipulation.

3. General Awareness

Evidence showing that an aider or abettor acted with severe recklessness establishes scienter and thus satisfies the requirement that the aider and abettor possess a general awareness or knowledge that his actions are part of an overall course of conduct that is illegal or improper. See Graham v. SEC, 222 F.3d 994 (D.C. Cir. 2000). Severe recklessness exists when the aider and abettor encounters "red flags" or "suspicious events creating reasons for doubt" that should have alerted him to the improper conduct of the primary violator. Id. 1006.

Prager effected countless trades at Heredia's direction that he knew, or was severely reckless in not knowing, were part of a manipulative trading scheme. The evidence establishes that Prager encountered numerous "red flags" that should have alerted him to Mitton and Heredia's manipulative scheme.

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15 The fact that the trading of H&R stock was principally wholesale in nature does not affect our analysis because the anti-fraud rules do not require injury to a purchaser, but are "expansive enough to encompass the entire selling process, including the seller/agent transaction." United States v. Naftalin, 441 U.S. 768, 773 (1979). It is not necessary that injury occur to a purchaser for liability to attach. Id.

16 Although the record contained no documentary evidence of the exact number of H&R shares publicly available during the relevant period, Mitton testified that the approximate maximum amount of the public float for H&R shares was seven million shares. Thus, our calculation of the percentage of the public float that Prager purchased from Hill Thompson is a reasonable estimate based on Mitton's testimony.

The evidence shows that Prager allowed Heredia to place trading orders without requiring him to open an account or deposit any monies or collateral to pay for the trades that he directed Prager to execute on his behalf. Instead, Prager, who was an experienced trader, permitted Heredia to place increasingly large volumes of unusual purchases and sales through Prager's firm account, thus placing the risk on Saperston. Further, Prager admitted during his on-the-record interview that during the period he was executing transactions for Heredia, he concluded that Heredia had access to the type of market information available only on quotation devices available to traders. Prager, however, never questioned Heredia about any of these details.[17]

Prager was also severely reckless in not recognizing that the trades that he effected on behalf of Heredia had the indicia of wash sales. Prager stated that when he first started trading H&R stock at Heredia's direction, he typically would contact Chamberlain at Equitrade prior to accumulating H&R shares to fill Heredia's order to ensure that Chamberlain would purchase the shares necessary to flatten out Prager's position. Eventually, Prager stopped contacting Equitrade prior to filling Heredia's purchase orders because he was confident that Equitrade would purchase the accumulated shares of H&R stock. Prager testified that Chamberlain typically knew Prager's position and average cost without Prager having to tell him. Moreover, Prager never questioned why Heredia directed him to sell H&R shares to Equitrade at a specified price without regard to the price at which the firm was quoting the stock,[18] and he never questioned the traders at Equitrade or Wolverton about how they routinely knew his inventory positions and the average price that he had paid for the stock that he sold to them.

Beginning on September 22, 1997, Prager was severely reckless in not recognizing that he was participating in manipulating the price and volume of the H&R stock. Once Heredia instructed Prager to "take the offer" when purchasing H&R stock while Prager was repeatedly raising his bid, it was obvious that Prager was driving up the price of H&R stock for a stock promoter.

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17 Between September 22 and 24, 1997, Prager's purchases of H&R stock for Heredia increased dramatically. On Monday, September 22, 1997, Prager bought 176,000 shares; on Tuesday, September 23, 1997, he bought more than one million shares; and on Wednesday September 24, 1997, he bought more than five million shares. During this period, Prager did not question Heredia's purchase orders, including his instructions to "take the offer." Nor did Prager question why Hill Thompson was typically the only firm that traded at the offering price. By the end of the trading day on September 24, 1997, Prager had purchased 3.9 million shares of H&R stock from Hill Thompson, or approximately 56 percent of the public float for the stock.

18 Prager claims on appeal that "Heredia, an institutional money manager, was simply attempting to obtain best execution by placing orders directly to a market maker, rather than interpositioning another broker." He never testified to such an understanding, however. Moreover, his claim makes no sense based on the evidence that Prager knew that Equitrade, the firm to which Heredia directed Prager to sell most of the H&R stock that he purchased for Heredia, was a market maker in H&R stock.

Prager also was severely reckless in ignoring Heredia's increasingly suspicious trading instructions on September 24, 1997. After directing Prager to accumulate and sell approximately 1.2 million shares of H&R stock to Equitrade on that date, Heredia told Prager to buy back 800,000 of those shares from Equitrade and, in turn, sell them to Wolverton. Prager did not question Heredia's bizarre instructions, or Heredia's simultaneous decision to double Prager's compensation from $0.03 to $0.06 per share for sales to Wolverton. When Prager started to sell H&R shares to Wolverton, the traders there, like Chamberlain at Equitrade, already knew how much stock he had to sell to them and at what price, yet Prager still continued to comply with Heredia's trading directions. Prager also did not question how Heredia knew to send him to Rosen towards the end of the trading day on September 24, 1997, for the 70,000 shares that he still needed to complete Heredia's order to purchase and then sell two million shares of H&R stock to Wolverton.

Prager asserts that there is no evidence that he agreed to conspire in the manipulation of H&R stock. He notes that the Hearing Panel found that he credibly denied entering into an agreement with Chamberlain and Rosen to manipulate H&R stock and that the finding is entitled to considerable weight and deference because it is based on hearing Prager's testimony and observing his demeanor. Prager is correct that an adjudicator's credibility findings are entitled to considerable weight. Keith L. DeSanto, 52 S.E.C. 316, 319 (1995). It is not necessary, however, to find that Prager conspired with others to play a role in the directed trading scheme to find him liable for aiding and abetting. It is enough to find that Prager knew or was severely reckless in not knowing that he was aiding and abetting directed trading. See Graham v. SEC, 222 F.3d at 1004-05. "Knowledge or recklessness is sufficient to satisfy [the general awareness] requirement." Howard R. Perles, 2002 SEC LEXIS 847 at *24 (quoting Graham v. SEC, 222 F.3d at 1004). Hence, the Hearing Panel's credibility determination is not relevant to our finding that Prager aided and abetted the directed trading.

The Hearing Panel also found that Prager's trading on behalf of Heredia was nothing more than the type of riskless principal transactions that Prager had been doing for a number of years prior to 1997. We disagree. Prior to Prager's arrangement with Heredia, Prager's business consisted of executing wholesale trades for his Saperston account with other broker-dealers. In a riskless principal transaction, the dealer, after receiving a customer order for a security, purchases the security from another firm for its own account, and then contemporaneously sells that security to the customer. Hibbard Brown & Co., Inc., 52 S.E.C. 170, 178 n.40 (1995). As the documentary and testimonial evidence shows, Heredia was not a customer of Saperston or a dealer making a market in the H&R shares. Further, Prager consistently followed Heredia's instructions without question expecting and, until the end, receiving a guaranteed profit on each order. Moreover, Prager had no basis for believing that Heredia's instructions for Prager to buy shares from one broker and sell them to another could possibly be economically advantageous to an institutional customer. Particularly recognizing that Prager was an experienced trader, he was severely reckless in accepting this explanation.

The Hearing Panel found that Heredia "did not direct Prager to buy a specific number of shares at a specific price from a specific broker-dealer" and concluded that Prager's activities were not reckless. The Hearing Panel's conclusion is not supported by the facts in the record. Prager stated in his declaration, which he executed on October 31, 1997, that he bought specified numbers of H&R shares at Heredia's direction. With respect to whether Heredia told him to buy H&R shares at a specified price, Prager testified in his on-the-record interview that he knew the price at which to fill the orders during September 22-24, 1997 because Heredia had directed him to "take the offer."

The Hearing Panel also found that Prager was victimized by the scheme and immediately reported what he knew about it to Saperston management, and that those facts establish that he did not participate in the manipulative scheme knowingly or recklessly. We disagree. Prager failed to stop his own participation in the directed trading in the face of numerous clear signals that Heredia was instructing him to execute wash sales trades. In addition, Prager did not voluntarily report to Saperston management the problem with the H&R trades that did not compare; rather, it was Saperston's back office that discovered the problem, at which point Saperston management immediately summoned him to Buffalo to explain to the firm's clearing firm and Saperston management what he knew about the problem trades. Indeed, there is an abundance of evidence that Prager ignored warning signs that Heredia's trading activity was suspicious.

We also disagree with the Hearing Panel's conclusion that Prager had no motivation for participating in the directed trading of H&R stock and that he was not guaranteed a profit on the trades that he effected for Heredia. The record establishes that Prager was motivated to continue engaging in directed trading because he had a guaranteed payment of $0.03 to $0.06 per share for a substantial volume of H&R trades with very little risk, given that Heredia routinely had purchasers flatten out Prager's position in H&R stock by the end of the trading day. In fact, Prager testified that had Saperston not gone out of business, he would have earned commissions of approximately $400,000 on the H&R transactions for the month of September 1997. In any event, Prager would not be absolved of responsibility even if he had not received commissions. See SEC v. U.S. Envtl., Inc., 155 F.3d 107, 112 (2d Cir. 1998) ("As long as [a respondent], with scienter, effected the manipulative buy and sell orders, [his] personal motivation for manipulating the market is irrelevant in determining whether he violated [Section] 10(b)."). The Hearing Panel also concluded that Prager lacked motivation to participate in the manipulative scheme because, unlike Rosen and Chamberlain, he received no free H&R stock. Based on our finding that Prager was promised a guaranteed profit on large volumes of H&R trades, we reject this reasoning.

In sum, we reject Prager's assertion on appeal that Heredia gave him no reason for suspicion. Instead, we conclude that Prager deliberately closed his eyes to the suspicious trading that he had a duty to investigate further under the circumstances. See Edward J. Mawod & Co., 46 S.E.C. 865, 872 (1977). Moreover, even if Prager was not aware of Mitton and Heredia's manipulative scheme, he was severely reckless in not recognizing that Heredia was engaging in uneconomic trades for the purpose of creating the artificial appearance of market activity in H&R stock. See Howard R. Perles, 2002 SEC LEXIS 847, at *29. Prager completely abdicated his responsibility to investigate Heredia's trading. As the Commission has stated, "the importance of a broker-dealer's responsibility to use diligence where there are any unusual factors is highlighted by the fact that violations of the antifraud and other provisions of the securities laws frequently depend for their consummation . . . on the activities of broker-dealers who fail to make diligent inquiry to obtain sufficient information to justify their activity in [a] security." Alessandrini & Co., Inc., 45 S.E.C. 399, 406 (1973).

We find that Prager aided and abetted directed trading and manipulation of the price of H&R stock, which constitutes conduct that is inconsistent with just and equitable principles of trade, in violation of Conduct Rule 2110.[19] Aiding and abetting is properly a matter for disciplinary action by self-regulatory organizations as conduct inconsistent with just and equitable principles of trade. See Howard R. Perles, 2002 SEC LEXIS 847 at *30 (citing John Thomas Gabriel, 51 S.E.C. 1285, 1291 (1994)).[20]

B. Supervisory Failures

We find that Alexander Securities, acting through Alexander, failed to appoint a registered principal to supervise Rosen and that Alexander Securities and Alexander failed to establish, maintain and enforce written supervisory procedures to provide for an on-site principal to supervise the activities of Rosen. We also find that the Firm and Alexander failed to establish written supervisory procedures to provide for the heightened supervision of associated persons

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[19] Prager asserts that the cases he cites in his reply brief on appeal "conclusively demonstrate that [he] did not aid and abet the Mitton/Heredia manipulation," because he was a victim who did not know about the manipulative scheme involving H&R stock. Prager's assertion is without merit. In each of the cited cases, the Commission found that the respondent acted recklessly by aiding and abetting manipulative activity in the face of numerous red flags that the trading was improper.

[20] In analyzing the aiding and abetting allegation in the second cause, we have examined the same conduct that forms the basis for the manipulation allegation in the first cause. We decline to resolve the legal issues involved in the first cause as unnecessary. We therefore express no opinion whether NASD may sanction a respondent for aiding and abetting a violation of Section 10(b) of the Exchange Act of 1934 ("Exchange Act") and SEC Rule 10b-5 thereunder after the Supreme Court's ruling in Central Bank, N.A. v. First Interstate Bank, N.A., 511 U.S. 164, 177 (1994) that a private plaintiff may not maintain an aiding and abetting lawsuit under those specific provisions. Similarly, we do not reach the issue of whether Prager violated Conduct Rule 2120, NASD's anti-fraud rule. We conclude that Prager failed to "observe high standards of commercial honor and just and equitable principles of trade," in violation of NASD Conduct Rule 2110, by aiding and abetting directed trading. Our finding in this regard is sufficient alone to support the sanctions we have imposed.

Because we find that Prager aided and abetted a violation of NASD Conduct Rule 2110 by participating in directed trading, we need not address the Hearing Panel's finding that he committed a less serious violation under NASD Conduct Rule 2110. The Hearing Panel concluded that Prager acted negligently in placing his firm at risk by ignoring red flags that resulted in the inflated volume and price of H&R stock. The finding that Prager acted recklessly supersedes this finding.

with disciplinary histories. Finally, we find that Alexander Securities, acting through Alexander, failed to detect and prevent Rosen's violations by disregarding numerous red flags.

1. Alexander Securities Failed to Have a Principal On-Site to Supervise Rosen

NASD Conduct Rule 3010(a) requires that each member establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and with NASD Rules. NASD Conduct Rule 3010(a)(4) further requires the designation of one or more appropriately registered principals in each OSJ.

The evidence establishes that Newberg, who was the principal with supervisory responsibility at the Florida OSJ, resigned his supervisory responsibility over Rosen on April 1, 1997, and that he did not resume that responsibility during the relevant period. Although Newberg and Alexander testified at the hearing that Newberg actually had not relinquished his supervisory responsibility over Rosen, we agree with the Hearing Panel's determination that their testimony on this point was not credible.[21] See Jim Newcomb, Exchange Act Rel. No. 44945, 2001 SEC LEXIS 2172, at *8 n.5 (Oct. 18, 2001), and the authorities cited there. The record does not contain substantial evidence to overcome this credibility finding, and we therefore agree with the Hearing Panel.

Further, we find Alexander's claim at the hearing that Newberg continued to supervise Rosen to be contrary to all of the other record evidence, including Alexander's own on-the record testimony. We note, moreover, that Newberg and Alexander failed to provide any documentary evidence showing that Newberg had resumed his supervisory duty as to Rosen after April 1, 1997, the date when Newberg advised the Firm that he would no longer supervise Rosen. We

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[21] The complaint alleges that from on or about April 1, 1997 through "at least August 11, 2000," Alexander Securities, through Alexander, continuously failed to supervise the activities of Rosen by neglecting to appoint one or more appropriately registered principals in its Florida OSJ to supervise Rosen.

We conclude that the evidence supports a finding of supervisory failures during a period different from that alleged in the complaint. The record supports the finding that there was no on-site principal at the Florida OSJ from April 1, 1997 through approximately August 1999. NASD examiner Thornton interviewed Newberg as part of an investigation of the Firm towards the end of August 1999. Thornton testified that Newberg told him that, as of April 1, 1997, he no longer had any supervisory responsibility over Rosen. Newberg's August 1999 statement to Thornton was consistent with his February 18, 1999 on-the-record testimony in which he stated that he had ceased having any supervisory responsibility over Rosen as of April 1, 1997. Further, the Alexander Respondents produced no evidence to establish that they had appointed an on-site principal at the Florida OSJ with supervisory responsibility over Rosen after Newberg resigned those duties.

therefore find, as did the Hearing Panel, that Newberg ceased supervising Rosen on April 1, 1997.

Alexander's purported supervision from the Firm's Los Angeles office did not fulfill the Firm's responsibility under NASD Conduct Rule 3010 to have a principal at the Florida OSJ responsible for supervising Rosen. Alexander, who by his own admission stated that he was "not much of a traveler," produced no documentary evidence that he visited the Florida office on a regular basis after Newberg resigned his supervisory duty over Rosen.

In addition, NASD Conduct Rule 3010(b) requires that a member establish, maintain, and enforce written procedures sufficient to supervise the activities of registered representatives and associated persons. Alexander Securities' 1995 written supervisory procedures, which were effective at the time of the events at issue here, did not include procedures to ensure that there was an on-site principal to supervise each associated person, including Rosen. Thus, Alexander Securities and Alexander failed to devise, maintain, and enforce written procedures to supervise the activities of each associated person in Alexander Securities' Florida OSJ. Although the Hearing Panel did not address this allegation in its decision, it is alleged in the complaint, and we find that the record supports a finding of violation.

We find that Alexander Securities, acting through Alexander, continuously failed adequately to supervise the activities of Rosen from April 1, 1997 through approximately August 1999, by neglecting to appoint one or more appropriately registered principals in its Florida OSJ with authority to supervise Rosen, and by failing to establish, maintain and enforce adequate written supervisory procedures, in violation of Conduct Rules 2110 and 3010.[22]

2. Alexander Securities Failed to Provide for Heightened Supervision of Rosen

"The Commission has repeatedly emphasized the need for heightened supervision when a firm employs a broker with known regulatory problems or customer complaints." Signal Sec., Inc., Exchange Act Rel. No. 43350, 2000 SEC LEXIS 2030, at *17 (Sept. 26, 2000), and the authorities cited therein. Additionally, NASD's Rules require a member to establish and maintain supervisory procedures that are "reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable [NASD] Rules." See Conduct Rule 3010(b). When Rosen became associated with Alexander Securities in 1995, he had a disciplinary history dating from 1980 through 1992, which included findings that he had engaged in sales practice abuses and fraudulent misconduct. Yet the Firm did not establish reasonable procedures to provide for the heightened supervision of Rosen, as evidenced by the Firm's 1995 written supervisory procedures in effect at the time, which had no provision to ensure that associated persons with disciplinary histories would be subjected to heightened supervision.

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[22] A violation of another NASD rule constitutes a violation of Conduct Rule 2110. See Stephen J. Gluckman, 54 S.E.C. 175, 185 n.30 (1999)

In addition, the Alexander Respondents did not subject Rosen to heightened supervision after it became clear that there were allegations against Rosen that, apart from the prior disciplinary history, would have required Alexander Securities to increase its scrutiny of his trading practices. As noted above, Newberg's notes and memoranda to Alexander and Kerr regarding Rosen's continuous compliance problems served as a red flag that Rosen required enhanced supervision. Alexander testified that he was aware in 1997 that Rosen was the subject of "backing away"[23] complaints, and that he was the subject of a federal regulatory and criminal investigation and NASD allegations that he had made harassing and anti-competitive telephone calls to another market maker. Despite these compliance-related problems and Rosen's past disciplinary history, the record contains no evidence that Alexander Securities heightened its supervision of Rosen, as required. See Signal Sec. Inc., Exchange Act Rel. No. 43350, 2000 SEC LEXIS 2030, at 17.

Although Alexander claimed that he provided additional supervision over Rosen after he became aware of the federal investigation into Rosen's trading activities, there is no documentary evidence to support Alexander's claim.[24] As the Hearing Panel found, Alexander's purported increased supervision over Rosen consisted merely of telling Rosen and Newberg that "they [had] to show more courtesy to one another." In fact, Alexander testified at the hearing that he treated Rosen no differently than other employees in terms of supervision. Heightened supervision might have detected and prevented Rosen's violations while he was associated with Alexander Securities.

We find that Alexander knew of Rosen's disciplinary history that pre-dated his association with the Firm and Rosen's regulatory compliance problems while he was associated with the Firm. We therefore find that, as alleged, Alexander Securities, acting through Alexander, failed to supervise adequately the activities of Rosen[25] by not establishing written procedures to provide for heightened supervision of associated persons with disciplinary histories, in violation of NASD Conduct Rules 2110 and 3010.

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[23] The failure of a broker-dealer acting as a market maker in a given security to make good on a bid for the minimum quantity is known as "backing away." See Barron's Dictionary of Finance and Investment Terms (6th ed. 2003).

[24] The additional supervision purportedly consisted of monitoring the filings of companies whose stock Rosen traded to determine if the names of any promoters who were known to deal in shell companies appeared. There is no credible evidence to support this claim. In any event, these efforts, even if they did occur, do not rise to the level of the increased supervision called for in these circumstances.

[25] The relevant period of the violation was from April 1, 1997 through approximately August 1999. See supra note 21.

3. Alexander Securities Ignored Red Flags of Irregularities

It is well-settled that "[r]ed flags and suggestions of irregularities demand inquiry as well as adequate follow-up and review. When indications of impropriety reach the attention of those in authority, they must act decisively to detect and prevent violations of the federal securities laws." See Edwin Kantor, 51 S.E.C. 440, 447 (1993).

Alexander was aware of a series of red flags prior to the collapse of the "daisy chain"[26] trading in H&R stock that should have put him on notice that additional supervision of Rosen was required. See, e.g., Douglas Conrad Black, 51 S.E.C. 791, 795 (1993). Alexander admitted that he had received several complaints from Newberg about Rosen's backing away from trades during the relevant period. Alexander also admitted that he knew that Rosen had received a subpoena, dated January 3, 1997, from the SEC, and that at some point after that date he learned that Rosen was the subject of an investigation into his trading activities by the SEC, the U.S. Attorney's Office, and the FBI.[27] Additionally, Alexander admitted that he learned that Rosen had invoked his Fifth Amendment privilege during that investigation.[28] Finally, Alexander admitted that in April 1997, he became aware that NASD had issued a Wells letter, thereby effectively informing the Firm that NASD had come to a preliminary determination that Rosen had placed telephone calls of a harassing and anti-competitive nature to another market maker.[29]

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26 "Daisy chain" trading is a term of art that describes trading between market manipulators designed to create the appearance of active volume to attract legitimate investors. See Barron's Dictionary of Finance and Investment Terms (6th ed. 2003).

27 At the hearing, Alexander testified that he did not remember the date that he learned about the investigation. The record shows that on February 3, 1997, Newberg sent Alexander a memorandum disclosing that Newberg had met with representatives of the Commission, the U.S. Attorney's Office, and the FBI on January 21, 1997, and that they had informed him that Rosen was the subject of their investigations.

28 The record shows that Newberg advised Alexander in a February 3, 1997, memorandum that Rosen had invoked his Fifth Amendment privilege. Newberg expressed deep concern to Alexander over Rosen's failure to advise him that he had invoked the Fifth Amendment privilege as follows: "It does not seem that he is acting in good faith by not notifying myself or the firm of his action . . . . I think you should speak to Mr. Rosen and if you are not satisfied or are uncomfortable with his response, you and I should privately discuss the situation, so I may assist you in implementing whatever actions you deem appropriate."

29 A "Wells" letter refers to a letter sent by NASD staff notifying a respondent "that a recommendation of formal disciplinary charges is being considered" and usually provides the respondent with an opportunity to "submit a written statement explaining why such charges should not be brought." NASD Notice to Members 97-55, 1997 NASD LEXIS 77, at *13 (Aug. 1997).

Despite these red flags of possible trading abuses, Alexander did not increase his scrutiny over Rosen's trading activities to prevent his participation in the scheme to manipulate the price of H&R stock.

As the president of Alexander Securities, Alexander was the official responsible for the operations of the Firm.[30] Alexander nonetheless failed to follow up on clear red flags that Rosen consistently engaged in trading activities with an apparent lack of regard for regulatory compliance issues.

Accordingly, we find that, as alleged, from April 1, 1997, through September 1997, Alexander Securities, acting through Alexander, failed to detect and prevent Rosen's involvement in a manipulative trading scheme, despite numerous red flags of irregularities on the part of Rosen, in violation of Conduct Rules 2110 and 3010.[31]

IV. Procedural Arguments

On appeal, the Alexander Respondents raise a number of procedural issues in which they contend that they were denied a fair hearing. As detailed below, we reject these arguments.

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[30] As the Commission has noted repeatedly:

> The president of a corporate broker-dealer is responsible for compliance with all of the requirements imposed on his firm unless and until he reasonably delegates particular functions to another person in that firm, and neither knows nor has reason to know that such person's performance is deficient.

John H. Gutfreund, 51 S.E.C. 93, 112 (1992) (quoting Universal Heritage Investments Corp., 47 S.E.C. 839, 845 (1982)). Here, Alexander knew that Newberg had abdicated his supervisory responsibility over Rosen.

[31] The Hearing Panel found that Rosen executed directed trades as part of Heredia and Mitton's manipulative scheme in exchange for guaranteed profits and free stock. The Alexander Respondents argue on appeal that the "Hearing Panel could not legally make any findings of fact against Rosen" and that, therefore, there can be no basis for a finding that the Alexander Respondents failed to supervise Rosen. This argument has no merit. See supra, note 2. In John A. Chepak, 54 S.E.C. 502, 509-13 (2000), the Commission concluded that a respondent failed to fulfill his supervisory responsibilities based, in part, on the Commission's findings that the firm (not a party to the disciplinary proceeding under review) with which he was associated engaged in excessive markups and markdowns in violation of NASD rules. Any findings as to Rosen in this proceeding have no regulatory effect on Rosen because the complaint against him in this matter was dismissed. Rather, our findings are against Alexander and the Firm, both of whom had sufficient opportunity to present evidence and defend themselves.

First, the Alexander Respondents assert that the Hearing Panel was "unduly influence[ed]" by what they characterize as Enforcement's "inflammatory, prejudicial, unsupported, and libelous per se, scorched earth language." The basis for the Alexander Respondents' assertion is language that Enforcement included in its post-hearing submission, which stated that the Alexander Respondents "knowingly offered perjured testimony" (referencing Newberg's hearing testimony) and that the Alexander Respondents' knowing use of perjured testimony should be treated as an aggravating factor for purposes of sanctions. The Alexander Respondents argue that the proceedings below therefore were unfair. We disagree.

The Exchange Act requires that self-regulatory organization ("SRO") rules "provide a fair procedure for the disciplining of members and persons associated with members[.]" Section 15A(b)(8) of the Exchange Act, 15 U.S.C. § 78o-3(b)(8) (emphasis added). Section 15A(h)(1) of the Exchange Act requires that NASD proceedings be fair. The Commission's interpretations of the Exchange Act's fairness language have focused on whether the SRO had followed its internal procedures and whether those procedures were fair.[32] We therefore review whether NASD followed its internal procedures and whether those procedures were fair. We find in the affirmative.

As an initial matter, the Alexander Respondents do not contend that NASD failed to follow its internal procedures, nor are there any facts in the record to show that NASD did not comply with its own Code of Procedure. We therefore find that NASD followed its internal procedures.

We also find that the procedures were fair. After assessing the evidence and Newberg's demeanor during the hearing, the Hearing Panel concluded that Newberg's hearing testimony was not credible in certain respects and that significant sanctions were appropriate based on the Alexander Respondents' extensive histories of supervisory and other violations.[33] Furthermore, the fact that the Hearing Panel did not find certain witnesses' testimony credible or rule in favor of the Alexander Respondents with regard to the ultimate findings and sanctions does not

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[32] See Scattered Corp., 53 S.E.C. 948, 958 (1998) (noting that past cases involving "fairness" analyses "have focused on the fairness of the SRO's internal procedures, including organization structure as it affects the fairness and impartiality of the course of the proceeding"); U.S. Associates, Inc., 51 S.E.C. 805 (1993) (performing a "fairness" analysis and finding that NASD had failed to follow its own procedural rules).

[33] The Alexander Respondents filed a motion requesting the Subcommittee of the NAC to strike certain references to disciplinary matters involving Newberg that Enforcement included in its brief as to Prager. The Subcommittee granted the motion to strike the references at issue, and we adopt the Subcommittee's ruling. We also agree with the Subcommittee's decision to take official notice, under NASD Procedural Rule 9145(b), of the fact that at the time of this appeal there is another disciplinary matter on appeal at the NAC involving the Alexander Respondents and Newberg that asserts different allegations from those at issue in this matter. During our consideration of this matter, there was no final disposition of that other action.

suggest, let alone prove, that the proceeding was unfair. See Sundra Escott-Russell, 54 S.E.C. 867 (2000) (finding that the NASD proceeding complied with the procedural safeguards required under Exchange Act Section 15A(h)(1) and thus was fair); James Elderidge Cartwright, 50 S.E.C. 1174, 1179 (1992) (finding that NASD's disciplinary proceedings are fair). Accordingly, we find that the Alexander Respondents were afforded a fair proceeding under NASD's Procedural Rules, and hereby deny their request to vacate the Hearing Panel decision.

Second, the Alexander Respondents claim that they were denied a fair hearing because the Hearing Panel erred in not admitting their rebuttal documents during the hearing. We reject this argument. At the end of the five-day hearing, the Alexander Respondents attempted to introduce as "rebuttal" evidence 68 documents that had not been identified as exhibits prior to the hearing, and had been supplied to Enforcement the night before the hearing. The Hearing Officer rejected the evidence because the exhibits were not placed on a list of documents that the Alexander Respondents intended to introduce and were not given to Enforcement earlier in the proceeding. Indeed, the Alexander Respondents failed to file the documents at issue with their pre-hearing submissions, which by order of the Hearing Officer were due to be filed by September 5, 2002. Procedural Rule 9263 grants the Hearing Officer "broad discretion to accept or reject evidence." Dept. of Enforcement v. Fiero, Complaint No. CAF980002, 2002 NASD Discip. LEXIS 16, at *89 (NAC Oct. 28, 2002). We find that the Hearing Panel did not abuse its discretion or otherwise prejudice the Alexander Respondents when it rejected the proffered exhibits.[34]

Third, the Alexander Respondents contend that the Hearing Panel abused its discretion by not granting their motion to continue the September 30, 2002 hearing as to them after Rosen's last minute bankruptcy filing. We do not agree. The Alexander Respondents argue that the stay of the proceedings as to Rosen under Section 362 of the Bankruptcy Code rendered him unavailable as a witness and that, therefore, they required additional time to prepare their defenses to the allegations related to Rosen. The Alexander Respondents have not proved, however, that Rosen did not attend the hearing because of the bankruptcy filing. In fact, Enforcement directed Rosen, who remained subject to NASD jurisdiction, to attend the hearing under Procedural Rule 8210, and advised him that the stay did not excuse his attendance. Rosen nonetheless chose not to attend the hearing.

Furthermore, at the time of the hearing it was unclear how long Rosen's bankruptcy stay would be in effect, and a prolonged stay of the NASD proceeding could have adversely affected the availability of witnesses in the matter. Additionally, Prager wanted the hearing to proceed on

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[34] The Alexander Respondents argue that their exhibits should have been admitted because Prager was allowed to introduce four exhibits that he had identified on his exhibit list, but had not previously filed. This argument is unavailing. As noted, the Hearing Officer has broad discretion to accept or reject evidence. See Dept. of Enforcement v. Fiero, 2002 NASD Discip. LEXIS 16 at *89. Moreover, Prager had only four exhibits that he attempted to introduce, compared to 68 exhibits that the Alexander Respondents attempted to introduce, and Prager had identified the documents on his exhibit list, whereas the Alexander Respondents had not.

schedule. The Commission has stated that "[i]t is well settled that in NASD proceedings, as in judicial proceedings, the trier of fact has broad discretion in determining whether a request for continuance should be granted, based upon the particular facts and circumstances presented." Falcon Trading Group Ltd., 52 S.E.C. 554, 560 (1995); see also Procedural Rule 9235 (providing Hearing Officers authority to resolve procedural and evidentiary matters). We conclude that the Hearing Panel exercised its discretion appropriately, fairly, and in accordance with NASD Procedural Rules.

In sum, we find the Alexander Respondents' procedural arguments to be without merit. Accordingly, we deny their request to dismiss the allegations against them or to vacate the Hearing Panel's decision and grant them a new hearing.

V. Sanctions

A. Prager

Although the NASD Sanction Guidelines ("Guidelines") do not specifically address aiding and abetting manipulative activity or violations of NASD Conduct Rule 2110, we have consulted the Guidelines' Principal Considerations, which apply to all violations, in determining appropriate sanctions. The Principal Considerations instruct us to consider whether Prager's misconduct resulted directly or indirectly in injury to other parties, including the investing public, the member firm with which he was associated, and/or other market participants.[35] Here, Prager played a critical role in assisting manipulative trading in the shares of H&R stock. His trading activity at Heredia's direction resulted in devastating consequences for Saperston. Saperston's losses were of such magnitude ($8.8 million) that the firm had to cease operating because of insufficient net capital. Not only did Prager bring about the demise of the firm with which he was associated, he substantially assisted in causing a multi-million dollar loss to his firm's clearing broker. Additionally, we note that "[l]osses suffered by brokers increase their cost of doing business, and in the long run investors pay at least part of this cost through higher brokerage fees." United States v. Naftalin, 441 U.S. 768, 776 (1979)). Thus, Prager's misconduct adversely affected the firm with which he was associated, his firm's clearing broker, and potentially the investing public. Furthermore, manipulative trading also reduces investor confidence in the markets as a whole.

The Guidelines further instruct us to consider whether Prager engaged in "numerous acts and/or a pattern of misconduct,"[36] and whether his misconduct resulted in his monetary gain.[37] It is undisputed that Prager executed repeated transactions and purchased millions of shares of H&R stock at Heredia's direction in exchange for a guaranteed profit. From September 22-24,

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[35] Guidelines (2001 ed.) at 10 (Principal Consideration No. 11).

[36] Guidelines (2001 ed.) at 9 (Principal Consideration No. 8).

[37] Guidelines (2001 ed.) at 10 (Principal Consideration No. 17).

1997, Prager knew the price at which to purchase the shares because Heredia instructed him to "take the offer." He then sold those shares to a purchaser that Heredia had designated at a price that Heredia selected -- based upon Prager's average cost of acquisition, plus his guaranteed profit of $0.03 to $0.06 per share. As Prager testified, had Saperston not gone out of business, he would have made approximately $400,000 in commissions on the H&R stock transactions for the month of September 1997.

Moreover, as discussed above, we have found that Prager's execution of directed trades was severely reckless.[38] Additionally, we note that Prager failed to accept responsibility for and acknowledge the misconduct to his employer prior to the collapse of the H&R trading scheme.[39]

In view of the serious nature of Prager's misconduct and the lack of mitigating facts,[40] we conclude that a bar is necessary in this case to protect the markets and the public interest. The market manipulation that Prager aided and abetted "jeopardized the integrity of the markets he was obligated, as a securities professional, to protect." Michael B. Jawitz, Exchange Act Rel. No. 44357, 2001 SEC LEXIS 1042 (May 29, 2001).[41] Prager is also assessed hearing costs of $8,521, jointly and severally with the Alexander Respondents.[42]

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[38] Guidelines (2001 ed.) at 10 (Principal Consideration No. 13). The Guidelines instruct us to consider "[w]hether the respondent's misconduct was the result of an intentional act, recklessness, or negligence."

[39] The Guidelines list as a factor to consider "[w]hether an individual . . . accepted responsibility for and acknowledged the misconduct to his or her employer . . . prior to detection and intervention by the firm. . . . Guidelines (2001 ed.) at 9 (Principal Consideration No. 2).

[40] Prager argues that he has maintained a "pristine" disciplinary record since the events at issue. A lack of disciplinary history, however, is not considered a mitigating factor for purposes of sanctions. See Dept. of Enforcement v. U.S. Rica Financial, Inc., Complaint No. C01000003, 2003 NASD Discip. LEXIS 24 (NAC Sept. 9, 2003) (rejecting the argument that the absence of disciplinary history should mitigate the severity of the sanctions imposed).

[41] Given the settlements and other legal actions between Saperston's clearing firm and other parties, including Alexander Securities, we are unable to quantify how much restitution, if any, we would order Prager to pay to the clearing firm. We therefore affirm the Hearing Panel's decision not to order restitution. Additionally, in light of our policy determination that, in certain cases involving the imposition of a bar, no further remedial purpose is served by the additional imposition of a monetary sanction, we also do not impose a fine for the aiding and abetting violation. See NASD Notice to Members 99-86.

[42] The Hearing Panel did not explain its reasons for not assessing hearing costs against Prager. We have determined that Prager should be jointly and severally liable with the Alexander Respondents for the hearing costs.

B. Alexander Securities and Alexander

We have determined sanctions based on our findings that the Alexander Respondents violated Conduct Rules 2110 and 3010 by failing to supervise adequately the activities of Rosen and by failing to establish, maintain, and enforce written procedures reasonably designed to prevent and deter securities law violations. We consider the specific Guidelines applicable to each violation and the General Principles and Principal Considerations applicable to all violations, and we aggregate the misconduct alleged because the misconduct stemmed from a continuous course of action.[43]

At the outset, we note that Alexander Securities and Alexander have extensive disciplinary histories. Under the Guidelines, we consider both "past misconduct similar to that at issue" and, while unrelated to the misconduct at issue, past misconduct that "evidences disregard for regulatory requirements, investor protection, or commercial integrity" as relevant disciplinary history.[44]

On June 12, 2002, NASD settled a matter with Alexander Securities in which NASD found that the Firm: published quotations without having in its records the information required by SEC Rules; failed to file a required form with NASD before the Firm's quotations were published or displayed; and maintained a supervisory system that was not reasonably designed to achieve compliance with SEC and NASD Rules. As part of the sanctions, the Firm undertook to revise its written supervisory procedures.

On February 7, 2002, NASD settled with Alexander Securities and Alexander and found that: (1) respondents permitted an individual who was barred to function as an associated

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[43] The Guideline for failure to supervise recommends a monetary sanction in the range of $5,000 to $50,000, and a suspension of the responsible individual in all supervisory capacities for up to 30 business days. See Guidelines (2001 ed.) at 108 (Supervision -- Failure to Supervise) at 108. The Guideline also recommends limiting the activities of the appropriate branch office or department for up to 30 business days. Id. In egregious cases, the Guideline recommends limiting the 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, and considering suspending the responsible individual in any or all capacities for up to two years or barring the responsible individual. Id. With respect to a case against a member firm involving systemic supervision failures, the Guideline recommends 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. Id.

The Guideline for deficient written supervisory procedures recommends a fine from $1,000 to $25,000. See Guidelines (2001 ed.) at 109 (Supervisory Procedures--Deficient Written Supervisory Procedures).

[44] Notice to Members 03-65 (Oct. 2003).

person; (2) the Firm, acting through Alexander, failed to take timely supervisory action to ensure that the individual's association with the Firm was terminated upon the imposition of the bar, and failed to revise its written supervisory procedures to be in compliance with NASD Conduct Rule 3010; (3) the Firm permitted 11 persons associated with the Firm to perform their duties as registered persons while their registration status with NASD was inactive due to continuing education requirements; and (4) the Firm's written supervisory procedures were not reasonably designed to achieve compliance with applicable securities rules and regulations.

On January 14, 2002, NASD settled with Alexander Securities and found that the Firm's supervisory system was inadequate in several areas including best execution, limit order protection, limit order display, firm quote rule, registration of traders and supervisors, trade reporting, books and records, failure to honor quotes, and harassment. NASD also found that the Firm's supervisory system did not include adequate written supervisory procedures. As part of the sanctions, the Firm undertook to revise its written supervisory procedures.

NASD settled again with Alexander Securities on January 14, 2002. In this action, NASD found that the Firm failed to comply with certain trade reporting requirements. NASD also found that the Firm's supervisory system did not include written supervisory procedures providing for a statement of the steps that the compliance officer at Alexander Securities should take to ensure compliance with trade reporting rules. As part of the sanctions, the Firm undertook to revise its written supervisory procedures.

On March 31, 2000, NASD settled with Alexander Securities a matter involving findings that the Firm placed orders to buy or sell stock in which trading had been suspended. NASD further found that the Firm published quotations for those securities when it did not have the required documentation in its records. As part of the sanctions, Alexander Securities undertook to submit revised written supervisory procedures reasonably designed to prevent future similar violations.

On October 29, 1999, Alexander Securities settled a matter and consented to findings that it failed to comply with a number of trade reporting requirements. The Firm also consented to findings that it failed to establish and maintain written supervisory procedures reasonably designed to achieve compliance with regard to trade reporting, best execution, limit order protection, order handling, and anti-competitive practices, among others.

On July 8, 1998, NASD settled a matter with Alexander Securities, and found that the Firm failed to establish, maintain, and enforce adequate written supervisory procedures to ensure compliance with NASD Conduct Rule 2110 and to deter and detect anti-competitive behavior by its traders, that it had no written supervisory procedures addressing anti-competitive behavior until January 29, 1997, and that those that were adopted on that date were inadequate. As part of the sanctions, the Firm undertook to revise its written supervisory procedures.[45]

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[45] In addition, NASD settled eight other matters with the Firm or the Firm and Alexander from September 1991 through August 9, 2002, in which the Firm or the Firm and Alexander consented to findings that they: (1) failed in a number of different instances to comply with trade

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Based on the Alexander Respondents' extensive disciplinary histories involving supervisory and other violations, we find that they have demonstrated an appalling indifference to matters of compliance over a sustained period of years.[46] See, e.g., District Bus. Conduct Comm. v. Montano, Complaint No. C02950050, 1999 NASD Discip. LEXIS 37, at *10-11 (NAC Jan. 27, 1999) (finding Montano's disciplinary history over a five-year period important not only because it contains similar past misconduct, but also because it demonstrates a "general indifference to the rules and regulations of the securities industry").

General Principle No. 2 specifically recommends imposing "increasingly severe monetary sanctions for second and subsequent disciplinary actions" in certain cases. Notice to Members 03-65 (Oct. 2003). General Principle No. 1 requires us to impose sanctions sufficient to remediate the Alexander Respondents' misconduct, and to deter others from engaging in the same pattern of compliance failures. Notice to Members 04-17 (Mar. 2004). In our view, the Alexander Respondents engaged in egregious misconduct. By failing adequately to supervise Rosen, they enabled him to participate in an extensive market manipulation. Furthermore, respondents' disciplinary history suggests that they have a history of being inattentive to regulatory requirements. Thus, in order to deter them and others from engaging in similar misconduct in the future, we have determined that significant sanctions are in order.

We affirm the Hearing Panel's sanctions as to Alexander, and order that he be fined $200,000, suspended for two years from association with any member firm in all capacities, and required to requalify by examination as a principal.[47] We also affirm the following sanctions that

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reporting and trade-related requirements; (2) issued false trade confirmations to customers; and (3) allowed an employee to function as a principal when he had been statutorily disqualified.

The Firm also entered into two consent agreements with state regulators. On May 9, 2002, Alexander Securities and Alexander entered into a consent agreement with the state of Georgia in settlement of allegations that they offered or sold securities in Georgia while the Firm was not registered as a securities dealer in Georgia. On February 20, 1995, the state of Wisconsin entered a consent order against Alexander Securities alleging that the Firm sold securities in the state without a license, and prohibiting the Firm from employing an agent to represent it in the state unless the agent was properly licensed.

[46] We reject the Alexander Respondents' argument that certain of their past disciplinary actions are too stale to be considered for purposes of determining sanctions. The Alexander Respondents' past disciplinary history, in its entirety, is important because it establishes a disturbing pattern of disregard for regulatory compliance matters.

[47] The suspension is within the Guideline for failure to supervise and exceeds the recommended suspension of up to one year under the Guideline for deficient written supervisory procedures. The monetary sanction exceeds the recommended maximum fines of $50,000 under the Guideline for failure to supervise and $25,000 under the Guideline for deficient written

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the Hearing Panel imposed on Alexander Securities: a fine of $200,000, and a requirement that the Firm hire an independent consultant with an expertise in market-making activities, acceptable to NASD, for a period of three years to review its supervisory, compliance, and other policies and procedures designed to detect and prevent federal securities law and NASD rule violations. The Firm is also ordered to prepare a report outlining suggested changes in those policies and procedures, to submit the report to NASD District No. 2, and to submit quarterly reports to that district detailing the Firm's efforts to implement the recommendations contained in the report, and stating whether it has achieved compliance with those recommendations.[48] In addition, Alexander Securities and Alexander are assessed hearing costs of $8,521, jointly and severally, with Prager, and appeal costs of $1,656.98 (consisting of $1,000 appeal costs and appeal transcript costs of $656.98), jointly and severally.

We eliminate the Hearing Panel's suspension of the market-making functions in the Florida OSJ. Given the facts and circumstances in this case, including that the violations did not involve a market-making violation and the individuals involved in the misconduct are no longer working in the Florida OSJ of the Firm, we decline to impose this sanction.

VI. CONCLUSION

Accordingly, we order that Prager be barred from association with any NASD member firm in any capacity. The bar will be effective as of the date of this decision. Alexander is fined $200,000, suspended for two years from association with any member firm in all capacities, and required to requalify as a principal. Alexander Securities is fined $200,000, and required to hire an independent consultant with an expertise in market-making activities for a period of three years to review its supervisory, compliance, and other policies and procedures designed to detect and prevent federal securities law and NASD rule violations. The Firm is also ordered to prepare a report outlining suggested changes in its supervisory policies and procedures, to submit the report to NASD District No. 2, and to submit quarterly reports to that district detailing the Firm's efforts to implement the recommendations contained in the report, and stating whether it has achieved compliance with those recommendations. We also impose hearing costs of $8,521 on

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supervisory procedures. These sanctions are necessary based on the Alexander Respondents' extensive disciplinary history that contains similar past misconduct.

[48] Enforcement has requested that we order Alexander Securities and Alexander to pay restitution to Saperston's clearing firm. For the reasons discussed above, we decline to order restitution. <u>See</u> <u>supra</u> note 41.

Alexander Securities, Alexander, and Prager, jointly and severally. Additionally, Alexander Securities and Alexander are assessed $1,656.98 in appeal costs, jointly and severally.[49]

On Behalf of the National Adjudicatory Council,

Barbara Z. Sweeney
Senior Vice President and Corporate Secretary

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[49] We also have considered and reject without discussion all other arguments advanced by the parties.

Pursuant to NASD Procedural Rule 8320, any member that fails to pay any fine, costs, or other monetary sanction imposed in this decision, after seven days' notice in writing, will summarily be suspended or expelled from membership for non-payment. Similarly, the registration of any person associated with a member who fails to pay any fine, costs, or other monetary sanction, after seven days' notice in writing, will summarily be revoked for non-payment.