FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. ALEXANDER H. MCKINNIS (CRD No. 4218213), Respondent.	Disciplinary Proceeding No. 2007010398802 Hearing Officer – LBB **HEARING PANEL DECISION** October 13, 2011

Respondent violated NASD Conduct Rules 3110 and 2110 by entering his office e-mail address in customer records as the customers' e-mail addresses, thereby causing e-mail intended for customers to be sent only to him. He also violated NASD Conduct Rules 3110 and 2110 by altering documents and submitting the altered documents to his firm. For these violations, the Hearing Panel imposes a suspension of 30 days and a fine of $25,000. Respondent is given credit for serving a 30-day suspension imposed by his firm, and is not required to serve the suspension imposed by the Hearing Panel. Respondent is fined $25,000, and ordered to pay costs.

Appearances

Howard L. Kneller, Esq., Senior Counsel, Margaret M. Tolan, Esq., Senior Trial Counsel, Steven F. Korostoff, Esq., Director, Enforcement Center, and Laura A. Cooper, Esq., Senior Counsel, for the Department of Enforcement.

Bryan I. Reyhani, Esq., and Alyson M. Weiss, Esq., New York, New York, for Respondent.

DECISION

I. Procedural Background

The Department of Enforcement ("Enforcement") filed the two-cause Complaint in this disciplinary proceeding on July 26, 2010. The First Cause of Action charges Respondent Alexander H. McKinnis ("Respondent") with entering his office e-mail address as customers'

e-mail addresses in his firm's computerized records. These actions caused e-mails that the firm intended to send to customers to be sent only to Respondent's e-mail account, thereby (a) violating NASD Conduct Rules 3110 and 2110 by causing his firm to maintain inaccurate books and records in violation of SEC Rule 17a-3; and (b) causing his firm to violate SEC Rule 10b-10. The Second Cause of Action charges Respondent with altering documents and submitting the altered documents to his firm, thereby violating NASD Conduct Rules 3110 and 2110 by causing the firm to maintain inaccurate books and records in violation of SEC Rule 17a-3.[1]

A hearing was conducted on June 14-15, 2011, before a Hearing Panel composed of a current member of the District 10 Committee, a former member of the District 10 Committee, and a Hearing Officer. The parties stipulated, and the evidence established, that Respondent, a sales assistant, committed both violations in an effort to accommodate customers. As a result of the stipulations, the sole issue for the hearing was a determination of the appropriate sanctions for Respondent's misconduct. The Hearing Panel considered a variety of factors, including Respondent's intent to accommodate customers, the lack of deceptive intent, Respondent's remorse and commitment to future compliance, and sanctions imposed by his firm, in determining that the appropriate sanction is a 30-day suspension, with credit for the 30-day suspension previously imposed by Respondent's firm, and a fine of $25,000.

II. Respondent

Respondent entered the securities industry in 1999, soon after graduating from college. He obtained a Series 7 license in 2000, and has also obtained his Series 31, 63, and 66 licenses.

[1] As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority (FINRA). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA Consolidated Rulebook. The first phase of the new consolidated rules became effective on December 15, 2008, including certain conduct rules and procedural rules. *See* Regulatory Notice 08-57 (Oct. 2008). This decision relies on NASD Conduct Rules 3110 and 2110, which were the applicable rules at the time of Respondent's alleged misconduct. The applicable rules are available at www.finra.org/rules.

He has been continuously employed by FINRA-regulated firms since 1999. He first worked as a temporary employee for Snelling Corp., then worked in the back office for Sanford C. Bernstein & Co., Inc. as an institutional margin clerk, from 2000 until 2002. Stip. 1l; CX-1; Tr. 258-259.[2] He next worked for several months with Banc of America Securities, where his primary responsibility was to monitor client accounts. Tr. 261; CX-1.

In May 2003, Respondent joined Oppenheimer & Co., Inc. ("Oppenheimer") as a sales assistant, working in a group ("Group") with financial advisors Chuck Roberts ("Roberts") and Stephen Condos ("Condos"), and other sales assistants. Tr. 182, 262-263, 267, 273; CX-1. In March 2005, Respondent became associated with Citigroup Global Markets, Inc. ("Smith Barney" or the "Firm") when the Group moved to that firm, and is currently employed with an affiliated entity of the Firm, Morgan Stanley Smith Barney, as a group administrator. Stip. 2; Tr. 187, 307.

III. Facts

A. Respondent's Group Changes Firms

In 2005, the Group, including Respondent, moved from Oppenheimer to Smith Barney. Tr. 265; CX-1. Respondent's misconduct began soon after the move, as a result of efforts by Respondent and others in the Group to reduce the burdens that would be imposed on clients resulting from moving the clients' accounts to Smith Barney.

The Group had a substantial number of customers. Many customers had multiple accounts, each with a different purpose. For example, one family had accounts for different family members, retirement accounts, trust accounts, and accounts with different objectives.

[2] References to the exhibits provided by Enforcement are designated as "CX-___." References to the exhibits provided by Respondent are designated as "RX-___." The parties filed a set of factual stipulations on March 15, 2011. References to these stipulations are designated as "Stip. ___." References to the hearing transcript are designated as "Tr. ___."

Tr. 176, 265-66, 360. As a result, when the Group moved to Smith Barney, they had to move a large number of accounts from Oppenheimer to Smith Barney. Tr. 265-266.[3] Because of the move, the Group's customers were going to have to sign a large number of documents. Some would have had as many as 400 pages of documents to sign. Tr. 245. Condos and Roberts stressed to the Group that they provided "white glove service" to their customers, and that the move should cause as little inconvenience to customers as possible. Tr. 268-269.

B. Respondent and Others Insert Respondent's E-mail Address in Place of Customer Addresses in Firm Records

As one way to make the move easier on customers, Respondent suggested to the Group that they initially insert his e-mail address in Smith Barney's computerized customer records that were supposed to record the customers' e-mail addresses, so the Firm's e-mails to customers went instead to Respondent's Smith Barney e-mail account. During two different time periods, approximately April through November of 2005, and in April and July of 2007, Respondent altered Smith Barney records by inserting his Smith Barney e-mail address on customers' electronic delivery consent forms and customers' online profiles for accounts that the customers maintained at Smith Barney. Stip. 3. Respondent set up the accounts to be more convenient for customers. For example, when the Firm sent e-mail confirmations to customers, the confirmations contained account numbers, but not a description of the account. Respondent gave the accounts descriptive names before the customers began receiving e-mails, so the customers would know which of their accounts had made the trade. He also checked off appropriate boxes so the customers would receive only the types of e-mail they wanted to receive. Tr. 192-193, 196, 198, 269-271, 275-280.

[3] Respondent estimated that between 3,000 and 7,000 accounts were moved. There were accounts for about 600 households, and many of those households had multiple accounts, sometimes as many as 30 to 60 for a household. Tr. 265-266.

Respondent intended the measure to be temporary. Tr. 275-277, 401. The majority of the affected accounts' e-mail address issues were rectified within periods of: (a) a week to seven months during 2005; and (b) less than a month during 2007. Stip. 4. Respondent's e-mail address remained on some accounts for as long as two years because Respondent overlooked the accounts and failed to update the e-mail addresses. Stip. 4; Tr. 276. Condos and Roberts were aware of the decision to direct customer e-mails to Respondent. The Group's sales assistants, as well as other sales assistants and temporary employees who assisted the Group during the transition, engaged in the practice of inserting Respondent's e-mail address in customer records. Tr. 191-192, 272-273.

As a result the insertion of Respondent's e-mail address in the Firm's records in place of the customers' e-mail addresses, e-mail from Smith Barney was sent to Respondent's e-mail address rather than that of the appropriate customers. These included communications containing confirmations for trade transactions that were intended for delivery to customers. The customers continued, however, to receive monthly account statements reflecting account activity. Stip. 5. In those instances in which customers did not receive confirmations, the trades had been discussed with the customers before they were executed. Tr. 223. According to an e-mail from Smith Barney's counsel to Enforcement, there were 437 trades for which confirmations were not received by the customer. CX-128; Tr. 203-4.[4] Smith Barney concluded that Respondent's e-mail address was substituted for customers' addresses in the accounts of 37 households. CX-133.

[4] This does not equate to 437 diverted e-mails confirming trades. The trade confirmations included all of the trades executed for the customer on the day of the e-mail, so a single e-mail might report multiple trades. Tr. 281-282.

C. Respondent and Others Alter Documents

Beginning in 2005 and at other times through 2007, Respondent and others in the Group caused Smith Barney customer records to be altered, for the purpose of reducing the burdens on customers. Stip. 7; Tr. 190, 244-245, 248-249.[5] Respondent acknowledged that he had written on 35 documents that were received in evidence, although for some documents the amount of writing was insubstantial, and his writing did not constitute alterations of the documents.[6] He also acknowledged that he had whited out information on some of them, writing information for different accounts and corrections where information had been whited out.[7] Tr. 284, 293-296, 302-316, 319-327, 330, 332, 335, 354-356. In some instances, Respondent wrote most of the information on documents. *See, e.g.*, CX-3, 19, 51; Tr. 284-285, 299, 321. On other documents, he wrote much less. For example, Respondent wrote only the account number on one document. CX-6; Tr. 292. On another, he wrote the account number, and printed Condos's name in a box for the printed name of the Firm's Financial Advisor for the account. Condos signed the document. CX-36; Tr. 312. On another, Respondent printed the clients' names next to the place

[5] At the hearing, Enforcement provided the original documents to Daniel Motherway, the Smith Barney compliance officer who discovered the e-mail and document irregularities, so he could identify the alleged improprieties in specific documents. Respondent also used the original documents during his testimony to identify those on which he had written or had whited out information. The Hearing Panel also reviewed the original documents. The originals were collectively identified as CX-141, which was not offered in evidence as a separate exhibit. As the originals of CX-2-123 and CX-140, the documents in CX-141 were essentially received in evidence when the documents were offered, and thus no separate ruling receiving CX-141 in evidence was required.

[6] The Hearing Panel found Respondent's testimony on his role in the document alteration to be quite credible. He was responsive and straightforward. He acknowledged having written on documents, and that he might have written on others when, for example, there was a circled X on a document to indicate where a customer should sign. *See, e.g.*, Tr. 324-325. There is no evidence in the record concerning which member of the Group suggested the alteration of documents.

[7] One hundred twenty-three documents were received in evidence that allegedly had some irregularity. CX-2-123, CX-140. Respondent testified that he had no role in with respect to 88 of the 123 documents offered by Enforcement, and there was no evidence that he did. Tr. 284, 293-296, 302-316, 319-327, 330, 332, 335, 354-356. The 123 documents had been produced to Enforcement by Smith Barney as documents that the Firm had identified as having some irregularity, including noncompliance with the Firm's policies and procedures. Tr. 84-85. There was no testimony concerning many of the documents, and the Hearing Panel does not find that all 123 documents had been altered. Witnesses were unable to identify any alterations with respect to some of the documents. CX-12, 23-25, 40, 45, 54; Tr. 70, 75-77, 79, 315-316.

for their signatures, to indicate where they should sign the document. CX-44; Tr. 317. Respondent wrote the customer's names in the "Account Title" boxes of two account transfer forms. CX-45, 61; Tr. 318, 326.

The parties stipulated to the types of documents that Respondent altered. First, in certain instances, documents such as executed new account forms, customer identification verification forms, and letters of acknowledgement concerning equity offerings for existing customers, were photocopied by Respondent and altered with correction fluid or tape. The altered copies were then used to: (1) open one or more additional authorized accounts for the customers or for one or more other individuals, the latter of whom were often related to or associated with the existing customer; or (2) for other administrative purposes. Stip. 8.

For example, one family had approximately 40 accounts, and each account required documentation. Respondent and others in the Group would send one document to the customer for signature, then white out the account number and submit the altered document for additional accounts. Tr. 292, 294, 314, 334, 353, 357-358, 360-361; CX-71, 73, 74, 75. The same practice was used for other customers with multiple accounts. See, e.g., CX-67, 68; Tr. 330-332, 244-245, 248-249.

Second, in certain instances, Respondent reused executed documents authorizing such actions as the transfer of customer accounts. This was accomplished by using correction fluid or tape to white out the customers' names, account numbers, or other information on the existing forms and replacing them with new information. The altered documents were then used by Respondent to make account transfers. Stip. 9.

Third, in certain instances, Respondent altered computer printouts. These printouts were required by Smith Barney to be submitted to an electronic customer identity verification system

before certain accounts could be opened at the Firm. In using the customer identity verification system, Smith Barney's sales assistants were responsible for first obtaining information such as the customer's name and address at certain publicly available internet sites or by obtaining identification such as a driver's license. Once the information was obtained, it was required by the Firm to be submitted into the system. The customer identity verification system was used by the Firm to verify customer information for, among other things, anti-money laundering purposes. Stip. 10, 11.

Where Respondent was unable to obtain a printout of the information for a customer or potential customer to open a particular account, he used correction fluid or tape to white out certain information on the printout that was available (e.g., name or social security number) for a member of the customer or potential customer on the printout, and inserted different information by hand. The computer printouts with handwritten alterations, which were correct as altered, were then scanned and submitted into the verification system by Respondent, thus permitting the new accounts to be opened. Stip. 11.

The altered printouts were obtained from websites such as WhitePages.com. For example, CX-16 is a Whitepages.com printout of a name and address on which someone deleted the original printed name and wrote the customer's name, by hand, above the address. The alteration was obvious. CX-16; Tr. 122-125. The documents were altered to accommodate clients, so the Group did not have to go back to clients for other forms of identification, such as a passport or driver's license. Tr. 391. Respondent did not generally prepare this type of document, and he did not alter the documents of this type that were introduced in evidence. He testified that he altered one or two similar documents. Tr. 240-242, 302.

Fourth, in certain instances, blank or partially completed forms such as new account forms were sent to customers for execution and were subsequently completed by Respondent. Stip. 12. For example, a customer signed a blank Financial Management Account Automatic Funds Transfer Enrollment and faxed it to the Firm. Respondent completed the document. CX-14; Tr. 118-121, 300.[8] Similarly, after the trustees of a trust customer had signed a certification of eligibility to participate in an IPO, Respondent completed the document. Before the trustees signed, Respondent printed their names on the document to indicate where they should sign. After the document had been signed, he filled in the trust's name and account number. CX-17; Tr. 129-130, 303.

D. Smith Barney Disciplines Respondent and Others

As a result of the insertion of his e-mail address in customer records and the document alteration issues discussed above, the Firm suspended Respondent for 30 days and instructed him to review the Firm's policies and procedures. Stip. 16; RX-1. The Firm also placed the Group under special supervision for one year. The Firm found no further violative conduct by Respondent that occurred during that year. Stip. 17.

IV. First Cause Of Action: By Entering His Business E-mail Address in Firm Records to Receive E-mails Intended for Customers, Respondent Caused His Firm to Maintain Inaccurate Books And Records, and to Violate SEC Rule 10b-10

NASD Conduct Rule 3110(a) provides, in part:

> Each member shall make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations and statements of policy promulgated thereunder and with the Rules of this Association and as prescribed by Exchange Act Rule 17a-3….

[8] The document is an authorization to establish a transfer between, in this instance, Citigroup Smith Barney and an outside bank for the purpose of moving funds to and from the Smith Barney account. Tr. 118-119. Respondent initially made an error on the document, which he corrected by whiting out the erroneous information and inserting the correct information. Tr. 300.

Entering inaccurate information in a member firm's books and records violates both the requirement of NASD Conduct Rule 3110 to keep accurate books and records, and of NASD Conduct Rule 2110 (now FINRA Conduct Rule 2010) that members observe high standards of commercial honor and just and equitable principles of trade.[9] Even though Respondent's goal was to minimize the burden on customers and not to benefit himself, it was "unethical and improper for [Respondent] to falsify information on the Firm's records to accomplish that goal." Falsification of records, even to benefit customers, violates NASD Conduct Rules 3110 and 2110.[10]

SEC Rule 10b-10(a) requires brokers to provide written confirmations to customers, at or before completion of such transaction, disclosing "the date and time of the transaction (or the fact that the time of the transaction will be furnished upon written request to such customer) and the identity, price, and number of shares or units (or principal amount) of such security purchased or sold by such customer…." The insertion of Respondent's e-mail address in the Firm's customer records caused confirmations to be sent to Respondent, and not to customers, causing the Firm to fail to deliver the confirmations to customers.

The Hearing Panel finds, as the parties have stipulated, that as a result of entering his e-mail address into the Firm's records in place of customer e-mail addresses, and receiving e-mails intended for customers, Respondent "(a) violated NASD Rules 3110 and 2110 in that he caused [Smith Barney] to create and maintain inaccurate books and records in violation of SEC Rule 17a-3, and (b) caused a violation of SEC Rule 10b-10." Stip. 6.

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[9] *Dep't of Enforcement v. Nouchi*, No. E102004083705, 2009 FINRA Discip. LEXIS 8 (N.A.C. Aug. 7, 2009); *see also*, *Fox & Co. Inv., Inc.*, Exchange Act Rel. No. 52697, 2005 SEC LEXIS 2822, at *30-32 (Oct. 28, 2005); *Geoffrey Ortiz*, Exchange Act Rel. No. 58416, 2008 SEC LEXIS 2401, at *17 (Aug. 22, 2008).

[10] *Dep't of Enforcement v. Correro*, No. E102004083702, 2008 FINRA Discip. LEXIS 29, at *16 (N.A.C. Aug. 12, 2008).

V. Second Cause of Action: Respondent Violated NASD Conduct Rules 3110 and 2110 by Altering Documents, Causing His Firm's Books and Records to be Inaccurate

The Hearing Panel finds, as the parties have stipulated, that as a result of the alteration of documents, as discussed above, "Respondent violated NASD Rules 3110 and 2110 in that he caused the Firm to create and maintain inaccurate books and records in violation of SEC Rule 17a-3." Stip. 14.

VI. Sanctions

Because Respondent's violations "stem from a single source," his misguided attempt to reduce the burdens on customers, it is appropriate to impose a single, unitary sanction.[11] Enforcement contends that it is appropriate to consider the FINRA Sanction Guidelines ("Guidelines") both for recordkeeping violations and for falsification of records.[12] Respondent argues that the records were not false, because all of the information in the records was accurate.[13] He urges the Hearing Panel to consider only the guideline for recordkeeping violations, and not to impose any sanction in light of the sanctions already imposed by Smith Barney.

The guideline for the falsification of records is the appropriate guideline for this matter. Respondent caused the Firm's electronic records to be inaccurate with respect to the customers' e-mail addresses. The altered documents were also false, even if the information in the documents, other than customer e-mail addresses, was accurate, because Respondent submitted

[11] *Dep't of Enforcement v. Braff*, No. 2007011937001, 2011 FINRA Discip. LEXIS 15, at *25 (N.A.C. May 13, 2011), *appeal docketed*, SEC Dkt. No. 3-14417 (June 9, 2011).

[12] *FINRA Sanction Guidelines* at 29 (2011) (guideline for violations of NASD Conduct Rule 3110 and SEC Rules 17a-3 and 17a-4, and FINRA Conduct Rule 2010 and NASD Conduct Rule 2110 recordkeeping violations); *Guidelines* at 37 (guideline for forgery and/or falsification of records).

[13] Enforcement did not contend that the information in the documents that were sent to customers or maintained by the Firm was inaccurate, except for the customer e-mail addresses. Respondent testified that all the information in the documents was accurate. Tr. 388-9.

the records to the Firm as records completed and submitted by customers or obtained from their original sources, when they were not.

For forgery or falsification of records, the Guidelines recommend consideration of a fine of $5,000 to $100,000. When mitigation is present, the Guidelines recommend consideration of a suspension in all capacities of up to two years. In egregious cases, the Guidelines recommend consideration of a bar. Principal Considerations include the nature of the falsified document and whether the respondent had a good-faith, but mistaken, belief of authority.[14]

The nature of the documents is an aggravating factor. Some e-mails to customers contained important information, including trade confirmations, that did not reach customers. Although the trades were discussed with the customers before they were made, and customers would later be able to review the trades when they received their account statements, they should have received the confirmations promptly after the trades were executed. Some of the paper documents were particularly important documents such as account opening documents and account transfer documents.

Respondent's motivation for his actions is a mitigating factor. Respondent engaged in the misconduct to benefit customers.[15] The parties stipulated that the purpose of Respondent's conduct was: (1) to accommodate customers by decreasing the quantity of written communications they received from the Firm, which was viewed by Respondent and his team to be excessive; and (2) as a shortcut with respect to the account opening process at the Firm. The parties also stipulated that a substantial portion of the conduct occurred when Respondent's team

[14] *FINRA Sanction Guidelines* at 37 (2011). The Hearing Panel did not consider the existence of express or implied authority to be a relevant factor.

[15] The National Adjudicatory Council has considered the intent to help customers in determining sanctions. *See, Dep't of Enforcement v. Nouchi*, 2009 FINRA Discip. LEXIS 8, at *10-11; *Dep't of Enforcement v. Correro*, 2008 FINRA Discip. LEXIS 29, at *18-19 (considering intent to help customers by submitting false disability waivers).

transferred from their prior firm to the Firm and was tasked with transferring and reopening a large number of customer accounts. Stip. 13.

Respondent did not intend to deceive anyone by directing e-mails to his office e-mail address.[16] Respondent's explanations of his reasons for the practice were both reasonable and credible. Condos and Roberts were aware of the practice, and others in the Group inserted Respondent's e-mail in customers' electronic records. Furthermore, if Respondent had intended to deceive anyone, he would not have used his office e-mail address.

The Hearing Panel also finds that Respondent did not intend to deceive anyone by altering documents. The Hearing Panel considered a number of facts in reaching this conclusion. The alterations were obvious for most of the documents, done in a manner that was not consistent with an intent to deceive. Many documents had been faxed from customers or copied by Respondent or others, but had blue ink handwriting on them that was added after the faxing or copying. Where Respondent wrote on documents, his handwriting was, in most instances, very apparent. *See*, e.g., CX-3, 14, 70, 71, 73; Tr. 57-59, 118-121, 234-5, 237, 284-285, 300, 333, 334, 353. Furthermore, many of the documents required further processing by the Firm, and Respondent could not have thought the alterations would go unnoticed. For example, the Operations group at the Firm accepted documents with blue writing, stamping documents with an "Operations Medallion" certifying the customer's signature. CX-5, 76-81, 96, 99; Tr. 285, 353. Condos, Roberts, and the branch manager subsequently signed some of the "reused" documents. Tr. 400; CX-5, 71, 76-81, 96. Respondent testified that he did not intend to deceive anyone. Tr. 283-284.

[16] See Principal Consideration No. 10, *FINRA Sanction Guidelines* at 6: "Whether the respondent attempted to conceal his or her misconduct or to lull into inactivity, mislead, deceive or intimidate … the member firm with which he or she is/was associated.

There is no evidence of any potential personal financial gain for Respondent.[17] Respondent testified that he did not benefit from the diversion of e-mail to his account. Tr. 283. There is no evidence of any financial gain from the alteration of documents.

Respondent cites to the absence of disciplinary history as a mitigating factor. Stip. 18. The absence of disciplinary history is not a mitigating factor.[18] Respondent also cites to the absence of customer harm. The absence of customer harm has generally been held not to be a mitigating factor, and the Hearing Panel did not consider it as a mitigating factor.[19] Similarly, Respondent notes that the Firm contacted the affected customers, and no customers complained about Respondent's conduct. Stip. 15. The absence of customer complaints is not a mitigating factor.[20]

Respondent's remorse and commitment to compliance with all applicable rules were important factors in determining sanctions. Respondent acknowledged that his conduct was wrongful, and expressed remorse for his actions and an intention to comply with all applicable rules. He explained that when he engaged in the misconduct, he was not aware that he was doing anything wrong. Tr. 371-373, 386. He consults compliance personnel and managers more frequently to be sure his conduct complies with the Rules. Tr. 167-168, 370. The Hearing Panel found Respondent's remorse, and his intention to comply with all applicable rules, to be sincere.

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[17] Principal Consideration No. 17, *FINRA Sanction Guidelines* at 7; "Whether the respondent's misconduct resulted in the potential for respondent's monetary or other gain."

[18] *FINRA Sanction Guidelines* at 6, n.1.

[19] *See, e.g., Harry Friedman*, Exchange Act Rel. No. 64486, 2011 SEC LEXIS 1699, at *34 (May 13, 2011); *Dep't of Enforcement v. v. FCS Securities*, No. 2007010306901, 2010 FINRA Discip. LEXIS 9, at *26-27 (N.A.C. July 30, 2010), *aff'd*, *FCS Securities*, Exchange Act Rel. No. 64852, 2011 SEC LEXIS 2366 (July 11, 2011); *Dep't of Enforcement v. Kraemer*, No. 2006006192901, 2009 FINRA Discip. LEXIS 39, at *27, n.16 (N.A.C. Dec. 18, 2009); *but see Dep't of Enforcement v. Bukovcik*, 2007 NASD Discip. LEXIS 21, at *15 (N.A.C. July 25, 2007) ("In light of a number of mitigating factors – including, the lack of any customer harm,…."), and *Dep't of Enforcement v. Correro*, 2008 FINRA Discip. LEXIS 29, at *18-19 (considering absence of customer harm).

[20] *Dep't of Enforcement v. Burch*, No. 2005000324301, slip. op. at 28, n.34 (N.A.C. July 28, 2011).

Having considered all of the foregoing, the Hearing Panel finds that an additional suspension would be unwarranted. Respondent has already served a 30-day suspension.[21] The Hearing Panel finds that a fine of $25,000, in addition to the suspension that Respondent has already served, is sufficiently remedial. While Respondent's violations were not egregious, and he had good intentions, his violations were serious. The fine imposed is substantial, but in the lower half of the range in the FINRA Sanction Guidelines. Although the Hearing Panel finds that Respondent genuinely intends to comply with all applicable rules, a substantial fine will reinforce the message that Respondent must be careful to comply in the future.

VII. Conclusion

Respondent Alexander H. McKinnis violated NASD Conduct Rules 3110 and 2110 by entering his office e-mail address in customer records as the e-mail address for customers, thereby causing e-mail intended for customers to be sent to him, and altering documents and submitting the altered documents to his firm. For these violations, the appropriate sanction is a suspension of 30 days and a fine of $25,000. Respondent is given credit for serving a 30-day suspension imposed by his firm, and is not required to serve the suspension imposed by the Hearing Panel. Respondent is fined $25,000.

Respondent is also ordered to pay the costs of the hearing in the amount of $4,317.65, which includes a $750 administrative fee and the cost of the hearing transcript. The fine and

[21] Principal Consideration No. 14, *FINRA Sanction Guidelines* at 7 ("Whether the member firm with which an individual respondent is/was associated disciplined respondent for the same misconduct at issue prior to regulatory detection.") The Firm imposed a suspension of 30 calendar days. Under the Guidelines, a suspension of 30 days or less is generally measured in business days. Guidelines at 9. The Hearing Panel finds that the suspension imposed by the Firm was sufficiently remedial and does not impose any additional suspension to account for the difference between calendar and business days.

costs shall be payable on a date set by FINRA, but not less than 30 days after this Decision becomes FINRA's final disciplinary action in this matter.[22]

HEARING PANEL

_____
Lawrence B. Bernard
Hearing Officer

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[22] The Hearing Panel has considered all of the parties' contentions and rejected or sustained them to the extent they are inconsistent or in accord with the views expressed in this decision.