FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. JASON BLUM (CRD No. 5184761), Respondent.	Disciplinary Proceeding No. 20090209629-01 Hearing Officer – RLP **HEARING PANEL DECISION** December 12, 2013

For violating NASD Rule 1021(a) and FINRA Rule 2010, by actively engaging in the management of the investment banking and securities business of a FINRA member firm without being registered as a principal, Respondent is suspended from associating in any capacity with any FINRA-registered firm for 20 business days and fined $10,000. Respondent is also ordered to pay costs.

Appearances

Jacqueline D. Whelan, Esq., San Francisco, California, for the Department of Enforcement.

Alvin L. Fishman, Esq., Tesler, Sandmann & Fishman, San Francisco, California, for Respondent.

DECISION

I. Introduction

Concerns raised by a telephone call to FINRA staff about the records of a former FINRA member firm, Iron Capital Securities, LLC ("ICS"), led to an investigation and, ultimately, the initiation of this disciplinary proceeding against Respondent Jason Blum. The complaint, filed December 12, 2012, by FINRA's Department of Enforcement ("Enforcement"), charged Blum with actively engaging in the management of ICS' investment banking and securities business without being registered as a principal, in violation of NASD Membership and Registration Rule

1021(a) and FINRA Rule 2010. Blum filed an answer on January 9, 2013, denying many of the complaint's allegations and asserting affirmative defenses, including equitable estoppel.

During the course of this proceeding, Blum has not disputed that he engaged in many of the activities Enforcement asserted required principal registration. Instead, as a general matter, he took the position that much of his conduct did not require principal registration because, among other things, he was supervised by or collaborated with ICS' President or he was authorized, as the owner of ICS and its parent, to take the actions he took. But, to the extent that the record supports Blum's factual assertions, those facts do not affect our conclusion that Blum actively engaged in the management of ICS and, therefore, was required to—but did not—register as a principal. Blum also defends generally against liability by asserting that he was laboring under a FINRA-created misapprehension that he could do what he did without principal registration and, therefore, FINRA should be estopped from pursuing these charges. As set forth below, however, even if such a defense could be asserted in a FINRA proceeding, the record does not support an estoppel here. Accordingly, for the reasons stated below, the Hearing Panel concludes that Blum violated NASD Rule 1021(a) and FINRA Rule 2010 by functioning as a principal of ICS without being registered as such.[1] We further conclude that a suspension of 20 business days and a fine of $10,000 appropriately remedy these violations.

[1] The hearing was held in San Francisco, California, on August 19 and 20, 2013. FINRA has jurisdiction over this proceeding given that Blum is currently registered with FINRA through a member firm.

II. Findings of Fact

A. Blum Forms ICS and Has a Colleague Oversee the Membership Application Process.

Jason Blum entered the securities industry in 2006, registering with FINRA as a general securities representative ("GSR") and corporate securities limited representative.[2] Blum has never been never registered as a general securities principal ("GSP").

In May 2007, Blum formed Iron Capital Holdings, LLC ("ICH") to provide funding and financial advisory services for start-up companies.[3] At around the same time, Blum also sought to associate with a new broker-dealer. As part of his search, he was introduced to Brian Dennen, who was then employed by Urchin Capital Partners, LLC. Ultimately, Blum and Dennen decided to form their own brokerage firm to capture revenues from the securities transactions that might result from ICH's business.[4] ICS thus was established in early 2008, as a wholly owned subsidiary of ICH and, in exchange for superintending the broker-dealer registration process, Dennen acquired a 30% ownership interest in ICH.[5]

In May 2008, Dennen submitted to FINRA a New Member Application ("NMA") on behalf of ICS, including a Form BD, with an attached business plan.[6] According to the business plan, ICS was formed "to engage in the offer of equity securities private placements . . . on a 'best efforts' agency basis . . . to institutional and high-net worth investors . . . ." The firm's target issuers were "smallcap to lower middle market, undervalued public and private growth

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[2] Complainant's Exhibit ("CX-") 1, at 5.

[3] Stipulations of the Parties as to Facts ("Stip.") 1, in Joint Exhibit ("JX-") 12, at 5-8; Hearing Transcript ("Tr.") 238, 244-246 (Blum); *see* JX-4, at 5. Thus, for example, ICH was the managing partner of a series of special purpose limited liability corporations Blum formed to pool investor funds to purchase securities of specified issuers. *See*, *e.g*., Stips. 2, 3; JX-4, at 5; Tr. 242 (Blum).

[4] Tr. 34-35 (Dennen), 242-245, 430 (Blum).

[5] Tr. 35-36, 45-46, 105, 109, 178 (Dennen), 431 (Blum); *see* Stips. 4, 5; JX-4, at 5.

[6] Stip. 9; CX-2–CX-4; *see* JX-2; Tr. 36-40, 42-43, 45 (Dennen).

companies that are underserved or ignored by larger investment banks."[7] The "primary driver" for taking up this business line was Blum's investment banking background and experience.[8]

ICS was to begin its brokerage business with two registered principals, Dennen and Luis Alvira. Dennen would function as the firm's President, Chief Compliance Officer, Chief Operations Officer, and Financial and Operations Principal.[9] According to the NMA, Dennen had been employed in the securities industry for more than nine years, with a focus on operations and compliance matters.[10] An organization chart identified Dennen as the supervisor of an investment banking group consisting of Blum—who was to be registered as a GSP, among other capacities—and one other person.[11] Alvira was to function as head of sales and as a GSP. The application represented that Alvira had more than 12 years' experience in the securities industry, including as the head of institutional sales at Urchin Capital.[12]

The FINRA examiner principally responsible for reviewing the NMA sought additional information about a variety of subjects, including details pertinent to the determination whether, under NASD Rule 1014(a)(10)(D), Dennen had at least one year of direct experience or two years of related experience in the subject areas that he would supervise, including the structuring and offering of private placements. According to the examiner, this request was typical of those

[7] CX-3, at 2-3; Tr. 40 (Dennen).

[8] Tr. 37 (Dennen). The business plan also represented that ICH would provide initial and, if necessary, additional capitalization for ICS. CX-3, at 8. An expense sharing agreement (RX-6), *see infra* p. 7, also was supplied as part of the NMA. Tr. 227 (Jani).

[9] CX-3, at 10; Tr. 35 (Dennen).

[10] CX-3, at 4; *see* Tr. 36 (Dennen).

[11] CX-3, at 10; Tr. 40-41, 110 (Dennen), 198 (Jani). Blum testified that he was not aware that he was identified to FINRA as someone who would function as a principal. Tr. 248-249 (Blum). We nevertheless credit Dennen's testimony that he informed Blum that he would represent to FINRA that Blum would obtain a Series 24 license. Tr. 110 (Dennen). Dennen and Blum together were embarked on a venture to establish a broker-dealer and, as Dennen testified, that Blum would obtain his principal license "was the plan . . . ." Tr. 110 (Dennen).

[12] CX-3, at 4.

made in connection with NMAs.[13] In an August 22, 2008 response, Dennen supplied the requested supplemental information.[14] This response, together with subsequent representations, provided FINRA staff with the information needed to decide whether Dennen met the membership standards for supervising ICS' banking business: ultimately, the staff determined that he did.[15]

The examiner also requested a "detailed description of the duties and responsibilities for each person to be associated with ICS." As pertinent, the August 22 response represented that Dennen would be responsible for the overall management of the firm, including "overseeing the Firm's investment banking activities, as well as Business Operations and Business Development."[16] Blum, described as "Director, Investment Banking," would be responsible for advisory services, capital sourcing, and business development.[17] Two other prospective associated persons also were afforded the title "Director, Investment Banking," but their functions were described as "sourcing and maturing investment banking transactions."[18] One of those persons, Tim Sullivan, a former colleague of Blum's, was further identified as the

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[13] JX-3, at 9; Tr. 200 (Jani).

[14] Dennen represented that he: had over four years of direct experience supervising investment banking activities, including private placements; was currently overseeing the "banking structuring and sales activities" of Blum and others at another firm; had "built out the investment banking department" at Urchin Capital; and had supervised 1031 real estate exchanges while at another firm. JX-4, at 24; *see* Tr. 37-38 (Dennen).

[15] Tr. 209-211 (Jani); *see* Tr. 474 (Miller). In a November 21, 2008 letter, Dennen further described his previous supervision of investment banking activities and attached a summary of his supervisory experience. Tr. 208-210 (Jani); JX-7. Whether Dennen had as much as or more investment banking experience than others at the firm was not something the examiner considered. She "wasn't looking for who had the most experience." Tr. 226 (Jani). Instead, she was deciding whether Dennen's experience, in itself, was adequate for the supervisory role he proposed to perform.

[16] JX-4, at 9.

[17] JX-4, at 10.

[18] JX-4, at 10. Information about Blum's background, as well as that of the other bankers also was supplied. *Id.* The response also disclosed: (i) the relationships between and among ICH, ICS, and the special purpose entities; (ii) a "sample list" of three Blum clients ICS stated it "would like to start working with once approved"; and (iii) the fact that Blum was participating on the investment committee with his supervisor, Dennen. JX-4, at 3, 5, 19.

"Managing Director" of the investment banking group and it was represented that he would obtain a Series 24 license.[19]

Blum, however, was no longer identified as someone who would register as a GSP. Although Dennen thought it was important that Blum do so because Blum "would potentially be supervising other representatives and having discretion on the activities of the investment banking group," Blum would not or could not devote the time to study for the examination and, therefore, would register only as a GSR.[20]

That Blum would not register as a GSP raised concerns on the part of FINRA staff. First, because Blum was a signatory on ICS' bank account, staff instructed the firm to file a Uniform Application for Securities Industry Registration or Transfer ("Form U4") to register Blum as a principal. ICS' response was to reaffirm that Blum would register only as a GSR and to remove him as a signatory on the bank account.[21] Reservations remained, however. As the principal examiner testified, indications that Blum would be "actively involved in the business of the firm . . . combined with his role as an owner" raised "concerns that he might be acting as a principal." Accordingly, the staff sought explicit assurances that Blum would not act as a principal unless he were appropriately registered.[22] In response, Blum provided a signed written statement representing that, since he would "not be registered as a principal," he would "not act as an officer of ICS" or "otherwise have any involvement in the day-to-day management of ICS" until

[19] JX-4, at 12; Tr. 74 (Dennen). In another, later, submission, Sullivan was neither designated as "Managing Director" nor identified as someone who would obtain a Series 24 license. JX-5, at 16. Nevertheless, Blum and others understood that Sullivan would be managing the investment banking group. *E.g.*, Tr. 74 (Dennen).

[20] Tr. 41, 138-139, 174-176 (Dennen); JX-4, at 12; *see* JX-5, at 2. As far as Dennen remembered, there never was an affirmative decision that Blum would not take the test. Blum simply was "consumed with the sales activity of the business and . . . apparently didn't have time to study for . . . and take the test." Tr. 41-42 (Dennen). Consequently, when, in the summer of 2008, it "became apparent" that Blum was not going to take the test, the NMA was amended. Tr. 175 (Dennen); *see* Tr. 249 (Blum).

[21] JX-5, at 2, 5; Tr. 137-139 (Dennen), 479 (Miller). Dennen informed Blum that FINRA was requiring ICS to remove Blum as authorized signer on the bank account because he did not have a Series 24 license. Tr. 250 (Blum).

[22] Tr. 205 (Jani); Tr. 203, 207 (Jani), 466-467 (Miller); JX-6, at 4.

he registered as a principal.[23] FINRA staff relied on these assurances and, without them, would not have approved ICS' membership, as Blum knew.[24]

B. Blum Engages in the Management of ICS' Business.

ICS' membership application was granted on December 2, 2008,[25] and once the firm was fully operational, its business was, to a large extent, interconnected with that of ICH. Thus, for example, an operating agreement provided, among other things, that ICH's members could terminate the employment of ICS personnel.[26] The businesses also shared office space and, under the terms of an expense sharing arrangement, ICH paid up to 90% of the rent and provided all furniture, equipment, and supplies.[27] In addition, ICH was the "official employer" of ICS' employees, including its registered representatives, although few employees actually performed work for both entities.[28] All payroll was done through a payroll service with which ICH had an account and, in the event that ICH failed to fund payroll, ICS would be in the position where it needed to cut nonessential staff or risk compliance issues.[29] That Blum and others viewed both entities simply as "Iron Capital" was illustrative of the close connection between ICS and ICH, as was Blum's practice of "branding" the two entities as one "Iron Capital" when he engaged in discussions with potential clients about providing investment banking services.[30]

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[23] CX-5; JX-6, at 4; Tr. 52-53, 112, 162 (Dennen), 206-207 (Jani), 250, 371-373 (Blum).

[24] Tr. 207-208 (Jani), 371 (Blum).

[25] Stip. 10; RX-3; Tr. 123 (Dennen); *see also* RX-4, RX-5.

[26] Tr. 406-407 (Blum).

[27] JX-4, at 21-22; RX-6; RX-9, at 7-9; Tr. 117-119, 131-133 (Dennen). Blum worked, at all times, on the same floor as some or all of ICS' personnel. *See* Stips. 22-23.

[28] Tr. 74-75 (Dennen). Blum and Dennen were among the employees that worked for both entities. *E.g.*, Tr. 75, 110 (Dennen).

[29] *See* CX-14; Tr. 94-95 (Dennen).

[30] Tr. 255 (Blum); Tr. 256, 258-259, 261 (Blum); *see* Tr. 88 (Dennen).

Another outgrowth of the relationship between ICH and ICS was that Blum actively engaged in the management of ICS, despite his representations to FINRA. As set forth below, Blum directed ICS' investment banking business, including determining what deals ICS would pursue and managing the consequent sales campaigns. He signed agreements on behalf of ICS, authorized compensation packages, prescribed job responsibilities and reporting relationships, and terminated employees. Then, during a period of management upheaval, Blum hired and fired principals, held himself out as ICS' president, and obtained signatory authority over the firm's bank account. Almost without exception, Blum believed that, as ICS' owner and the person most knowledgeable about its business, he was authorized to take, and justified in taking, these actions[31]—all without regard to his registration status.

1. Blum Directs ICS' Investment Banking Business.

From ICS' inception, Blum managed its investment banking business. As a general matter, he decided which companies ICS would raise money for, negotiated the terms of engagements, and managed ongoing relationships. Indeed, as Dennen testified, ICS' initial business was "the result of . . . Blum's contacts and no one else's."[32] As Dennen also testified, if Blum was not interested in a particular deal, ICS generally would not pursue it; the firm devoted resources to a transaction only if Blum approved.[33]

Although for much of ICS' existence, the firm's investment committee consisted of Dennen and Blum, Blum alone performed many of the committee's functions. As Blum stated,

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[31] *E.g.*, Tr. 272, 304-305 (Blum).

[32] Tr. 141 (Dennen).

[33] Tr. 51-52 (Dennen). In Blum's view, he was the only ICS representative "who actually could close a CEO of a startup to do investment banking. There was no other originator[] in the company . . . ." CX-21, at 3-4; Tr. 267-268 (Blum). Accordingly, Blum was "not happy with the quality of companies that were introduced to the firm by other bankers." Tr. 268 (Blum).

"[t]he investment committee was basically me."[34] While Blum discussed potential business with Dennen, in practice, Dennen did not have the ultimate authority to decide which opportunities the firm would pursue; Blum did.[35] And, although Dennen was responsible for supervising investment banking activities, Blum did not believe that he reported to Dennen or view Dennen as his boss; instead, according to Blum, he and Dennen "consulted" and "collaborated."[36] But that collaboration was piecemeal at best: Blum made it "very crystal clear that a compliance person [such as Dennen and his successor CCO, Justin Drobenaire] does not determine what a good investment banking deal is. . . . I did not ask them whether or not Fusion IO was a good deal or not and that we should do it. That never happened."[37]

Blum believed that ICS' registered representatives should devote their time and energy to marketing the placements he brought to the firm.[38] To ensure that they did so, he functioned as a *de facto* sales manager.[39] For example, during most of the time ICS was actively engaged in

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[34] CX-21, at 6; *see* Tr. 50, 143 (Dennen).

[35] Tr. 159-160 (Dennen).

[36] *E.g.*, CX-21, at 8; Tr. 308, 442 (Blum).

[37] CX-21, at 8-9; *see also* Tr. 311 (Blum). At the hearing, citing business originated by other bankers, Blum testified that Dennen had the "final say" about whether ICS would commit to a deal. Tr. 271. Although the record reflects that other bankers did bring in some business, much of it was originated by Fred Ramberg, an independent representative, who did fundraising himself. Tr. 97-98, 100-101 (Dennen); RX-15, at 7; JX-8; JX-9; and JX-11. Moreover, when asked whether Blum objected to certain deals originated by other bankers, Dennen replied, "Not these three deals, no" (Tr. 158), giving rise to a strong inference that Blum had objected to others. In light of Blum's view that other representatives should market his placements, Blum's belief that he was ICS' only real originator, and Blum's financial stake in ICS, we credit Dennen's testimony that, if Blum objected to an opportunity, the firm did not pursue it and, conversely, that if Blum introduced a deal, ICS worked on it. Tr. 51 (Dennen).

[38] *E.g.*, CX-21, at 4; RX-15, at 6.

[39] When asked at his OTR whether ICS had a sales manager, Blum responded: "Well, that essentially would be me as the investment banker for the company; right?" CX-21, at 7; Tr. 272 (Blum). At the hearing, Blum testified that what he meant by this was that the person who had the relationship with the client would be the one to "rally everyone on the team to . . . raise money for the opportunity" and "that person could be Fred Ramberg, that could be me, that could be anyone who has the relationship with the company." Tr. 272-273. But the record shows that Blum brought in the majority of ICS' business, was the only banker who had the means to continuously monitor sales force productivity, as discussed *infra* p. 10, and was the banker who most often ran sales calls.

business, Blum ran weekly sales calls.[40] During the calls, Blum would "call out" representatives on their commitments to deliver investor funds and, in so doing, mete out a "fair bit of criticism" about the representatives' performance individually and as a group.[41] As Dennen testified, running the weekly calls was a management responsibility: the person running the call was "trying to manage the sales campaigns and the commitments that we made to our clients."[42]

Another means Blum used to monitor employee performance was Salesforce.com, an Internet resource used to manage sales campaigns. Blum was the only person at ICS who had system administrator privileges granting him higher level access to Salesforce.[43] This high level of access typically would be afforded "a manager . . . to see the contacts and all the activity of [his] subordinates."[44] And Blum used the information he accessed to manage; in at least one instance in which Salesforce data demonstrated that a production quota was not being met, Blum cited the information as one reason to demote an ICS employee.[45] Blum's privileges also allowed him to determine the level of access others had to Salesforce.[46]

Consistent with his desire that ICS' personnel work on placements he originated, Blum also issued instructions to ICS' representatives about what matters they could work on. For example, Blum gave "direct orders" to one representative not to work on a potential deal and to

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[40] Tr. 87-88, 151-152 (Dennen).

[41] Tr. 168 (Dennen); Tr. 87, 181 (Dennen).

[42] Tr. 86-87 (Dennen). Dennen later testified, inconsistently, that a GSR could appropriately have run the calls. Tr. 149-151. But, at the same time, Dennen characterized Blum's role in running the calls as that of an "office manager" because "he was also calling people out on their progress in completing the transaction." Tr. 152. Moreover, when asked why representatives other than Blum did not run the call, Dennen stated: "It was Mr. Blum's desire to run that call." Tr. 150.

[43] Tr. 79-80, 167 (Dennen).

[44] Tr. 80-81 (Dennen).

[45] CX-12.

[46] Tr. 80-81 (Dennen). Although Dennen had access to all contacts and activity in the Salesforce database, his access was more limited than Blum's. Tr. 81 (Dennen).

focus instead on existing matters.[47] Ultimately Blum cited the representative's disobedience of the order as one reason to demote him.[48]

2. Blum Signs Agreements on Behalf of ICS.

On May 22, 2009, Violin Memory Systems, Inc. ("Violin") and Iron Capital Partners V, LLC ("ICP V") executed a Memorandum of Understanding ("MOU") setting forth the principal terms of a proposed Series B preferred stock financing of Violin.[49] In the "Other Matters" section of the MOU, a "Finders" provision recited that Violin wished to consider "other investors for a portion of the round" and specified that ICS would act as the placement agent in a "best efforts" placement, in return for a fee of 6.5% of the gross proceeds raised by Violin from ICS clients or "other investors." The "Finders" provision also included a cross-indemnification provision between Violin and ICS and permitted ICS to publicize any placement and ICS' role in it.[50] Blum was the only representative of any Iron Capital entity to sign this MOU and he was the only representative of an Iron Capital entity involved in its negotiation.[51]

On October 28, 2009, Blum signed an Amended and Restated MOU summarizing the principal terms of a proposed Series A preferred stock financing of Violin.[52] A "Finders" provision substantially similar to that in the earlier MOU was included, as were identical cross-indemnity and public announcement provisions. Blum—and no one else associated with an Iron Capital entity—signed the amended MOU. Ultimately, Blum and Violin agreed to terminate the

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[47] CX-12; Tr. 83-84 (Dennen).

[48] CX-12.

[49] CX-6; Tr. 284 (Blum).

[50] CX-6, at 8, 10; Tr. 63-65 (Dennen), 284 (Blum).

[51] Tr. 60, 65-67 (Dennen), 277-278 (Blum). Although Blum testified that he "collaborated on this project" with Dennen (Tr. 280), we conclude, based on Dennen's unequivocal testimony, that Dennen was not involved in negotiating this agreement.

[52] CX-7; Tr. 285 (Blum). Although the record does not contain a copy of the MOU bearing both Blum's signature and that of a Violin representative, reference was made to the MOU in a subsequent agreement. *See* CX-8.

relationship between Violin and the Iron Capital entities. A January 22, 2010 letter reflecting this agreement was signed by Blum as "President" of ICS.[53] Although Blum acknowledged that it was "wrong" for him to sign in this capacity, he noted that he did this during a time of turmoil at the firm and that "a number of mistakes [were] made in this window of time."[54]

On June 18, 2009, Blum signed a letter agreement between Portable Zoo, Inc. and ICH and ICS (referred to collectively as "Iron Capital"). Under the agreement, Iron Capital was to act for a one-year period as the exclusive placement agent for the sale of securities under a shelf registration statement or through a series of private placements. Blum alone signed this letter agreement Iron Capital's behalf.[55]

3. Blum Engages in Personnel Management.

Another way in which Blum exercised authority over ICS' operations was by becoming extensively involved in personnel management. He approved compensation packages. He sought to change reporting relationships and assign functions. He fired employees.

As stated, ICS and ICH had an expense sharing agreement. Blum understood the agreement to empower and require him, as CEO of ICH, to approve or disapprove ICS' proposed expenditures, including compensation packages. Accordingly, Blum, not Dennen, had the final say on compensation.[56] For example, in June 2009, Dennen sent Blum a compensation proposal

[53] CX-8; Tr. 287-288, 289-290 (Blum). In late 2009, at Blum's request, Violin paid ICS over $108,000 in advance commissions. Stips. 19-21; CX-16, at 2, 4, 6; Tr. 293-296 (Blum).

[54] Tr. 378 (Blum). *See infra* pp. 14-17.

[55] CX-9; Tr. 67-69 (Dennen). CX-9 bears only Blum's signature and not that of a representative of Portable Zoo. Although CX-9 may not be a final version of an agreement between Iron Capital and Portable Zoo, ICS did attempt, unsuccessfully, to raise capital for Portable Zoo. Tr. 69 (Dennen), 262, 416-417 (Blum).

[56] Tr. 304-305 (Blum).

for a representative setting forth a proposed salary, overrides, and options grant, and asked Blum to "Let me know." Blum responded "Sounds good."[57]

Emblematic of Blum's attempts to alter reporting arrangements and dictate functions were his efforts to formally place Sullivan in a managerial role, followed by his actions to demote and, in effect, fire Sullivan. As stated above, ICS' NMA represented that Sullivan would become a GSP and manage ICS' investment banking business. But Sullivan did not join the firm until mid-2009 and, even then, he had not passed the Series 24 examination.[58] Nonetheless, on August 31, 2009, Blum sent an email to Dennen, Alvira, Sullivan, and another person associated with ICS, directing the associated person and Alvira (himself a GSP and, by then, 24 percent owner of ICS) to report to Sullivan, who Blum identified as "responsible for IB and Sales production at ICS." Blum also stated that any questions or concerns should be directed to Blum. In response, Dennen expressed concern that Sullivan was not a principal, but Blum countered by insisting "[h]e will be shortly. I want to have the communications flowing appropriately now."[59]

Less than one month after attempting to solidify Sullivan's managerial role, Blum sent an email to Dennen criticizing Sullivan and cataloguing aspects of Sullivan's performance that had been "toxic" to ICS' success. Then, Blum set forth the "next steps" that would be taken, including that: Sullivan would be "demoted to a broker level"; his compensation would be "all commission"; he would have the month of October to "produce something"; and he would not be allowed to "sit in ANY management meetings" or "interface with any of our clients" going

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[57] CX-13, at 1-2.

[58] Tr. 74, 76 (Dennen).

[59] CX-11; Tr. 75-78 (Dennen). In light of the email's content and the fact that Blum did not discuss the e-mail with Dennen before sending it, we do not credit Blum's testimony that he was merely "suggesting" a different reporting structure or that he did not "continue to insist" on the structure after Dennen's response. Tr. 381-382 (Blum). Furthermore, the directive was not implemented because of its timing; Sullivan resigned not long after this email was written. *See* Tr. 116, 144-145 (Dennen).

forward. Blum also informed Dennen that Blum would "run the Tuesday morning [sales] call" and "begin inserting [himself] into everything and everyone" Sullivan was working with.[60] The "next steps" were not Dennen's idea or recommendation; they were Blum's directive and amounted to a *de facto* firing of Sullivan. Around one week later, Sullivan resigned.[61]

Sullivan was not the only ICS employee that Blum fired during this period. Another associated person was terminated for nonproduction after only a few months with the firm. Although Dennen notified the representative of his termination, it took place because Blum no longer wanted to pay for the representative's lack of production.[62]

C. During a Period of Upheaval at ICS, Blum Escalates His Managerial Involvement.

Dennen left ICS in October 2009.[63] By that time or shortly thereafter, Blum had terminated the employment of all of ICS' representatives, other than its principals.[64] ICS had encountered serious financial problems because the representatives were unable to raise money for clients.[65] Again, although Dennen (or his successor) met with employees to let them know they had been terminated, Blum was the decisionmaker. In some instances, he "named out

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[60] CX-12.

[61] Tr. 84, 89 (Dennen).

[62] Tr. 93 (Dennen).

[63] Tr. 103-104, 535-537 (Dennen). At the hearing, Blum testified that shortly after Dennen left the firm, Dennen misappropriated a desktop computer and firm financial information. Tr. 419-424. Dennen testified that the computer was his, and although his computer had QuickBooks software installed, it did not have the firm's financial information on it when he took it. According to Dennen, that data resided on the firm's central server and to access and manipulate it, the firm simply needed to purchase its own copy of QuickBooks. Tr. 530-534. We credit Dennen's testimony. Business continuity considerations would have required, at minimum, that the firm's financial data be backed up and there is no reason to believe that Dennen, an experienced operations principal, would not have observed this minimal safeguard. *See, e.g.*, Tr. 532 (Dennen).

[64] Tr. 259, 439-440 (Blum).

[65] Tr. 260, 262-264 (Blum); RX-15, at 5-6.

individuals that [he] just didn't think were very good," but, ultimately, he simply directed the removal of all ICS representatives in order for the firm to remain viable.[66]

On Dennen's departure, Alvira became ICS' managing principal, and Drobenaire, who had succeeded Dennen as CCO by July 2009, continued to function as the firm's CCO.[67] Shortly thereafter, Blum concluded that these two principals also were not serving ICS' interests—in this instance, taking money from a commission and paying themselves before paying ICS' other debts. Consequently, Blum instructed them that there would be no further disbursements from ICS' accounts for any reason without Blum's approval.[68] Charges and countercharges of impropriety and usurpation of authority followed, some professed by Drobenaire and Alvira, on the one hand, and some by Blum, on the other. In early December 2009,[69] Blum and another member of ICH, acting by formal consent ("the Consent"), relieved Alvira and Drobenaire of their duties.[70]

The Consent also recited the intention of ICH's members to retain Leonard Stecklow and Henry Carter to assume ICS' day-to-day securities operations and compliance functions, respectively, and appointed Stecklow ICS' manager "[i]mmediately upon the effectiveness of his

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[66] Tr. 439-440 (Blum).

[67] *See* CX-17; Tr. 131-132 (Dennen), 252 (Blum); RX-9, at 5.

[68] Tr. 306-307 (Blum).

[69] Around the same time, Drobenaire and Alvira attempted to fire Blum and submitted a Form U5 notifying FINRA of an investigation into alleged improper conduct on Blum's part. CX-1, at 14. Drobenaire then contacted FINRA staff and related that he had terminated Blum and was concerned about the integrity of firm records. *See* Tr. 333-334 (Hellman), 376-377 (Blum). That call resulted in the examination that ultimately led to the initiation of this proceeding. Tr. 342-343, 353 (Hellman), 377 (Blum).

[70] CX-17. *See* Tr. 291-292, 298, 385, 393-394 (Blum); RX-13. According to Blum, Drobenaire committed a "fireable offense" and Blum therefore approached Alvira and told him that he would "prefer it if [Drobenaire] was removed." When Alvira refused to fire Drobenaire, Blum went directly to Drobenaire and attempted to fire him. Drobenaire averred that, because Blum was not a principal, Blum could not fire him. Blum's response was to obtain the Consent. Tr. 385-386.

[FINRA] registration."[71] Carter became ICS' CCO in early January 2010.[72] Stecklow, on the other hand, had never committed to work for ICS. According to Stecklow, Blum "knew all along" that, because of Stecklow's other commitments, it was going to be difficult for Stecklow to associate with ICS or even to assist Blum in finding other persons to serve as principals.[73] Stecklow never worked for ICS in any capacity.

Once Carter assumed the CCO position, Blum instructed him to terminate the registrations of Drobenaire and Alvira; their Forms U5 were submitted to FINRA on January 5, 2010.[74] On the same day, Blum opened a new checking account for ICS at Bank of America ("BOA"). Because Blum was reluctant to permit anyone to have "unfettered" access to the account, Blum and Carter both were listed as signatories on the Business Signature Card.[75] Blum identified himself as ICS' President on the signature card, because BOA wanted confidence that he was authorized to act on behalf of the firm.[76]

After obtaining a copy of the BOA signature card, FINRA staff directed correspondence to Carter and Blum noting Blum's status as a signatory and his title on the signature card, seeking an explanation of ICS' "plans to have Mr. Blum qualify as a registered principal," and expressing concern that Blum may have acted in a principal capacity in 2009. In a response, Blum explained that: ICS' "original general principals [were] no longer registered with the

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[71] CX-17; Tr. 298-299, 387 (Blum).

[72] Stip. 24.

[73] Tr. 522-523 (Stecklow); Tr. 510, 524 (Stecklow). Stecklow also did not recall being aware of the Consent or seeing the Consent, and he testified affirmatively that he was not aware of the extent of the authority it granted. Tr. 517, 519 (Stecklow).

[74] Stips. 24-26; CX-18; Tr. 299-300 (Blum). The Form U5 notifying FINRA of Alvira's termination alleged that Alvira had attempted to divert ICS' funds and had improperly removed ICS' records from its office. CX-18 at 7; Tr. 395-396 (Blum). Subsequently, an amended Form U5 notified FINRA that Drobenaire had been terminated for the same reasons. Tr. 398 (Blum).

[75] CX-19; Tr. 300-301, 399-402 (Blum).

[76] Tr. 399-400 (Blum).

firm"; ICS was "currently interviewing candidates to register with the firm as . . . principal[s]"; Blum was listed as a signatory in order to pay bills; and ICS was "not currently conducting broker-dealer activity." With regard to his title on the BSC, Blum stated:

> Mr. Blum is listed as President on the signature card . . . because he was and is a partner in the firm. ICS is currently in the transition phase bringing in new principals to head the firm. There are no securities transactions being made during this transition period. . . . The only principal with the firm currently is Mr. Henry Carter and Mr. Blum as CEO. As soon as we have filled the other required positions we will update the contacts and Form BD immediately.[77]

III. Conclusions of Law

A. Blum Functioned as a Principal Without Being Properly Registered.

Article III, Section 3(b) of FINRA's By-Laws provides that no person shall become or continue to be associated with a member unless the person satisfies qualification standards established under Article III, Section 2. NASD Membership and Registration Rule 1021(a) in turn provides that "[a]ll persons engaged . . . in the investment banking or securities business of a member who are to function as principals shall be registered as such . . . " and, further, that "[b]efore their registration can become effective, they shall pass a Qualification Examination for Principals appropriate to the [pertinent] category of registration." Rule 1021(b) designates "principals" as persons "associated with a member, enumerated . . . hereafter, who are actively engaged in the management of the member's investment banking or securities business, including supervision, solicitation, conduct of business or the training of persons associated with a member for any of these functions . . . ." The enumerated persons are sole proprietors, officers, partners, managers of offices of supervisory jurisdiction, and directors of corporations.

[77] CX-20, at 2-3; Tr. 302. According to Blum, Carter drafted the response, but Blum read it and signed it and it represented his views or positions at the time. Tr. 303-304 (Blum).

Nevertheless, titles do not determine who must register as a principal.[78] As the Securities and Exchange Commission has long recognized, the objectives of both FINRA's By-Laws and the Securities Exchange Act of 1934 provisions authorizing registered national securities associations "would be impaired if persons whose functions correspond to those of a principal could evade the requirement that they be registered as such by the lack . . . of a formal structure of titles and tables of organization."[79] Accordingly, the decisive factor is what a person does for a firm, and "not what he was called."[80] In determining whether principal registration was required, adjudicators thus consider all relevant facts and circumstances, "including the cumulation of individual acts that might not, on their own, show management."[81]

Among the actions indicative of "active engagement in the management" of a firm, either individually or in combination with other similar acts, are: exercising leadership over an important business line;[82] conducting regular sales meetings and guiding and supervising sales persons;[83] giving orders to firm personnel;[84] holding out as acting on behalf of the firm, including signing and negotiating agreements on behalf of the firm;[85] asserting and exercising

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[78] *Leslie A. Arouh*, Exchange Act Rel. No. 62898, 2010 SEC LEXIS 2977, at *35-36 (Sept. 13, 2010).

[79] *Samuel A. Sardinia*, 46 S.E.C. 337, 343 (1976).

[80] *Arouh*, 2010 SEC LEXIS 2977, at *35-36; *see also, e.g.*, *Dennis Todd Lloyd Gordon*, Exchange Act Rel. No. 57655, 2008 SEC LEXIS 819, at *25, n.31 (Apr. 11, 2008) ("[W]e have previously sustained NASD determinations that persons who do not fall into one of [the] categories [enumerated in Rule 1021(b)] are principals where, as here, the requirement of active engagement in the management of the member's investment banking or securities business is satisfied."); *see also* NASD Notice to Members 99-49 (June 1999) ("The registration determination does not depend on the individual's title, but rather on the functions that he or she performs.").

[81] *Gordon*, 2008 SEC LEXIS 819, at *32.

[82] *Arouh*, 2010 SEC LEXIS 2977, at *29-31.

[83] *Kirk A. Knapp*, 50 S.E.C. 858, 861 (1992).

[84] *Gordon*, 2008 SEC LEXIS 819, at *26.

[85] *Gordon*, 2008 SEC LEXIS 819, at *27; *Dep't of Enforcement v. Gallagher*, No. 2008011701203, 2012 FINRA Discip. LEXIS 61, at *8 & n.8 (N.A.C. Dec. 12, 2012); *Dep't of Enforcement v. Harvest Capital Invs., LLC*, No. 2005001305701, 2008 FINRA Discip. LEXIS 45, at *27-30 (N.A.C. Oct. 6, 2008).

authority to hire and fire firm employees;[86] and controlling firm finances (*e.g.*, possessing signatory authority over a firm bank account and paying firm expenses, including broker compensation).[87]

Here, considering some of Blum's actions individually and all of his actions collectively, Blum acted as an unregistered principal. As we have found, Blum directed the firm's investment banking business, functioning as the final arbiter of the deals ICS would pursue. He managed sales campaigns by running sales calls and "calling out" representatives on their progress, monitoring representatives' productivity on Salesforce, and issuing orders to representatives about what matters they could work on. He held himself out as acting on behalf of the firm when he functioned as the sole negotiator or signatory on agreements involving ICS.[88] He was extensively involved in personnel matters, firing the bulk of the firm's employees, among other things. Finally, he controlled firm finances, by, among other things, exercising ultimate authority to determine whether firm expenditures would be approved.

B. Blum Presents Nothing that Militates Against Liability.

Blum's arguments against liability are unavailing. First, Blum asserts that Dennen ran the firm's day-to-day operations, appropriately supervised Blum, and did not need authority from Blum to function as the firm's President. But, as we have found, Blum inserted himself into the management of the firm in multiple ways and on a continual basis. That Dennen may have had authority to and did direct many aspects of the firm's operations and that he may have supervised

[86] *Gordon*, 2008 SEC LEXIS 819, at *28-29; *Knapp*, 50 S.E.C. at 861; *Harvest Capital*, 2008 FINRA Discip. LEXIS 45, at *26.

[87] *Richard F. Kresge*, Exchange Act Rel. No. 55988, 2007 SEC LEXIS 1407, at *49-50 (June 29, 2007); *Harvest Capital*, 2008 FINRA Discip. LEXIS 45, at *27 (*citing Vladislav Steven Zubkis*, 53 S.E.C. 794, 799-800 (1998)).

[88] Blum's current supervisor gives Blum latitude to source deals, discuss terms and conditions with potential clients, and "make his own decisions" in negotiating terms to bring to the firm (Tr. 497-498). But that does not mean that in negotiating and *signing agreements on behalf of ICS*, Blum was not functioning in a capacity that, considered in light of the totality of the circumstances, required that he register as a principal of ICS.

some of Blum's activities does not mean that Blum did not engage in principal functions.[89] And, as for whether Dennen needed authority from Blum to function as the firm's President, Dennen observed:

> Officially, from the FINRA perspective, . . . I had the right to act as the principal and do what I would do within the firm in my capacity. In reality, being that the firm was owned . . . primarily by Jason, . . . I always sought his opinion . . . regarding running transactions business through the brokerage.[90]

Nor does the assertion that Blum "worked collaboratively" with Dennen undermine our finding that Blum acted as an unregistered principal. To the extent that Blum and Dennen collaborated, they often did so in a manner akin to that of co-managers. For example, the fact that Dennen was made aware of the obligations and benefits to ICS of the Violin MOU and the Portable Zoo letter agreement, that he approved of the pertinent terms and conditions, and that Blum may have understood that Dennen authorized him to sign the documents,[91] does nothing to undercut the conclusion that Blum was holding himself out as acting on behalf of ICS when he negotiated those terms and conditions and signed those documents. Nor does the fact that Dennen and Blum "worked out expenses" establish that Blum was not the person ultimately responsible for approving them.[92] Similarly, while Dennen or his successors may have informed ICS personnel that they were fired and may have filed the termination notices with FINRA, the terminations (and at least some of the filings) were done at Blum's behest.[93]

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[89] *Cf. Gallagher*, 2012 FINRA Discip. LEXIS 61, at *10 ("The presence of other general securities principals at Vision Securities has no bearing on Gallagher's activities at the firm.").

[90] Tr. 159 (Dennen). This testimony in itself demonstrates that Blum possessed an influence over firm affairs indicative of the need for principal registration. *See Gordon*, 2008 SEC LEXIS 819, at *30 & n.36.

[91] *See* Tr. 113-116, 177-178 (Dennen); Tr. 375, 380-381 (Blum).

[92] *See* Tr. 304-305 (Blum).

[93] Directing the filing of Forms U4 and U5 is conduct indicative of a need for principal registration. *Gallagher*, 2012 FINRA Discip. LEXIS 61, at *8.

Second, that all of Blum's directives may not have been carried out does not mean that, in issuing those commands, Blum was not acting as a principal. For example, Blum's directive regarding ICS' reporting structure was not implemented. But that does not alter the conclusion that, when Blum issued the directive, he was engaged in an activity indicative of the need for principal registration.[94] Similarly, while ICS took on some investment banking clients introduced by other bankers, Blum generally determined what deals ICS would pursue and most often those were deals he originated and expected others to work on.

Third, Blum has consistently asserted that, as ICS' owner and the person with the necessary knowledge and experience, he was capable, authorized, and, in some instances, obligated to act as he did. But his authority over,[95] financial interest in, and experience regarding ICS' business provided no justification for ignoring NASD Rule 1021(a)'s requirement that persons who function as principals of member firms must register as such. That is particularly true here where Blum provided written assurances that he would not manage ICS' business unless he registered as a principal. As the examiner principally responsible for reviewing ICS' NMA stated, although she understood that, by virtue of his control person status, Blum was in the position to control ICS, she did not anticipate that he would given his contrary assurances.[96]

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[94] *Cf. Gordon*, 2008 SEC LEXIS 819, at *29-30 (the fact that a person is consulted about firm affairs illustrates influence in the management of a firm whether or not articulated views prevail) (citations omitted).

[95] Even if Blum was legally authorized to sign contracts on behalf of ICS, when he did so, he was engaged in an activity that, considered in light of his other managerial activities, required principal registration. Similarly, even if the operating agreement gave Blum authority to terminate the employment of ICS personnel, when he did so, he was functioning as a principal. And, notwithstanding the provisions of the expense sharing arrangement, Blum's control over ICS' finances, considered in light of his other managerial activities, required principal registration.

[96] Tr. 232 (Jani). Many of the cases finding violations of Rule 1021 involve persons who owned the firm or were acting on behalf of the owners. *E.g.*, *Gallagher*, 2012 FINRA Discip. LEXIS 61, at *7 (unregistered principal was part owner and president of firm's parent company); *Gordon*, 2008 SEC LEXIS 819, at *9-10, 31 (unregistered principal held one majority owner's power of attorney, was the husband of the successor majority owner, and was viewed as acting on behalf of the owners); *Harvest Capital*, 2008 FINRA Discip. LEXIS 45, at *4 (unregistered

Alternatively, Blum argues that FINRA should be estopped from asserting that he failed to comply with the principal registration requirement. He argues that because ICS' NMA included disclosures about ICS' "business model and regulatory infrastructure,"[97] he reasonably relied on FINRA's approval of the NMA to conclude that he was permitted, without principal registration, to: sign MOUs and engagement letters in the capacity in which he signed; direct ICS' investment banking business as he did; and involve himself in personnel matters, including delineating job functions, changing reporting relationships, and approving compensation. As a consequence, he asserts that a finding of liability here would work an injustice.

The argument is without merit. Even assuming that equitable estoppel could be available as a defense in this proceeding—which it cannot[98]—the record does not support an estoppel. Equitable estoppel doctrine can operate to preclude a party from pursuing a legal right when the party has made a "definite misrepresentation of fact" to another person "having reason to believe that the other [person] will rely upon it" and the person reasonably does rely upon it to his detriment.[99] Nothing in the record demonstrates that FINRA misrepresented to Blum that he

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principal was the sole owner of the firm's parent company); *see Knapp*, 50 S.E.C. at 858-59 (unregistered principal who owned substantially all of the firm's stock failed to comply with principal bar).

[97] According to Blum, those disclosures included that: (i) ICS' supervisors had little investment banking experience, while Blum had extensive experience and concrete prospects; (ii) Blum would be responsible for "business development" and would participate on the investment committee; (iii) Blum owned ICH and, in turn, ICS; (iv) Blum created and controlled the special purpose entities referred to *supra* n.3; and (v) ICH's and ICS' operations were intertwined, by virtue of, among other things, the expense sharing arrangement.

[98] As the SEC has repeatedly held, members of the securities industry cannot shift to FINRA or the SEC their responsibility to comply with applicable laws and regulations. For that reason, a "regulatory authority's failure to take early action neither operates as an estoppel against later action nor cures a violation." *Don D. Anderson & Co.*, 43 S.E.C. 989, 991 (1968); *W.N. Whelen & Co.*, 50 S.E.C. 282, 284 (1990) (same). As the SEC has further held, "industry professionals are not released from their obligations based on erroneous advice from the NASD." *B.R. Stickle & Co.*, 51 S.E.C. 1022, 1025 (1994) (citation omitted); *see also Dep't of Enforcement v. Padilla*, No. 2006005786501, 2012 FINRA Discip. LEXIS 46, at *30, n.31 (N.A.C. Aug. 1, 2012).

[99] *Heckler v. Cmty. Health Servs. of Crawford Cnty., Inc.*, 467 U.S. 51, 59 (1984) (cited in *Sharon M. Graham*, 53 S.E.C. 1072, 1088 & n.41 (1998)).

could engage in particular managerial activities without principal registration.[100] To the contrary, based on the NMA's disclosure about ICS' business model and its ownership, FINRA staff was concerned that Blum might engage in the management of ICS and, to ameliorate those concerns, required him to provide written assurances that he would not do so without principal registration. That Blum may have assumed that there was an exception for managerial conduct that he was legally authorized or financially motivated to undertake does not bar FINRA from pursuing this case.

Accordingly, the Hearing Panel concludes that, by actively engaging in the management of ICS' investment banking and securities business, Blum violated NASD Rule 1021(a) and FINRA Rule 2010.[101]

IV. Sanctions

The FINRA sanction guideline for registration violations by an individual recommends a fine in the range of $2,500 to $50,000 and consideration of a suspension in any or all capacities of up to six months, with consideration of a lengthier suspension or a bar in egregious cases. The principal considerations specific to this guideline are whether the respondent has filed a registration application and the nature and extent of the respondent's duties.[102]

As to the guideline's specific considerations, Blum chose not to seek principal registration, despite Dennen's encouragement and the staff's concerns. Instead, he decided to register only as a GSR and expressly represented to FINRA staff that he would not be involved in the day-to-day management of ICS. Despite that representation, he took charge of numerous

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[100] *See Dist. Bus. Conduct Comm. v. Andrew Fensmark Harris*, No. C10960149, 1998 NASD Discip. LEXIS 56, at *9 & n.2 (N.A.C. Dec. 22, 1998) (argument that National Adjudicatory Council ("NAC") was estopped from calling case for review failed because, among other reasons, NAC did not misrepresent any material facts to respondent).

[101] Blum's violation of NASD Rule 1021(a) also ran afoul of FINRA Rule 2010's "high standards of commercial honor and just and equitable principles of trade." *Gordon*, 2008 SEC LEXIS 819, at *4, n.3.

[102] FINRA Sanction Guidelines at 45 (2011), *available at* www.finra.org/Industry/Enforcement/SanctionGuidelines.

aspects of ICS' business, including controlling its primary business[103] and making or influencing important personnel decisions. Over a period of eight months, he managed ICS' business in numerous and varied ways, some sustained and continuous (*e.g.*, monitoring representatives' performance), others frequent and regular (*e.g.*, running the weekly sales call), and others more episodic or irregular (*e.g.*, directing employee terminations). These factors exacerbate the severity of Blum's misconduct.[104]

Considering the general principles governing all sanction determinations, we find that two factors aggravate and none mitigate the severity of Blum's violative conduct. Turning first to aggravating factors, with limited exception, Blum has not accepted responsibility for his misconduct. To some extent, this is simply a corollary of Blum's assertion of a vigorous defense. In other respects, however, it reflects Blum's unwillingness to acknowledge that he engaged in conduct he must have known required the principal license he lacked. Thus, for example, while Blum has expressed regret over signing the BOA signature card as ICS' President, he has failed to acknowledge that, regardless of the title he used, possessing and exercising signatory authority required principal registration.[105] Given that Blum knew that, around one year earlier, his name had been removed from the list of authorized signers on an ICS account in response to a staff directive that his signatory authority required his principal

[103] Blum testified that he did not believe that his representation operated to restrict his investment banking activities. Tr. 372-373 (Blum). While Blum may have been free to originate and participate in executing private placements without being registered as a principal, he was not permitted, without principal registration, to be the final arbiter of whether the firm pursued any given deal, to sign engagement letters on ICS' behalf, or to manage the firm's representatives, by monitoring, critiquing, and directing their job functions and terminating their employment.

[104] *Cf.* FINRA Sanction Guidelines at 6 (Principal Considerations 8 and 9).

[105] *See, e.g.*, Tr. 577-579. Blum further asserts that exigent circumstances excused this action given the chaotic situation at the firm. Tr. 290 (Blum). But this exigency is not mitigating, considering, among other things, Blum's inability to recall whether—during the twelve to eighteen month period that the bank account remained open—there was any effort made to remove his name as a signatory. Tr. 401 (Blum).

registration, his failure to acknowledge that it was wrongful to again possess signatory authority aggravates the severity of his misconduct.[106]

For similar reasons, Blum's actions with respect to the BOA account also evidence the other aggravating factor present here—that Blum's misconduct was, in large part, the result of recklessness.[107] Despite the staff's earlier directive, Blum became an authorized signer on the BOA account without even attempting to obtain principal registration. Indeed, all his managerial actions were undertaken after he represented to FINRA that he would not engage in the day-to-day management of ICS unless he registered as a principal. He was on notice, therefore, that he needed to carefully consider and circumscribe his activities—something he failed to do. And, although Blum avers that he failed to appreciate that what he did constituted day-to-day management,[108] most of the conduct addressed in this opinion cannot reasonably be characterized in any other way. Under the circumstances, if Blum failed to appreciate that he was engaging in the day-to-day management of ICS when he functioned as an investment committee of one, monitored and directed job performance, or fired employees, for example, he was reckless.[109]

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[106] FINRA Sanction Guidelines at 6 (Principal Consideration 2); *see also, e.g.*, *Dep't of Enforcement v. CMG Inst. Trading, LLC*, No. 2006006890801, 2010 FINRA Discip. LEXIS 7, at *53 (N.A.C. May 3, 2010). Blum's acknowledgement that he made a mistake when he signed the Violin termination agreement also is not mitigative because, in his view, his mistake exclusively consisted of signing in the capacity in which he did. *See, e.g.*, Tr. 378-379 (Blum). Nor, for the reasons stated *infra* n.115, is it mitigative that Blum was under pressure when he signed the agreement.

[107] FINRA Sanction Guidelines at 7 (Principal Consideration 13).

[108] Although Blum asserts that FINRA staff ought to have provided guidance about what constituted principal conduct, he never sought that guidance. Moreover, for the reasons stated above, equitable estoppel principles do not mitigate the seriousness of Blum's misconduct.

[109] That Dennen may have failed to appreciate that Blum was functioning as a principal when he undertook these actions does not mean that Blum was not reckless. Dennen had no real understanding of what constituted principal activity, as reflected by, among other things, his opinion that Blum did not need to be a principal to run the sales calls because "there was nothing substantive discussed" in those calls. Tr. 153 (Dennen). Moreover, neither claimed ignorance of regulatory responsibilities, nor attempts to shift responsibility for compliance failures warrants lessening the sanction imposed. *See Thomas C. Kocherhans*, 52 S.E.C. 528, 531-32, 534 (1995) (concluding that ignorance of NASD rules and absence of supervisory structure do not compel reduction of sanction).

Blum argues that the following factors mitigate the seriousness of his misconduct: (i) that he has accepted responsibility for certain instances of unregistered principal activity (*i.e.*, signing the Violin agreement and the BOA signature card as ICS' President); (ii) that exigent circumstances accounted for those instances of misconduct; (iii) that he did not understand that he was functioning as a principal, did not intend to do so, and did his best to avoid doing so; (iv) that his principal activity was limited in time and in number; (v) that he took "corrective measures" when he attempted to keep ICS running with appropriately licensed principals, Carter and Stecklow; and (vi) that he has already suffered enough. Finally, although he admits that the following factors are not mitigating, Blum contends that the panel should take into account the absence of disciplinary history, customer harm, potential for gain, and concealment of wrongdoing. We address each factor seriatim.

As to Blum's first contention, we have concluded that, to a significant degree, Blum has not accepted responsibility for his misconduct. We also have rejected Blum's second contention that exigent circumstances mitigated his misconduct. As to Blum's third stated mitigating factor, as a matter of fact, Blum did not do his best to avoid functioning as a principal; instead, his conduct was reckless. As for the fourth assertion—that Blum's principal activity was limited in time and in number,[110]—we have concluded that similar guideline-specific considerations (concerning the nature and extent of Blum's principal responsibilities) aggravate the severity of his misconduct.

We also reject the fifth asserted mitigating factor—that Blum took corrective measures when he attempted to keep ICS running with appropriately licensed principals, Carter and

[110] *See* FINRA Sanction Guidelines at 6 (Principal Considerations 8 and 9).

Stecklow.[111] As a matter of law, the fact that there are qualified principals associated with a firm does not mean that other employees can operate as unlicensed principals.[112] As a matter of fact, and as Blum was aware, Stecklow had never committed to and did not join the firm, and the firm operated for months with only one principal.[113] Accordingly, to the extent that Blum viewed the Consent as a means to document his attempt to "bring on two new 24s to the broker-dealer so that we would stay compliant[,] . . . have proper supervision of the broker-dealer[,] and be able to keep the business moving forward," he was mistaken, at best.[114]

As to Blum's remaining contentions, the caselaw is clear that the following factors are not mitigating: (i) collateral consequences of misconduct;[115] (ii) lack of disciplinary history;[116]

[111] *See* FINRA Sanction Guidelines at 6 (Principal Consideration 3).

[112] *See supra* n.89.

[113] *See, e.g.*, CX-20. The record does not disclose the exact number of months, but CX-20 shows that the firm functioned with only one principal for at least two months.

[114] Tr. 387 (Blum); Tr. 386-387 (Blum); *see* CX-17, at 1.

[115] The hardships that Blum encountered as a result of the upheaval at the firm and the investigation that followed flowed, at least in part, from Blum's unwillingness to seek principal registration, which rendered his principal activities violative and enabled those who were principals to assert that they, not Blum, controlled the firm. We find no authority for the proposition that such hardships are mitigating. On the other hand, abundant authority establishes that any hardships resulting from the investigation and disciplinary proceeding are not mitigating. *John Joseph Plunkett*, Exchange Act Rel. No. 69766, 2013 SEC LEXIS 1699, at *51 (June 14, 2013) ("[A]ny negative consequences for Plunkett resulting from the violation he committed, or from the disciplinary proceeding that followed, are not mitigating.").

[116] As Blum concedes, although recidivism is aggravating (*see* FINRA Sanction Guidelines at 6 (Principal Consideration 1)), lack of disciplinary history is not mitigating because registered persons are required at all times to comply with FINRA's standards of conduct. *Rooms v. SEC*, 444 F.3d 1208, 1214 (10th Cir. 2006).

(iii) lack of customer harm or potential for a respondent's gain;[117] and (iv) lack of concealment.[118]

In assessing sanctions, we are mindful that the principal registration requirement "ensures that a person in a position to exercise some degree of control over a firm has a comprehensive knowledge of the securities industry and its related rules and regulations . . . [thereby] enhanc[ing] investor protection." [119] Blum exercised control over ICS without having the requisite qualifications. Given the seriousness of his misconduct, we conclude that a $10,000 fine and a suspension of 20 business days are appropriate remedies. They will serve to impress on Blum and others the importance acquiring the qualifications necessary to engage in the management of a firm's securities business.

V. Conclusion

For violating NASD Rule 1021(a) and FINRA Rule 2010, Blum is suspended from associating with any member firm in any capacity for 20 business days and fined $10,000. In addition, Blum is ordered to pay costs in the amount of $5,378.96, which includes the hearing transcript costs and an administrative fee of $750.[120] The fine and costs shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.

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[117] While the presence of harm or the potential for gain may be aggravating (FINRA Sanction Guidelines at 6, 7 (Principal Considerations 11, 17)), the absence of these factors is not mitigating. *Howard Braff*, Exchange Act Rel. No. 66467, 2012 SEC LEXIS 620, at *26 (Feb. 24, 2012) ("The absence of monetary gain or customer harm is not mitigating, as our public interest analysis focuses on the welfare of investors generally.") (quotations omitted).

[118] Concealment is aggravating (*see* FINRA Sanction Guidelines at 7 (Principal Consideration 12)) but lack of concealment is not mitigating because registered persons are obligated by FINRA's rules to cooperate with FINRA examinations and investigations. *See Dep't of Enforcement v. Keyes*, No. C02040016, 2005 NASD Discip. LEXIS 9, at *28 (N.A.C. Dec. 28, 2005), *aff'd in part*, *Philippe N. Keyes*, Exchange Act Rel. No. 54723, 2006 SEC LEXIS 2631 (Nov. 8, 2006).

[119] *Dist. Bus. Conduct Comm. v. Pecaro*, No. C8A960029, 1998 NASD Discip. LEXIS 13, at *22 (N.B.C.C. Jan. 7, 1998).

[120] The Hearing Panel has considered and rejects without discussion all other arguments of the parties.

If this decision becomes FINRA's final disciplinary action, the suspension shall begin with the opening of business on Monday, February 3, 2014, and end at the close of business on Monday, March 3, 2014.

HEARING PANEL.

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Rada Lynn Potts
Hearing Officer

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