FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. MEYERS ASSOCIATES, L.P. (CRD No. 34171), BRUCE MEYERS (CRD No. 1045447), and IMTIAZ A. KHAN (CRD No. 4084250), Respondents.	Disciplinary Proceeding No. 2010020954501 Hearing Officer—RSH **EXTENDED HEARING PANEL DECISION** April 27, 2016

Meyers Associates, L.P. and its principal, Bruce Meyers, sent, or caused to be sent, misleading and unbalanced advertising materials via email and failed to establish and enforce adequate supervisory procedures. Meyers Associates also failed to maintain accurate books and records. For these violations Meyers Associates is fined a total of $700,000 and Meyers is barred from acting in any supervisory or principal capacity and fined a total of $75,000. The charges against Imtiaz A. Khan are dismissed.

Appearances

For the Complainant: Michael A. Gross, Esq., Frank M. Weber, Esq., and Dale A. Glanzman, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondents: Robert I. Rabinowitz, Esq. and Sarah Klein, Esq., Red Bank, New Jersey; and Fara Daun, Esq., Lynnwood, Washington.

DECISION

I. Introduction

FINRA's Department of Enforcement initiated this disciplinary proceeding against Meyers Associates, L.P. ("Meyers Associates" or the "Firm"), Bruce Meyers ("Meyers"), and Imtiaz A. Khan ("Khan") by filing a nine-cause Complaint with FINRA's Office of Hearing Officers on October 6, 2014.[1]

The First Cause of Action alleges that Meyers Associates and Meyers violated Section 5(c) of the Securities Act of 1933 ("Securities Act") and FINRA Rule 2010[2] by offering to sell securities when no registration statement was in effect for those securities and no exemption from registration applied. The Second Cause of Action alleges that Meyers Associates and Meyers violated FINRA's advertising rules, NASD Rules 2210(d)(1)(A) and (B), and FINRA Rule 2010 by sending, or causing to be sent, misleading and unbalanced advertising materials via email. The Fourth Cause of Action alleges that Meyers Associates, Meyers, and Khan violated Section 17(a) of the Securities Exchange Act of 1934 ("Exchange Act") and SEC Rules 17a-3, 17a-4, and 17a-5 thereunder, NASD Rule 3110(a) and FINRA Rules 4511(a) and 2010 by creating and maintaining inaccurate books and records. The Fifth Cause of Action alleges that Meyers Associates, Meyers, and Khan violated FINRA Rule 2010 by falsifying IRS tax forms. The Sixth Cause of Action alleges that Meyers Associates and Meyers violated NASD Rule 3010 and FINRA Rule 2010 by failing to have an adequate system for accurately classifying employee expenses and reasonable written supervisory procedures ("WSPs") for maintaining adequate books and records**.** The Seventh Cause of Action alleges that Meyers Associates violated NASD Rules 3010 and 2110 and FINRA Rule 2010 by failing to have a reasonable system and WSPs for reviewing email correspondence. The Eighth Cause of Action alleges that Meyers Associates violated NASD Rules 3070 and 2110 and FINRA Rule 2010 by failing to report customer complaints and reporting customer complaints late. The Ninth Cause of action alleges that Meyers Associates violated NASD Rule 3012 and FINRA Rule 2010 by failing to establish, maintain, and enforce reasonable written supervisory control policies and procedures, and a system for testing and verifying the efficacy of the Firm's supervisory procedures.

Respondents filed an Answer, which denied all of the charges.

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[1] Enforcement dismissed the Third Cause of Action before the hearing.

[2] Rule 2010 requires members to observe high standards of commercial honor and just and equitable principles of trade.

The hearing was held in New York City for six days between October 19 and October 27, 2015.[3]

After a thorough review of the record, the Extended Hearing Panel makes the following findings of fact and conclusions of law.

II. Findings of Fact and Conclusions of Law

A. Background

1. Meyers Associates, L.P.

Meyers Associates engages in retail securities brokerage and investment banking. The Firm has been a FINRA member since June 1994. It maintains approximately ten branch offices and has approximately 75 registered persons. The Firm derives most of its revenue from its retail brokerage business.[4]

Meyers Associates has been the subject of ten final disciplinary actions since 2005—six settlements with FINRA, three actions by state regulators, and one FINRA Hearing Panel Decision. Some of these actions involved the same type of misconduct alleged in the current action, including the unregistered sales of securities, misleading statements and omissions of material facts, supervisory failures, and recordkeeping violations. The FINRA Hearing Panel Decision involved the Firm's failure to cooperate with FINRA regulators, in violation of Rule 8210.[5]

2. Bruce Meyers

Meyers entered the securities industry in 1982. He subsequently acquired Series 7, 24, and 63 licenses. At various times from 1982 through 1994, Meyers was associated with several FINRA members. From April 1993 through the present, he has been associated with Meyers Associates, which he co-founded and of which he indirectly owns approximately 90 percent. Meyers is registered with FINRA, through Meyers Associates, as, among other things, a General Securities Representative and General Securities Principal ("Principal"). He serves as the Firm's CEO and also performs investment banking work.[6]

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[3] In this decision, "Tr." refers to the transcript of the hearing; "Stip." to joint stipulations; "CX" to Enforcement's exhibits; "RX" to Respondents' exhibits; and "JX" to the parties' joint exhibits.

[4] Stip. ¶ 1.

[5] CX-11 – CX-21.

[6] Stip. ¶ 3.

Meyers is the head of Meyers Associates; no one stands above him at the Firm.[7] Meyers determines who works at his Firm and what policies and procedures to implement.[8] As the head of Meyers Associates, Meyers sets the tone for his Firm.[9]

Meyers has been the subject of six disciplinary actions over the last two decades, most involving supervisory violations. He has been censured, fined, and suspended for failing to supervise personnel under his authority.[10] Despite his own and the Firm's disciplinary history, the Extended Hearing Panel concluded that Meyers has little interest in ensuring that Meyers Associates has a strong culture of compliance. Meyers testified that he is not involved with the compliance of the Firm, has "no compliance experience" and "no knowledge of compliance per se," and does not intend to acquire such knowledge.[11]

3. Imtiaz A. Khan

Khan entered the securities industry in May 1997. In November 1999, he joined Meyers Associates and has been associated with the Firm since then. In 2000, he acquired a Series 7 license. Khan is registered with FINRA, through Meyers Associates, as, among other things, a General Securities Representative. He indirectly owns a small percentage of Meyers Associates. Khan is an Executive Vice President of the Firm.[12] He serves as Meyers's right-hand man.[13] Khan works in the Firm's Investment Banking Department and also works closely with Meyers on the Firm's business development.[14] Khan has no disciplinary history.[15]

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[7] Tr. 219-20.

[8] Tr. 226-28.

[9] Tr. 228-29.

[10] CX-2, at 17-26; CX-11; CX-12; CX-15.

[11] Tr. 255-56.

[12] Tr. 593.

[13] Tr. 599.

[14] Tr. 594; Stip. ¶ 4.

[15] CX-3.

B. First Cause of Action—Offering Violations Section 5(c) of the Securities Act and FINRA Rule 2010 (Meyers Associates and Meyers charged)

1. Findings of Fact

SignPath Pharma, Inc. ("SignPath") describes itself as a development stage biotechnology company founded in 2006 by Meyers and Dr. Lawrence Helson to develop synthesized proprietary formulations of curcumin, a naturally-occurring compound found in the turmeric plant, for applications in human diseases.[16] Helson has served as SignPath's CEO since its inception.[17] As of year-end 2014, Helson was SignPath's sole employee,[18] and SignPath had not generated revenue, did not anticipate generating revenue in the foreseeable future, and had an accumulated deficit of over $13.4 million.[19]

As of year-end 2010, Meyers Associates and Meyers collectively owned more than 60 percent of the issued and outstanding shares of SignPath's common stock.[20] Meyers Associates has provided investment banking services to SignPath and has served as the exclusive placement agent for its offerings and other attempts to raise capital.[21] Meyers Associates has raised approximately $13 million for SignPath and has generated over $1 million in fees for its services.[22]

Between May 2008 and at least September 2011, Meyers Associates, as placement agent, began to raise between $1.5 million and $6 million for SignPath through a private offering of convertible preferred stock and warrants ("Offering").[23] SignPath claimed that the securities sold through the Offering were exempt from registration with the Securities and Exchange Commission ("SEC") under Section 4(2) of the Securities Act and Rule 506 of Regulation D

[16] Stip. ¶ 11.

[17] Tr. 369.

[18] CX-35, at 16.

[19] Tr. 370-371; Stip. ¶ 13.

[20] CX-33, at 73-74.

[21] Stip. ¶ 14.

[22] Tr. 378.

[23] JX-1, at 1; CX-36, at 3; Stip. ¶ 15.

thereunder, which prohibited general solicitations.[24] Between January and June 2011, Meyers Associates raised over $350,000 for SignPath through the Offering.[25]

During the time period of the Offering, Meyers, using a Meyers Associates email address, sent, or caused to be sent, 1,037 emails about SignPath. In many of the emails, Meyers presented himself as a "Principal" of SignPath. Meyers sent the emails out as form letters to persons on a list that he had compiled over many years. The email recipients were individuals associated with venture capital funds, biotech companies, or other major investors in biotech companies.[26] Neither Meyers nor Meyers Associates had pre-existing, substantive relationships with most of the persons to whom he sent the emails.[27] Only three persons had accounts with Meyers Associates.[28]

The emails all described SignPath's past and anticipated future research activities. While the emails stated that SignPath was in the process of raising funds for possible acquisitions of certain drugs and for research, they did not refer to the Offering and did not give any information about how to invest in the company. Meyers's emails, including those stating that SignPath was "seeking investors" or "seeking capital," did not reference any specific security currently being offered or contemplated for offering. None of the emails referenced the preferred shares being sold in the Offering or any other security or class of security. None suggested any particular type of investment that might interest the recipient.[29]

Meyers credibly testified that he sent the emails, not to solicit investors for the Offering, but to introduce biotechnology companies or investors in them to SignPath for future joint ventures or large direct investments. While the retail sales of the private placement in 2011 ranged from $10,000 to $150,000,[30] the emails went to large institutions that typically do not invest in retail private offerings and to whom Meyers Associates does not market securities.[31] Meyers testified that his emails contained a preliminary description of SignPath to generate interest as one step in a protracted process of introductions and updates expected to take years. His goal was not to market SignPath's securities, but to familiarize industry professionals with

[24] JX-1, at 2; CX-36, at 1; Stip. ¶ 16.

[25] CX-41.

[26] Tr. 394-97, 402; CX-42.

[27] CX-42, at 179-688; Tr. 400.

[28] Tr. 399-400.

[29] CX-42.

[30] CX-41.

[31] Tr. 512-13.

SignPath, its formulations, and progress through clinical trials. He wanted to provide institutions with demonstrated investment interest in biotech companies information on an ongoing basis.[32] While most recipients did not respond, some that responded invited further contact only when SignPath had developed into a later stage drug company.[33]

Many of the emails indicated that SignPath had the opportunity to acquire a drug that had completed one Phase 3 trial. SignPath estimated that such an acquisition would require $25-30 million and convert SignPath into the later stage drug company that might be of more interest to institutional investors within months instead of years. So, in addition to the long-term effort, the emails through April 5, 2011, were also aimed at a more immediate strategic arrangement; specifically, a co-development partner for a joint venture in that drug.[34] As such, SignPath represented an opportunity for institutions seeking a potential seven-figure investment, and many of the responses to the emails show that the recipients were a suitable audience for such a proposal.[35] Institutional investors such as the email recipients typically do not make retail investments. Instead, they negotiate a customized direct investment in the company and often are actively involved in the company's management, with the objective of bringing drugs to market.[36]

Meyers implemented "Chinese Wall" procedures to ensure separation of the emails and the Offering.[37] Meyers kept a log of the persons who received offers of the preferred shares in the Offering; Offering documents were numbered; and the log shows the recipient, date sent, state of residence of the recipient, and delivery method for each.[38] Meyers also kept a list of the people to whom he sent the emails. The only way a potential investor could obtain Offering documents for the preferred shares was through Meyers. Meyers did not permit any recipient of the emails to receive the Offering documents. Meyers did not send emails to those who had received Offering documents.[39] Meyers's "Chinese Wall" apparently worked; no one who received Offering information on the preferred shares was sent an email, and none of the email recipients were offered or sold SignPath preferred shares.[40] Meyers's procedures thus succeeded

[32] Tr. 420-23.

[33] Tr. 415; 420-23; CX-76, at 1, 23, 78, 95.

[34] Tr. 416-17.

[35] CX-76, at 16, 26, 74, 76, 97.

[36] Tr. 416, 418, 426.

[37] Tr. 510- 11, 1697.

[38] CX-40.

[39] Tr. 511, 586-87.

[40] Tr. 510, 1633-34; CX-40; CX-42.

in differentiating his dual roles as both placement agent for the preferred shares and investment banker.

Joseph Mazur ("Mazur"), FINRA's lead examiner in this matter, testified that he was concerned that "emails were sent while there was an offering taking place."[41] However, Enforcement failed to present any persuasive evidence that tied Meyers's 1,037 emails to SignPath's concurrent Offering.

2. Conclusions of Law

Meyers Associates and Meyers Did Not Violate Section 5 or FINRA Rule 2010.

To state a *prima facie* case for a violation of Section 5(c) of the Securities Act, Enforcement must show a "(1) lack of a registration statement as to the subject securities; (2) the offer or sale of the securities; and (3) the use of interstate transportation or communication and the mails in connection with the offer or sale" of a security. If even one element is missing, there is no violation.[42]

The Extended Hearing Panel concluded that Enforcement failed to make a *prima facie* case for a Section 5(c) violation because it failed to prove that the emails contained an offer to sell any security.

Both the SEC's Interpretive Release on Regulation D[43] and its No Action letter to Bateman Eichler, Hill Richards, Inc. ("Bateman Eichler") are instructive.[44] In its Interpretive Release, the SEC divides the analysis under Rule 502(c) of Regulation D into two separate inquiries, only the first of which is at issue in this matter: "First, is the communication in question a general solicitation or general advertisement? Second, if it is, is it being used by the issuer or by someone on the issuer's behalf to offer or sell the securities? If either question can be answered in the negative, then the issuer will not be in violation of Rule 502(c)."

In *Bateman Eichler,* the SEC addressed whether introductory solicitations would constitute a general solicitation under Rule 502(c). *Bateman Eichler* established a two-part test under which an introductory solicitation would *not* constitute an offer to sell securities. First, the solicitation must be generic in nature and not reference any specific investment currently offered

[41] Tr. 726.

[42] *SEC v. Cavanagh*, 445 F.3d 105, at *111 n.13 (2d Cir. N.Y. 2006) (quoting *Eur. & Overseas Commodity Traders, S.A. v. Banque Paribas London*, 147 F.3d 118, 124 n.4 (2d Cir. 1998) (internal quotation marks omitted)).

[43] SEC Interpretative Release on Regulation D, Release No. 33-6455, 1983 SEC LEXIS 2288 (Mar. 3, 1983).

[44] Bateman Eichler, Hill Richards, Inc., SEC No Action Letter, 1985 WL 55679 (Dec. 3, 1985).

or contemplated for offering. Second, the sender must implement procedures designed to insure that persons solicited were not offered any securities that were offered or contemplated for offering at the time of the solicitation. The SEC went on to say that "later offers to persons who respond to the mailings would not be deemed made by a general solicitation as a result of the initial solicitation provided a substantive relationship has been established with the offeree."

The Extended Hearing Panel found that Meyers's emails were generic and that Meyers Associates successfully implemented "Chinese Wall" procedures to ensure separation of the emails and the Offering. Having met both tests under *Bateman Eichler,* the emails did not constitute a general solicitation of the Series A Preferred Shares. Therefore, Enforcement failed to prove that Meyers Associates and Meyers violated Section 5 of the Securities Act or FINRA Rule 2010.

The First Cause of Action is therefore dismissed.

C. Second Cause of Action—Advertising Violations NASD Rule 2210 and FINRA Rules 2210 and 2010 (Meyers Associates and Meyers charged)

1. Findings of Fact

Meyers's emails to prospective investors omitted to disclose the following material facts about SignPath: (1) its history of significant losses;[45] (2) its anticipated lack of revenue in the foreseeable future;[46] (3) its lack of financial resources necessary to develop and market its intended product successfully;[47] (4) its lack of experience in manufacturing, marketing, selling, and distributing products;[48] (5) Respondents' collective ownership of a majority of the issued and outstanding shares of SignPath's common stock;[49] (6) its management's failure or inability to devote sufficient time to the company;[50] and (7) changes in the external market or therapeutic drug industry that might impact the company.[51]

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[45] CX 42; CX-33, at 18.

[46] CX 42; CX-33, at 19.

[47] CX 42; CX-33, at 19-20.

[48] CX 42; CX-33, at 21.

[49] CX 42; CX-33, at 19, 73-74.

[50] CX-42; CX-33, at 3.

[51] CX-42; CX-33, at 3.

Meyers also made exaggerated claims about SignPath's prospects in hundreds of emails. He claimed that SignPath "ha[s] a unique opportunity in obtaining an oral incretin-mimetic [Dutogliptin] designed for individuals with type II diabetes which will catapult SignPath Pharma's direct entry into clinical Phase III and IV within the next several months."[52] In the same emails, he predicted that: "Entry into the clinic with two active principles [*sic*], and financial returns on investment within the immediate two years will enhance the stature of SignPath Pharma, Inc. as a young but imposing pharmaceutical company."

Meyers's emails also failed to disclose: (1) SignPath needed to raise $3 million to possibly purchase Dutogliptin;[53] (2) Phenomix Corp., the company that owned Dutogliptin, never accepted SignPath's offer to acquire the drug;[54] (3) the U.S. Food and Drug Administration's cardio toxicity concerns with Dutogliptin;[55] and (4) the anticipated $125 million cost for a new Phase III trial of Dutogliptin.[56] Meyers did not provide a factual basis for his exaggerated and unwarranted claims in the emails.

Contrary to what Meyers wrote in the emails, SignPath's opportunity to acquire Dutogliptin was not unique to SignPath; Phenomix was looking to sell Dutogliptin to the highest bidder.[57] Further, even if SignPath had acquired Dutogliptin and the drug had passed its trials, there was no guarantee that Dutogliptin would be profitable, let alone within two years.[58]

Meyers failed to disclose Meyers Associates' relationship with SignPath.[59] He also failed to prominently display the Firm's name on hundreds of the emails. Instead, he stated only that he was a "principal" of SignPath.[60]

The Extended Hearing Panel found that because of the omission of these risks and material facts, Meyers's emails were not fair and balanced, and were misleading.

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[52] CX-42, at 18-248.

[53] CX-42; Tr. 1527-28.

[54] CX-42; Tr. 1529.

[55] CX-42; RX-10, at 1.

[56] CX-42; RX-10, at 1.

[57] RX-10, at 1.

[58] Tr. 846, 1542.

[59] CX-42; CX-33, at 74-75; Stip. ¶¶ 14-15.

[60] CX-42, at 689-1041.

2. Conclusions of Law

During the period at issue, NASD Rule 2210(d)(1)(A) provided that:

> All member communications with the public shall be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member may omit any material fact or qualification if the omission, in the light of the context of the material presented, would cause the communications to be misleading.

Under NASD Rule 2210(a), Meyers's emails constitute "communications with the public," because they are "Sales Literature."[61] "Sales Literature" is subject to the content standards of NASD Rule 2210(d)(1). NASD Rule 2210 applies to member communications with the public, even if they do not concern a security.[62]

NASD Rule 2210(d)(1)(B) prohibited, among other things, "mak[ing] any false, exaggerated, unwarranted or misleading statement or claim in any communication with the public." In addition, NASD Rule 2210(d)(1)(D), in pertinent part, provided that: "Communications with the public may not predict or project performance . . . or make any exaggerated or unwarranted claim, opinion or forecast." When considered under the content standards of NASD Rule 2210(d)(1), the communications with the public must stand on their own, without regard to other documents associated with an offering. Further, "Sales Literature" must "prominently disclose the name of the member" and "reflect any relationship between the member and any non-member or individual who is also named."[63]

The Extended Hearing Panel concluded that Meyers's emails were not fair and balanced because he failed to adequately disclose numerous material facts about SignPath. In many

[61] "Sales Literature" was defined in NASD Rule 2210(a)(2) as "…electronic communications…other than institutional sales material and correspondence…concerning a member's products or services." Because Meyers Associates was selling investments in SignPath, albeit not in the emails at issue, SignPath was one of Meyers Associates' "products." Respondent failed to prove that the emails constitute "Institutional Sales Material," as defined by NASD Rules 2210(a)(4) and 2211(a)(2); however, under Rule 2211(d)(1), "Institutional Sales Material" is subject to the content standards of NASD Rule 2210(d)(1).

[62] *Dep't of Enforcement v. KCD Fin., Inc.*, No. 2011025851501, 2015 FINRA Discip. LEXIS 18 (OHO June 16, 2015), *appeal pending*; *Robert L. Wallace*, Exchange Act Release No. 40654, 53 S.E.C. 989, 1998 SEC LEXIS 2437 (Nov. 10, 1998).

[63] *CapWest Secs., Inc.*, Exchange Act Release No. 71340, 2014 SEC LEXIS 205, at **28-32 (Jan. 17, 2014) (citing *Sheen*, *Fin. Resources, Inc.*, Exchange Act Release No. 35477, 52 S.E.C. 185, 1995 SEC LEXIS 613, at *12) (Mar. 13, 1995)).

emails, Meyers made exaggerated and unwarranted claims about SignPath's prospects in relation to Dutogliptin and about SignPath's shares trading in the first quarter of 2011. Meyers failed to provide a factual basis for his claims in the emails. In some emails, Meyers failed to prominently disclose the Firm's name. In all of them, he failed to disclose Meyers Associates' relationship with SignPath.

The Extended Hearing Panel found that, as a result of the foregoing, Meyers and Meyers Associates violated NASD Rules 2210(d)(1)(A), (d)(1)(B), (d)(1)(D), (d)(2)(C)(i), and (d)(2)(C)(ii) and FINRA Rule 2010.[64]

D. Fourth Cause of Action—Inaccurate Books and Records Section 17(a)(1) of the Exchange Act, the rules promulgated thereunder, and FINRA Rules 4511(a) and 2010 (Meyers Associates, Meyers, and Khan charged)

1. Findings of Fact

In November 2010, Meyers and Meyers Associates entered into an employment agreement, which provided:

> During the term of this Agreement, the Company shall advance or reimburse the Employee each month for all expenses and disbursements of any kind or nature incurred by the Employee in connection with or on behalf of the Company in the performance of the Employee's duties under this Agreement, which expenses shall include, but not be limited to, travel, entertainment, meals, car expense, airline travel and certain personal expenses to the sum of $10,000 per month on a non-accountable basis.[65]

Khan and Meyers Associates also entered into an employment agreement containing the same clause with a monthly expense limit of $7,500.[66]

There is no dispute that Meyers's and Khan's employment agreements containing the non-accountable expense provisions were lawful.[67] The provision allowed Meyers and Khan to charge both personal and business expenses to a corporate American Express ("AmEx") credit

[64] A violation of FINRA Rule 2210 also constitutes a violation of FINRA Rule 2010. *KCD Fin.*, 2015 FINRA Discip. LEXIS 18, at *45 (citations omitted).

[65] JX-4, at 5.

[66] JX-9, at 5.

[67] JX-4; JX-9.

card, for which Meyers Associates would make payments on each of their behalf, up to the specified monthly limit.[68] Joshua Wong, a FINRA investigator ("Wong"), testified that Meyers Associates' payment of Meyers's and Khan's personal expenses does not violate any SEC or FINRA rule.[69]

In 2011 and 2012, pursuant to his employment agreement, Meyers charged business and personal expenses to a corporate AmEx card, which Meyers Associates paid.[70] Similarly, in 2011 and 2012, pursuant to his employment agreement, Khan charged business and personal expenses to a personal Chase credit card and obtained reimbursement from Meyers Associates for those expenses ("Personal Expenses" refers to all personal expenses incurred by Meyers and Khan and paid by Meyers Associates).[71] The total amount of Personal Expenses for Meyers and Khan over the two year period was approximately $60,000. The charges included jewelry, clothing, spa services, and travel for family members.[72]

Although Meyers Associates' payment of the Personal Expenses for Meyers and Khan did not violate any rules, the Firm should have accounted for those expenses as employee compensation. Instead, the payments were categorized as business expenses. In addition, the amounts of their Personal Expenses should have been included in Meyers's and Khan's Forms W-2 for tax years 2011 and 2012. Because the payments for the Personal Expenses were not included, their Forms W-2 understated their incomes.[73] Meyers and Khan did not report the Personal Expenses on their 2011 and 2012 personal tax returns.[74]

By misclassifying the Personal Expenses, Meyers Associates inaccurately recorded the Personal Expenses in its general ledger, monthly-filed Part IIA of Forms X-17A-5 ("FOCUS Reports"), and annually-filed Statement of Financial Conditions, Statement of Incomes, and supporting schedules ("Annual Reports") in 2011 and 2012. In its general ledger, the Firm misclassified the Personal Expenses as miscellaneous and travel expenses or other miscellaneous business expenses, instead of as compensation to Meyers and Khan.[75] In its FOCUS Reports, the Firm failed to classify the Personal Expenses as "[s]alaries and other employment costs for

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[68] JX-4; JX-9.

[69] Tr. 163.

[70] JX-14; CX-89; Tr. 294-95.

[71] JX-14; JX-15; CX-90; Tr. 611-12.

[72] JX-8; JX-13 – JX-15; CX-89, CX-90; CX-104.

[73] JX-6; JX-10; Tr. 331-32, 334-35, 621-22. The Firm did not issue a Form W-2 to Meyers for 2011. Tr. 331-332.

[74] JX-5; JX-7; JX-10 – JX-12; Tr. 333, 335, 621-23.

[75] JX-16; CX-101, at 2; Tr. 119, 183.

general partners and voting stockholders."[76] In its Annual Reports, the Firm failed to classify the Personal Expenses as "[e]mployee compensation and benefits."[77]

Meyers Associates' accounting Firm prepared the Firm's Annual Reports and issued two clean opinion letters for fiscal years 2011 and 2012.[78] The accounting Firm did not review Meyers Associates' credit card statements in the 2011 and 2012 audits because it deemed travel and entertainment not to be a risk area for the Firm based on the immaterial amounts of such charges.[79]

The amounts Meyers Associates paid on behalf of Meyers and Khan for the Personal Expenses in 2011 and 2012 were significantly less than one percent of the Firm's total gross revenue in each of those years. In 2011, the Firm paid $22,218 on behalf of Meyers and $15,417 on behalf of Khan, which totaled $37,635 and represented 0.56% of the Firm's gross revenue for the year.[80] In 2012, the Firm paid $14,895 on behalf of Meyers and $10,212 on behalf of Khan, which totaled $25,107 and represented 0.21% of the Firm's gross revenue for the year.[81]

The only inaccuracy in Meyers Associates' books and records was that the Personal Expenses were classified in one expense category rather than a different expense category. As two of Enforcement's witnesses testified, the total expense and income amounts were unaffected by this misclassification, and the remainder of the books, records, and reports, as well as the "bottom line" amounts, were unaffected.[82] There was also no impact on the Firm's net capital computation.[83]

It was the Chief Financial Officer's ("CFO") responsibility to ensure that those expenses were entered appropriately on the general ledger.[84] There were two CFOs at Meyers Associates during the relevant time period. One passed away in 2012, so the Hearing Panel was unable to hear his testimony. The other, Richard Onesto ("Onesto"), served as Meyers Associates' CFO and Limited Principal-Financial and Operations ("FINOP") from mid-February 2012 through

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[76] JX-17; JX-18, at 7; Tr. 119, 183.

[77] JX-19; JX-20; Tr. 119, 183.

[78] JX-19; JX-20; Tr. 1089-90.

[79] Tr. 1096-98, 1162-63; CX-118, at 3.

[80] RX-21.

[81] RX-22.

[82] Tr. 181-82, 1136, 1138-39.

[83] Tr. 183.

[84] Tr. 533, 645, 1372-73, 1425.

mid-January 2013.[85] Onesto prepared the Firm's financial books and records, including its general ledger and FOCUS Reports.[86] Onesto had not seen the Employment Agreements,[87] and Meyers and Khan did not advise Onesto that they had expense reimbursement or allowance agreements.[88]

Onesto testified that he was overwhelmed with the amount of work at the Firm.[89] He commuted to and from work for a total of five hours every day, and he took a one to two hour lunch break.[90] Onesto stated that he booked all of the Personal Expenses under "miscellaneous travel and entertainment," regardless of what they were.[91] He admitted that the CFO would need full copies of Meyers's and Khan's credit card bills to classify the Personal Expenses properly,[92] and he also admitted that he was given full copies of the bills and other financial information when he requested it.[93] In other words, he admitted that he knew how to properly classify expenses and had access to do so. He also admitted that he failed to alert his successor to issue Forms 1099 for those personal expenses, and that the better practice would have been to alert him.[94]

Neither Meyers nor Khan made entries on the general ledger, nor did they cause any entries to be made.[95] They did not know how to make such entries, and they did not have access to the PeachTree accounting software used at the Firm for that purpose.[96] Neither Meyers nor Khan have held a Series 27 license. Neither Meyers nor Khan served as the CFO or FINOP of Meyers Associates in 2011 or 2012.[97]

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[85] Stip. ¶ 9.

[86] Tr. 1178, 1180, 1187.

[87] Tr. 1202.

[88] Tr. 1202, 1363.

[89] Tr. 1303.

[90] Tr. 1383-84.

[91] Tr. 1262-63, 1277.

[92] Tr. 1269-70.

[93] Tr. 1279-80, 1374.

[94] Tr. 1238-39.

[95] Tr. 533, 645-46, 1372-73, 1579-80.

[96] Tr. 645-46, 1372-73, 1579-80.

[97] Stip. ¶ 5.

Meyers and Khan were not involved in and did not control the process of issuing Forms W-2 and 1099.[98] They testified that they were unaware in 2011 and 2012 that the Firm's payment of their Personal Expenses was taxable compensation to them.[99] They relied on the CFOs, whose responsibility it was to issue Forms 1099 to Meyers and Khan at the end of the fiscal year as applicable.[100] However, both former CFOs failed to do so.[101] As a result of FINRA's investigation into this matter, Meyers and Khan reviewed their credit card statements from the relevant time period with Meyers Associates' current CFO and determined the amounts of Personal Expenses that should have been included in their taxable income.[102] They requested that the CFO issue them Forms 1099 for those Personal Expenses for 2011 and 2012, and they filed amended tax returns. The end result was that Meyers owed no additional taxes,[103] and Khan owed $700 for 2011 and $1,100 for 2012.[104]

FINRA's investigator on this case, Wong, testified that there are no FINRA Rules regarding issuance of inaccurate Forms W-2 or 1099[105] and that FINRA does not have jurisdiction to enforce IRS rules or guidelines.[106]

2. Conclusions of Law

Section 17(a)(1) of the Exchange Act requires broker-dealer Firms to make and keep records as prescribed by the SEC. SEC Rule 17a-3(a)(2) requires Firms to make and keep current "ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts." SEC Rule 17a-4(a) requires Firms to preserve these ledgers for at least six years.

SEC Rule 17a-5(a) requires Firms to file monthly or quarterly FOCUS Reports with the SEC. SEC Rule 17a-5(d) requires Firms to file annually with the SEC, among other things, a Statement of Financial Condition, Statement of Income, and supporting schedules, including a FOCUS Report, that are prepared in accordance with U.S. generally accepted accounting

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[98] Tr. 541-42, 649-50, 1579.

[99] Tr. 298, 612-13.

[100] Tr. 541-42, 1377, 1437-38, 1459.

[101] Tr. 541-42, 656.

[102] Tr. 544-45.

[103] Tr. 557-58.

[104] Tr. 1578.

[105] Tr. 205.

[106] Tr. 209.

principles ("GAAP"). SEC Rules 17a-4(b)(5) and (b)(8) require Firms to preserve the foregoing filings for at least three years.

FINRA Rule 4511(a) requires members to make and preserve books and records as required under SEC and FINRA rules. A violation of any FINRA rule is also a violation of FINRA Rule 2010, which requires members to "observe high standards of commercial honor and just and equitable principles of trade."

Enforcement charged Meyers Associates with willfully misclassifying the Personal Expenses, and Meyers and Khan with willfully deceiving the Firm and causing the Firm to create inaccurate books and records, for the purpose of avoiding payment of taxes on the Personal Expense payments. After listening to testimony and reviewing the other evidence, however, the Extended Hearing Panel concluded that the misclassification was not willful or intentional; rather, it was the result of carelessness and inadequate oversight and attention to detail at Meyers Associates.

By failing to classify the Personal Expenses as compensation to Meyers and Khan, Meyers Associates inaccurately classified the Personal Expenses in its general ledger, monthly FOCUS Reports, and Annual Reports in 2011. The Extended Hearing Panel concluded that Meyers Associates thereby violated Section 17(a)(1) of the Exchange Act, the rules promulgated thereunder, and FINRA Rules 4511(a) and 2010.

The Extended Hearing Panel concluded that Meyers and Khan did not cause Meyers Associates to maintain inaccurate books and records. The Fourth Cause of Action is therefore dismissed as to Meyers and Khan.

E. Fifth Cause of Action—Falsifying W-2 Tax Forms
FINRA Rule 2010
(Meyers Associates, Meyers and Khan charged)

1. Findings of Fact

The facts are as described in the Fourth Cause of Action.

2. Conclusions of Law

The Hearing Panel found that Meyers Associates' issuance of inaccurate W-2 tax forms to Meyers and Khan was negligent and inadvertent, rather than willful. Its violations do not rise to the level of conduct "failing to observe high standards of commercial honor and just and equitable principles of trade" which would violate FINRA Rule 2010. The Fifth Cause of Action against Meyers Associates, Meyers, and Khan is therefore dismissed.

F. Sixth Cause of Action—Failure to Have WSPs for Maintaining Accurate Books and Records NASD Rule 3010 and FINRA Rules 3110 and 2010 (Meyers Associates and Meyers charged)

1. Findings of Fact

During tax years 2011 and 2012, Meyers Associates did not have a system or any WSPs for ensuring that the personnel who prepared the Firm's books and records were made aware of Meyers's and Khan's Personal Expenses and that the Firm was paying the Personal Expenses.[107]

From January through May 1, 2011, Meyers supervised Victor Puzio, the Firm's CFO and FINOP during that time period.[108] Nevertheless, Meyers failed to ensure that Puzio maintained a reasonable system and procedures, including WSPs, so that: (1) the Firm's employees who prepared its books and records and Forms W-2 knew that it was paying Meyers's and Khan's Personal Expenses pursuant to their Employment Agreements; and (2) the Firm accurately classified the Personal Expenses as compensation.[109]

2. Conclusions of Law

NASD Rule 3010(a) required members to "establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules."[110] Supervision must be reasonable, and the standard for reasonableness is determined based on the facts and circumstances of each case.[111] NASD Rule 3010(b) required members to establish, maintain and enforce WSPs implementing the supervisory system required by Rule 3010(a).

The Extended Hearing Panel concluded that Meyers Associates did not have an adequate system reasonably designed to ensure that it properly accounted for payments it made for the

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[107] CX-27; CX-28; CX-29; CX-30; CX-31.

[108] Stip. ¶ 7; Tr. 353-54.

[109] CX-22; CX-23; CX-24; CX-25; CX-26; CX-27; Tr. 354.

[110] On December 1, 2014, NASD Rule 3010 was superseded by FINRA Rule 3110, which is substantially identical to 3010.

[111] *See CapWest Secs., Inc.,* No. 2007010158001, 2013 FINRA Discip. LEXIS 4, at *28 (NAC Feb. 25, 2013) (citing *Christopher J. Benz,* Exchange Act Release No. 38440, 52 S.E.C. 1280, 1997 SEC LEXIS 672, at *12 (Mar. 26, 1997)), *aff'd,* 2014 Exchange Act Release No. 71340, 2014 SEC LEXIS 205 (Jan. 17, 2014).

Personal Expenses, nor did it have reasonable WSPs for maintaining accurate books and records with respect to the Personal Expenses.

The Extended Hearing Panel concluded that Meyers, as CEO and self-described "boss of the Firm," should have ensured that the CFO had created and maintained adequate WSPs. Meyers knew or should have known that his CFO was not spending sufficient time at the Firm, and should have exercised more oversight of the CFO's activities. Instead, he ignored the CFO's shortcomings because he did not value compliance at the Firm. The Extended Hearing Panel therefore concluded that Meyers was responsible for Meyers Associates' failure to have reasonable WSPs.

As a result of the foregoing, Meyers Associates and Meyers violated NASD Rule 3010(a) and (b) and FINRA Rule 2010.

G. Seventh Cause of Action—Failure to Have Procedures for Review of Emails NASD Rules 3010 and 2110 and FINRA Rule 2010 (Meyers Associates charged)

1. Findings of Fact

In a December 2008 Letter of Acceptance, Waiver and Consent, FINRA sanctioned Meyers Associates for, among other things, failure to retain records of supervisory review of electronic correspondence between April 2005 and April 2006.[112]

Between March 2007 and September 2010—i.e., even after being sanctioned by FINRA—the Firm still failed to maintain records that identified which business-related electronic correspondence had been reviewed, who reviewed it, and when they reviewed it.[113] Mitchell Halpern, Meyers Associates' former Chief Compliance Officer ("CCO"), admitted that the Firm failed to maintain these records: "[A]rchiving was being accomplished for the period in question, but not the tracking of the supervisor's access into the employee's emails."[114] During the same time period, the Firm claimed that four supervisors were responsible for reviewing its electronic correspondence.[115] However, two of those supervisors, represented to, in writing, that they were not responsible for, and did not conduct, such reviews.[116]

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[112] CX-19.

[113] CX-121, at 1; CX-122; *see also* CX-133, at 4; CX-138, at 4-5.

[114] CX-122.

[115] CX-126, at 1.

[116] CX-134; CX-135.

Between March 2007 and September 2010, Meyers Associates failed to maintain reasonable policies and procedures for reviewing its electronic correspondence. Its WSPs failed to address: (1) how supervisors were to select electronic correspondence for review; (2) how they were to review it; (3) how often they needed to review it; and (4) how they were to document their reviews.[117]

2. Conclusions of Law

NASD Rule 3010(d)(1) provided that members establish and maintain written supervisory procedures for the review by registered principals of incoming and outgoing written and electronic correspondence between registered representatives and the public relating to the members' banking or securities business. The Rule required members to maintain and make available to FINRA upon request evidence that the supervisory procedures had been implemented and carried out.

The evidence presented at the hearing demonstrated that from March 2007 through September 2010, Meyers Associates failed to establish and maintain a reasonable supervisory system, including WSPs, for the review by a registered principal of its incoming and outgoing electronic correspondence. As detailed above, the Firm's WSPs failed to address how supervisors were to review electronic correspondence, and the Firm also failed to document such reviews.

The Extended Hearing Panel concluded that Meyers Associates therefore violated NASD Rules 3010(a), (b), and (d)(1) and 2110 (for misconduct before December 15, 2008) and FINRA Rule 2010 (for misconduct on and after December 15, 2008).

H. Eighth Cause of Action—Failure to Report Customer Complaints NASD Rules 3070(c) and 2110 and FINRA Rule 2010 (Meyers Associates charged)

1. Findings of Fact

Between March 2007 and July 2010, Meyers Associates failed to report statistical and summary information regarding 49 written customer complaints to FINRA.[118] As of the final day of the Hearing, the Firm still had not reported them.[119] During the foregoing time period, the

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[117] CX-22 – CX-24; CX-26; CX-27; Tr. 945-46.

[118] CX-139 – CX-188; Tr. 969-70.

[119] Tr. 970, 1697-99.

Firm failed to report more than half of the written customer complaints that it received.[120] Many of the unreported customer complaints alleged serious sales practice abuses. Twenty-one of them alleged unauthorized trading.[121] The Firm's management and supervisory personnel were aware of some of the customer complaints because the complaints were emailed or otherwise sent to them, but they nonetheless chose not to report them.[122] The Firm also failed to timely report statistical and summary information regarding three 2009 written customer complaints to FINRA, reporting each of them over one year late.[123] These reporting failures impacted FINRA's ability to timely investigate the complaints and to timely identify any trends at the Firm.[124] Meyers Associates' responses to FINRA's requests for information reflect that the Firm did not understand and appreciate its complaint reporting obligations.[125]

2. Conclusions of Law

NASD Rule 3070(c)[126] required members to report customer complaints to the NASD by the 15th day of the month following the calendar quarter in which customer complaints were received by the member. Here, Meyers Associates failed to report 49 customer complaints it received between March 2007 and July 2010 and also failed to timely report three other complaints it received in 2009.

The Extended Hearing Panel concluded that Meyers Associates therefore violated NASD Rules 3070(c) and 2110 (for misconduct before December 15, 2008, when Rule 2110 was superseded) and FINRA Rule 2010 (for misconduct on and after December 15, 2008).

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[120] Tr. 967.

[121] CX-139.

[122] *E.g.*, CX-142; CX-143; CX-148; CX-153; CX-156; CX-159; Tr. 261.

[123] CX-189–CX-194; Tr. 973-81.

[124] Tr. 967-68.

[125] CX-133, at 2-4; CX-138, at 1-2.

[126] On July 1, 2011, NASD Rule 3070(c) was superseded by FINRA Rule 4530(d), which is substantially identical to Rule 3070(c).

I. Ninth Cause of Action—Inadequate Supervisory Controls NASD Rules 3012 and FINRA Rule 2010 (Meyers Associates charged)

1. Findings of Fact

From 2009 through June 2011, Meyers Associates' WSPs failed to: (1) explain how the Firm would identify managers who conducted customer account activity; (2) specify procedures for reviewing such activity conducted by its managers; (3) address how it would identify managers who were responsible for generating 20 percent or more of the revenue of the business units that they supervised;[127] (4) adequately address how transmittals from customer accounts to outside entities would be monitored, reviewed, and approved; (5) address how transmittals between customers and registered representatives, or third parties would be detected; and (6) provide a means or method of customer confirmation, notification, or follow-up for transmittals of customer funds and securities.[128]

Meyers Associates' 2009 annual report on its supervisory control system did not adequately summarize the procedures used to test and verify the efficacy of its system. The report contained conclusory statements that unspecified methods of testing the system showed it to be adequate.[129] For example, the report failed to address how the Firm tested the adequacy of its supervisory procedures for sales of private offerings and agency/riskless principal transactions in retail customer accounts—its two primary revenue sources.[130] Nevertheless, Meyers approved the 2009 report.[131] The Firm issued the same generic, deficient report for the next three years.[132]

2. Conclusions of Law

NASD Rules 3012(a)(2)(A) and (a)(2)(C) required members to establish, maintain and enforce written supervisory procedures to review and supervise customer account activity conducted by branch office managers, sales managers, or any persons performing similar supervisory functions, as well as to provide heightened supervision over the activities of the business units supervised by a producing manager's supervisor.[133]

[127] CX-22 — CX-27; Tr. 999-1001.

[128] CX-22 — CX-27; Tr. 1001-2.

[129] CX-195.

[130] CX-195; Tr. 1005-7.

[131] CX-196; Tr. 440.

[132] CX-197; CX-198; CX-199.

[133] On July 1, 2011, NASD Rule 3012 was superseded by FINRA Rule 3120, which is substantially identical.

NASD Rule 3012(a)(2)(B)(i) required members to have procedures reasonably designed to review and monitor all transmittals of funds or securities from customer accounts to third party accounts, outside entities, and locations other than a customer's primary residence, and between customers and registered representatives. The procedures must include a means or method of customer conirmation, notification, or follow-up that can be documented.

NASD Rule 3012(a)(1) required members to, test and verify the efficacy of their supervisory control policies and procedures and to generate annual reports "detailing each member's system of supervisory controls, the summary of the test results and significant identified exceptions, and any additional or amended supervisory procedures created in response to the test results."

From 2009 through June 2011, Meyers Associates' WSPs did not adequately address required areas of supervision of producing managers and transmittals of customer funds and securities. In addition, Meyers Associates' 2009 annual report regarding its supervisory control system did not adequately summarize the procedures used to test and verify the efficacy of its system.

The Extended Hearing Panel concluded that, as a result of the foregoing, Meyers Associates violated NASD Rule 3012(a)(1), (a)(2)(A), (a)(2)(B), and (a)(2)(C) and FINRA Rule 2010.

III. Sanctions

In assessing sanctions against Meyers Associates and Meyers for their violations, the Extended Hearing Panel considered two critical factors—Meyers's indifference towards compliance and the disciplinary histories of Meyers and his Firm. Both factors are at the heart of FINRA's disciplinary process, the objectives of which are "to protect the investing public, support and improve the overall business standards in the securities industry, and decrease the likelihood of recurrence of misconduct by the disciplined respondent."[134] Therefore, these factors warrant that the imposed sanctions be "meaningful and significant enough to prevent and discourage future misconduct by [Meyers and his Firm] and deter others from engaging in similar misconduct."[135]

Meyers testified at the hearing—in which he and his Firm were accused of demonstrating an indifference towards compliance—that he is not involved with the compliance of Meyers Associates, has "no compliance experience" and "no knowledge of compliance per se," and does

[134] FINRA Sanction Guidelines at 2 (2015), www.finra.org/sanctionguidelines.

[135] Guidelines at 3.

not intend to acquire such knowledge.[136] This testimony is particularly troubling because Meyers owns and controls a broker-dealer that generates most of its revenue from retail customers,[137] and both he and the Firm have been previously sanctioned for similar conduct. Accordingly, meaningful sanctions are needed to protect the investing public and to improve the overall business standards of the industry.

Meyers's testimony on compliance appears to be reflective of views that he has held for quite some time. He has been the subject of six disciplinary actions.[138] And his Firm has been the subject of 10 disciplinary actions since 2005.[139] Three of those actions involved the failure to cooperate with regulators—a sign of his and the Firm's repeated disregard for the laws and rules that govern the securities industry.[140] The FINRA Sanction Guidelines ("Guidelines") provide that "[d]isciplinary sanctions should be more severe for recidivists."[141] The purpose of imposing escalating sanctions on recidivists is "to deter and prevent future misconduct" by those who "already ha[ve] demonstrated a failure to comply with FINRA's rules or the securities laws."[142]

In previous disciplinary actions, the Firm and Meyers have received five-figure fines. Meyers was suspended for four months from acting in a principal capacity. Those sanctions apparently did not deter Meyers and his Firm from engaging in future misconduct. Therefore, the Extended Hearing Panel found that more significant sanctions must be imposed on Meyers Associates and Meyers to deter and prevent future misconduct by them.

A. Second Cause of Action—Meyers Associates and Meyers

For violative communications with the public, the Guidelines recommend a fine of \$1,000 to \$29,000 and consideration of suspending the responsible person in all capacities for up to 60 days.[143] The sole Principal Consideration for such violations is "[w]hether violative communications with the public were circulated widely."[144] In this case, they were.[145] The emails

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[136] Tr. 255-256.

[137] Stip. ¶¶ 1, 3.

[138] CX-2; CX-11; CX-12; CX-15.

[139] CX-1; CX-11–CX-21.

[140] CX-11; CX-12; CX-15; CX-17.

[141] Guidelines at 2.

[142] Guidelines at 2.

[143] Guidelines at 79.

[144] Guidelines at 79.

[145] CX-42; Guidelines at 79.

also failed to disclose several material facts, and were, on the whole, misleading and unbalanced.[146]

For its use of violative communications, Meyers Associates is fined $50,000. Meyers is fined $25,000.

B. Fourth and Sixth Causes of Action

Meyers Associates' violations due to its creation of inaccurate books and records (Fourth Cause of Action), and the Firm's and Meyer's violations due to related supervisory deficiencies (Sixth Cause of Action) both stemmed from a single systemic problem—the failure to classify properly the Personal Expenses of Meyers and Khan paid by the Firm.[147]

1. Fourth Cause of Action-Failure to Have Personal Expenses WSPs (Meyers Associates)

"The entry of accurate information on official Firm records is a predicate to [FINRA's] regulatory oversight of its members."[148] Compliance with this basic requirement is "critical."[149] Accordingly, recordkeeping violations are significant transgressions, and egregious recordkeeping violations, like those here, warrant significant sanctions. For such violations, the Guidelines recommend a fine of $10,000 to $146,000 and consideration of suspending the responsible persons in all capacities for up to two years or barring them.[150] The Principal Consideration for such violations is the "[n]ature and materiality of inaccurate or missing information."[151] For filing false or misleading FOCUS Reports, the Guidelines recommend a fine of $10,000 to $73,000 and consideration of suspending the responsible persons in all capacities for up to two years.[152]

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[146] CX-42; Guidelines at 6.

[147] Guidelines at 4 (General Principle No. 4).

[148] *Charles E. Kautz*, Exchange Act Release No. 37072, 52 S.E.C. 730, 1996 SEC LEXIS 994, at **11-12 (Apr. 5, 1996).

[149] *Id*. at 12.

[150] Guidelines at 29.

[151] Guidelines at 29.

[152] Guidelines at 68.

Meyers Associates' misconduct resulted in numerous inaccurate books and records—the Firm's general ledger, monthly-filed Part IIA of Forms X-17A-5, and annually-filed Statement of Financial Conditions, Statement of Incomes, and supporting schedules.[153]

For this violation, Meyers Associates is fined $50,000.

2. Sixth Cause of Action—Personal Expenses Supervisory Violations (Meyers Associates and Meyers)

Meyers Associates had an inadequate supervisory system in place to classify the Personal Expenses, as its WSPs did not even address the subject.[154] The Hearing Panel found that Meyers was responsible for the Firm's failure to have WSPs.

The Guidelines suggest a fine of $5,000 to $73,000 for failure to have an adequate supervisory system.[155] In egregious cases, they recommend consideration of suspending the responsible individual in all capacities for up to two years or barring him.[156] The Principal Considerations for such violations are: whether the Firm ignored "red flags" that should have resulted in additional scrutiny; the nature, extent, size, and character of the underlying misconduct; and the quality and degree of implementation of the Firm's procedures.[157]

Meyers's and his Firm's significant disciplinary histories, which include supervisory violations, should have caused Meyers to increase his oversight of the Firm's compliance. Instead, he continued to ignore compliance. His failure to increase his scrutiny of compliance, as well as his and the Firm's significant disciplinary histories, further aggravate the Personal Expenses-related supervisory violations.[158]

For this violation, Meyers Associates is fined $100,000. Meyers is fined $50,000 and permanently barred from acting in a principal or supervisory capacity in any FINRA-regulated Firm.

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[153] JX-16; JX-17; JX-19; JX-20; Guidelines at 6 (Principal Consideration Nos. 8, 9).

[154] CX-27—CX-31; Guidelines at 6 (Principal Consideration No. 5).

[155] Guidelines at 103.

[156] Guidelines at 103.

[157] Guidelines at 103.

[158] CX-11; CX-12; CX-14; CX-15; CX-16; CX-19; CX-20; Guidelines at 6 (Principal Consideration No. 1).

C. Seventh Cause of Action-Failure to Supervise Email Review (Meyers Associates)

The Guidelines suggest a fine of $5,000 to $73,000 for failure to have an adequate supervisory system.[159] For numerous reasons, Meyers Associates' failures to supervise its electronic correspondence are egregious. First, this is a repeat violation.[160] In 2008, FINRA sanctioned the Firm for failing to record its supervisory reviews of electronic correspondence, and the Firm failed to correct this deficiency.[161] Second, the Firm's WSPs during the period at issue here were grossly deficient, as they failed to address: (1) how supervisors were to select electronic correspondence for review; (2) how they were to review it; (3) how often they needed to review it; and (4) how they were to document their reviews.[162] Third, the "[q]uality and degree of supervisor[s'] implementation of the Firm's supervisory procedures and controls" was poor.[163] Two supervisors supposedly responsible for reviewing electronic correspondence represented, in writing, that they were not responsible for, and did not conduct, such reviews.[164] The electronic correspondence violations may have caused the Firm's failure to report some of the customer complaints received via email to FINRA. Fourth, the Firm provided two incomplete responses to FINRA's requests for documents and information regarding its review of electronic correspondence.[165] Lastly, the violations occurred over two and a half years.[166]

For its electronic correspondence violations, Meyers Associates is fined $200,000.

D. Eighth Cause of Action-Failure to Report Customer Complaints (Meyers Associates)

The Sanction Guidelines recommend a fine of $5,000 to $146,000 for failure to report events under NASD Rule 3070 and a fine of $5,000 to $73,000 for failure to timely report events.[167] The Principal Considerations for these violations include the number and type of

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[159] Guidelines at 103.

[160] Guidelines at 6 (Principal Consideration No. 1).

[161] CX-19.

[162] CX-22—CX-27; Tr. 945-46; Guidelines at 6 (Principal Consideration No. 5).

[163] Guidelines at 103.

[164] CX-134; CX-135.

[165] CX-123; CX-124; CX-127; CX-137; CX-138; Guidelines at 7 (Principal Consideration No. 12).

[166] CX-121; CX-122; Guidelines at 6 (Principal Consideration No. 9).

[167] Guidelines at 74.

unreported and untimely reported events and whether the events established a pattern of potential misconduct.[168]

All three factors are aggravating. Meyers Associates failed to report 49 customer complaints and untimely reported another three complaints.[169] Customer complaints are significant events. Several of the unreported complaints involved allegations of unauthorized trading, thereby demonstrating a pattern of possible misconduct by the Firm's registered representatives.[170] Additional aggravating factors are: the Firm's failure to implement a reasonable supervisory system for reviewing customer complaints sent through email (discussed above);[171] the Firm's incomplete responses to FINRA's requests for documents and information regarding the reporting of the complaints;[172] the Firm's blatant failure to review the complaints prior to the hearing to determine if they needed to be reported;[173] and the three-plus years over which the violations occurred.[174]

For its NASD Rule 3070 violations, Meyers Associates is fined $200,000.

E. Ninth Cause of Action--Deficient Supervisory Controls (Meyers Associates)

The Guidelines do not specifically address inadequate supervisory control systems. The most analogous section concerns failure to supervise, as the Firm failed to establish, maintain, and enforce adequate procedures to supervise and control producing branch managers and transmittal of customer funds and securities.[175] Here, the violations concerned major aspects of NASD Rule 3012 and occurred over two and a half years.[176] The Firm's 2009 report on its supervisory control systems was deficient.[177] For example, the report failed to address how the Firm tested the adequacy of its supervisory procedures for sales of private offerings and

[168] Guidelines at 74.

[169] CX-139; CX-140 — CX-194; Tr. 969-81; Guidelines at 74.

[170] CX-139; Guidelines at 74.

[171] Guidelines at 6 (Principal Consideration No. 5).

[172] CX-123 — CX-127; CX-133; Guidelines at 7 (Principal Consideration No. 12).

[173] Tr. 276-77, 284-85; Guidelines at 2 (General Principle No. 2).

[174] CX-139; Guidelines at 6 (Principal Consideration Nos. 8, 9).

[175] Guidelines at 103.

[176] CX-22 — CX-27; Tr. 999-1002; Guidelines at 6 (Principal Consideration No. 9).

[177] CX-195; Guidelines at 6 (Principal Consideration No. 5).

agency/riskless principal transactions in retail customer accounts—its two primary revenue sources.[178] The Firm issued the same generic, deficient report for the next three years.[179]

For violating NASD Rule 3012, Meyers Associates is fined $100,000.

IV. Order

A. For violating NASD Rules 2210(d)(1)(A), (d)(1)(B), (d)(1)(D), (d)(2)(C)(i), and (d)(2)(C)(ii) and FINRA Rule 2010, Meyers Associates is fined $50,000 and Meyers is fined $25,000.

B. For violating Section 17(a)(1) of the Exchange Act and rules promulgated thereunder, and NASD Rules 3010 and 3110, and FINRA Rules 4511(a) and 2010, Meyers Associates is fined $50,000.

C. For violating NASD Rules 3010(a) and (b) and FINRA Rule 2010, Meyers Associates is fined $100,000 and Meyers is fined $50,000 and permanently barred from acting in a principal or supervisory capacity for any FINRA-regulated Firm.

D. For violating NASD Rules 3010(a), (b), and (d)(1) and 2110 and FINRA Rule 2010, Meyers Associates is fined $200,000.

E. For violating NASD Rules 3070(c) and 2110 and FINRA Rule 2010, Meyers Associates is fined $200,000.

F. For violating NASD Rules 3012(a)(1), (a)(2)(A), (a)(2)(B), and (a)(2)(C) and FINRA Rule 2010, Meyers Associates is fined $100,000.

G. The First Cause of Action against Meyers Associates and Meyers is dismissed; the Fourth Cause of Action against Meyers and Khan is dismissed; and the Fifth Cause of Action against Meyers Associates, Meyers, and Khan is dismissed.

In summary, Meyers Associates is fined a total of $700,000 and Bruce Meyers is permanently barred from acting in any supervisory or principal capacity with any FINRA-regulated Firm and fined a total of $75,000. The charges against Imtiaz A. Khan are dismissed.

Meyers Associates and Meyers are also ordered to pay, jointly and severally, costs in the amount of $13,626.32, which includes a $750 administrative fee and the cost of the hearing transcript. The fines and costs shall be payable on a date set by FINRA, but not less than 30 days

[178] CX-195; Tr. 1005-7.

[179] CX-197–CX-199; Guidelines at 6 (Principal Consideration Nos. 8, 9).

after this Decision becomes FINRA's final disciplinary action in this matter. If this Decision becomes FINRA's final disciplinary action, Meyers's bar shall be effective upon service of this Decision.[180]

Rochelle S. Hall
Hearing Officer
For the Extended Hearing Panel

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