

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RICHARD O. WHITE
(CRD No. 3147238),

Respondent.

Disciplinary Proceeding
No. 2015045254501

Hearing Officer—LOM

HEARING PANEL DECISION

February 27, 2018

On his return home from two gambling trips, Respondent structured cash deposits with knowledge of, and intent to evade, federal currency reporting requirements, in violation of the high standards of ethical conduct imposed by FINRA Rule 2010. For this misconduct, Respondent is barred from associating with any FINRA member in any capacity.

Appearances

For the Complainant: Joseph E. Strauss, Esq., Savvas A. Foukas, Esq., and Tiffany A. Buxton, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: Nathan C. Zezula, Esq.

I. INTRODUCTION

This case involves the unlawful “structuring” of cash deposits. Under the Currency and Foreign Transactions Reporting Act of 1970, as amended by subsequent legislation—commonly referred to as the Bank Secrecy Act—and the Act’s implementing regulations, financial institutions in the United States are required to file currency transaction reports (“CTRs”) in connection with cash transactions in excess of \$10,000. The purpose of CTRs is to provide law enforcement officials with information to enable them to uncover misconduct such as tax evasion and money laundering. Structuring cash deposits to avoid the filing of the required report is a crime with three elements: (i) the breaking of large sums of cash into smaller amounts of \$10,000 or less; (ii) knowledge of the reporting requirement; and (iii) intent to evade the reporting requirement. It is unnecessary to prove a motive. It is sufficient to prove the intent to avoid the filing of the required report.

Respondent Richard O. White, who was employed by and registered through Wells Fargo Securities, Inc. (“Wells Fargo” or the “Firm”) at the time of the events at issue, is charged with violating his ethical obligations under FINRA Rule 2010 by structuring cash deposits after successful gambling trips for the purpose of evading the filing of the required reports. From March 2012 to March 2015, White took eight trips to Las Vegas. Twice he was successful and returned home with gambling winnings. He had approximately \$26,000 in cash the first time, a combination of the money he initially took with him to gamble and his winnings. The second time he returned home with a total of \$72,000 in cash.

In each case when he came back from a trip with winnings, White made multiple deposits below \$10,000 over the course of several days or several weeks, rather than depositing the cash in a single transaction. Several times, White broke the wrapper on a pack of \$10,000 that he had received from a casino, pulled out a one hundred dollar bill or two, and deposited the remaining \$9,700 to \$9,900. These acts constituted the structuring element of the crime.

White had extensive training every year on what constitutes unlawful structuring of cash transactions, and he knew from that training that financial institutions are legally required to file CTRs for cash transactions in excess of \$10,000. In addition, the Firm’s code of conduct and its employee handbook informed employees that engaging in structuring could potentially lead to criminal sanctions and professional discipline, including termination from their employment and a professional bar. White admits that he knew generally that “something happened” at \$10,000. He told a Wells Fargo investigator and some of his friends that he made the deposits the way that he did to avoid raising a “red flag” and having questions asked. This evidence establishes the knowledge element of unlawful structuring.

In 2014 and 2015, White made nine deposits below \$10,000, seven of them barely below that threshold. Even though he had as much as \$72,000 in cash at a time, he *never* made a deposit of more than \$9,900. His pattern of making such deposits was consistent. He also acted to conceal what he was doing by splitting deposits aggregating more than \$10,000 into smaller deposits at two different financial institutions, the bank affiliate of his Wells Fargo employer (included here in references to Wells Fargo) and an unaffiliated credit union, so that neither financial institution would recognize that a report should be made. His confession to a Wells Fargo investigator and his friends that he wanted to avoid raising a “red flag” further shows his intent to evade the filing of a report. White failed to provide a legitimate, credible reason for structuring his deposits in the way that he did. The record compels the conclusion that he acted with intent, the third element of the crime.

White’s misconduct, despite receiving years of training on what constitutes structuring and how it is a crime, is an egregious violation of his duty to behave ethically and observe high standards of commercial honor. The fact that he attempted to conceal the amounts of his currency transactions by making same-day deposits at two different financial institutions shows a degree of calculated wrongdoing that aggravates the violation. His misconduct demonstrates disregard for the laws and regulations governing the financial industry in which he worked.

We further find that when his misconduct was discovered, White dissembled and attempted to mislead Wells Fargo and FINRA investigators. At the hearing, he also did not tell the truth. His lack of candor when his actions were discovered and his lack of credibility at the hearing further diminish his trustworthiness. Moreover, although he claims he is now fully versed in the law of structuring, he continues to insist that he did nothing wrong, and to challenge the investigation leading to his termination and this disciplinary proceeding as unfair. If he truly made an innocent mistake, we would expect his study of the law of structuring to have led him to recognize how suspicious his cash deposits were, and how reasonable it was for Wells Fargo and FINRA staff to ask questions about the deposits. He has given no assurance that in the future he would take his training more seriously and comply with his ethical and professional responsibilities.

Taking into account all the circumstances of White's misconduct and his reaction to the discovery of it, we have concerns regarding his ability to comply with legal and regulatory requirements in the future. We conclude that a bar from association with any FINRA member in any capacity is appropriate and in the public interest.

II. FINDINGS

A. Proceeding

FINRA's Department of Enforcement filed the Complaint on November 11, 2016. The hearing was held over three days in June 2017. Seven witnesses testified,¹ and the parties introduced exhibits into evidence.² The parties filed simultaneous post-hearing briefs and simultaneous reply briefs, with post-hearing briefing completed on August 10, 2017.³

¹ In addition to White, the following persons testified: JS, who is currently employed by Wells Fargo as the Director for Monitoring Surveillance in the group responsible for implementing anti-money laundering policies and ensuring that Wells Fargo files appropriate CTRs; MB, an investment banker in the public finance department of Wells Fargo, who worked with White and is a good friend; BR, who was employed at Wells Fargo on the debt origination side and who also is White's friend; TL, who worked with White in sales prior to the events in issue, and who accompanied White on some of his trips to Las Vegas; CN, the Wells Fargo investigator who interviewed White about three of his cash deposits prior to his termination by Wells Fargo; and MHB, the supervisor of White's direct supervisor at Wells Fargo, who was present when CN interviewed White about three of his cash deposits at Wells Fargo.

References to hearing testimony are in the following format: "Hearing Tr. (last name of witness), page of transcript." For example, White's testimony is cited as "Hearing Tr. (White) 182."

² The parties submitted joint exhibits, which are referred to with the prefix "JX" and an identifying number. Respondent offered other exhibits, some of which were admitted into evidence. Respondent's exhibits are referred to with the prefix "RX" and an identifying number.

³ References to the post-hearing briefs are as follows: Department of Enforcement's Post-Hearing Brief ("Enf. PH Br."); Respondent's Post-Hearing Brief ("Resp. PH Br."); Department of Enforcement's Reply Brief ("Enf. Reply"); and Respondent's Post-Hearing Reply Brief ("Resp. Reply").

B. Respondent

After graduating from college in 1992 and obtaining an MBA in 1994, White began working at First Union National Bank, a predecessor of the firm where he worked at the time of the events at issue, present-day Wells Fargo Securities LLC (together with intermediary and affiliated entities, included in references to the “Firm” or “Wells Fargo”). White began as a back office analyst, but, starting in 1999 and continuing until he was terminated by Wells Fargo on March 25, 2015, he worked on the Firm’s municipal bond trading desk. In that position, he engaged in underwriting and trading and was involved in managing positions on a day-to-day basis.⁴

White held Series 7, Series 63, and Series 53 securities licenses. He passed the examinations for those licenses the first time he took the exams.⁵

Generally, White was held in high regard and performed his job duties well. He was promoted to director in 2011 or 2012, and in 2013 he began receiving annual compensation (combined base and bonus) in the range of \$500,000.⁶ Those who worked with him viewed him as a good friend and professional colleague. When the Firm terminated him, it was professionally and personally upsetting to the people who knew him.⁷ His direct supervisor and his second-level supervisor were both “devastated” by White’s termination.⁸

C. Jurisdiction

Although White is no longer registered, FINRA has jurisdiction to bring this proceeding against him. The Complaint charges him with misconduct committed while he was registered, and it was filed within two years of the termination of his registration.⁹

D. White’s Knowledge of Bank Secrecy Act Reporting Requirements

1. Training

Prior to the events at issue, White had taken many years of training on the Bank Secrecy Act,¹⁰ both at a Wells Fargo & Company corporate level, and at a line of business level at Wells Fargo Securities LLS.¹¹ As White knew, all Wells Fargo employees receive such training,

⁴ JX-1 at 2; Hearing Tr. (White) 161-64.

⁵ Hearing Tr. (White) 163.

⁶ Hearing Tr. (White) 164-65.

⁷ Hearing Tr. (MB) 414-16, 437; Hearing Tr. (BR) 452-55; Hearing Tr. (MHB) 621, 638-39, 648-49.

⁸ Hearing Tr. (MHB) 621, 637, 644; JX-47.

⁹ FINRA By-Laws, Article V, Section 4.

¹⁰ Hearing Tr. (White) 178-79.

¹¹ JX-21.

regardless of the different jobs they hold. Whether a Wells Fargo employee is a bank teller or an information technology employee, the person receives training on the Bank Secrecy Act.¹²

Wells Fargo's Bank Secrecy Act training is given by means of a self-paced computer course, with training slides and modules to review, along with test questions to ensure adequate understanding.¹³ The training modules constitute 30-50 pages of reading material. An employee can read the modules first and then take the test, or simply take the test. If the employee does not pass the test with a sufficiently high score (around 80%), the employee is required to review the training materials and take the test again.¹⁴ In 2010, 2011, 2012, and 2013, White passed the tests administered with the training with scores of 90% or above. In 2014, White passed the test with a score of 100% correct.¹⁵

a. 2014 Bank Secrecy Act Training

The 2014 training that White received emphasized the importance of compliance with the Bank Secrecy Act. It clearly stated that the potential consequences for "Team Members" (meaning Wells Fargo employees) of non-compliance with the Bank Secrecy Act included disciplinary action up to and including termination of employment, civil or criminal penalties, and debarment from working in the financial services industry.¹⁶

The training expressly informed those who took it about the currency reporting requirements. One of the slides in the 2014 training was titled "Currency Transaction Reporting." Following that title, the training explained, "[Bank Secrecy Act] regulations require most financial institutions, including Wells Fargo, to file Currency Transa[c]tion Reports (CTRs) when transactions in currency totaling more than \$10,000 are conducted on the same business day by, through, or to the financial institution."¹⁷ The training slide specified that multiple currency transactions on the same business day by or on behalf of the same individual or entity that exceed \$10,000 are aggregated into a single currency transaction report.¹⁸ The 2014 training explained that any party who "conducts" a currency transaction exceeding \$10,000 must be identified, along with any person who is a beneficiary of the transaction.¹⁹

The test at the end of the 2014 training module asked whether it was true or false that multiple transactions by or on behalf of a single person on the same day would be aggregated for

¹² Hearing Tr. (White) 182.

¹³ Hearing Tr. (White) 180-81; JX-35.

¹⁴ Hearing Tr. (MHB) 605-06.

¹⁵ Hearing Tr. (White) 178-79; JX-45.

¹⁶ JX-35, at 8. Every employee at Wells Fargo is a "Team Member." Hearing Tr. (White) 233, 380.

¹⁷ JX-35, at 44.

¹⁸ Hearing Tr. (White) 184; JX-35, at 45.

¹⁹ Hearing Tr. (White) 182-84; JX-35, at 2-3, 44-45.

purposes of submitting a currency transaction report.²⁰ White received a score of 100% correct on the 2014 test questions—he must have correctly answered that question as true.²¹

b. 2013 Bank Secrecy Act Training

The 2013 training that White took similarly explained that Bank Secrecy regulations require Wells Fargo to file a CTR for any currency transaction larger than \$10,000, and that multiple currency transactions on the same day by the same person that exceeded \$10,000 in the aggregate would be combined into a single currency transaction report. The 2013 training contained a slide with a test question that highlighted that multiple currency transactions by the same person on the same business day would be aggregated and reported on a single CTR.²² The 2013 training, like the 2014 training, informed Wells Fargo employees that noncompliance with the Bank Secrecy Act could result in termination and even a bar from the securities industry.²³

c. 2012, 2011, and 2010 Bank Secrecy Act Training

The training for 2012, 2011, and 2010 contained similar information. The 2012 training declared that an individual who conducts a transaction in currency exceeding \$10,000 must be identified.²⁴ The training declared that currency transaction reporting was an important concept for all “team members of Wholesale,” referring to Wells Fargo employees in the investment banking and securities business, to understand even though the currency transaction might occur in another part of Wells Fargo such as regional banking.²⁵ White was a team member in Wholesale.²⁶

The 2011 and 2010 training discussed the identification of persons who conduct large currency transactions and the aggregation of multiple transactions by the same person on the same day.²⁷ A slide in the 2010 training material specifically explained that some customers try to avoid CTRs by structuring their transactions, and the slide defined structuring as dividing a transaction that is over \$10,000 into smaller transactions. The slide stated that structuring is a

²⁰ JX-35, at 67; Hearing Tr. (White) 187-88.

²¹ White argues that scoring 100% on the test questions in the 2014 training is meaningless and does not signify that he or anyone else taking the test actually understood the information. Resp. PH Brief 11-12. We reject the argument. To accept it would render training pointless and allow registered representatives to disregard guidance on their legal and ethical obligations. Moreover, as discussed below, White’s pattern of deposits compels the conclusion that he knew about the reporting requirement and the required aggregation of deposits made on the same day, even if he did not know exactly how a report was made.

²² JX-34, at 53-55.

²³ JX-34, at 10; Hearing Tr. (White) 191-93.

²⁴ JX-54, at 53; Hearing Tr. (White) 194-95.

²⁵ JX-54, at 74; Hearing Tr. (White) 195.

²⁶ Hearing Tr. (White) 190, 230.

²⁷ JX-52; JX-53; Hearing Tr. (White) 197-202.

federal offense.²⁸ The 2010 training went into some detail, saying customers who make multiple currency transactions at different tellers or stores could potentially be structuring to avoid CTR reporting requirements, which is a federal offense that could lead to criminal prosecution.²⁹

2. Firm Policies and Other Training

a. Code of Ethics Training

Well Fargo's Code of Ethics applies to every Wells Fargo employee.³⁰ Wells Fargo requires its employees to read it, take annual training on it, and comply with it.³¹

White took Code of Ethics training each year from 2010 through June 2014.³² The 2014 version of the training on the Code of Ethics had a section about managing one's personal finances properly and in a prudent manner. White testified that what this meant to him was that an employee should not do "anything illegal" or "knowingly wrong."³³ The training provided that misuse of Wells Fargo's financial services by an employee would result in the same penalties or restrictions that apply to customers.³⁴

The 2013 training on the Code of Ethics was similar.³⁵ It provided that when a Wells Fargo employee transacted personal financial business with Wells Fargo the employee was subject to the same procedures as customers.³⁶

You must transact personal financial business with Wells Fargo following the same procedures that are used by customers and from the customer side of the window or desk.

Thus, if a non-employee customer's currency transaction exceeded \$10,000 and required that a CTR be submitted, the same would be true of an employee's currency transaction that exceeded \$10,000.

²⁸ JX-52, at 55; Hearing Tr. (White) 205-06.

²⁹ JX-52, at 55; Hearing Tr. (White) 206.

³⁰ JX-38, at 3; Hearing Tr. (White) 230.

³¹ JX-36, at 5; JX-38, at 3.

³² Hearing Tr. (White) 208-09; CX-45, at 2.

³³ JX-37, at 51; Hearing Tr. (White) 211-12, 214.

³⁴ JX-37, at 52; Hearing Tr. (White) 212, 214, 380.

³⁵ JX-36; Hearing Tr. (White) 214-18.

³⁶ JX-36, at 26.

b. Employee Handbook

Wells Fargo's Code of Ethics and other corporate policies are collected in an employee handbook, which is available to employees online. Every United States employee has to sign an acknowledgement that he or she knows how to access it and understands how it applies to his or her employment.³⁷ White admitted that it was his responsibility to comply with the policies set forth in the handbook.³⁸

The January 2015 handbook made clear that although an employee's personal finances were generally private, it was important to Wells Fargo, as a financial institution that manages other people's money, that Wells Fargo employees manage their own finances "properly and in a prudent manner."³⁹ Wells Fargo also reminded employees that, when they received financial services from Wells Fargo, they were subject to the same restrictions as other customers. The handbook specified that employees were expected not to "misuse" their accounts with Wells Fargo, and expressly stated, "Wells Fargo prohibits improper transactions by team members."⁴⁰ The handbook gave as examples of improper transactions check kiting and making false ATM deposits to receive immediate cash. But it said that improper transactions were not limited to the examples. Finally, Wells Fargo warned its employees that it reserved the right to review employee accounts with Wells Fargo and its affiliates for unusual activity, both on a regular basis and during investigations.⁴¹

The handbook further specifically provided that an employee could be immediately terminated for engaging in illegal conduct, listing a series of specific examples. Among them was conducting a transaction in a personal bank account that violated the Bank Secrecy Act.⁴²

Thus, through its handbook, Wells Fargo put its employees on notice that their use of their personal financial accounts was considered by Wells Fargo to be related to its business and their employment. It specifically told them that it would monitor their use of those accounts and that improper transactions in violation of the Bank Secrecy Act could lead to immediate termination.

c. Compliance Guidelines for White's Business Unit

White also had training on the compliance guidelines for his business unit.⁴³ The July 2014 guidelines reiterated that employees were expected to comply with the Code of Ethics, and

³⁷ JX-38, at 2-3.

³⁸ Hearing Tr. (White) 226-29.

³⁹ JX-38, at 7.

⁴⁰ JX-38, at 8.

⁴¹ JX-38, at 8.

⁴² JX-38, at 12.

⁴³ JX-39; Hearing Tr. (White) 232.

that a violation of that Code could lead to termination and possible criminal prosecution.⁴⁴ These guidelines contained a section on anti-money laundering and anti-terrorist financing.⁴⁵ That section counseled employees to report unusual activity, including activity that appeared designed to evade reporting requirements, which would include structuring transactions.⁴⁶

The guidelines listed a number of suspicious activities that would raise red flags and require further investigation. Among others, it identified efforts to avoid reporting and recordkeeping requirements, such as when a customer accesses a safe deposit box before making currency deposits structured at or just under \$10,000,⁴⁷ or where currency is deposited just below a reporting threshold to evade reporting requirements.⁴⁸

d. Corporate Policy on Currency Transaction Reporting

Wells Fargo's currency transaction reporting policy began by declaring that the Bank Secrecy Act requires a financial institution to file a CTR when a currency transaction exceeds \$10,000. The policy further declared that where multiple currency transactions by the same person on the same business day total more than \$10,000, then a CTR must be filed. The policy informed employees that Wells Fargo files a CTR for every currency transaction in excess of \$10,000.⁴⁹

The corporate policy specifically stated that all employees were required to understand the concept of structuring.⁵⁰ It also specifically prohibited employees themselves from attempting to avoid a CTR by structuring transactions, using plain, easily understood language: "Team members [meaning Wells Fargo employees] are strictly prohibited from attempting to avoid a CTR filing by structuring . . . any transaction."⁵¹ It defined structuring as the illegal act of breaking up currency transactions into smaller amounts for the purpose of evading the filing of a CTR.⁵²

⁴⁴ JX-39, at 25.

⁴⁵ JX-39, at 74.

⁴⁶ JX-39, at 103.

⁴⁷ JX-39, at 107.

⁴⁸ JX-39, at 112.

⁴⁹ JX-40, at 1-2; JX-42, at 1-2.

⁵⁰ JX-40, at 3; JX-42, at 3.

⁵¹ JX-40, at 3; JX-42, at 3.

⁵² JX-40, at 18; JX-42, at 18; Hearing Tr. (White) 239-42.

This policy was posted online for Wells Fargo employees. White admitted that this policy prohibited employees, including him, from structuring in their own personal accounts, but he did not recollect ever consulting the policy with regard to structuring.⁵³

3. White's General Knowledge

White admitted at the hearing that, apart from the training he received at Wells Fargo, he had heard the \$10,000 figure throughout his life.⁵⁴ He testified that he did not know exactly what its significance was. He said, "I knew the number. I knew something happened. I didn't know specifically what. I just had heard, over the years, and not specifically related to [Wells Fargo] training, that something happened at 10. That was what stuck out in my mind."⁵⁵ When a Wells Fargo investigator interviewed him about three of his Wells Fargo deposits, he said, "I knew something happened at 10, yes."⁵⁶

White could hardly deny that he knew that "something happened" at the \$10,000 threshold. Almost everyone in the financial industry has that general knowledge. JS, the current Wells Fargo Director of Monitoring Surveillance, often inquires of employees what they know about the Bank Secrecy Act. He said that in his experience most employees have a general understanding that a CTR requirement exists for large cash transactions. He said that "most employees ultimately do at least know the CTR requirement . . . [T]hey may not always know the \$10,000 versus \$10,000.01 threshold, but they generally [have] at least [the] understanding that there's some requirement that comes into play for a large cash transaction."⁵⁷ "[P]eople will – they'll know the CTR requirement," JS said. "They may not know it's called a CTR, but they'll understand something about \$10,000 cash."⁵⁸

E. White's Misconduct

1. White's Bank and Brokerage Accounts

White opened a checking account at his employer's affiliated bank in 1994, when he started working at a Wells Fargo predecessor. At the time of the events at issue, the Wells Fargo checking account was his primary account for everyday use ("Wells Fargo account"). White did most of his banking business at a Wells Fargo branch bank located approximately three blocks from his office.⁵⁹

⁵³ JX-42; Hearing Tr. (White) 236-39, 244-46.

⁵⁴ Hearing Tr. (White) 185-86.

⁵⁵ Hearing Tr. (White) 186.

⁵⁶ Hearing Tr. (White) 352-53. *See also* Hearing Tr. (White) 355, 358, 359, 717.

⁵⁷ Hearing Tr. (JS) 151.

⁵⁸ Hearing Tr. (JS) 153.

⁵⁹ Hearing Tr. (White) 167-70.

In March 2013 (around the time of his second gambling trip to Las Vegas, as discussed below), White established a safe deposit box at Wells Fargo.⁶⁰ The safe deposit box was linked to another Wells Fargo bank account called a “Premier Checking” account, which he opened at the same time. White also had a Wells Fargo brokerage account in which he primarily traded exchange traded funds (“ETFs”) on margin. The brokerage account had a net asset value of approximately \$1 million as of January 31, 2015, and the margin balance at that time was around \$700-750,000.⁶¹

From 1994 to the present, White also held a savings account at a credit union that is not affiliated with Wells Fargo (“credit union account”). He did not use the credit union account to pay bills and did not have a credit or debit card linked to that account. White never transferred money from the Wells Fargo brokerage account to the credit union account, and he used the credit union account infrequently prior to making the deposits at issue. As of January 1, 2014, the balance in the credit union account was \$132.21.⁶²

The credit union was another two blocks further from White’s office than his Wells Fargo branch bank. When he made deposits, he usually walked from work to the Wells Fargo branch and then on to the credit union.⁶³

2. White’s Gambling Trips and Deposits

White went on eight trips to Las Vegas between March 2012 and March 2015. While there, he engaged in sports betting and played table games such as Blackjack.⁶⁴ Twice he ended a trip “up” and returned with gambling winnings: in April 2014 and in late January 2015. In each case when he ended “up” for the trip, he broke up the cash into multiple deposits, all less than \$10,000.

First trip. In March 2012, White went to Las Vegas on a business related trip. On that trip, he lost \$5,000 in gambling.⁶⁵

Second trip. In March 2013, White withdrew \$20,000 in cash from his Wells Fargo account to use in gambling. He withdrew it in two \$10,000 transactions on separate days because

⁶⁰ JX-16.

⁶¹ Hearing Tr. (White) 167-71; JX-5, at 15.

⁶² Hearing Tr. (White) 172-74; JX-8, at 1.

⁶³ Hearing Tr. (White) 172-73.

⁶⁴ Hearing Tr. (White) 259-60.

⁶⁵ Hearing Tr. (White) 260-61. White’s monthly bank statement for his Wells Fargo account for the period of February 22, 2012, to March 20, 2012, shows a \$5,000 withdrawal on March 16, 2012. JX-2, at 2.

the bank did not have enough one hundred dollar bills to give him the entire amount all at once. While in Las Vegas, he lost the entire \$20,000.⁶⁶

Third trip. In January 2014, White took another trip to Las Vegas, after withdrawing \$21,000 with which to gamble. He lost \$10,000. When he returned home with the remaining \$11,000, he initially tried to deposit the cash at a Wells Fargo ATM that accepted large deposits, fifty bills at a time. The ATM jammed after receiving approximately \$3,000. So he went into the branch later and deposited what was left into his Wells Fargo account, approximately \$8,000.⁶⁷

Fourth trip. This gambling trip was the first time that White returned with more money than he had taken with him.

In April 2014, White planned to attend a Wells Fargo healthcare conference in Las Vegas and to gamble while he was there. He first withdrew \$5,000 in cash from his Wells Fargo account at his local branch, but later decided he needed more cash. He withdrew another \$7,000 from another Wells Fargo branch while he was at a shopping mall.⁶⁸

White won over \$13,000 in Las Vegas, so he returned home with nearly \$26,000 in cash, including the \$12,000 he took with him for gambling. At that point, taking into account his losses on the January trip, he was \$3,000 ahead for the year on his gambling.⁶⁹ He brought the \$26,000 home in his backpack. Although he did not firmly remember, White thought it was likely organized into two \$10,000 bundles of one hundred dollar bills with the rest as loose cash. White explained that casinos like to pay large sums of cash in as quick a manner as possible, which the \$10,000 packets allowed them to do.⁷⁰

White did not deposit the cash all in one deposit. On May 5, 2014, he deposited \$9,900 at the Wells Fargo branch where he did most of his banking. That same day, he deposited another

⁶⁶ Hearing Tr. (White) 261-64. White's monthly bank statement for his Wells Fargo account for the period of February 22, 2013, to March 20, 2013, shows a \$10,000 withdrawal on March 18, 2013, and a \$10,000 withdrawal on March 20, 2013. JX-2, at 7.

⁶⁷ Hearing Tr. (White) 264-67. White's monthly bank statement for his Wells Fargo account for the period January 23, 2014, to February 21, 2014, shows a withdrawal of \$21,000 on January 31, 2014. JX-3, at 2. The same statement shows a deposit of \$8,000 on February 4, 2014, and an ATM adjustment the next day, on February 5, 2014. JX-3, at 2.

⁶⁸ Hearing Tr. (White) 267-71. White's monthly bank statement for his Wells Fargo account for the period of April 19, 2014, to May 20, 2014, shows a \$5,000 withdrawal on April 25, 2014, and a \$7,000 withdrawal on April 29, 2014. JX-3, at 11.

⁶⁹ Hearing Tr. (White) 267-72.

⁷⁰ Hearing Tr. (White) 272-73.

\$9,900 into his credit union account. The next day, May 6, 2014, he deposited \$5,700 in cash in his account at the Wells Fargo branch.⁷¹

White explained how and why he broke up the cash into three deposits of less than \$10,000 as follows. He brought all of the cash with him when he walked to work in the morning, the two \$10,000 bundles and the remaining loose cash. White's residence is a 12- to 15-minute walk from his office. Later in the morning, he walked with all of the cash three blocks to his Wells Fargo branch, before going on another two blocks to the credit union.⁷²

White broke the wrapper on one of the \$10,000 packets before making the Wells Fargo deposit and removed a one hundred dollar bill, depositing \$9,900. He claims that he did so because he wanted "cash on hand."⁷³ But he acknowledged that he could just as easily have retained some of the loose cash he already had in his pocket, which was approximately \$5,700. He said he was planning to put the \$5,700 in loose cash in his safe deposit box that day, but he forgot his key. So then he continued on to the credit union with the second \$10,000 packet and the \$5,700 in loose cash to the credit union. Once there, White broke the wrapper on the second \$10,000 packet before making the credit union deposit and removed another one hundred dollar bill because he wanted to keep some cash.⁷⁴ He deposited the remaining \$9,900, and kept the \$5,700. He returned to his Wells Fargo branch the next day, May 6, and deposited the \$5,700 into his Wells Fargo account. He said that he did so because he again forgot to bring his safe deposit key.⁷⁵

Fifth trip. In October 2014, White took another trip to Las Vegas. Before going, he withdrew \$10,000 from his Wells Fargo bank account. He lost the \$10,000 plus another \$20,000. Because he had established a line of credit with the casino, the additional losses were recorded as markers for later payment. Either he could pay back the \$20,000 within a certain period, or at the conclusion of that period the casino could withdraw the money he owed it directly from his account.⁷⁶

Sixth trip. In preparation for another Las Vegas trip, White withdrew \$10,000 from his Wells Fargo account on November 20, 2014. The next day, November 21, 2014, he withdrew

⁷¹ Hearing Tr. (White) 273-75; White's monthly bank statement for his Wells Fargo account for the period of April 19, 2014, to May 20, 2014, shows a deposit of \$9,900 on May 5, 2014. JX-3, at 11. White's monthly statement for his credit union account shows a deposit of \$9,900 that same day. JX-9, at 1. The Wells Fargo bank statement shows a deposit of \$5,700 the next day, on May 6, 2014. JX-3, at 11.

⁷² Hearing Tr. (White) 166, 276-77.

⁷³ Hearing Tr. (White) 277.

⁷⁴ Hearing Tr. (White) 280.

⁷⁵ Hearing Tr. (White) 277-83.

⁷⁶ Hearing Tr. (White) 290-92. White's monthly bank statement for his Wells Fargo account for the period of September 20, 2014, to October 21, 2014, shows a \$10,000 withdrawal on October 10, 2014. JX-3, at 20.

another \$6,000. In Las Vegas, he lost the money gambling, along with another \$25,000 in markers.⁷⁷

Seventh trip. This was the second time that White brought back more money than he took to Las Vegas.

In preparation for a 2015 trip to Las Vegas during Super Bowl weekend, White withdrew \$15,000 from his Wells Fargo account at the branch where he usually does his banking. He tried to withdraw \$27,000, but branch personnel said that the branch did not have enough hundred dollar bills to fulfill that request. He came back the next day and withdrew an additional \$12,000.⁷⁸ Thus, White took with him approximately \$27,000.

On this trip, White won a total of \$45,000.⁷⁹ He returned home with \$72,000 in cash, the money he had taken with him to gamble plus his winnings. He could have taken the money in a check or by wire. Instead, he took the cash and carried the \$72,000 home in his backpack.⁸⁰ White got home in the evening and laid the money out on his kitchen table. He didn't remember if he left it on the table overnight. Seeing the stack of money, he was "thrilled" he had finally won in Las Vegas.⁸¹

On February 3, 2015, the next day after his return from Las Vegas, White deposited \$9,900 at Wells Fargo and \$9,900 at the credit union.⁸² According to White, he walked to work that day with approximately \$26,000. He had two \$10,000 packets of one hundred dollar bills, and almost \$6,000 in loose cash. He said that he left the remaining \$45,000 or so in a home safe.⁸³ As White admits, the source of the February 3 deposits was the money he brought home with him from Las Vegas.⁸⁴ White first placed the loose cash in his safe deposit box, where he already had another \$5,000 to \$6,000 in cash. Then he went to a teller window and made his first

⁷⁷ Hearing Tr. (White) 292-93. White's monthly bank statement for his Wells Fargo account for the period of October 22, 2014, to November 21, 2014, shows a \$10,000 withdrawal on November 20, 2014, and a \$6,000 withdrawal on November 21, 2014. JX-3, at 24.

⁷⁸ Hearing Tr. (White) 293-95. White's monthly bank statement for his Wells Fargo account for the period of January 23, 2015, to February 20, 2015, shows a \$15,000 withdrawal on January 29, 2015, and a \$12,000 withdrawal on January 30, 2015. JX-4, at 6.

⁷⁹ Hearing Tr. (White) 293-96.

⁸⁰ Hearing Tr. (White) 297.

⁸¹ Hearing Tr. (White) 304.

⁸² White's monthly bank statement for his Wells Fargo account for the period of January 23, 2015, to February 20, 2015, shows a deposit of \$9,900 on February 3, 2015. JX-4, at 6. White's monthly statement for his credit union account shows a deposit of \$9,900 that same day. JX-12, at 1. The bank's records show that he visited his safe deposit box on February 4, 2015, JX-16, at 1, but White testified that that was an error. He testified that he visited his safe deposit box on February 3, 2015. Hearing Tr. (White) 309.

⁸³ Hearing Tr. (White) 304-09.

⁸⁴ Hearing Tr. (White) 307-10.

Wells Fargo deposit. In doing so, he broke the wrapper on the \$10,000 packet and kept a one hundred dollar bill. Although he had just placed more than \$5,000 in loose cash in his safe deposit box, he said that he took the one hundred dollar bill for spending money.⁸⁵ After making the Wells Fargo deposit, White walked to the credit union and did the same thing there. He broke the wrapper on a \$10,000 packet, took out a one hundred dollar bill, and deposited \$9,900.⁸⁶

On February 19, 2015, White deposited \$9,800 cash at Wells Fargo and \$9,700 at the credit union, each time breaking a wrapper from a packet of \$10,000 and taking out two or three hundred dollar bills. He also visited his Wells Fargo safe deposit box that day.⁸⁷ He testified that he did not put any cash into his safe deposit box that day or remove any cash. He said that he either was checking on the expiration date of his passport, which he kept in his safe deposit box, or he was looking for the title to a car that he intended to donate to Goodwill.⁸⁸

On February 27, 2015, White deposited \$9,500 in cash plus a \$160 check at Wells Fargo and \$3,100 in cash at the credit union. He testified that the money he deposited was cash that he had previously put into his safe deposit box.⁸⁹ Bank records show that he visited his Wells Fargo safe deposit box that day.⁹⁰

Thus, out of the \$72,000 he brought back from Las Vegas, during the month of February White deposited some in his Wells Fargo account, deposited some in his credit union account, and retained the rest. White testified that he kept some of it in a safe he had at home and that he put “portions” of it into his safe deposit box during one or two of his visits to the box.⁹¹

Eighth trip. In March 2015, White made another trip to Las Vegas. He took \$25-27,000 from his safe at home. On that trip, he lost all the cash he took with him and also had markers. His total losses were around \$60,000.⁹²

⁸⁵ Hearing Tr. (White) 308-10, 322-24.

⁸⁶ Hearing Tr. (White) 322-27.

⁸⁷ Hearing Tr. (White) 327-38. White’s monthly bank statement for his Wells Fargo account for the period of January 23, 2015, to February 20, 2015, shows a deposit of \$9,800 on February 19, 2015. JX-4, at 6. White’s monthly statement for his credit union account shows a deposit of \$9,700 that same day. JX-12, at 1. The bank’s records show that he also visited his safe deposit box the same day. JX-16, at 1.

⁸⁸ Hearing Tr. (White) 333-34, 336.

⁸⁹ Hearing Tr. (White) 340-41. White’s Amended Answer said that the cash came from his safe at home. But at the hearing he recollected that he wanted to keep the cash at home because he was going back to Las Vegas in a few days. Hearing Tr. (White) 340-47.

⁹⁰ Hearing Tr. (White) 339-40. White’s monthly bank statement for his Wells Fargo account for the period of February 21, 2015, to March 19, 2015, shows a deposit of \$9,660 on February 27, 2015. JX-4, at 10. White’s monthly statement for his credit union account shows a deposit of \$3,100 that same day. JX-12, at 1. He also visited his safe deposit box the same day. JX-16, at 1.

⁹¹ Hearing Tr. (White) 309-10, 317-20, 322-25.

⁹² Hearing Tr. (White) 351.

F. Wells Fargo Identifies Three Deposits as Suspicious

Because White's three Wells Fargo cash deposits in February 2015 were made within a 21-day period and were just under the reporting threshold, an exception report was automatically generated. That report caused the matter to be referred to a Wells Fargo internal investigator, CN. She reviewed his account and could not find the source of the cash. She then scheduled an interview with White.⁹³

G. Subsequent Events

1. White's Meeting with Wells Fargo Investigator

On March 13, 2015, shortly before White's eighth trip to Las Vegas, White met with CN, the Wells Fargo investigator, and MHB, the supervisor of White's direct supervisor. The investigator had called White's direct supervisor, but he was on vacation. MHB took the call and set up a conference room where the investigator could interview White. The investigator did not inform MHB of the nature of the inquiry, and MHB did not give White any notice or warning that he was about to meet with CN. MHB simply asked White to come into the conference room when CN arrived.⁹⁴

During the meeting, CN talked with White, while MHB observed.⁹⁵ CN and MHB described the meeting as cordial and non-confrontational.⁹⁶ MHB testified that White may have felt stress but it was not outwardly visible.⁹⁷ White described the meeting in different terms, saying that CN accused him of committing a felony⁹⁸ and that the meeting "spun out of control from there."⁹⁹ White said he was in shock after the interview.¹⁰⁰

CN discussed the Bank Secrecy Act training that White had received and asked whether he knew what a CTR was. She mentioned two of White's withdrawals and then focused on White's three deposits to his Wells Fargo account on February 3, 19, and 27, asking why he made the deposits in the way that he did.¹⁰¹

According to MHB, White described coming back from Las Vegas with slightly more money than he had withdrawn to take with him to Las Vegas. MHB testified that White said that

⁹³ Hearing Tr. (CN) 510-13; JX-49.

⁹⁴ Hearing Tr. (White) 356-57; Hearing Tr. (MHB) 602, 611, 627; Hearing Tr. (CN) 513-15.

⁹⁵ Hearing Tr. (CN) 515.

⁹⁶ Hearing Tr. (CN) 515, 585-86; Hearing Tr. (MHB) 616.

⁹⁷ Hearing Tr. (MHB) 616.

⁹⁸ Hearing Tr. (White) 358, 361, 681-84.

⁹⁹ Hearing Tr. (White) 358.

¹⁰⁰ Hearing Tr. (White) 686-87.

¹⁰¹ Hearing Tr. (White) 356-57; Hearing Tr. (MHB) 612-13.

he made the three separate deposits because “he wanted to stay below \$10,000.”¹⁰² White explained that he had done nothing wrong, and he thought a larger cash deposit “would raise the red flags and somebody would call,”¹⁰³ and he wanted to avoid that.¹⁰⁴ According to MHB, White said that he held the rest of the cash in his safe deposit box.¹⁰⁵ White’s explanation for splitting up the deposits was “just that he wanted to stay below 10,000.”¹⁰⁶ MHB said that White did not seem clear about the details of when or how a CTR is filed,¹⁰⁷ but White made plain that he split the deposits into amounts below \$10,000 on purpose. And that purpose was to avoid raising a red flag and having someone call with questions.¹⁰⁸

CN’s testimony was consistent with MHB’s testimony in the essential details—she testified that White told her that he split up his deposits to be below \$10,000 on purpose so as to avoid questions.¹⁰⁹ Like MHB, she thought that White “did not express clear knowledge of how a CTR was completed,”¹¹⁰ but she thought that he had admitted intentionally breaking up the larger sum of money into amounts less than \$10,000.¹¹¹

Contradicting MHB and CN, White testified that he never admitted in the interview with CN that he made the three deposits below \$10,000 for a specific purpose.¹¹² He testified that he told CN, “[T]hat’s just how I wanted to make the deposits.”¹¹³ He reiterated that he made the three deposits “the way I wanted to put the money in.”¹¹⁴

In other regards, however, White’s testimony was consistent with MHB’s and CN’s testimony about the meeting. White confirmed that he admitted to CN that he knew “something happened” at \$10,000.¹¹⁵ When CN then asked what he thought might happen at \$10,000, White confirmed that he said it might set off a red flag and someone might ask about the source of the

¹⁰² Hearing Tr. (MHB) 614-15.

¹⁰³ Hearing Tr. (MHB) 613-15. *See also* Hearing Tr. (MHB) 619.

¹⁰⁴ Hearing Tr. (MHB) 652-53.

¹⁰⁵ Hearing Tr. (MHB) 613-15.

¹⁰⁶ Hearing Tr. (MHB) 625.

¹⁰⁷ Hearing Tr. (MHB) 615, 633-34.

¹⁰⁸ Hearing Tr. (MHB) 619, 625, 652-53.

¹⁰⁹ Hearing Tr. (CN) 517-18.

¹¹⁰ Hearing Tr. (CN) 517-18; JX-49.

¹¹¹ Hearing Tr. (CN) 518-21.

¹¹² Hearing Tr. (White) 680-81.

¹¹³ Hearing Tr. (White) 352.

¹¹⁴ Hearing Tr. (White) 359.

¹¹⁵ Hearing Tr. (White) 358, 681.

money.¹¹⁶ He testified at the hearing, however, that at the time of the meeting with CN he had “no clue” about CTRs.¹¹⁷

In that meeting, White described the three deposits at Wells Fargo as the return of the money he had taken to Las Vegas plus a small amount of additional money.¹¹⁸ He said nothing about the three credit union deposits totaling nearly \$20,000. He also said nothing about having additional gambling winnings from the same Las Vegas trip in a safe at his home.¹¹⁹

CN asked White if he wanted to make an additional statement regarding the matters they discussed in the interview. He declined to do so.¹²⁰

After White left the room, CN and MHB talked for a few minutes. They both expressed concern, and CN said she wanted to take the matter to the next level. MHB was worried because he understood that making multiple deposits below \$10,000 was structuring. MHB interpreted what White said about what he had done as an admission to structuring.¹²¹ So did CN, the investigator, who later wrote in her report summarizing the meeting that White had admitted to structuring.¹²² By that, she meant that he had admitted facts that, in her opinion, amounted to structuring, not that he had said in so many words that he had structured the deposits.¹²³

MHB left for a vacation shortly after the meeting. Before he left, White asked him “what happens next?”¹²⁴ MHB told him that he did not know.¹²⁵

2. White’s Immediate Reaction and Termination

After his meeting with CN and MHB, White made two telephone calls. He called a former Wells Fargo compliance officer who was at that time a compliance consultant. He explained to her what had happened. She told him that when red flags pop up, one has to prove the source of the money. White next called a Wells Fargo in-house counsel and explained his

¹¹⁶ Hearing Tr. (White) 360.

¹¹⁷ Hearing Tr. (White) 359.

¹¹⁸ Hearing Tr. (White) 310-12, 358-59, 362-63; JX-17.

¹¹⁹ Hearing Tr. (MHB) 622-24.

¹²⁰ Hearing Tr. (MHB) 616.

¹²¹ Hearing Tr. (MHB) 618-20.

¹²² Hearing Tr. (CN) 557-59; JX-49, at 3.

¹²³ Hearing Tr. (CN) 529-30, 557-59, 584-85.

¹²⁴ Hearing Tr. (White) 689-91.

¹²⁵ Hearing Tr. (White) 687.

story. The lawyer similarly said that once White demonstrated the source of the money he “should be fine.”¹²⁶

White already had planned his eighth gambling trip to Las Vegas. When he left on March 19, 2015, a few days after the interview with CN, he thought things would work out so that the Firm would merely give him a warning not to do it again.¹²⁷

On March 25, 2015, after White’s return from his eighth gambling trip, Wells Fargo terminated White for cause, and his supervisor walked him out of the building. At that time, Wells Fargo only knew about White’s three cash deposits in his Wells Fargo account in February 2015. It did not know about White’s deposits at the credit union or the earlier cash deposits in 2014.¹²⁸

The day after he was terminated, White did four hours of Googling about the law related to structuring.¹²⁹ From that internet research and more than two years of later study of the law relating to structuring,¹³⁰ he testified, “I now know, ironclad, exactly what happens”¹³¹ and “all the ins and outs” of structuring.¹³²

3. White’s Electronic Correspondence with Friends

After he was fired, White exchanged electronic messages with multiple friends and colleagues about his termination. They expressed support and surprise at what happened.¹³³

White’s messages reveal that he made the three deposits at Wells Fargo below \$10,000 purposely, and these messages further corroborate the testimony of CN and MHB about their meeting with White. He admitted to his friends that he wanted to avoid suspicion and that he had said as much to CN and MHB.

In a March 26, 2015 message to BR, for example, White wrote, “Because all the deposits were so close to under 10 and I said I knew something happened at 10 or higher is the reason [I was fired].”¹³⁴ White claimed that he “didn’t know what . . . happened at 10,”¹³⁵ but that he

¹²⁶ Hearing Tr. (White) 392-93, 689-91.

¹²⁷ Hearing Tr. (White) 396-97, 400.

¹²⁸ Hearing Tr. (White) 691-92.

¹²⁹ Hearing Tr. (White) 371, 391-92.

¹³⁰ Hearing Tr. (White) 391-92, 396-98, 710-11.

¹³¹ Hearing Tr. (White) 371. *See also* Hearing Tr. (White) 694.

¹³² Hearing Tr. (White) 391-92.

¹³³ JX-51.

¹³⁴ Hearing Tr. (White) 370-71; JX-51, at 17.

¹³⁵ JX-51, at 17.

“knew something did.” White explained that he had told the Wells Fargo investigator that he thought “at 10K it triggers a red flag,” and that he had made his deposits “on purpose” because he “didn’t want to do anything to look suspicious.”¹³⁶ He explained to MB that when he was asked why he did not deposit the money all at once, he had told the investigator that he knew that depositing large amounts looked questionable.¹³⁷ White told another friend, CB, “I knew something happened at 10K that was a red flag and I didn’t want to look like I was doing something wrong.”¹³⁸ CB instantly knew what the issue was. He wrote back to White, “10,000 cash, IRS rules.”¹³⁹

These messages also show that White misled his friends by not revealing the full scope of his structuring activities. He did not reveal that in addition to his deposits at Wells Fargo he had made same-day deposits under \$10,000 at the credit union. White rallied support from his friends by misleadingly characterizing the three Wells Fargo deposits as though they were the entirety of his deposits related to the gambling trip. He told his friends that he had withdrawn \$27,000 to take to Las Vegas and then, when he returned, he had redeposited the same money plus a modest amount more. He said nothing about his credit union deposits or the additional cash that he had brought back but not deposited.¹⁴⁰ He wrote to AJ, for example, “I come back [from Las Vegas] with almost the same amount [I withdrew to take to Las Vegas] and deposit it like I want to. I deposit 9 grand and put the rest in my safety deposit box...then deposited another 9 grand 3 weeks later. The last day of the month I deposit the rest of what I took out....2 withdrawals...3 deposits. YOU ARE GONE. This is crazy.”¹⁴¹

The misleading nature of White’s story is demonstrated by his electronic correspondence with his friend MB. White told MB that he had taken \$27,000 out of his account and then came back with \$28,000. MB wondered in his response what was wrong with that. He had had a different impression of why White had been fired; MB had heard that White had “won big” and then deposited the money in installments over time.¹⁴² White’s correspondence with NA also demonstrates that the story he told friends was misleading. NA responded to his description of what he did by saying, “I didn’t realize the deposit and withdrawal numbers were so close.”¹⁴³ White did not reveal to NA that he had a lump sum of \$72,000 that he divided into multiple same-day deposits under \$10,000 at two different financial institutions.

¹³⁶ JX-51, at 17.

¹³⁷ JX-51, at 94; Hearing Tr. (White) 375-76.

¹³⁸ JX-51, at 27; Hearing Tr. (White) 374.

¹³⁹ JX-51, at 27; Hearing Tr. (White) 374.

¹⁴⁰ JX-51, at 71, 93, 97.

¹⁴¹ JX-51, at 1; Hearing Tr. (White) 314-16.

¹⁴² Hearing Tr. (MB) 421-24, 427-28; JX-51, at 93.

¹⁴³ JX-51, at 97.

4. White's Reinstatement Request

In April 2015, White pursued a Dispute Resolution Request, seeking to be reinstated at Wells Fargo. He submitted a document laying out his position. In it, he maintained that all he had done was replace the money he had withdrawn a few weeks earlier from his Wells Fargo account and put the remainder in his safe deposit box. He said that he understood now that the deposits triggered internal bank controls but he was not aware at the time of the deposits that they would raise any suspicions. He said that he did not intend to violate any laws and he believed that Wells Fargo had determined his activity to be legal.¹⁴⁴

White explained in this document that he did not immediately deposit the entire amount of money because he walked to work. He implied that he was uncomfortable carrying the entire amount to work and so took no more than \$10,000 at a time.¹⁴⁵

The document White submitted was misleading because it treated the three Wells Fargo deposits as though they were the entirety of the cash he had when he returned from Las Vegas. He did not disclose his additional winnings or what he did with those winnings. He disclosed nothing about his same-day credit union deposits.¹⁴⁶

White's explanation for making the cash deposits below \$10,000 on three separate days was also misleading. He implied that he was not comfortable carrying more than \$10,000 each day, but, as discussed above, on February 3, 2014, he carried a total of almost \$26,000 on his walk to work. He carried one packet of \$10,000 to deposit at Wells Fargo, a second \$10,000 packet of bills to deposit at the credit union, and another \$5,700 in loose bills. And again, on February 19, 2014, he carried two \$10,000 packets on his walk to work, one for deposit at Wells Fargo and one for deposit at the credit union.

The suggestion that he was worried about carrying more than \$10,000 is also inconsistent with his carrying \$72,000 in his backpack as he traveled back from Las Vegas. He testified that he was not concerned about carrying such a large sum of money because he was a "[p]retty big guy" traveling with two friends, and he did not have to declare the cash since he was not traveling outside the country.¹⁴⁷

5. White's Arbitration Claim for Wrongful Termination

White later pursued a claim in arbitration, alleging, among other things, that Wells Fargo had wrongfully terminated him and defamed him with its explanation of his termination on his Form U5 (the Uniform Termination Notice for Securities Industry Registration that the Firm filed). In his arbitration claim, White emphasized that he had returned his own money to his own

¹⁴⁴ JX-17, at 2-3.

¹⁴⁵ JX-17, at 2.

¹⁴⁶ JX-17, at 1-3.

¹⁴⁷ Hearing Tr. (White) 298.

account. He declared that he had deposited the money on three separate days, in three separate amounts just below \$10,000, because he walked to work and felt uncomfortable carrying more, repeating the same misleading explanation he had given in his Dispute Resolution Request seeking reinstatement.¹⁴⁸

6. White's Representations to FINRA Staff

In response to a Rule 8210 request for information, White submitted a document that repeated the story that he took around \$10,000 to work each day and made a Wells Fargo deposit because he was afraid of losing the whole amount if he was robbed when he walked to work. That description, like White's other descriptions of what he did, was misleading. It failed to mention the additional cash that White carried to deposit at his credit union or the additional cash that formed the \$72,000 lump sum from which he made the deposits.¹⁴⁹

H. White's Credibility

We do not credit White's testimony about how he handled the cash he brought back from his gambling trips or about his reasons for making the deposits the way that he did. We conclude that he did not tell the truth about his conduct either during the investigation or at the hearing.

1. White's Explanations for His Deposits Make No Sense

White summed up his explanations for his actions, saying, "It was all for convenience and [just] basically diversification."¹⁵⁰ We find, to the contrary, that White's actions served no apparent purpose except to break down a larger sum of currency into multiple smaller sums below \$10,000.

Multiple Deposits on Different Days. White claims that he made the deposits the way that he did because it was convenient for him.¹⁵¹ "[I]t's my money," he said. "I'm doing what is convenient for me."¹⁵²

But making multiple deposits required multiple trips to his Wells Fargo branch bank and to his credit union, carrying large sums of money. After his first "up" trip, for example, White carried almost \$26,000 on his walk to work. Then he carried the cash to his Wells Fargo branch bank, where he deposited \$9,900. Then he walked with the rest of the money to his credit union to make a deposit of \$9,900. He returned to the Wells Fargo branch the next day and deposited \$5,700.

¹⁴⁸ JX-18, at 1-4.

¹⁴⁹ JX-19, at 2; JX-30, at 5.

¹⁵⁰ Hearing Tr. (White) 395-96.

¹⁵¹ Hearing Tr. (White) 396, 719-21.

¹⁵² Hearing Tr. (White) 356.

Similarly, after his second “up” trip, when he returned with \$72,000 in cash, White made multiple trips to his bank and credit union. On February 3, 2014, White walked to work with approximately \$26,000, leaving the remaining \$45,000 from his gambling trip in a home safe. He took the money to his Wells Fargo branch bank and deposited \$9,900. Then he went to the credit union and deposited another \$9,900. On February 19, 2014, he made two more deposits of slightly less than \$10,000 in cash, one at Wells Fargo and one at the credit union. On February 27, 2014, he deposited \$9,500 in cash at Wells Fargo and \$3,100 in cash at his credit union.

White still had not deposited all the cash he had when he returned from his trip, but, when he did not have enough money in his Wells Fargo account at the end of the month to cover some markers coming due, he did not deposit the cash to cover the markers. Instead, he transferred \$5,000 from his brokerage account to his Wells Fargo account. White could have managed his funds more easily if he had deposited enough cash in his Wells Fargo account at the outset, knowing that the markers were coming due.¹⁵³

The “convenience” explanation is also implausible in light of the fact that White has a car. As he testified, he could have taken the entire \$72,000, and driven with it to his office.¹⁵⁴ He could then have deposited it all at Wells Fargo or apportioned the cash between Wells Fargo and the credit union without running the risk of being robbed on his walk to work.

We do not credit White’s claim that he made the deposits the way that he did because it was convenient. We find that he did it in order to keep his cash deposits on any given day with either financial institution under \$10,000.

Same-Day Deposits at Two Financial Institutions. White claimed that he made deposits at his credit union on the same day that he made deposits in his Wells Fargo account because he wanted to take advantage of the better interest rate the money could earn at the credit union on a CD.¹⁵⁵ White’s credit union statement for the period April 1, 2014, to June 30, 2014, shows that a depositor earned 0.550% on a twelve-month CD. There was no evidence as to how that might have compared to what White was earning from his brokerage account investments. However, White’s income tax returns show that he had more than \$240,000 in capital gains in 2014 and more than \$680,000 in capital gains in 2015.¹⁵⁶ The earnings on a \$10,000 credit union CD would have been paltry to White.

Moreover, the notion that White made the credit union deposits to take advantage of the interest rate is inconsistent with his assertion—intended to rebut the inference that he wanted to

¹⁵³ Hearing Tr. (White) 347-50.

¹⁵⁴ Hearing Tr. (White) 350-51.

¹⁵⁵ Hearing Tr. (White) 378-79.

¹⁵⁶ JX-14; JX-15.

evade income taxes—“I was making 550,000 a year. I’m not worried about 10,000 here, or 5,000 there. I don’t care.”¹⁵⁷

We further note that White retained thousands of dollars in cash, either in his safe deposit box or in a safe at home, where the money earned nothing. It is doubtful that a financial professional would be satisfied with his money earning nothing, and it belies his assertion that he made deposits at the credit union because the interest rate on CDs was so attractive.

White also claimed that he deposited some of the cash at the credit union because he wanted to diversify and have less in the stock market.¹⁵⁸ If that were true, then it is difficult to understand why White did not deposit much more of the cash at the credit union to begin with, instead of dribbling the money into his account in deposits all below \$10,000. The claim is further belied by the small amount he deposited in the credit union—less than \$30,000—compared to the assets he held in his brokerage account, which had a net asset value of approximately \$1 million.¹⁵⁹ The CDs did not provide significant diversification.

We do not credit White’s claim that he made the deposits at the credit union to take advantage of a better interest rate or to diversify. We find that White made the same-day deposits at the credit union because he wanted to spread his deposits between the two financial institutions and prevent either of them from knowing the full extent of his cash deposits.

Removing Bills from the \$10,000 Packets. Seven out of the nine deposits were just barely under \$10,000.¹⁶⁰ White admitted that in at least four of those seven instances he broke the wrapper on a \$10,000 packet and removed a few one hundred dollar bills before making the deposit. None of his explanations for removing the bills from the packet before making the deposit is credible.

On May 5, 2014, White deposited \$9,900 in cash at Wells Fargo and \$9,900 in cash at his credit union. In each case, he broke the wrapper on a \$10,000 packet of cash and removed a single one hundred dollar bill. He claimed that he wanted spending money in his pocket, but that morning he already had \$5,700 in loose cash in his pocket. He had no need to remove a one hundred dollar bill from each cash packet when he had so much cash already.

On February 3, 2015, White deposited \$9,900 in cash at Wells Fargo and \$9,900 in cash at his credit union. In each case he broke the wrapper on a \$10,000 packet of cash and kept a one hundred dollar bill. Again, he said he wanted pocket cash. But he was carrying with him \$5–6,000 in loose cash that day, which he placed in his safe deposit box (where he had available another \$5–6,000 in loose cash). White also had thousands of dollars in cash in his safe at home.

¹⁵⁷ Hearing Tr. (White) 356.

¹⁵⁸ Hearing Tr. (White) 377-78.

¹⁵⁹ JX-5, at 15.

¹⁶⁰ Hearing Tr. (White) 717-18.

As he agreed, he could have taken cash from his safe or his safe deposit box.¹⁶¹ White did not need to remove a one hundred dollar bill from the deposit to obtain pocket cash. Moreover, there is no reason that he could not have obtained whatever he needed as pocket cash from the first packet and then deposited the entire packet of \$10,000 at his credit union—or vice versa. The only purpose served by removing a one hundred dollar bill from each packet was to keep each deposit below \$10,000.

White additionally explained his actions in connection with the deposits on February 3, 2015, as his “habit.” He said, “it’s habit, it’s what I do.”¹⁶² But it was a recently acquired habit. He had never had as much cash in his hands as \$10,000 before his first successful gambling trip.¹⁶³

2. White Misled Wells Fargo and FINRA Staff About His Deposits

In connection with his attempt to be reinstated and his arbitration claim against Wells Fargo for wrongful termination, White presented a misleading description of what he did. He portrayed the three deposits at Wells Fargo in February 2015 as though they constituted the entirety of the cash he returned with from Las Vegas. He also implied that he deposited the money on three separate days because he did not feel comfortable carrying more than \$10,000 when he walked to work, when, in fact, he had carried much more. He repeated the misleading story when FINRA staff investigated his misconduct.¹⁶⁴

3. White Told Inconsistent Stories

As discussed above, White told CN, the Wells Fargo investigator, that he had made the deposits of less than \$10,000 to avoid raising a red flag and triggering further inquiry. He indicated to her that he placed the funds that he did not immediately deposit into his safe deposit box.

Later in the investigation, however, and at the hearing, he told a different story. He claimed that he retained the undeposited monies in a safe at home. That claim was necessary to his story that he made the deposits in smaller increments because he was not comfortable carrying more than \$10,000 on his walk to work. As noted below in the legal discussion, White’s later story somewhat resembles the explanation found credible in a case where the district court dismissed a charge of unlawful structuring. We do not find White’s version of the story credible.

¹⁶¹ Hearing Tr. (White) 322-25.

¹⁶² Hearing Tr. (White) 324.

¹⁶³ Hearing Tr. (White) 324-25.

¹⁶⁴ JX-17, at 2; JX-18, at 1-4; JX-19, at 2.

4. White's Claim That He Had "No Clue" About CTRs, Despite His Training, Is Not Credible

White claims that he knew that something would happen at the \$10,000 point, but that he "had no clue what it was."¹⁶⁵ "I . . . had no idea," he said, "that it was a report going to the IRS."¹⁶⁶ According to White, prior to his termination, he knew the term structuring but did not know details like "\$10,000 and one penny" trigger a CTR.¹⁶⁷ "Through the years of the training I had heard the term [CTR]. But I did not know specifically the ins and outs of what occurred around a CTR, no."¹⁶⁸

White's assertion that he had "no clue" regarding CTRs is not credible in light of his background as an MBA, years of training on the Bank Secrecy Act and structuring, and apparent professional competence. He was repeatedly informed that structuring currency transactions to evade CTR reporting is prohibited and can lead to serious sanctions, including criminal sanctions. He could not have been oblivious to that information or have misunderstood it.

White may not have remembered the details, but he knew "something happened" at \$10,000. As JS, Wells Fargo's current director of the group responsible for ensuring that the Firm files appropriate CTRs, testified, people in the financial industry have a general understanding that there is a requirement that comes into play for a large cash transaction—and they know the figure \$10,000.

5. White Gave Flimsy Excuses During Testimony

White attempted to create the false impression that it was reasonable that he would not know about CTR reporting from the training he received. His testimony reveals only his continuing refusal to acknowledge the clear import of that training.

White testified that he did not think the CTR requirement was applicable to what he did with his "own money."¹⁶⁹ He said repeatedly:

- "It's just my money."¹⁷⁰
- "[T]his is just me depositing my own money."¹⁷¹

¹⁶⁵ Hearing Tr. (White) 360.

¹⁶⁶ Hearing Tr. (White) 355, 358-59.

¹⁶⁷ Hearing Tr. (White) 397.

¹⁶⁸ Hearing Tr. (White) 680.

¹⁶⁹ Hearing Tr. (White) 318.

¹⁷⁰ Hearing Tr. (White) 325-26.

¹⁷¹ Hearing Tr. (White) 331.

- “I’m not thinking CTRs. . . . it’s just my money.”¹⁷²
- “I’m dealing with my own money.”¹⁷³
- “[T]his is my money.”¹⁷⁴
- “[I]n my mind [the structuring law] never applied to [my] own money.”¹⁷⁵
- “I never looked at the policies because it’s my money.”¹⁷⁶
- “This was my own personal money.”¹⁷⁷
- “It is your money. I thought you could spend it, save it, put it under your mattress, throw it out your window, blow it in Vegas. I thought you could do whatever you wanted to do with it.”¹⁷⁸

Given that White received training year after year that clearly stated that a CTR filing is required for *all* currency transactions in excess of \$10,000, White could not possibly have believed that *his* transactions were somehow exempt.

White also said he did not think the training on the Bank Secrecy Act applied to him. “We’re not bank tellers,” he said. “[I]n my mind it was always something that a bank teller or a bank manager . . . it’s your responsibility to know this.”¹⁷⁹ Again, White’s assertion rings hollow. He had training on CTRs and structuring every year, along with every other Wells Fargo employee, regardless of the nature of the employee’s work.

White claimed that the Bank Secrecy Act training was focused on money that was involved in wrongdoing. He did not think it applied to him because he knew he was not a money launderer and he was not from a country that was of concern to the Office of Foreign Assets

¹⁷² Hearing Tr. (White) 338.

¹⁷³ Hearing Tr. (White) 344.

¹⁷⁴ Hearing Tr. (White) 345.

¹⁷⁵ Hearing Tr. (White) 395.

¹⁷⁶ Hearing Tr. (White) 353.

¹⁷⁷ Hearing Tr. (White) 361.

¹⁷⁸ Hearing Tr. (White) 722. As discussed below in the Conclusions section, White was not required to deposit all his money at once or to deposit it in any particular way. But he was required to have a credible legitimate explanation for consistently making deposits below \$10,000 and for dividing the deposits between two different financial institutions each time. He fails to recognize that the law regarding structuring never prevented him from doing anything. He always had the freedom to make deposits as he wished—as long as he did not make them with the intent to evade the reporting requirement.

¹⁷⁹ Hearing Tr. (White) 361.

Control. He never thought “this obscure law” having to do with protecting the United States from terrorism would have anything to do with his gambling winnings.¹⁸⁰

Contrary to White’s claim that the currency reporting requirements are “obscure,” JS testified that CTRs were “one of the core elements” of every anti-money laundering training he had seen at Wells Fargo and at other companies.¹⁸¹ Moreover, the filing of CTRs is what permits government authorities to investigate *whether* the money is connected to illegal activities. It would make no sense for the currency reporting requirement to apply only to transactions *known* to involve money laundering and terrorism activities. A financial institution could never know whether a report needed to be filed because it would not know if the structuring concealed other misconduct. White’s claim that he did not think the reporting requirement applied to him because he was not involved in money laundering or terrorism is absurd on its face.

MHB, White’s second-level supervisor, testified that the training on the Bank Secrecy Act and CTR requirements made it clear to him that currency transactions over \$10,000 had to be reported. When asked whether in his view whether it would be possible for someone to complete that training year after year and not know those requirements, MHB said, “No.”¹⁸²

I. MHB’s Credibility

We find the testimony of MHB, White’s second-level supervisor, credible. He was straightforward in describing his recollection of the meeting between CN and White, and his testimony was consistent with CN’s. In light of his evident regard for White and sadness about terminating White’s employment at Wells Fargo, he had no reason to misrepresent what White said to CN.

MHB testified that he understood that White split the deposits because he wanted to stay below the \$10,000 threshold. According to MHB, White told CN that he thought that a \$10,000 deposit would raise a red flag and cause questions to be asked.

J. CN’s Credibility

White and CN remembered details of their meeting differently. For example, he said that she was the first to bring up the \$10,000 figure;¹⁸³ she thought that he brought it up first.¹⁸⁴

¹⁸⁰ Hearing Tr. (White) 384-85, 395, 712.

¹⁸¹ Hearing Tr. (JS) 151.

¹⁸² Hearing Tr. (MHB) 609.

¹⁸³ Hearing Tr. (White) 358, 361.

¹⁸⁴ Hearing Tr. (CN) 518. CN testified that she would not have brought up the \$10,000 figure first, without White bringing it up, because she needed “[t]o ensure that he understood what the threshold is before moving on in an interview discussing structuring activity, it’s important to establish that understanding. I would not have said the \$10,000 or over \$10,000 because I would need to understand that he understood what that is.” Hearing Tr. (CN) 518.

White said that CN told him that he had committed a felony;¹⁸⁵ she said that she conducted a fact-finding interview and did not express judgments about what she heard.¹⁸⁶ We do not attempt to resolve who said \$10,000 first or whether CN told White he had committed a felony because it is not material to our decision.

On two essential points, CN's testimony is consistent with White's (and with MHB's). First, both CN and White testified that he acknowledged to her that he knew "something happened" at \$10,000. And, second, they both testified that White thought at the \$10,000 threshold a red flag would be raised and questions would be asked.¹⁸⁷ Thus, when first asked about the three deposits at Wells Fargo, White indicated he knew that \$10,000 was a threshold at which a red flag would be raised, triggering some kind of inquiry.

III. CONCLUSIONS

A. Unlawful Structuring

Structuring cash transactions for the purpose of evading federal reporting requirements is a crime.¹⁸⁸ The crime of structuring has three elements: (i) the defendant must in fact have engaged in acts of structuring; (ii) he must have done so with knowledge that the financial institutions involved were legally obligated to report currency transactions in excess of \$10,000; and (iii) he must have acted with the intent to evade this reporting requirement.¹⁸⁹

For almost fifty years, federal law has required financial institutions to file reports on currency transactions exceeding \$10,000. Congress first imposed the reporting requirement in 1970. Initially, the focus was on preventing tax evasion, and reports were filed with the Internal Revenue Service. Later the focus of the Bank Secrecy Act expanded to include anti-terrorism and money laundering concerns, and reports are now filed with the Financial Crimes Enforcement Network. As first enacted, the Bank Secrecy Act did not explicitly prohibit a person from structuring cash transactions so that no one transaction exceeded \$10,000. The absence of such a prohibition made it difficult to enforce the reporting requirement. In 1986, Congress

¹⁸⁵ Hearing Tr. (White) 358.

¹⁸⁶ Hearing Tr. (CN) 585. CN testified that she invited White to "[t]ell me a little bit about what I see. And I allowed him to explain and tell me the story. . . . [A]t that point I'm not judging," she said. "I'm just taking it in and getting an understanding of the intent behind or the rationale behind his actions." Hearing Tr. (CN) 585. MHB testified that CN did not say that White had committed a felony. Hearing Tr. (MHB) 616.

¹⁸⁷ Hearing Tr. (White) 359-60; Hearing Tr. (CN) 554-56.

¹⁸⁸ 31 U.S.C. § 5324(a).

¹⁸⁹ *United States v. Nguyen*, 854 F.3d 276, 281 (5th Cir. 2017); *United States v. Taylor*, 816 F.3d 12, 22 (2d Cir. 2016); *United States v. MacPherson*, 424 F.3d 183, 189 (2d Cir. 2005).

closed that loophole by specifically criminalizing the structuring of currency transactions for the purpose of evading the reporting requirements.¹⁹⁰

“Originally, only a person who ‘willfully’ violated the prohibition on structuring was subject to criminal penalties.”¹⁹¹ In 1994, the Supreme Court held in *Ratzlaf v. United States* that for structuring to be “willful,” the defendant had to know that structuring itself was unlawful.¹⁹² Congress subsequently eliminated willfulness as a requirement of a criminal structuring violation. Now a person does not have to know that structuring deposits in order to evade the reporting requirement is itself unlawful. Therefore, to be criminally liable for structuring, a person need only know that there is a reporting requirement—and intend to evade it.¹⁹³

In a criminal case, the three elements of structuring must be proven beyond a reasonable doubt.¹⁹⁴ In this disciplinary case, however, the standard of proof is a preponderance of the evidence.¹⁹⁵ The preponderance standard requires only that the complainant “prove it is more

¹⁹⁰ See the discussion in *MacPherson*, 424 F.3d at 188-89, of the history of the law relating to currency transaction reporting and structuring. See also *Taylor*, 816 F.3d at 19-20 and n.7.

¹⁹¹ *MacPherson*, 424 F.3d at 188.

¹⁹² *Ratzlaf v. United States*, 510 U.S. 135 (1994).

¹⁹³ *MacPherson*, 424 F.3d at 188-89; *United States v. Ismail*, 97 F.3d 50, 56-57 (4th Cir. 1996); *United States v. 79,650.00 Seized from Bank of Am. Account Ending in 8247 at Bank of Am.*, 2010 U.S. Dist. LEXIS 30608, at *8 (E.D. Va. Mar. 29, 2010) (“*Seventy-Nine Thousand*”). See also <https://www.justice.gov/usam/criminal-resource-manual-2033-structuring>. At one point in the investigation, White mistakenly defended his actions by saying that there is no evidence that he knew his structuring was unlawful, citing post-*Ratzlaf* cases prior to the elimination of willfulness as a requirement for a criminal violation. See JX-30, at 9 (citing *United States v. Gabel*, 85 F.3d 1217 (7th Cir. 1996)). Knowledge that structuring is unlawful is no longer required.

¹⁹⁴ *Taylor*, 816 F.3d at 12; *MacPherson*, 424 F.3d at 189; *United States v. Simon*, 85 F.3d 906, 908 (2d Cir. 1996), cert. denied, 519 U.S. 1011 (1996).

If a person breaks up currency transactions into smaller transactions in order to cause a domestic financial institution to fail to file a CTR, the funds involved in the transactions become forfeitable. For purposes of a forfeiture action by the government to seize funds that were purportedly involved in structured transactions, the standard of proof is a preponderance of the evidence. The same three elements of structuring must be proven, but by the lower standard. *United States v. Sixty-One Thousand Nine Hundred Dollars and No Cents (\$61,900.00) Seized from Account No. XXXXX4429*, 802 F. Supp. 2d 451, 452 (E.D.N.Y. 2011) (“*Sixty-One Thousand*”).

¹⁹⁵ See *Joseph R. Butler*, Exchange Act Release No. 77984, 2016 SEC LEXIS 1989, at *16 (June 2, 2016) (applying a preponderance of the evidence standard in FINRA disciplinary proceedings); *Luis Miguel Cespedes*, Exchange Act Release No. 59404, 2009 SEC LEXIS 368, at *18 & n.11 (Feb. 13, 2009) (citing *David M. Levine*, 57 S.E.C. 50, 73 n.42 (2003) (holding that preponderance of the evidence is the standard of proof in self-regulatory organization (“SRO”) disciplinary proceedings)); *Kirk A. Knapp*, 51 S.E.C. 115, 130 n.65 (1992) (stating that “[t]he correct standard is preponderance of the evidence” in an SRO proceeding); *Dep’t of Enforcement v. Claggett*, No. 2005000631501, 2007 FINRA Discip. LEXIS 2, at *25 (NAC Sept. 28, 2007) (Enforcement had burden of proof, which it had to satisfy by a preponderance of the evidence). Cf. *Nguyen*, 854 F.3d at 281 (sentencing judge found defendant participated in the uncharged offense of currency structuring by a preponderance of the evidence, permitting the imposition of a non-Guideline sentence).

likely than not” that the allegations are true.¹⁹⁶ Essentially, the balance of the evidence must tip at least slightly in favor of the complainant.

B. White Engaged in Unlawful Structuring

Enforcement proved by a preponderance of the evidence the three elements of unlawful structuring. We conclude that it is more likely than not that White (i) deposited his cash in amounts below \$10,000 because (ii) he was aware from his training that a report was required to be filed at the \$10,000 threshold, and (iii) he wanted to avoid having such a report filed in connection with his deposits of gambling winnings.

1. White Structured His Cash Deposits

The first element of unlawful structuring is actual structuring of currency transactions, as opposed to coincidental deposits of \$10,000 or less. White’s deposits were not coincidental. He structured his transactions, meaning he purposely arranged them. Even he declared, in a somewhat defiant tone, that he made the deposits the way that he wanted to make them.¹⁹⁷

White made nine deposits below \$10,000 in two different financial institutions. Twice, he broke up the lump sum of cash he brought back from Las Vegas into smaller, separate deposits, each deposit less than \$10,000. Four times, he made a pair of split deposits on the same day, one at Wells Fargo and one at his credit union. As a result, neither financial institution knew the full extent of his currency transactions on those days. If the split deposits had been aggregated they would have totaled more than \$10,000 and triggered the requirement to file a CTR.

2. White Knew About the \$10,000 Threshold and CTR Filing Requirement

The second element of unlawful structuring is knowledge. A person is not liable for structuring if he does not know of the currency reporting requirement, since knowledge is a predicate for the intent to evade.¹⁹⁸ However, the bar for the knowledge element is low, and may

¹⁹⁶ See *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 329 (2007) (stating that, at trial, proof of scienter under the preponderance standard requires showing that allegation is “more likely than not”); *Herman & MacLean v. Huddleston*, 459 U.S. 375, 389-90 (1983) (discussing preponderance standard and holding that it applies to civil damage actions for securities fraud); *United States v. Gumesindo Montano*, 250 F.3d 709, 713 (9th Cir. 2001) (under the preponderance of the evidence standard, the relevant facts must be shown to be more likely than not); *Days Inn Worldwide, Inc. v. Sonia Invs.*, 2007 U.S. Dist. LEXIS 29689, at *11 n.6 (N.D. Tex. Apr. 23, 2007) (preponderance of the evidence means to prove the claim or element is more likely than not).

¹⁹⁷ White said, “This is my money. I can do with it – It was really hard to get that money from Vegas to Charlotte. It was very difficult to win that money. . . . This is my money. I’m thrilled about it. It is my money. It is mine. I don’t have to – it is not Russia. . . . I just did it the way that I wanted to do it.” Hearing Tr. (White) 723-24.

¹⁹⁸ *Seventy-Nine Thousand*, 2010 U.S. Dist. LEXIS 30608, at *14-15, 17.

be satisfied if the defendant knows that financial institutions are legally obligated to report currency transactions over \$10,000.¹⁹⁹

White had an MBA, and, in the context of his employment in the financial industry, he took extensive training over the course of many years regarding the Bank Secrecy Act, CTRs, and structuring. In that training he was tested on the adequacy of his understanding, and he correctly answered specific questions on structuring and CTRs. White also admitted knowing that “something happened” at roughly a \$10,000 threshold, although he did not know the details of how a CTR is filed or whether the threshold was at \$10,000 or in excess of \$10,000.

We conclude that White’s professional background and training are sufficient to establish the knowledge element of unlawful structuring. White, like others in the financial industry, generally knew that financial institutions are required by law to report cash transactions of a certain size, and he thought that \$10,000 was the trigger. Courts have stated that the business background of a defendant, when combined with evidence of structuring itself, can be sufficient to infer knowledge of a bank’s currency reporting requirement.²⁰⁰ When willfulness was required to impose criminal sanctions, even willfulness (knowledge that structuring is unlawful) could be inferred from a defendant’s background and professional role.²⁰¹ “[S]pecial knowledge conferred by a defendant’s professional status is evidence that the defendant knew of the illegality of structuring a currency transaction.”²⁰²

White asserts that he did not know the details of when and how a CTR is filed and did not know that the requirement for a CTR is triggered only where a currency transaction *exceeds* \$10,000, rather than at the \$10,000 mark. He apparently means to imply that he did not have sufficient knowledge to be held liable for structuring.

It is undisputed, however, that White was informed multiple times over the years in extensive training that banks and other financial institutions are legally required to file a CTR in connection with every currency transaction in excess of \$10,000. He cannot escape liability by, essentially, claiming he does not remember the details of that training. In any event, we conclude that it was not necessary for him to know in detail the mechanisms for filing a CTR or whether a CTR is required at the \$10,000 mark or the \$10,000-plus-a-penny mark. Those details are not material. White had a general sense that a report was required to be filed at the \$10,000 threshold. He knew enough to develop the intent to avoid the filing of such a report.

¹⁹⁹ *Sixty-One Thousand*, 802 F. Supp. 2d at 470 & n.34.

²⁰⁰ *Nguyen*, 854 F.3d at 282 & n.3.

²⁰¹ *MacPherson*, 424 F.3d at 194-95 (police officer and licensed real estate salesperson); *United States v. Scholl*, 166 F.3d 964, 968, 979 (9th Cir. 1999) (state court judge); *United States v. Simon*, 85 F.3d 906, 910-11 (2d Cir. 1996) (stockbroker); *United States v. Tipton*, 56 F.3d 1009, 1013 (9th Cir. 1995) (bank officials).

²⁰² *United States v. Beidler*, 110 F.3d 1064, 1068 (4th Cir. 1997).

3. White Intended to Evade the CTR Filing Requirement

The third element of unlawful structuring requires evidence from which intent can reasonably be inferred.²⁰³ Direct proof of intent is almost never available, but intent may be established by circumstantial evidence, including the individual's acts and words, and all the surrounding circumstances.²⁰⁴ Sometimes, the pattern of structuring itself provides sufficient evidence of intent, as where there are too many deposits under \$10,000 to believe that they were not made for the purpose of evading the reporting requirement.²⁰⁵ A person who adequately demonstrates other legitimate reasons for a pattern of deposits below the threshold amount, however, will not be held liable for unlawful structuring.²⁰⁶

The pattern of White's deposits strongly suggests that he intended to avoid the filing of a report on his deposits. White engaged in a consistent pattern of taking a single lump sum of cash when he returned from his gambling trips with winnings and splitting it up into smaller deposits of less than \$10,000. When he first returned with winnings, he split the money into three deposits of less than \$10,000 on two consecutive days. The second time he returned with winnings, he made six deposits, each less than \$10,000, over the course of several weeks and still retained some of the money, either in a safe at home or his safe deposit box. Breaking up a lump sum into smaller transactions can be a sign of intent to evade the reporting requirement because there is no obvious reason not to deposit the lump sum all at once. In contrast, a person who runs a cash

²⁰³ *Id.*

²⁰⁴ 3-50B Modern Federal Jury Instructions – Criminal § 50B.05, Instruction 50B-23.

²⁰⁵ *Taylor*, 816 F.3d at 23-24.

²⁰⁶ See *Sixty-One Thousand*, 802 F. Supp. 2d 451, in which the government sought the forfeiture of hundreds of thousands of dollars in bank accounts held by the owners of a strip club, which was a cash business. After a bench trial, the district court dismissed the case, holding that the government had failed to prove intent to evade the CTR reporting requirement. The court found the strip club owners' explanations credible and logical. One of the owners made almost daily trips to his bank on foot carrying the amount of cash that he felt comfortable carrying, usually around \$8,000. He explained that it was his habit to carry no more than \$8,000 because he had been robbed once.

We note that, after his internet research and study of the structuring cases, White changed his story such that it now bears some resemblance to the strip club owner's story. When White spoke to the Wells Fargo investigator and rallied his friends to his side, he did not mention breaking the lump sum into smaller deposits because he walked to work and was afraid of being robbed; rather, he told them that he made the separate deposits the way he did to avoid suspicion, and that he put the cash he did not immediately deposit in his safe deposit box. At the hearing, however, White claimed he kept most of the money at home in a safe and explained his multiple deposits below \$10,000 as due to his fear of being robbed on his walk to work. He also claimed that he removed a one hundred dollar bill or two from the \$10,000 wrapped packets because it was just his "habit."

Unlike the strip club owner, however, who made all his deposits at the same bank, White split his deposits between his bank and the credit union, which concealed from the two financial institutions the full extent of his cash deposits. White deprived either financial institution of the information necessary to aggregate and report his same day transactions in excess of \$10,000.

business such as a liquor store and who makes multiple deposits below \$10,000 may be doing so to pay bills and to routinely and safely move the cash into the banking system as it is received.²⁰⁷

Furthermore, when White split the same-day deposits between two different financial institutions, the result was that neither financial institution was aware of the full extent of his currency transactions. Splitting same-day deposits between two financial institutions is another sign of intent, because it has the effect of concealing the full extent of a person's currency transactions.²⁰⁸

White visited his safe deposit box every time that he made a deposit from his second successful gambling trip. Wells Fargo identified this kind of behavior in its compliance guidelines for White's business unit as a suspicious activity that would raise a red flag and require further investigation. Visiting a safe deposit box at the time of a cash deposit may mean that the person is holding more cash to be deposited in other transactions of less than \$10,000. White in fact admitted that he kept thousands of dollars in cash in his safe deposit box and home safe, and that he drew upon those supplies of cash in making multiple deposits below \$10,000.

In addition to the circumstances of the deposits, other facts strengthen the conclusion that White's purpose was to avoid the CTR filing requirement. When White met with CN he told her that he wanted to avoid raising a red flag and having someone ask questions. Both CN and MHB understood him to say that he purposely made the cash deposits below \$10,000. White also told some of his friends in electronic messages that he had purposely made the deposits below \$10,000 in order to avoid suspicion.

White counters by saying that he had no motive to avoid the CTR reporting requirement. He testified he had always paid all his taxes, and he was making so much money that he was not worried about paying taxes on his gambling winnings.²⁰⁹ We have insufficient evidence to

²⁰⁷ Contrast *MacPherson*, 424 F.3d at 191, where the defendant structured multiple smaller transactions from what was a single lump sum, with *Taylor*, 816 F.3d at 25, where the defendant owner of a liquor store routinely handled large amounts of cash and made deposits for immediate use to pay business and personal expenses. The jury verdict against the defendant in *MacPherson* for structuring was reinstated on appeal; the defendant's conviction in *Taylor* for structuring was overturned on appeal.

Contrast White's behavior with that in *Taylor*, 816 F.3d at 25. White behaved in a consistent manner—he always deposited less than \$10,000 in cash. The defendant liquor store owner in *Taylor* did *not* behave in a consistent manner. Although he made multiple currency transactions below \$10,000, during the same time period he also made deposits exceeding \$10,000.

²⁰⁸ See *Scholl*, 166 F.3d at 979, where the Ninth Circuit said, “Whenever Scholl made two deposits on the same day, he made the deposits at different banks. By using different banks, he concealed from each bank the fact that he was making multiple deposits.”

²⁰⁹ Hearing Tr. (White) 355-56, 389-90, 400.

evaluate his assertion that he always paid all the taxes that he owed,²¹⁰ and we note, in any event, that even wealthy people may engage in tax evasion.²¹¹

In any event, we need not determine what White's motive was for structuring his deposits to avoid the CTR filing requirement. While motive may provide evidence from which intent can be inferred, proof of motive is not required to find that a person engaged in unlawful structuring.²¹² We can conclude that White intended to evade the CTR filing requirement without knowing why he did it.²¹³

C. FINRA Rule 2010 Applies to White's Unlawful Structuring

White argues that FINRA Rule 2010 does not apply to his misconduct.²¹⁴ He notes that the Rule provides that a member firm is instructed to "observe high standards of commercial honor and just and equitable principles of trade" but that it also specifies "in the conduct of its business."²¹⁵ He acknowledges that Rule 2010 has been held to apply to business activities beyond the securities industry, but argues that bad faith must be shown where "the business

²¹⁰ There are special reporting requirements that apply to gambling losses and winnings, although we do not know whether White complied with them. *See Scholl*, 166 F.3d at 969, 973. In *Scholl*, a compulsive gambler was convicted of filing false tax returns and of unlawful structuring. According to the Ninth Circuit's opinion, the gambler's accountant had told him that both gambling winnings and gambling losses must be separately reported on his tax return. The Ninth Circuit also said that the Form 1040 Instructions Manual specifically stated, "You cannot offset [gambling] losses against winnings and report the difference." In that case, the defendant's false tax returns had failed to report both losses and wins.

White provided his 2014 and 2015 U.S. income tax returns in unsigned and undated form. On his 2014 return, he disclosed no gambling wins or losses, although he took four gambling trips to Las Vegas in 2014 and his first "up" trip occurred that year. On his 2015 return, he included gambling winnings of \$45,000 in his gross income, although, according to his hearing testimony, he gained \$45,000 on one trip that year and lost \$60,000 on his subsequent trip that same year. Based on that testimony, he would not have had \$45,000 income from gambling. Rather, he would have had a net loss. On his 2015 tax return, White did not separately report his wins and losses. JX-14; JX-15.

In any event, the income tax returns prove nothing about White's intentions at the time he made the structured deposits. The 2014 tax return was due in mid-April 2015, which was after Wells Fargo terminated White, and the 2015 tax return was due in mid-April 2016, when he knew that his conduct was being investigated. White had the opportunity to create tax returns after his structuring was discovered that were designed to support his claim that he did not intend to evade paying taxes.

²¹¹ *United States v. Helmsley*, 941 F.2d 71 (2d Cir. 1991), *cert. denied*, 502 U.S. 1091 (1992) (affirming conviction of wealthy businesswoman for tax evasion).

²¹² *Sixty-One Thousand*, 802 F. Supp. 2d at 470. "Intent and motive should never be confused. Motive is what prompts a person to act or fail to act. Intent refers only to the state of mind with which the act is done or omitted." *Id.* (quoting *United States v. Simpson*, 950 F. 2d 1519, 1525 (10th Cir. 1991)).

²¹³ *Id.* at 468.

²¹⁴ Resp. PH Br. 2 n.1, 24-27; Hearing Tr. (arguments by counsel) 654-58.

²¹⁵ Resp. PH Br. 24.

nexus is strained.”²¹⁶ He asserts that his deposits in his personal accounts “plainly” did not involve his “activities as a registered person,” and concludes that he did not act in bad faith.²¹⁷

We reject White’s argument. There is a nexus between White’s deposits and his business activities, as is reflected by the efforts of Wells Fargo to train each and every one of its employees on structuring and the Firm’s explicit policy prohibiting employees from structuring in their own personal accounts. Wells Fargo made plain that those who work in the financial industry have a heightened duty to comply with the laws and regulations governing that industry, and that the Firm had an interest in overseeing their compliance. Its reputation and business could be damaged if its employees failed to comply.

Furthermore, the Securities and Exchange Commission (“SEC”) has held that Rule 2010 may be violated if the respondent has acted *either* in bad faith *or* unethically.²¹⁸ It has “long applied a disjunctive ‘bad faith or unethical conduct’ standard to disciplinary action under [Rule 2010].”²¹⁹ In the context of a Rule 2010 violation, the SEC has defined bad faith as a dishonest belief or purpose, and unethical conduct as conduct inconsistent with the moral norms or standards of professional conduct.²²⁰

In fact, White’s misconduct is a violation of Rule 2010 under either prong of the test. He made the deposits in bad faith because he made them with a dishonest purpose—to evade the law requiring the filing of reports on currency transactions over \$10,000. He also violated his Firm’s policies and ignored years of training on structuring, which breached the standards of professional conduct for registered persons.

D. The Expungement Order Does Not Preclude This Proceeding or Decision

White and Wells Fargo settled his claim against the Firm for wrongful termination, but he continued to pursue his accompanying claim seeking to expunge his Form U5. In March 2017, he obtained an award in a FINRA Dispute Resolution proceeding before a panel of arbitrators that expunged certain language from his Form U5 and modified the answers to certain questions on it.

White argues that the expungement award, which has now been confirmed by a North Carolina state court and put into effect, precludes the Hearing Panel from considering and determining the issues in this disciplinary proceeding. He characterizes the expungement award

²¹⁶ Resp. PH Br. 27.

²¹⁷ Resp. PH Br. 27.

²¹⁸ *Heath v. SEC*, 586 F.3d 122, 130, 131-34 (2d Cir. 2009).

²¹⁹ *Blair Alexander West*, Exchange Act Release No. 74030, 2015 SEC LEXIS 102, at *20 (Jan. 9, 2015).

²²⁰ *Edward S. Brokaw*, Exchange Act Release No. 70883, 2013 SEC LEXIS 3583, at *33 & n.72 (Nov. 15, 2013) (defining bad faith as (i) “dishonesty of belief or purpose” and (ii) “not simply bad judgment or negligence, but rather . . . the conscious doing of a wrong because of dishonest purpose or moral obliquity”). *See also Simpson v. Bear, Stearns & Co.*, No. C07950030, 1997 NASD Discip. LEXIS 13, at *27 n.9 (NAC Jan. 29, 1997).

as *res judicata*.²²¹ His counsel said at the hearing, “[Y]ou’ve got a prior determination by a FINRA panel in a prior arbitration.”²²² He argued that it would be “inappropriate” for the FINRA arbitration panel and this FINRA disciplinary proceeding panel to reach “different conclusions.”²²³

Res judicata is a legal doctrine that precludes re-litigation of the same cause of action. Generally, three elements must be satisfied:

- There must have been a final adjudication on the merits in the prior action by an adjudicator with jurisdiction.
- The two actions must involve either the same parties or persons in privity with the same parties.
- The cause of action in each case must be identical or must be such that it could have been resolved in the first action if it had been presented.²²⁴

In short, there must be (i) a final judgment on the merits; (ii) identity of the parties; and (iii) identity of the claims.²²⁵ The doctrine of *res judicata* “holds that a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in [the first] action.”²²⁶

As Respondent’s counsel appropriately conceded at the hearing, this disciplinary proceeding does not share an identity of parties with the arbitration proceeding and the cause of action here is different from the cause of action in the expungement proceeding.²²⁷ Respondent nevertheless asserts that *res judicata* precludes this proceeding in part because of an unusual context. Although Enforcement was not a party to the arbitration proceeding, it sought to stay that proceeding until resolution of this disciplinary proceeding, arguing that the arbitration panel

²²¹ Respondent argued at the hearing for the equivalent of a directed verdict or summary disposition on the basis of *res judicata*. That motion was denied. Respondent preserved the *res judicata* argument in his post-hearing brief. Hearing Tr. (arguments of counsel) 660-74; Resp. PH Br. 2 n.1; RX-20.

²²² Hearing Tr. (arguments of counsel) 661.

²²³ Hearing Tr. (arguments of counsel) 662.

²²⁴ *Williams v. W. Va. State Police*, 2018 U.S. Dist. LEXIS 12791, at *11-12 (S.D. W. Va. Jan. 26, 2018). *See also Reed v. Big W GS, LLC*, 2016 U.S. Dist. LEXIS 66425, at *15-16 (D. S.C. May 20, 2016); *Marine Bank v. Rice*, 2015 U.S. Dist. LEXIS 126191, at *9 (E.D. Mo. Sept. 22, 2015).

²²⁵ *Sai v. Smith*, 2018 U.S. Dist. LEXIS 11741, at *25 (N.D. Cal. Jan. 24, 2018).

²²⁶ *Brown Media Corp. v. K&L Gates, LLP*, 854 F.3d 150, 157 (2d Cir. 2017) (citations and internal quotations omitted).

²²⁷ Hearing Tr. (arguments of counsel) 661-62.

would be determining the issue to be resolved in this proceeding—whether White engaged in unlawful structuring.²²⁸

White’s assertion that *res judicata* applies here is mistaken. The basic elements necessary for *res judicata* are missing—there is no identity of the parties and no identity of the claims. The parties to the arbitration proceeding were White and Wells Fargo, not FINRA Enforcement. The claim that led to the expungement award was White’s claim that he had been defamed by the description of his termination entered onto his U5, while the claim here is that he violated FINRA Rule 2010 by engaging in unlawful structuring. Enforcement had no opportunity to present its evidence and arguments in that proceeding, and it should not be foreclosed from doing so here. Moreover, because the arbitration award contains no reasoning explaining the result, it is impossible to ascertain what, if anything, the arbitration panel might have determined about White’s misconduct. Finally, Enforcement’s arguments as a non-party in the arbitration proceeding in an attempt to obtain a stay of that proceeding are irrelevant to this proceeding.²²⁹

IV. SANCTIONS

A. General Approach

In considering the appropriate sanction for a violation, adjudicators in FINRA disciplinary proceedings look to FINRA’s Sanction Guidelines (“Guidelines”).²³⁰ The Guidelines are intended to be applied with attention to the regulatory mission of FINRA—to protect investors and strengthen market integrity. An important facet of FINRA’s regulatory function is to build public confidence in the financial markets. Requiring that participants in the industry adhere to high standards of ethics and commercial honor is one way of fulfilling that regulatory function.²³¹ The Guidelines also advise that disciplinary sanctions should be designed to promote the public interest. Through the disciplinary process, FINRA aims to strengthen market integrity by preventing and discouraging future misconduct by the particular respondent and by deterring others from engaging in similar misconduct.²³²

²²⁸ Hearing Tr. (arguments of counsel) 668; Order Granting in Part and Denying in Part Respondent Richard White’s Motion to Add Late-Published Exhibits (“May 5 Order”), at 3 (quoting from letter sent by Enforcement to the arbitration panel) (May 5, 2017).

²²⁹ In fact, if we were to consider Enforcement’s arguments in that different proceeding, we would also have to consider White’s arguments in that proceeding. In successfully opposing Enforcement’s request for a stay of the arbitration proceeding, Respondent took the opposite position from his position here. His counsel wrote, “The parties are different, the burdens of proof are different, the claims and allegations are different, and the evidence at issue, while overlapping, is different. In short, a ruling on the expungement hearing by this Panel could not and would not have any preclusive effect on Enforcement’s action.” May 5 Order, at 3 (quoting from letter sent by Respondent’s counsel to the arbitration panel).

²³⁰ FINRA Sanction Guidelines (2017), <http://www.finra.org/industry/sanction-guidelines>.

²³¹ Guidelines at 1, Overview.

²³² Guidelines at 2, General Principle 1.

The Guidelines contain recommendations for sanctions for many specific violations, depending on the circumstances.²³³ However, the Guidelines do not contain specific provisions applicable to structuring. For violations that are not addressed specifically, adjudicators are encouraged to look to the Guidelines for analogous violations. But we find no analogous violations in the Guidelines. For that reason, we turn to the overarching Principal Considerations and General Principles contained in the Guidelines, which are applicable in all cases. We are particularly instructed by the application of those overarching Principal Considerations and General Principles in the most recent decision of the National Adjudicatory Council (the “NAC”) in a structuring case, *Department of Enforcement v. Iida*,²³⁴ and the earlier Hearing Panel decisions in *Department of Enforcement v. Highland Financial, Ltd.*,²³⁵ *Department of Enforcement v. Trenham*,²³⁶ and *Department of Enforcement v. Baker*.²³⁷ Because Enforcement seeks a bar, and White argues against a bar, characterizing it as punitive, we also have considered other precedents relating to a professional bar as a sanction.

For the reasons discussed below, we have determined that it is in the public interest to bar White from associating with any FINRA member in any capacity.

B. Egregious Nature of Violation

In making our sanction determination, we first consider the egregious nature of the offense. White testified that he harmed no one but himself by splitting up his deposits the way he did. His reference to harming himself apparently referred to how his misconduct had ensnared him in this disciplinary proceeding.²³⁸ In asserting no one else was harmed, White characterized structuring in a benign way. That is not accurate.

Structuring is viewed by law enforcement officials as frequently connected with other crimes and misconduct. As a Treasury Department official wrote in a memorandum for special agents in charge of criminal investigations, “Individuals who are structuring cash deposits or withdrawals are more often than not doing so in an attempt to conceal the existence and source of the funds from the U.S. Government. While the structuring activities violate 31 U.S.C. § 5324, the activity should be treated as just an indicator that another violation of law might have occurred.”²³⁹ By evading the filing of a CTR, a person deprives law enforcement officials of information that would assist them in uncovering other misconduct.

²³³ Guidelines at 1, Overview; Guidelines at 2, General Principle 1.

²³⁴ *Dep’t of Enforcement v. Iida*, No. 2012033351801, 2016 FINRA Discip. LEXIS 32 (NAC May 18, 2016).

²³⁵ *Dep’t of Enforcement v. Highland Financial, Ltd.*, No. 2011025591601, 2013 FINRA Discip. LEXIS 39 (OHO Sept. 27, 2013).

²³⁶ *Dep’t of Enforcement v. Trenham*, No. 2007007377801, 2010 FINRA Discip. LEXIS 15 (OHO Mar. 18, 2010).

²³⁷ *Dep’t of Enforcement v. Baker*, No C8A010048, 2002 NASD Discip. LEXIS 40 (OHO Aug. 5, 2002).

²³⁸ Hearing Tr. (White) 704, 707.

²³⁹ JX-30, at 26.

Because structuring may conceal other unlawful activity, it is considered a serious offense and is classified as a felony. The seriousness of the misconduct is also reflected by the potential penalties for a criminal structuring violation, which include imprisonment for up to five years.²⁴⁰ As the hearing panel said in *Highland*, “Structuring is quintessential suspicious financial activity.”²⁴¹

C. Aggravating Factors

We consider it extremely aggravating that White engaged in unlawful structuring when he is a twenty-year veteran in the securities industry and had extensive training every year on the Bank Secrecy Act and the prohibition against structuring. Moreover, testing conducted in connection with that training showed that White understood the basic concepts of structuring and CTR reporting. This factor is similar to engaging in misconduct despite receiving prior warnings that it violated applicable laws and rules.²⁴² In *Baker*, an individual was barred for structuring in part because she had received training regarding CTR reporting requirements, which was treated as a prior warning.²⁴³ Where a respondent has in the past ignored training and warnings against prohibited conduct, there is strong reason to conclude he might do so again in the future.

We also find it aggravating that White engaged in the misconduct when his Firm had an express policy prohibiting employees from engaging in unlawful structuring in their own accounts, and when it warned its employees that improper transactions in their personal accounts in violation of the Bank Secrecy Act could lead to immediate termination. Adding to our concern about White’s potential for misconduct in the future, and increasing the degree of aggravation, when asked at the end of his testimony if he thought that his nine deposits under \$10,000 violated any Wells Fargo policy, White answered, “I don’t think I violated any policy.”²⁴⁴ Even though White claims he fully understands from his internet research and his two-year study of structuring and forfeiture cases the ins and outs of structuring, at the hearing he displayed no recognition that his conduct warranted inquiry, much less that his conduct was wrong.²⁴⁵ This increases the risk he presents of future misconduct.

White’s misconduct was plainly intentional, not reckless or negligent.²⁴⁶ He engaged in a pattern of misconduct, structuring his cash deposits each time he returned from Las Vegas with more money than he took so that the deposits would all be below \$10,000.²⁴⁷ White concealed

²⁴⁰ 31 U.S.C. § 5324(d).

²⁴¹ *Highland*, 2013 FINRA Discip. LEXIS 39, at *52.

²⁴² Guidelines at 8, Principal Consideration 14.

²⁴³ *Baker*, 2002 NASD Discip. LEXIS 40, at *30.

²⁴⁴ Hearing Tr. (White) 725.

²⁴⁵ Guidelines at 7, Principal Consideration 2.

²⁴⁶ Guidelines at 8, Principal Consideration 13.

²⁴⁷ Guidelines at 7, Principal Consideration 8.

his misconduct by making same-day deposits of less than \$10,000 that totaled in the aggregate more than \$10,000 at two unaffiliated financial institutions. Neither institution could know the total amount of his currency transactions.²⁴⁸ He also concealed the full extent of his misconduct from Wells Fargo and others by misleadingly describing his three deposits at Wells Fargo as though they were the entirety of his gambling winnings on his second “up” trip.²⁴⁹

In determining to bar White, we are also significantly influenced by our conclusion that he attempted to mislead Wells Fargo and FINRA staff during their investigations of his conduct, and our conclusion that he was not truthful in his hearing testimony. “[Respondent’s] untruthfulness at the hearing [is] disturbing and reflects strongly on his fitness to serve in the securities industry.”²⁵⁰ If a registered person cannot be relied upon to tell the truth to his or her firm or regulator, that person lacks the fundamental integrity necessary to participate in the securities industry, where trust and honesty are vital.²⁵¹

D. Potential Mitigating Factors

At least one mitigating factor exists. White was terminated by his Firm.²⁵² Where a respondent’s misconduct is serious, however, adjudicators may find—even considering a firm’s prior termination of the respondent’s employment for the misconduct—that there is no guarantee of changed behavior and therefore may impose a bar.²⁵³ In such a case, the fact that a respondent has been terminated has *de minimis* mitigating effect.²⁵⁴

²⁴⁸ Guidelines at 7, Principal Consideration 10.

²⁴⁹ Guidelines at 7, Principal Consideration 10.

²⁵⁰ *Dep’t of Enforcement v. Brian Michael White*, No. 2012033128703, 2015 FINRA Discip. LEXIS 48, at *64 (OHO June 30, 2015).

²⁵¹ *See Thomas S. Foti*, Exchange Act Release No. 31646, 1992 SEC LEXIS 3329, at *13 (Dec. 23, 1992) (lack of candor at hearing as an aggravating factor); *Dep’t of Mkt. Regulation v. Burch*, No. 2005000324301, 2011 FINRA Discip. LEXIS 16, at *26 (NAC July 28, 2011) (adverse credibility findings at hearing central to finding that respondent engaged in fraud); *Dist. Bus. Conduct Comm. v. Goodman*, No. C9B960013, 1999 NASD Discip. LEXIS 34, at *45-46 (NAC Nov. 9, 1999), *aff’d*, 54 S.E.C. 1203 (2001) (false hearing testimony aggravating factor); *Dep’t of Enforcement v. Josephthal & Co.*, No. C3A990071, 2001 NASD Discip. LEXIS 15, at *80 (OHO May 15, 2001) (false testimony at hearing considered in assessing sanctions).

White presented witnesses who vouched for his integrity and honesty. He argued that they demonstrated that he would never have intended to evade the filing of a CTR. Resp. Reply 1-2, 6. The character witnesses’ opinions cannot substitute for our judgment, based on careful consideration of the record. The witnesses did not have in front of them the evidence in the case, and much of what they did know about it they learned from White’s misleading narrative.

²⁵² *Iida*, 2016 FINRA Discip. LEXIS 32, at *19-20; Guidelines at 5, General Principle 7.

²⁵³ *See Denise M. Olson*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629, at *18-19 (Sept. 3, 2015).

²⁵⁴ *Iida*, 2016 FINRA Discip. LEXIS 32, at *20.

Although White testified that he would never structure cash deposits again, the sentiment appeared to arise out of a wish to avoid discipline rather than a desire to correct his behavior.²⁵⁵ As discussed above, he still does not recognize that he did anything wrong, and he was not completely honest during the investigations or at the hearing. We are not confident in his ability in the future to comply with the legal and regulatory requirements applicable to the securities industry.

White has suffered collateral consequences from his misconduct and his subsequent termination, such as an inability to find another equivalent job. But, as the NAC noted in *Iida*, such collateral consequences of misconduct do not have a mitigating effect.²⁵⁶

E. *Steadman* Factors

The SEC's decision in *Steadman v. SEC* sets out factors that should be considered in determining whether to bar a person from the securities industry. The *Steadman* factors include the egregiousness of the misconduct, the isolated or recurrent nature of the misconduct, the degree of scienter, the sincerity of respondent's assurances against future violations, the respondent's recognition of the wrongful nature of the conduct, and the likelihood that respondent's occupation will present opportunities for future violations.²⁵⁷

The *Steadman* factors weigh in favor of a bar. As discussed more fully above, White's misconduct was a serious, intentional violation of law, which he attempted to conceal by splitting up deposits at two different, unaffiliated financial institutions. His misconduct also was not an isolated occurrence. Rather, he engaged in unlawful structuring in 2014 and again in 2015, both times that he returned from a successful gambling trip with a large sum of cash. White does not recognize the wrongful nature of his conduct, and, to the extent he said he would never structure currency transactions again, the statement was in the nature of never wanting to be disciplined again. It does not reflect recognition of the wrongful nature of his conduct. While White's misconduct was not facilitated by the nature of his occupation, he had a heightened duty to avoid structuring because of his employment with a financial institution. Wells Fargo expressly prohibited its employees from engaging in structuring and gave them extensive training to ensure that they knew what to avoid. We saw no indication that White now understands that what he did was wrong. Nor did he indicate any resolve to pay closer attention to his training. He gave no

²⁵⁵ When White was asked whether, knowing what he now knows, he would have done anything differently, he said he would have deposited the entire \$72,000 from his second "up" trip in one deposit. But he explained it was not because he thought he did anything wrong—it was because then he would have been "done with it" and he "would not be in this position today" in which he "went from a Super Bowl win to no career, bad name, inability to work, [and] two years later basically life savings have gone in paying lawyers . . ." Hearing Tr. (White) 706-10.

²⁵⁶ *Iida*, 2016 FINRA Discip. LEXIS 32, at *21.

²⁵⁷ *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). *See also J.S. Oliver Capital Management, L.P.*, Initial Decisions Release No. 649, 2014 SEC LEXIS 2812, at *141 (Aug. 5, 2014).

sign that in the future he would be better able to comply with the laws and regulations applicable to the securities industry.

F. FINRA Precedents Do Not Support a Lesser Sanction

The sanctions in a FINRA disciplinary proceeding necessarily will be tailored to the particular circumstances of the case. They cannot be determined by comparison to sanctions in other cases that involve different facts and circumstances.²⁵⁸ Nevertheless, we here discuss the sanctions for unlawful structuring in four prior decisions because there are no recommendations in the Guidelines that are specific to structuring or even analogous to it, and these decisions offer some guidance. That the four cases led to different results demonstrates the importance of analyzing in detail the particular circumstances of any given case.

In *Iida*, the NAC reduced a two-year suspension imposed by the hearing panel for unlawful structuring to a one-year suspension. The NAC reduced the sanction based in part on several mitigating factors. The misconduct appeared to be an isolated and aberrational event, rather than a pattern.²⁵⁹ The respondent expressed credible remorse,²⁶⁰ and he made no attempt to conceal what he was doing when he made multiple cash deposits below \$10,000.²⁶¹ The NAC noted that respondent did not fully understand the serious nature of trying to evade currency reporting requirements because of special circumstances such as his Brazilian background and a possible language barrier, but it did not treat his misapprehension as mitigating.²⁶²

Those mitigating factors and special circumstances do not exist here. White engaged in a pattern of misconduct both times that he had gambling gains, once in 2014 and again in 2015. White's misconduct, unlike the respondent in *Iida*, was not isolated and aberrational. Unlike *Iida*, White is without remorse. White feels bad for himself that he has lost his job and been embroiled in this disciplinary proceeding, but he does not recognize that what he did was wrong. "Never crossed my mind that I had done anything wrong," he said, "and I still don't think I've done anything wrong."²⁶³ While the respondent in *Iida* made all his deposits at one bank, White attempted to conceal what he was doing by spreading his deposits between his bank and the credit union, making it difficult for either to know the full extent of his cash deposits, and thereby avoiding the aggregation that would trigger the filing of CTRs. White also was not forthcoming with his Firm or with others about his other deposits at the credit union. Finally, the cultural and language barriers that existed in *Iida* do not exist here.

²⁵⁸ See, e.g., *William Scholander*, Exchange Act Release No. 77492, 2016 SEC LEXIS 1209, at *42 & n.65 (Mar. 31, 2016).

²⁵⁹ *Iida*, 2016 FINRA Discip. LEXIS 32, at *17; Guidelines at 7, Principal Consideration 8.

²⁶⁰ *Id.* at *17-18.

²⁶¹ *Id.* at *18.

²⁶² *Id.* at *16 n.8.

²⁶³ Hearing Tr. (White) 191, 372.

In *Highland*, the individual respondent (the firm’s owner, president, and CEO) was found to have engaged in structuring. The hearing panel permanently barred him in all principal capacities, suspended him in all capacities for six months, and ordered him to requalify as a general securities representative for his acts of structuring. These sanctions were imposed in circumstances far different from White’s. The individual respondent in *Highland* had structured the cash deposits for an extremely aged customer in a misguided attempt to help her avoid paperwork and inquiry when she deposited cash that had been hoarded for some years. When the misconduct was discovered, the individual respondent expressed credible, sincere remorse, acknowledging that serious sanctions were warranted.²⁶⁴ “[T]hroughout the hearing, [his] words and demeanor demonstrated that he [wa]s sincerely ashamed of what he did.”²⁶⁵ In contrast, White neither acknowledges wrongdoing nor expresses remorse.

White’s misconduct is closer to that in *Baker*,²⁶⁶ where the respondent was barred for structuring. Both White and the respondent in *Baker* received training on the requirement to report large currency transactions, and both knew there was “something about \$10,000.” Nevertheless, both of them intentionally structured their personal transactions to evade those reporting requirements.

White’s behavior after his misconduct was discovered is similar to that of the respondent in *Trenham*, who was barred. Like White, the *Trenham* respondent told inconsistent stories about his cash deposits. He admitted in an on-record-interview that he had obtained cashier’s checks in cash transactions under \$10,000 to avoid reporting requirements and “keep it under the radar.”²⁶⁷ But then he told a different story at his hearing—which the hearing panel did not credit—claiming that a bank teller had said that the teller would handle the paperwork. White similarly admitted initially to the Wells Fargo investigator, CN, and his second-level supervisor, MHB, as well as several friends, that he purposely kept his deposits under \$10,000 in order to avoid raising a red flag and triggering an inquiry. But at the hearing he denied that he had that purpose.

G. The Bar Is Not Excessive or Oppressive

White argues that imposing a bar here, as Enforcement requests, would be punitive, not remedial.²⁶⁸ By “punitive,” White apparently means disproportionate and excessive or oppressive. He asserts that a bar is the penalty “reserved” for those who steal from clients and commit fraud and the like, implying that his misconduct was less bad and does not warrant a bar.²⁶⁹ He further asserts that his actions “did not involve or touch on the investing public,”²⁷⁰

²⁶⁴ *Highland*, 2013 FINRA Discip. LEXIS 39, at *49-50 and n.122.

²⁶⁵ *Id.* at *49.

²⁶⁶ *Baker*, 2002 NASD Discip. LEXIS 40, at *30-31.

²⁶⁷ *Trenham*, 2010 FINRA Discip. LEXIS 15, at *4.

²⁶⁸ Resp. PH Br. 29-32.

²⁶⁹ Resp. PH Br. 29.

²⁷⁰ Resp. PH Br. 31.

and argues that this case does not “fit” into the “basket of cases” where a bar may be justified, which he describes as “involving money launderers, drug dealers, criminals, and their accomplices and enablers.”²⁷¹ White relies primarily on *McCarthy v. SEC*,²⁷² a case in which the Second Circuit vacated and remanded an SEC decision affirming a two-year suspension from membership in the New York Stock Exchange for further consideration of the sanction. White quotes from *McCarthy*, saying that “a bar should be to ‘protect investors, not to penalize brokers.’”²⁷³

We reject White’s argument that the sanction is disproportionate and excessive or oppressive. White’s misconduct was not as benign as he portrays it. His misconduct involved an intentional violation of law—even though he had been trained on the law and instructed to avoid violating it—along with acts to conceal his misconduct, such as splitting his deposits between two financial institutions so neither would know the full extent of his cash transactions. His misconduct deprived governmental authorities of information they were entitled to in order to enable them to investigate potential violations of law. Furthermore, White’s misconduct harmed his firm, Wells Fargo, and the regulatory system. Securities firms like Wells Fargo expend great effort and large sums of money on training every year and rely on their employees to understand and comply with the guidance provided. The Firm made clear in its training and policies that its reputation and business could be damaged if its employees failed to comply with the Bank Secrecy Act. By ignoring the Firm’s concerns, White wasted the Firm’s training efforts and caused the Firm to make additional expenditures of time and money to investigate his misconduct, consider what action to take, and then terminate his employment. His misconduct put the Firm at risk of regulatory action and reputational damage, as well.

Furthermore, contrary to White’s assertion, no authority “reserves” the sanction of a bar for cases involving theft or fraud or for money launderers or drug dealers. In fact, a bar is “standard” for cheating on a securities licensing examination²⁷⁴ or failing to provide information

²⁷¹ Resp. PH Br. 31.

²⁷² *McCarthy v. SEC*, 406 F.3d 179 (2d Cir. 2005).

²⁷³ Resp. PH Br. 30.

Under Section 19(e)(2) of the Exchange Act, the SEC reviews sanctions imposed by FINRA to determine whether they are “excessive or oppressive,” always with “due regard for the public interest and the protection of investors.” It is unclear what the consequence is of labeling the sanction punitive unless by that White means the sanction is excessive or oppressive. While a bar generally has an impact on a respondent that feels punitive, the sanction also has a remedial aspect if it focuses on protecting the public from the risk of future misconduct, improving business conduct in the securities industry, and enhancing public confidence in the people and institutions who participate in the industry. As one Court of Appeals has said, “In one sense, both labels [punitive and remedial] are correct. From the point of view of the public and [the] enforcement agency, the action of the SEC [in barring a person from the industry] is ‘remedial.’ To the broker removed from his profession the action partakes of ‘punitive’ impact.” *Collins Sec. Corp. v. SEC*, 562 F.2d 820, 825 (D.C. Cir. 1977), *abrogated on other grounds*, *Steadman v. SEC*, 450 U.S. 91 (1981). As the Supreme Court has said, “[E]ven remedial sanctions carry the sting of punishment.” *United States v. Halper*, 490 U.S. 435, 447 n.7 (1989), *abrogated on other grounds*, *Hudson v. United States*, 522 U.S. 93 (1997).

²⁷⁴ Guidelines at 40 (a bar is “standard” sanction for cheating on qualifying examination).

requested pursuant to FINRA Rule 8210.²⁷⁵ A bar is imposed for such violations, not to punish the wrongdoer, but to protect the investing public and other market participants from a person who cannot be trusted in the future to comply with legal and regulatory requirements.

White's citation of *McCarthy* also fails to bolster his argument. The Second Circuit remanded the case for further consideration of the sanction, because the SEC "made no findings regarding the protective interests to be served by removing [the defendant] from the floor of the Stock Exchange."²⁷⁶ The Court said that the SEC had only discussed the serious nature of the violation, without "even provid[ing] a deterrence rationale for its decision" and without devoting sufficient individual attention to the unique facts and circumstances of the case.²⁷⁷ The Second Circuit listed the factors that should be considered in determining whether to bar a securities professional. Protecting the public from further harm is the foremost consideration, with deterrence, both specific and general, an additional concern.

We have considered the factors specified in *McCarthy* in determining that a bar is appropriate here. We have discussed not only the violation itself but our concern about White's ability to comply with applicable legal and regulatory requirements in the future. White's intentional violation of law related to the financial industry, after receiving years of training warning him against it, casts doubt on his ability to comply with legal requirements in the future. His attempt to conceal the full extent of his currency transactions by splitting the deposits between two different financial institutions, and his attempts to mislead Wells Fargo and FINRA staff when his misconduct was discovered, both add to our concern about his ability in the future to conform his conduct to the applicable requirements. Our conclusion that his testimony at the hearing was not truthful further casts doubt on his future trustworthiness. Finally, his lack of recognition that his conduct was wrongful and the absence of remorse give us no confidence that he can be trusted in the future to follow his training guidance and comply with the applicable laws and regulations.²⁷⁸ His promise not to structure cash deposits in the future is insufficient. A bar is necessary to prevent and deter further misconduct by White.

The bar serves also to deter others in the securities industry from ignoring their training on legal and ethical conduct. This will enhance the integrity of the markets and increase public confidence in the honesty of those who work in the securities industry. A bar serves the overall purposes of FINRA's disciplinary process—"to remediate misconduct by preventing the

²⁷⁵ Guidelines at 33 (a bar is "standard" for a failure to respond in any manner to a Rule 8210 request for information). *See, e.g., David Kristian Evansen*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080, at *63-64 (July 27, 2015) (bar imposed for failure to respond to Rule 8210 requests because respondent's failure to cooperate showed him to be a "continuing danger to the public interest in securing voluntary cooperation with investigations and, ultimately, detecting and preventing industry misconduct").

²⁷⁶ *McCarthy*, 406 F.3d at 189.

²⁷⁷ *Id.*

²⁷⁸ *See, e.g., Birkelbach v. SEC*, 751 F.3d 472, 480 (7th Cir. 2014) (noting that the SEC, when considering a FINRA-imposed sanction, considers "the likelihood of recurring violations" and "the sincerity of a respondent's assurances against future violations").

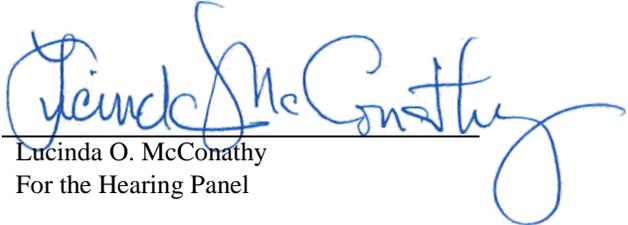
recurrence of misconduct, improving overall standards in the industry, and protecting the investing public.”²⁷⁹ It has been long recognized that “[e]xclusion from the securities business is a remedial device for the protection of the public.”²⁸⁰ Debarment serves “to protect investors” and redresses “significant harm to the self-regulatory system.”²⁸¹ The bar is appropriate because the securities industry depends heavily on the integrity of its participants and investors’ confidence in their integrity. “[I]t is essential that the highest ethical standards prevail in every facet of the securities industry.”²⁸²

In sum, the imposition of a bar in this case is appropriate and in the public interest. It is not disproportionate or excessive or oppressive. The sanction addresses the risk of allowing a respondent to remain in the securities industry who has engaged in intentional misconduct, attempted to conceal it, repeatedly lied about what he did, and shows no recognition that he engaged in wrongdoing. He is therefore not fit to participate in an industry that depends on honesty, trust and integrity.²⁸³

V. ORDER

As alleged, Respondent Richard O. White structured currency deposits with knowledge of and intent to evade federal currency reporting requirements in the Bank Secrecy Act. He thereby violated the high standards of ethical conduct imposed by FINRA Rule 2010. For his misconduct he is barred from association with any FINRA member in any capacity.

Respondent is also ordered to pay costs in the amount of \$6,647.85, which includes a \$750 administrative fee and \$5,897.85 for the cost of the transcript. If this decision becomes FINRA’s final disciplinary action, White’s bar will take immediate effect.



Lucinda O. McConathy
For the Hearing Panel

²⁷⁹ Guidelines at 2 (General Principles Applicable to All Sanction Determinations). Although deterrence is often associated with criminal law, it is understood that civil penalties also have deterrent effect. The Supreme Court has said, “[A]ll civil penalties have some deterrent effect. . . . If a sanction must be ‘solely’ remedial (i.e., entirely nondeterrent) to avoid implicating the Double Jeopardy Clause, then no civil penalties are beyond the scope of the Clause.” *Hudson*, 522 U.S. at 102.

²⁸⁰ *Assoc. Sec. Corp. v. SEC*, 283 F.2d 773, 775 (10th Cir. 1960).

²⁸¹ *PAZ Sec. Inc. v. SEC*, 566 F.3d 1172, 1175-76 (D.C. Cir. 2009).

²⁸² *J.S. Oliver Capital*, 2014 SEC LEXIS 2812, at *146 (citing *Donald L. Koch*, 2014 SEC LEXIS 1684, at *86 (May 26, 2014)).

²⁸³ The Hearing Panel has considered and rejected without discussion any other arguments made by the Parties that are inconsistent with this decision.

Copies to:

Richard O. White (via overnight courier and first-class mail)

Nathan C. Zezula, Esq. (via electronic and first-class mail)

Joseph E. Strauss, Esq. (via electronic and first-class mail)

Savvas A. Foukas, Esq. (via electronic mail)

Tiffany A. Buxton, Esq. (via electronic mail)

Jeffrey D. Pariser, Esq. (via electronic mail)