

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

BRUCE MARTIN ZIPPER
(CRD No. 1019731)

and

DAKOTA SECURITIES
INTERNATIONAL, INC.
(CRD No. 132700),

Respondents.

Disciplinary Proceeding
No. 2016047565702

Hearing Officer—DW

HEARING PANEL DECISION

June 18, 2018

Respondent Bruce Zipper improperly associated with his firm, Respondent Dakota Securities, during a three-month all-capacities suspension. Dakota did not adequately supervise Zipper, allowing him to associate while suspended (and later while statutorily disqualified) and to falsify firm books and records by misidentifying the responsible broker for hundreds of trades. Zipper is barred from associating with any FINRA member firm in any capacity, and Dakota is expelled.

Appearances

For the Complainant: Janine D. Arno, Esq., Savvas A. Foukas, Esq., and David B. Klafter, Esq.,
Department of Enforcement, Financial Industry Regulatory Authority.

For Respondent Bruce M. Zipper: *pro se*.

For Respondent Dakota Securities International, Inc.: Gary Cuccia, Chief Financial Officer.

I. Introduction

The question presented is whether a registered person suspended from associating with a FINRA member in any capacity is free to ignore the terms of that suspension. We find that he is not.

Respondent Bruce M. Zipper (“Zipper”) negotiated a settlement with the Department of Enforcement following Zipper’s failure to disclose three outstanding judgments on his Form U4.¹ Under the terms of the agreement, Zipper was to pay a \$5,000 fine and serve a three-month suspension from associating with any FINRA member.

At the time he negotiated the settlement, Zipper was the principal of Respondent Dakota Securities International, Inc. (“Dakota”), a small broker-dealer that operated as a “one man shop” where Zipper wore “all the hats.” After agreeing to his settlement, Zipper explained to FINRA that he was bringing another broker into his firm to run things during the suspension. Yet after his suspension started in May 2016, Zipper never stopped his association with Dakota. The broker brought in to replace Zipper conducted no meaningful supervision or oversight as Zipper continued soliciting Dakota customers, doing business with the firm’s clearing broker, and generally operating the firm.

Zipper’s settlement resulted in his statutory disqualification. Under Article III, Section 3 of FINRA’s By-Laws, he was required to reapply to FINRA for permission to continue his association with Dakota after the suspension.² FINRA denied that permission because Zipper had violated the terms of his suspension, and because Dakota was incapable of exercising meaningful supervision over him. Even though FINRA’s decision denying permission to continue his association resulted in Zipper’s statutory disqualification, Zipper nevertheless continued to associate with Dakota.

Enforcement brought this action charging Zipper with violating his settlement agreement with FINRA by improperly associating with Dakota, engaging in securities activities while suspended and statutorily disqualified, and falsifying Dakota’s books and records by misidentifying the broker of record in hundreds of trades. The Complaint also charges Dakota with allowing Zipper to associate with the firm while suspended and statutorily disqualified, failing to implement adequate supervisory procedures, and maintaining false books and records.

Zipper by and large admits the Complaint’s allegations but asserts that Enforcement authorized much of his conduct. Zipper claims that an Enforcement attorney told him that if he “was the only person who could answer a question or solve a problem that might come up during his suspension ... [Zipper] could intercede and resolve the problem so that the firm and a client would not be harmed.”³ He also maintains that his misidentification of the responsible broker in hundreds of trades in firm records “was done with the full knowledge of all clients ... and there

¹ A Form U4 is a Uniform Application for Securities Industry Registration or Transfer, which provides public disclosure of certain material information about associated persons.

² A person who is subject to disqualification may not associate with a FINRA member in any capacity unless and until approved in an Eligibility Proceeding as set forth in Article III, Section 3(d) of FINRA’s By-Laws and FINRA Rules 9520 through 9527.

³ Zipper Answer (“Ans.”) ¶ 1.

was never a complaint either verbally or in writing from the firm’s clients.”⁴ This Hearing Panel convened a hearing on the claims and defenses in Boca Raton, Florida.

II. Findings of Fact

A. Respondents

Zipper entered the securities industry when he first associated with a FINRA member firm in October 1981.⁵ He has been with a number of firms during his 36 years in the industry, and presently holds a number of licenses, including the Series 7 and 24.⁶ Zipper founded FINRA member Dakota Securities in 2005 and has associated with the firm since that time.⁷ He has served at various times as the firm’s President, Chief Executive Officer, Chief Compliance Officer, and Financial and Operations Principal.⁸

Both Dakota and Zipper are subject to FINRA’s jurisdiction.⁹

B. Zipper and Dakota’s Disciplinary History

Both Zipper and the firm have a history of discipline. In April 2016, FINRA sanctioned Zipper and Dakota for failing to adequately supervise firm email communications and ensure that the communications were preserved.¹⁰ Zipper received a suspension in a principal capacity for a month and a \$10,000 fine.¹¹ Dakota was censured and fined \$10,000.¹²

Dakota was censured and fined \$5,000 in March 2010 for failing to retain and review business-related electronic communications.¹³ In November 2009, the Florida Office of Financial Regulation sanctioned Zipper and Dakota for failing to conduct independent testing of Dakota’s Anti-Money Laundering compliance program.¹⁴ Zipper and Dakota settled the matter by agreeing to a fine of \$5,000, imposed jointly and severally.¹⁵ In 1995, the Florida Department of Banking and Finance fined Zipper \$1,000 for failing to timely notify the regulator about an

⁴ Ans. ¶ 4.

⁵ Stipulations (“Stip.”) ¶ 5.

⁶ Stip. ¶¶ 2, 6, 7.

⁷ Stip. ¶¶ 2, 3, 6, 7.

⁸ Stip. ¶¶ 2, 6.

⁹ Stip. ¶¶ 4, 8.

¹⁰ CX-73.

¹¹ CX-73.

¹² CX-73.

¹³ CX-72.

¹⁴ CX-71.

¹⁵ CX-71.

NASD action.¹⁶ The year before, NASD sanctioned Zipper the year before, imposing a censure, a \$5,000 fine, and a five-day suspension for Zipper’s failure to timely comply with an arbitration award.¹⁷ Even before that, in 1989, the NASD had censured Zipper and fined him \$1,000 for effecting transactions in non-exempt securities while failing to maintain sufficient net capital.¹⁸

C. Zipper Agrees to the Suspension

At the same time as his April 2016, one-month principal capacity suspension for inadequately supervising Dakota’s email communications, Zipper agreed to settle another FINRA disciplinary action for willfully failing to update his Form U4.¹⁹ FINRA identified three outstanding judgments that Zipper failed to disclose on his Form U4 for several years.²⁰ To settle the matter, Zipper agreed to (1) pay a \$5,000 fine, (2) serve a three-month suspension from association with any FINRA member in all capacities, and (3) be subject to statutory disqualification because of his willful violation.²¹

Before agreeing to the settlement, Zipper attempted to negotiate a lesser sanction. Recognizing that a suspension from only principal capacities was less severe than all capacities, he asked Kevin Rosen, then an attorney in FINRA’s Department of Enforcement, whether FINRA would consider a suspension in only a supervisory capacity.²² According to Zipper, if only suspended as a principal he would “still be allowed to have conversations with lifetime clients.”²³ Zipper argued that he would be able to pay his fines more quickly and “more importantly not . . . hurt [his] lifetime clients who had no part in this issue and would be harmed in a possible financial way by not having the ability to discuss their investments which they have entrusted to [Zipper] and have relied on for 30 years.”²⁴

Rosen rejected the proposal that same day, unequivocally telling Zipper “Enforcement will not settle for a limited capacity suspension.” Rosen went on to explain that “[t]he Sanction Guidelines and our settlements are all capacities for this type of violation” so that “[t]here is no room to adjust, here.”²⁵ Zipper responded, “OK Kevin, thanks for the info.”²⁶

¹⁶ CX-70.

¹⁷ CX-69.

¹⁸ CX-63.

¹⁹ JX-1.

²⁰ JX-1.

²¹ JX-1.

²² CX-14.

²³ CX-14.

²⁴ CX-14.

²⁵ CX-14.

²⁶ CX-14.

Zipper signed the settlement agreement, or letter of Acceptance, Waiver and Consent (“AWC”), on April 1, 2016.²⁷ The AWC became effective when FINRA executed the agreement on April 22, 2016.²⁸ The AWC explained that Zipper specifically and voluntarily waived any right to appeal and agreed to be “subject to a statutory disqualification with respect to association with a member.”²⁹

The day he agreed to the AWC, Zipper called Rosen to discuss Zipper’s concern that the principal running Dakota during the suspension might need to call Zipper with questions.³⁰ Rosen directed Zipper “to tell his principal, now, to instead contact [FINRA’s] office during [Zipper’s] suspension.”³¹ This was to avoid “Zipper possibly crossing the suspension line.”³² Rosen also told Zipper that he needed to submit a plan outlining the steps taken by Dakota to ensure that Zipper had no association with the firm or compensation during his suspension.³³

After accepting the AWC, FINRA advised Zipper that his suspension began on May 16, 2016,³⁴ but Zipper requested more time to prepare for his suspension. FINRA agreed to begin the suspension on May 31, 2016,³⁵ and warned Zipper that failing to dissociate himself from Dakota during the suspension could result in disciplinary action.³⁶

D. Zipper Unsuccessfully Tries to Back Out of the Settlement

Before his suspension started, Zipper tried to back out of the deal. After receiving a letter from FINRA on May 5, 2016, confirming his statutory disqualification, Zipper called Rosen and told him that he wanted out of the agreement.³⁷ Rosen told him that because both sides had already accepted the settlement, it was final and not appealable.³⁸ The written AWC describes Zipper’s understanding that because of his suspension, and because of his willful nondisclosure

²⁷ JX-1.

²⁸ JX-1.

²⁹ JX-1.

³⁰ CX-15.

³¹ CX-15.

³² CX-15.

³³ CX-15.

³⁴ Hearing Transcript (“Tr.”) (Zipper) 116-17; CX-75.

³⁵ Tr. (Zipper) 116-17; CX-77; CX-79.

³⁶ Tr. (Zipper) 120; CX-77.

³⁷ Tr. (Rosen) 395. Zipper expressed concerns regarding the cost of undertaking the process of re-associating with Dakota after statutory disqualification. Rosen told Zipper that Zipper could request to have the fees waived, but Rosen could not guarantee that the request would be approved. *Id.* at 396.

³⁸ Tr. (Rosen) 395.

on his Form U4, he was subject to statutory disqualification.³⁹ The AWC also memorializes Zipper’s specific and voluntary waiver of any appeal.⁴⁰ After speaking to Rosen, Zipper spoke to Rosen’s supervisor as well as other FINRA representatives in an effort to back out of the agreement.⁴¹ They all told Zipper the same thing—the deal was final.⁴²

After his unsuccessful effort to pull out of the deal, Zipper told FINRA he was making plans to abide by the agreement. On May 16, 2016, Zipper sent a letter to FINRA representing that Dakota “has taken steps to make sure the firm can continue operations without Bruce Zipper for the 3 months of the suspension.”⁴³ According to the plan, “Robert Lefkowitz a broker now with the firm will take over as the CEO and supervisor of the firm.”⁴⁴ Zipper promised that Lefkowitz would “handle all day to day business of the firm.”⁴⁵ Dakota also planned to hire a consultant with appropriate licenses to oversee the firm’s financial operations and its options business.⁴⁶ Zipper assured FINRA that he would receive no remuneration and would direct his email and phone communications to Lefkowitz.⁴⁷ Consistent with these assurances, Zipper created a one-page addendum to Dakota’s written supervisory procedures that provided, without qualification, that Zipper “will not be involved in the company’s business” during the suspension.⁴⁸

E. Zipper Violates His Suspension

Zipper’s three-month suspension started on May 31, 2016. During this brief period, Zipper repeatedly and intentionally violated the terms of his suspension by continuing to associate with Dakota.

For instance, on May 31, 2016—the day his suspension started—Zipper communicated with Dakota’s vendors about outstanding bills with its clearing firm regarding net capital requirements and other business.⁴⁹ The next day, he reached out to a Dakota customer with stock purchase recommendations.⁵⁰ During the suspension Zipper regularly communicated with

³⁹ JX-1.

⁴⁰ JX-1.

⁴¹ Tr. (Rosen) 395-97.

⁴² Tr. (Rosen) 397.

⁴³ CX-89.

⁴⁴ CX-89.

⁴⁵ CX-89.

⁴⁶ CX-89.

⁴⁷ CX-89.

⁴⁸ CX-12.

⁴⁹ CX-17; CX-18.

⁵⁰ CX-22; CX-23.

Dakota's clearing firm and vendors regarding the firm's ongoing operations,⁵¹ and with several firm customers in order to provide customers access to the firm's website,⁵² their brokerage statements and other records,⁵³ as well as Zipper's investment analysis and recommendations that led to securities purchases.⁵⁴ During the latter part of his suspension in August 2016, Zipper personally negotiated a settlement in an arbitration case against Dakota.⁵⁵

During the suspension, Dakota did not restrict Zipper's access to its email or trading systems.⁵⁶ The firm continued to operate its business out of Zipper's home.⁵⁷ And despite being copied on Zipper's emails, Lefkowitz did not adequately review them or take any remedial action when the emails made clear that Zipper was continuing to associate with Dakota.⁵⁸ Indeed, Lefkowitz himself later served a five-month suspension and paid a \$5,000 fine for failing to supervise Zipper during this period.⁵⁹

F. Zipper Continues to Associate with Dakota While Statutorily Disqualified

In the latter part of July 2016 toward the end of Zipper's suspension, Dakota filed a Form MC-400 (a Membership Continuance Application) with FINRA to permit his re-association with the firm.⁶⁰ Following a hearing and careful consideration, the National Adjudicatory Council ("NAC") denied the application on October 2, 2017, for a number of reasons, including Zipper's continued association with Dakota during his suspension.⁶¹ That denial resulted in Zipper's immediate disqualification from associating with a FINRA member.⁶²

Though the SEC never granted a stay of FINRA's disqualification order, Zipper continued to associate with Dakota after his disqualification.⁶³ From the time of the NAC's denial of the application through at least November 2017, Zipper supervised trading activities at

⁵¹ CX-19; CX-20; CX-30; CX-34; CX-37; CX-39.

⁵² CX-21.

⁵³ CX-24; CX-31; CX-32; CX-38; CX-40; CX-43.

⁵⁴ CX-25; CX-26; CX-27; CX-28; CX-29; CX-36.

⁵⁵ CX-44.

⁵⁶ Stip. ¶ 23; Dakota Answer ("Dakota Ans.") ¶ 21.

⁵⁷ Stip. ¶ 25; Dakota Ans. ¶ 23.

⁵⁸ Stip. ¶ 24; Tr. (Lefkowitz) 308-27.

⁵⁹ Tr. (Lefkowitz) 327-28; CX-74.

⁶⁰ CX-57. Zipper drafted the application on behalf of Dakota *during* his suspension and had Lefkowitz sign the document. Tr. (Lefkowitz) 285-86.

⁶¹ CX-45.

⁶² See FINRA Rule 9524.

⁶³ Stip. ¶ 28.

Dakota, entered customer orders, made securities recommendations to customers, directed payment of his own compensation, and generally managed the firm.⁶⁴

At the hearing, Zipper testified that he never received notice of the NAC's denial of the MC-400 application on October 2, 2017.⁶⁵ When confronted with the fact that he filed an appeal two days later on October 4, Zipper acknowledged that maybe he did receive notice of the decision.⁶⁶ But he claimed he didn't know that he needed to separately seek a stay of the order to avoid disqualification.⁶⁷ Zipper testified that he did not learn that he needed to seek a stay in addition to his appeal until November 6, 2017, when he received further correspondence from FINRA related to his disqualification.⁶⁸

But the evidence showed that Zipper actually *had* sought a stay several days earlier, on October 31, 2017.⁶⁹ Zipper was clearly aware of the need to seek and obtain a stay to stave off disqualification before receiving the November 6 communication. And certainly no stay was granted by the SEC, as Zipper continued to associate with Dakota through at least November 16, 2017.⁷⁰ We find that Zipper was on notice of his disqualification on October 2, 2017, but continued to associate with Dakota for at least a month longer.

G. Dakota Falsifies Its Books and Records

Before 2016, Dakota employed another broker who worked with Zipper.⁷¹ Firm records identified accounts assigned to Zipper as DS02.⁷² Accounts for the other broker's clients were DS01.⁷³ Accounts jointly overseen by both Zipper and the other broker were DS03.⁷⁴ The firm terminated the other broker on February 19, 2016.⁷⁵

Starting even before Zipper's suspension, and continuing through the latter part of 2016, Dakota misidentified the broker of record in its trade confirmations and memoranda for *hundreds*

⁶⁴ CX-10; CX-47; CX-58; CX-60; CX-61; CX-62.

⁶⁵ Tr. (Zipper) 237.

⁶⁶ Tr. (Zipper) 237.

⁶⁷ Tr. (Zipper) 237.

⁶⁸ Tr. (Zipper) 240.

⁶⁹ CX-81; Tr. (Zipper) 244.

⁷⁰ Tr. (Zipper) 262.

⁷¹ Ans. ¶¶ 41-43; Dakota Ans. ¶¶ 40-46.

⁷² Tr. (Zipper) 35.

⁷³ Tr. (Zipper) 35.

⁷⁴ Tr. (Zipper) 35.

⁷⁵ Tr. (Zipper) 190.

of trades.⁷⁶ Zipper admits that after Dakota terminated the broker with whom he had worked, he caused the firm to continue using the DS01 and DS03 representative codes in more than 450 trades between February 22, 2016, and November 16, 2016.⁷⁷ During Zipper's suspension, Lefkowitz adopted the practice, falsely using the DS01 and DS03 representative codes more than 200 times.⁷⁸ According to Zipper, Dakota continued to use the representative code of the terminated broker because the firm had paid his New Jersey state registration and Zipper had no New Jersey registration.⁷⁹ As a result, Zipper and Dakota incorrectly recorded the broker of record on order memoranda and trade confirmations in more than 680 transactions.⁸⁰

H. Dakota Fails to Supervise

Dakota enabled much of the conduct described above by failing to establish and maintain supervisory systems adequate to ensure that Zipper not associate with the firm while subject to suspension and statutory disqualification.⁸¹ During this period, the firm also failed to conduct any review of the firm's electronic communications.⁸² And this was *after* the firm was sanctioned by FINRA for its failure to review electronic communications.⁸³ Finally, Dakota failed to reasonably supervise the creation of the firm's books and records with respect to the identification of the broker of record entering trades.⁸⁴ Trades routinely reflected the name of a broker who no longer worked for the firm, and at times Lefkowitz entered Zipper's name on trades during Zipper's suspension.⁸⁵ Though trades in the name of a broker not employed by the firm should have alerted Dakota to the inaccurate records, it failed to act on the red flags and prevent the improper conduct.⁸⁶

III. Conclusions of Law

A. Zipper Violated the Terms of his Suspension

The first cause of the Complaint alleges that Zipper violated FINRA Rule 2010 by violating the terms of his AWC by continuing to associate with Dakota while suspended. The

⁷⁶ Stip. ¶ 30; Dakota Ans. ¶¶ 40-46; CX-7; CX-8; CX-9.

⁷⁷ CX-7; Tr. (Zipper) 198-201.

⁷⁸ CX-9; Tr. (Lefkowitz) 331-35.

⁷⁹ Ans. ¶ 42; Dakota Ans. ¶ 42; Tr. (Zipper) 186-87.

⁸⁰ Stip. ¶ 30.

⁸¹ Dakota Ans. ¶¶ 67-68.

⁸² Dakota Ans. ¶ 70.

⁸³ FINRA sanctioned the firm in March 2010, and then again in April 2016, for Dakota's failure to supervise and adequately monitor firm email communications. CX-72; CX-73.

⁸⁴ Dakota Ans. ¶ 71.

⁸⁵ Dakota Ans. ¶ 71.

⁸⁶ Dakota Ans. ¶ 71.

second cause alleges that Zipper's activities not only violated his AWC, but also violated NASD Membership and Registration Rule 1031, Article III, Section 3(b) of FINRA's By-Laws, and FINRA Rule 2010 because he engaged in activities that required registration while his registration was not in effect.

FINRA Rule 2010 requires FINRA members and their associated persons to "observe high standards of commercial honor and just and equitable principles of trade" in the conduct of their business. It mandates that securities industry participants not only conform to legal and regulatory requirements, but also conduct themselves in the course of their business with integrity, fairness, and honesty.⁸⁷

Because industry participation carries an expectation of regulatory compliance, any conduct that runs afoul of FINRA or SEC rules necessarily violates Rule 2010.⁸⁸ In addition, "[a] violation of an AWC, which is a settlement of disciplinary charges that imposes duties on the entities and persons who enter into it, is analogous to a violation of FINRA rules and, on that basis, is likewise a violation of FINRA Rule 2010."⁸⁹ Breaching an AWC also violates duties imposed by FINRA's By-Laws on registered entities and persons to comply with FINRA Rules, orders, and directives.⁹⁰

Moreover, NASD Membership and Registration Rule 1031 mandates that individuals who perform registered representative functions be registered. A suspension results in the suspended individual's statutory disqualification for the duration of the suspension,⁹¹ which makes association with any FINRA member impermissible under Article III, Section 3(b) of FINRA's By-Laws. Violation of these provisions similarly violates FINRA Rule 2010.⁹²

To establish Zipper's violation of his AWC and suspension on the facts here, Enforcement must prove by a preponderance of the evidence that Zipper (1) was suspended; (2) had notice of his suspension; and (3) violated its terms by associating with a FINRA

⁸⁷ *Robert Marcus Lane*, Exchange Act Release No. 74269, 2015 SEC LEXIS 558, at *22 n.20 (Feb. 13, 2015) ("[T]his general ethical standard . . . is broader and provides more flexibility than prescriptive regulations and legal requirements. [The Rule] protects investors and the securities industry from dishonest practices that are unfair to investors or hinder the functioning of a free and open market, even though those practices may not be illegal or violate a specific rule or regulation.").

⁸⁸ *Dep't of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *12-13 (NAC June 2, 2000).

⁸⁹ *Dep't of Enforcement v. Grigsby*, No. 2012030570301, 2014 FINRA Discip. LEXIS 56, at *20, 21 (OHO Dec. 2, 2014).

⁹⁰ FINRA Rule 0140 (FINRA Rules apply to all members and persons associated with a member); By-Laws Article IV, Section 1(a)(1) (members agree to comply with securities laws, FINRA Rules, and all rulings, orders, directions, and decisions issued, and sanctions imposed, under FINRA Rules); By-Laws Article V, Section 2(a)(1) (same).

⁹¹ 15 U.S.C. § 78c(a)(39)(A).

⁹² *Dep't of Enforcement v. Hedge Fund Capital Partners, LLC*, No. 2006004122402, 2012 FINRA Discip. LEXIS 42, at *36 (NAC May 1, 2012).

member.⁹³ We find that there is no question that Zipper violated his suspension by associating with Dakota in breach of his AWC. Indeed, the parties' written stipulations (as well as Zipper's Answer) establish each element of his violation.⁹⁴

Zipper makes a number of arguments by way of defense. He challenges the facts, claiming that FINRA told him that he could tend to various Dakota affairs during his suspension if circumstances arose where Zipper was the only one able to deal with a particular situation. But we are not persuaded that Zipper was given such discretion. Documentary evidence shows that FINRA's direction to Zipper during the relevant period was to the contrary—Zipper was told to have the principal managing the firm in his absence to “contact [FINRA's] office” in the event of a problem to avoid “Zipper possibly crossing the suspension line.”⁹⁵ And we find credible the hearing testimony of former FINRA attorney Rosen who insists that he told Zipper he could have *no* involvement with Dakota during the period of his suspension.⁹⁶ Corroborating Rosen was the credible testimony of another FINRA staff member who interacted with Zipper during the relevant period.⁹⁷ On the other side of the ledger, Zipper's story is contradicted by his own sworn on-the-record testimony admitting that he was not permitted to engage in firm-related activities such as speaking to customers or entering customer orders, and could “not [] have anything to do” with Dakota during his suspension.⁹⁸ Ultimately, we do not believe Zipper.⁹⁹

Zipper also challenges the law, arguing that his activities did not constitute “association” with a member firm within the meaning of FINRA rules. According to Zipper, he did not violate his suspension from association with any FINRA member because he “did not speak to anybody that's a FINRA member.”¹⁰⁰ Zipper defends his repeated contacts with Dakota's clients and vendors during his suspension with his “interpretation,” claiming that “if the person I was dealing with was a non-FINRA member, then I'm not violating the agreement.”¹⁰¹

⁹³ *Dep't of Enforcement v. Usher*, No. C3A980069, 2000 NASD Discip. LEXIS 5, at *13 (NAC Apr. 18, 2000).

⁹⁴ Stip. ¶¶ 9-29; Ans. ¶¶ 1, 9-18, 20, 24-39, 47-58.

⁹⁵ CX-15.

⁹⁶ Tr. (Rosen) 366-70.

⁹⁷ Tr. (Calonge) 525-30.

⁹⁸ Tr. (Zipper) 86-89.

⁹⁹ We similarly do not credit Lefkowitz's testimony on this point. *See* Tr. (Lefkowitz) 340-41. We believe that Lefkowitz, Zipper's long-time friend, testified in response to Zipper's leading questions to help his friend and to justify his own misconduct as a supervisor. We also note that even if Zipper's account had some truth to it, it is not a defense. *Hans N. Beerbaum*, Exchange Act Release No. 55731, 2007 SEC LEXIS 971, at *19, n.22 (May 9, 2007) (“[M]embers and their associated persons ‘cannot shift their burden of compliance to [FINRA],’” and “are not released from their obligations even when they receive ‘erroneous advice from [FINRA].’”).

¹⁰⁰ Tr. (Zipper) 90.

¹⁰¹ Tr. (Zipper) 95.

Zipper is wrong. Even if Dakota's customers and vendors were not themselves FINRA members, Zipper associated with Dakota by conducting the firm's business through these contacts while suspended¹⁰² and statutorily disqualified. FINRA's By-Laws define "a person associated with a member" to include "[a] sole proprietor . . . of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the . . . securities business who is directly or indirectly controlling or controlled by a member."¹⁰³ In this context, the "securities business" includes "the business, carried on by a broker [or] dealer [] . . . of purchasing securities and offering the same for sale as a dealer, or of purchasing and selling securities upon the order and for the account of others."¹⁰⁴ In this forum, we broadly construe the phrase "associated person" in order to "take regulatory action in circumstances where a person's connection with a member firm implicates the public interest."¹⁰⁵

By conducting Dakota's securities business during his suspension and disqualification, Zipper associated with the firm in violation of his AWC, and while disqualified.¹⁰⁶ His conduct was inconsistent with just and equitable principles of trade, and violated FINRA Rule 2010. And by associating with Dakota while disqualified,¹⁰⁷ Zipper violated NASD Membership and

¹⁰² Zipper also claims he was not really suspended because he should have been allowed to back out of the deal, pointing to Section 19(d) of the Exchange Act, which permits a respondent 30 days to appeal an adverse FINRA order. *See* 15 U.S.C. § 78s(d); Tr. (Rosen) 398-402. But Zipper ignores the fact that he *waived* his right to appeal the AWC. Although Zipper tried to withdraw less than 30 days after FINRA accepted the agreement, once finalized the AWC was effective. FINRA Rule 9216. The SEC confirmed as much in rejecting Zipper's appeal of his suspension, explaining that "Zipper's AWC is binding and . . . he waived his right to appeal the AWC to the Commission." *Bruce Zipper*, Exchange Act Release No. 81788, 2017 SEC LEXIS 3107, at *10 (Sept. 29, 2017). Although Zipper presently seeks reconsideration of that determination, he predicates his reconsideration motion on the claim that he tried to back out of the AWC *before* it was final. *Bruce Zipper*, Exchange Act Release No. 82486, 2018 SEC LEXIS 76, at *3-4 (Jan. 11, 2018). But the undisputed evidence here was that Zipper did not attempt to back out of the deal until May 5, 2016, *after* the AWC was accepted by all parties. Tr. (Rosen) 395.

¹⁰³ By-Laws Article I, Section (rr)(2).

¹⁰⁴ By-Laws Article I, Section (u).

¹⁰⁵ *Hedge Fund Capital Partners*, 2012 FINRA Discip. LEXIS 42, at *31 (citing *Dist. Bus. Conduct Comm. v. Paramount Investments, Int'l, Inc.*, No. C3A940048, 1995 NASD Discip LEXIS 248, at *12 (NBCC Oct. 20, 1995)).

¹⁰⁶ *Vladislav S. Zubkis*, 53 S.E.C. 794, 799-800 (1998) (holding that a person controlled a firm and was an "associated person" based in part on his payment of firm expenses such as rent, telephone charges, and compensation of brokers); *Dist. Bus. Conduct Comm. v. Deltavest Financial, Inc.*, No. C02930042, 1994 NASD Discip. LEXIS 221, at *25 (NBCC June 27, 1994) (Associated persons include those who "perform[] the usual and customary functions of persons in the firm's employ and, in effect, could be considered one of the broker-dealer's employees.").

¹⁰⁷ Zipper was disqualified for the duration of his suspension (*see* 15 U.S.C. § 78c(a)(39)(A)) as well as after the NAC denied Dakota's MC-400 application.

Registration Rule 1031,¹⁰⁸ as well as Article III, Section 3(b) of FINRA’s By-Laws and FINRA Rule 2010.¹⁰⁹

B. Dakota Improperly Permitted Zipper’s Continued Association

The Complaint also alleges that Dakota violated FINRA Rules 8311 and 2010, as well as NASD Membership and Registration Rule 1031 and Article III, Section 3(b) of FINRA’s By-Laws, by allowing Zipper to continue his association with the firm during his suspension and statutory disqualification.

FINRA Rule 8311 provides that “[i]f a person is subject to a suspension . . . or other disqualification, a member shall not allow such person to be associated with it in any capacity that is inconsistent with the sanction imposed or disqualified status, including a clerical or ministerial capacity.” And as explained above, NASD Membership and Registration Rule 1031 and Article III, Section 3(b) of FINRA’s By-Laws similarly prohibit an individual from associating with a FINRA member while suffering a statutory disqualification resulting from a suspension or otherwise.

We find that Dakota violated these provisions. The firm knew that Zipper was continuing to associate with it while he was suspended. Zipper conducted Dakota business over firm emails; he entered trades in firm systems; and he directed services from the firm’s vendors. Indeed, there is little evidence in the record that anyone *other* than Zipper managed the firm’s business during Zipper’s periods of disqualification. And Dakota took no action to stop the misconduct. Lefkowitz, for his part, testified that he “didn’t know what [he] could and couldn’t do” when he was purportedly running Dakota during Zipper’s suspension.¹¹⁰ So he did nothing.

By allowing Zipper to continue to associate with it during his suspension and statutory disqualification, Dakota violated FINRA Rules 8311 and 2010, as well as NASD Membership and Registration Rule 1031 and Article III, Section 3(b) of FINRA’s By-Laws.

C. Zipper and Dakota Falsified Books and Records

FINRA Rule 4511(a) requires FINRA members to “make and preserve books and records as required” under FINRA’s rules, the Exchange Act, and Exchange Act rules. Exchange Act Rule 17a-3(a)(7) requires member firms to maintain a record of each purchase or sale of a

¹⁰⁸ See *Dep’t of Enforcement v. Beerbaum & Beerbaum Fin. and Ins. Serv., Inc.*, No. C01040019, 2006 NASD Discip. LEXIS 5, at *9-12 (NAC May 19, 2006), *aff’d*, Exchange Act Release No. 55731, 2007 SEC LEXIS 971 (May 9, 2007) (engaging in conduct that requires registration while suspended violates the Membership and Registration Rules).

¹⁰⁹ *Hedge Fund Capital Partners*, 2012 FINRA Discip. LEXIS 42, at *36-37.

¹¹⁰ Tr. (Lefkowitz) 330-31.

security that reflects, among other things, the identity of the associated person responsible for the account. Falsifying a firm's required books and records violates FINRA Rules 4511 and 2010.¹¹¹

We again find that there is no question that Zipper and Dakota falsified the firm's books and records by misidentifying the responsible broker in connection with more than 680 trades. Once again, the parties' written stipulations as well as Respondents' Answers conclusively establish Zipper and Dakota's violations.¹¹²

Dakota and Zipper's defense—that they systematically misidentified the responsible broker with the knowledge of firm customers, and in order to facilitate cost efficiency and “client convenience” so that a new broker would not have to register in the relevant state—is no defense at all.¹¹³ Zipper and Dakota were not at liberty to disregard their obligation to keep accurate books and records where they found it inconvenient.¹¹⁴ They were required to keep accurate records of trade transactions, but instead intentionally falsified hundreds of these records. Accordingly, both Zipper and Dakota violated FINRA Rules 4511 and 2010.

D. Dakota Failed to Adequately Supervise

FINRA Rule 3110(a) requires member firms to “establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.” In order to effectively implement and maintain these systems, FINRA Rule 3110(b) requires member firms to “establish, maintain, and enforce written procedures to supervise the types of business in which it engages.” “Assuring proper supervision is a critical component of broker-dealer operations.”¹¹⁵ Because this obligation must necessarily account for facts presented in any given situation, “[t]he standard of ‘reasonable’ supervision is determined based on the particular circumstances of each case.”¹¹⁶ Supervisory obligations “include[] the responsibility to investigate ‘red flags’ that suggest that misconduct may be occurring and to act upon the results

¹¹¹ See *Mitchell T. Fillet*, Exchange Act Release No. 75054, 2015 SEC LEXIS 2142, at *48-49 (May 27, 2015) (stating that FINRA's recordkeeping rules include the requirement that the records be accurate, which applies “regardless of whether the information itself is mandated”) (internal citations omitted); *Dep't of Enforcement v. John Carris Investments, LLC*, No. 2011028647101, 2015 FINRA Discip. LEXIS 32, at *97-98 (NAC Jan. 20, 2015) (“Entering inaccurate information in a member firm's books or records” violates FINRA Rules 4511 and 2010.).

¹¹² Stip. ¶¶ 30-35; Ans. ¶¶ 41-43, 76, 77, 81, 82; Dakota Ans. ¶¶ 40-46, 73-82.

¹¹³ *Dep't of Mkt. Regulation v. Burch*, No. 2005000324301, 2011 FINRA Discip. LEXIS 16, at *52 (NAC July 28, 2011) (rejecting the notion that falsified order tickets and confirmation statements were “minor mistakes” and “errors resulted in no harm”).

¹¹⁴ Respondents were also not at liberty to ignore their obligation to comply with state registration requirements through their falsification of firm books and records or otherwise.

¹¹⁵ *Richard F. Kresge*, Exchange Act Release No. 55988, 2007 SEC LEXIS 1407, at *27 (June 29, 2007).

¹¹⁶ *John A. Chepak*, 54 S.E.C. 502, 513 n.27 (2000).

of such investigation.”¹¹⁷ “Final responsibility for proper supervision of a member’s business rests with the member.”¹¹⁸

Here, the Complaint alleges that Dakota (1) failed to maintain a supervisory system adequate to ensure that Zipper was not associating with the firm during his suspension; (2) missed numerous red flags that should have alerted the firm to the misconduct; (3) failed to conduct any review of its electronic correspondence during the period of Zipper’s suspension; and (4) failed to adequately supervise the creation of the firm’s books and records with respect to the identification of the broker of record entering trades. Again, there is no doubt that Dakota failed in each regard—the firm admits as much in its Answer.¹¹⁹ And we find that the evidence presented at the hearing overwhelmingly established that Dakota’s implementation of its supervisory systems was deficient in each of these respects.

Accordingly, Dakota violated FINRA Rules 3110 and 2010.¹²⁰

IV. Sanctions

A. Zipper’s Misconduct

We first assess the appropriate sanction for Zipper’s misconduct in this case. Although FINRA’s Sanction Guidelines (“Guidelines”) do not directly speak to Zipper’s improper association with Dakota while suspended and statutorily disqualified, we consider the somewhat analogous guideline for a disqualified person associating with a firm prior to approval.¹²¹ For the disqualified person, the Guidelines recommend a fine of \$5,000 to \$73,000, and in egregious cases a bar.¹²² The Guidelines recommend that principal consideration should focus on the nature

¹¹⁷ *Michael T. Studer*, 57 S.E.C. 1011, 1023-1024 (2004).

¹¹⁸ *Dep’t of Enforcement v. Brookstone Sec., Inc.*, No. 2007011413401, 2015 FINRA Discip. LEXIS 3, at *104 (NAC Apr. 16, 2015); *see Dep’t of Enforcement v. CapWest Sec., Inc.*, No. 2007010158001, 2013 FINRA Discip. LEXIS 4, at *28 (NAC Feb. 25, 2013), *aff’d*, Exchange Act Release No. 71340, 2014 SEC LEXIS 205 (Jan. 17, 2014).

¹¹⁹ Dakota Ans. ¶¶ 66-72.

¹²⁰ A failure to supervise also violates FINRA Rule 2010. *Dep’t of Enforcement v. Midas Sec., LLC*, No. 2005000075703, 2011 FINRA Discip. LEXIS 62, at *21-23 (NAC Mar. 3, 2011).

¹²¹ *See* FINRA Sanction Guidelines at 43 (2018), <http://www.finra.org/industry/sanction-guidelines>. In May 2018, FINRA revised its Guidelines by amending General Principle No. 2 to instruct adjudicators in disciplinary proceedings to consider customer-initiated arbitrations that result in adverse arbitration awards or settlements when assessing sanctions. These revisions apply only to complaints filed in FINRA’s disciplinary system beginning June 1, 2018. *See* Guidelines at 2-3. Accordingly, we did not consider Zipper or Dakota’s customer complaints in determining sanctions. No other revisions were made to the Guidelines. *See* FINRA Regulatory Notice 18-17 (May 2, 2018), <http://www.finra.org/industry/notices/18-17>.

¹²² Guidelines at 43.

and extent of the disqualified person's activities, and whether disqualification resulted from misconduct.¹²³

Considering these principles, we find Zipper's violation of his suspension egregious. The suspension resulted from Zipper's prior misconduct, and he has a substantial history of misconduct, factors which we find aggravating.¹²⁴ And Zipper's association with Dakota in violation of the suspension was not an isolated incident—it was persistent, continuous and reflected Zipper's intentional flouting and disregard of his obligations.¹²⁵

The NAC has made clear that when FINRA “takes the extraordinary step of suspending a firm or a registered person, it is entitled to require complete and precise compliance with its directive.”¹²⁶ Zipper came nowhere near complete and precise compliance. And Zipper took no responsibility for his own conduct at the hearing—instead he falsely testified that his conduct was excused and insisted that he had done nothing wrong.¹²⁷

Zipper was similarly dismissive of his other violation, falsifying Dakota's books and records.¹²⁸ For recordkeeping violations of this sort, the Guidelines recommend considering a suspension of up to two years, or a bar, and a fine of \$10,000 to \$146,000, when aggravating factors predominate.¹²⁹ The relevant principal considerations include whether the violation occurred over an extended period, and whether the violations served to conceal other misconduct.

We find that Zipper's systematic misrepresentation of the broker of record in account transactions was also egregious misconduct. His misconduct spanned an extended time, and it likely concealed Zipper's own misconduct by creating false records that failed to identify him as the responsible broker during periods of his suspension and disqualification.

Zipper does not suggest any mitigating factors, nor do we find any.¹³⁰ FINRA rules, designed to protect investors, are meaningless if disregarded.¹³¹ Based upon his prior disciplinary history, his conduct at issue here, and his testimony at hearing, we have no confidence that

¹²³ Guidelines at 43.

¹²⁴ Guidelines at 7, Principal Consideration 1.

¹²⁵ Guidelines at 7, Principal Consideration 8.

¹²⁶ *Usher*, 2000 NASD Discip. LEXIS 5, at *13.

¹²⁷ *Kent M. Houston*, Exchange Act Release No. 71589, 2014 SEC LEXIS 614, at *27-28 (Feb. 20, 2014) (finding respondent's acceptance of responsibility “unconvincing because of his attempts to shift blame for his misconduct”).

¹²⁸ Guidelines at 7, Principal Consideration No. 2.

¹²⁹ Guidelines at 29.

¹³⁰ See *ACAP Fin., Inc. v. SEC*, 783 F.3d 763, 767 (10th Cir. 2015) (limiting its analysis of mitigating factors to those actually pursued by respondents).

¹³¹ *Beerbaum*, 2007 SEC LEXIS 971, at *20.

Zipper would follow FINRA rules, or, for that matter, abide by any suspension were we to impose one. For these reasons, and for each of his violations, Zipper is barred from association with a FINRA firm in all capacities.¹³²

B. Dakota's Misconduct

We next assess the appropriate sanction for Dakota. For improperly permitting Zipper to associate with the firm during his suspension and statutory disqualification, we again draw from the Guideline provision for a disqualified person associating with a firm prior to approval, providing a recommended sanction of a suspension for up to two years in egregious cases.¹³³

As explained above, permitting Zipper to continue his association with Dakota while disqualified was egregious misconduct. And Zipper was not merely disqualified—he was suspended by FINRA. The NAC clearly regards a registered person's association while suspended as “a more serious violation of [FINRA's] rules” warranting a commensurately more serious sanction.¹³⁴

And Dakota's serious failures in this regard are not isolated. They are instead troublingly consistent with an overall course of misconduct that reflects the firm's fundamental disregard for its obligation to exercise appropriate oversight and supervision of its operations. For Dakota's supervisory violations, we turn to the Guidelines' provision for systematic supervisory failures. We consider the provision where “a supervisory failure is significant and is widespread or occurs over an extended period of time.”¹³⁵ Systematic supervisory failures, as reflected by the conduct here, “involve supervisory systems that have both ineffectively designed procedures and procedures that are not implemented.”¹³⁶ The Guidelines recommend a fine of \$10,000 to \$292,000 for the responsible firm. Where aggravating factors predominate, the Guidelines recommend a higher fine along with a suspension of the firm for up to two years or expulsion.¹³⁷

The Guidelines recommend that in addition to the Principal Considerations in Determining Sanctions,¹³⁸ our consideration should focus on (1) whether supervisory deficiencies allowed violative conduct to occur or to escape detection; (2) the extent to which the deficiencies were not corrected or addressed once identified; (3) whether the firm appropriately allocated its resources to prevent or detect the supervisory failure; (4) the extent to which the

¹³² In light of the bar, Enforcement does not seek a fine against Zipper and we do not impose one.

¹³³ See Guidelines at 43.

¹³⁴ *Usher*, 2000 NASD Discip. LEXIS 5, at *13.

¹³⁵ Guidelines at 105.

¹³⁶ Guidelines at 105.

¹³⁷ Guidelines at 105. See also Guidelines at 107 (deficient written supervisory procedures).

¹³⁸ Guidelines at 7.

failures impacted customers or markets; and (5) the magnitude of the transactions not adequately supervised.¹³⁹

On balance, we find that aggravating factors predominate our analysis and that Dakota's violations were egregious. The firm's supervisory failures allowed a suspended representative to continue associating with it for an extended period. During this time, Dakota admits that it missed numerous red flags that should have alerted the firm to the misconduct. In particular, Dakota failed to supervise and adequately review internal email communications even after FINRA sanctioned the firm—twice—for failing to do just that.¹⁴⁰ And after receiving the NAC's denial of the MC-400 application expressly advising the firm of the problematic nature of Zipper's continued association, Dakota continued to improperly permit Zipper to associate with the firm. Accordingly, we find that Dakota's supervisory failures in this regard were aggravated and its shortcomings permitted "violative conduct to occur or to escape detection."¹⁴¹

Supervisory failures extended to other aspects of Dakota's business, including its failure to ensure that it properly record the responsible broker in customer trades. Once again, Dakota's deficient procedures implicated hundreds of transactions over an extended period. Given that these transactions are at the center of Dakota's business, the failure to adapt and implement procedures necessary to ensure compliance reflected a failure to allocate "resources to prevent or detect the supervisory failure, taking into account the potential impact on customers or markets."¹⁴² And given the substantial volume of the transactions, the "number . . . of the transactions not adequately supervised as a result of the deficiencies" is also aggravating.¹⁴³

And Dakota's falsification of its books and records is serious beyond failures of supervision. Because "[r]ecordkeeping rules are the keystone of the surveillance of brokers and dealers," falsification of such records is unacceptable misconduct that "cannot be countenanced."¹⁴⁴ The Guidelines for falsification of records recommend a suspension of up to two years or expulsion, and a fine of \$10,000 to \$146,000, when aggravating factors predominate. For the same reasons discussed above regarding Zipper, we find Dakota's intentional falsification of firm records egregious and without mitigation.

Our consideration of an appropriate sanction also takes into account our complete lack of confidence in Dakota's ability to maintain accurate records or adequately supervise its business going forward. The firm is now run by Lefkowitz, whose previous tenure as the firm's principal during Zipper's suspension resulted in much of the misconduct now at issue.¹⁴⁵ And we find it extremely troubling that the firm provided FINRA a record reflecting its past and current

¹³⁹ Guidelines at 105.

¹⁴⁰ Guidelines at 2, General Principle 2.

¹⁴¹ Guidelines at 105, Principal Consideration 1.

¹⁴² Guidelines at 105, Principal Consideration 3.

¹⁴³ Guidelines at 105, Principal Consideration 5.

¹⁴⁴ *Burch*, 2011 FINRA Discip. LEXIS 16, at *49.

¹⁴⁵ Tr. (Cuccia) 578-79.

supervisory responsibilities that identified Lefkowitz as the designated supervisor of a number of individuals at the firm *during periods when Lefkowitz was suspended*.¹⁴⁶ That record also indicated that Zipper continued supervising Dakota's affairs when disqualified and not permitted to associate with the firm.¹⁴⁷ After FINRA raised questions about these issues, Dakota *changed its books and records* to reflect that other individuals were purportedly supervising the firm during the precise dates of Lefkowitz's suspension and submitted this modified record to FINRA.¹⁴⁸

Dakota emphasizes that it has separated itself from Zipper, removing him from ownership and relocating its operations from Zipper's living room to a separate office.¹⁴⁹ But any benefit stemming from the fact that ownership of the firm is no longer directly in Zipper's hands is diminished by the fact that ownership was transferred to Zipper's wife.¹⁵⁰ Despite this purported transfer, Dakota's financial reports and information continue to be provided directly to Zipper.¹⁵¹ We find it unlikely that much has truly changed at Dakota.

For these reasons, and taking into account Dakota's disciplinary history as a supervisory violation recidivist, its egregious misconduct here, and the absence of any mitigating factors, we find that in order to effectuate the remedial purposes of the Sanction Guidelines, protect the public interest, improve overall business standards in the securities industry, and deter others from engaging in similar misconduct, the only appropriate sanction is the firm's expulsion. Accordingly, for each of its violations, Dakota is expelled from FINRA membership.

V. Order

Respondent Bruce M. Zipper is barred from associating with any FINRA member firm in any capacity for associating with Dakota during his suspension and disqualification, in violation of FINRA Rule 2010, NASD Membership and Registration Rule 1031, and Article III, Section 3(b) of FINRA's By-Laws. Zipper is also barred from associating with any FINRA member firm in any capacity for falsifying trade transaction records, in violation of FINRA Rules 4511 and 2010.

Respondent Dakota Securities International, Inc. is expelled from FINRA membership for permitting Zipper to continue to associate with it during his suspension and statutory disqualification, in violation of FINRA Rules 8311 and 2010, as well as NASD Membership and Registration Rule 1031 and Article III, Section 3(b) of FINRA's By-Laws. Dakota Securities International is also expelled from FINRA membership for failing to maintain adequate

¹⁴⁶ CX-59; Tr. (Pagnanelli) 495-97.

¹⁴⁷ CX-59; Tr. (Pagnanelli) 495-97.

¹⁴⁸ CX-50; Tr. (Pagnanelli) 498-501.

¹⁴⁹ Tr. (Cuccia) 579-83.

¹⁵⁰ CX-85.

¹⁵¹ Tr. (Cuccia) 596-97.

supervisory systems, in violation of FINRA Rules 3110(a) and 2010, and for falsifying trade transaction records, in violation of FINRA Rules 4511 and 2010.

The bars and the expulsions shall be effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.

We also order Respondents, jointly and severally, to pay costs of \$6,077.55, a \$750 administrative fee and \$5,327.55 for the cost of the transcript. The fine and costs shall be payable on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action.



Hearing Officer
For the Hearing Panel

Copies:

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