BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Steven E. Larson Nisswa, MN, Respondent.	DECISION Complaint No. 2014039174202 Dated: September 21, 2020

Registered principal fraudulently misrepresented and omitted material facts, failed to comply fully and promptly with FINRA requests for information, backdated and provided falsified records to FINRA, and filed a misleading FINRA continuing membership application. Held, findings and sanctions affirmed, in part.

Appearances

For the Complainant: J. Lloyd Gattis, Esq., Adam B. Walker, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Pro Se

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Decision

On June 14, 2018, an Extended Hearing Panel ("Hearing Panel") issued a decision that found Steven E. Larson violated FINRA rules when he did not comply fully and promptly with a series of FINRA requests for information, backdated and provided to FINRA falsified records, and filed a misleading FINRA continuing membership application ("CMA"). For this misconduct, the Hearing Panel imposed concurrent suspensions on Larson of two years, 18 months, and 18 months, respectively. The Hearing Panel also ordered that Larson pay a $37,000 fine for his failure to respond fully and promptly to FINRA's information requests.

Although the Hearing Panel found that Larson misled customers by misrepresenting and omitting material facts when he communicated with them about church bonds they owned, and when he arranged several cross trades of church bonds between his customers, a Hearing Panel majority nevertheless concluded that he did not do so with scienter. Consequently, the Hearing Panel dismissed Enforcement's two causes of action that alleged Larson engaged in fraud, in violation of the federal securities laws and FINRA rules.

Enforcement appeals the Hearing Panel's findings that Larson did not commit fraud, and it requests that we impose a sanction on him for what it alleged were his reckless misrepresentations and omissions of material facts. Enforcement also seeks to increase to a bar the two-year suspension and $37,000 fine that the Hearing Panel imposed after it found Larson failed to respond fully and promptly to multiple FINRA requests for information.

In addition to Enforcement's appeal, a Review Subcommittee of the National Adjudicatory Council ("NAC") called other elements of the Hearing Panel's decision for discretionary review. First, the Review Subcommittee called for review the Hearing Officer's decision to deny a motion Larson filed seeking to dismiss Enforcement's disciplinary claims as a sanction for its failure to comply with prehearing discovery obligations imposed under FINRA rules. Second, the Review Subcommittee called for review the Hearing Panel's findings that Larson violated FINRA rules when he allegedly did not comply fully and promptly with several requests for information issued by FINRA staff.

After a thorough review of the entire record, we find: (1) the Hearing Officer did not commit clear error when he denied Larson's motion to dismiss Enforcement's claims; (2) the Hearing Panel majority erred in finding that Larson lacked the scienter required to commit fraud; and (3) the Hearing Panel properly found that Larson violated FINRA rules by failing to provide promptly full responses to three FINRA requests for information. For the remaining liability findings related to Larson's backdating and provision of falsified records to FINRA, and his filing of a misleading CMA, we affirm these findings, which the parties did not appeal and the Review Subcommittee did not call for review.

For sanctions, we impose a single bar for Larson's acts of fraud. We affirm, but do not impose in light of the foregoing bar, the two-year suspension and $37,000 fine the Hearing Panel assessed for his failure to respond fully and promptly to multiple FINRA information requests. Finally, we affirm the 18-month suspensions the Hearing Panel assessed for Larson's remaining violations of FINRA rules, although these sanctions are also not imposed because of the bar.

I. Background

Larson entered the securities industry in 1994. In August 2011, he associated with Oakbridge Financial Services, Inc. ("Oakbridge"), and registered with the firm as a general securities representative, general securities principal, and operations professional.[1] From December 2012 to May 2015, Larson served as the firm's chief executive officer and chief compliance officer. Although Oakbridge was headquartered in Missouri, Larson worked primarily from his home in Minnesota. He has not associated with another FINRA member since leaving Oakbridge in May 2016.

II. Procedural History

A. Enforcement Initiates Disciplinary Proceedings Against Larson

This matter involves claims of misconduct set forth in a five-cause, amended complaint Enforcement filed on May 31, 2016.[2] The first cause alleged Larson fraudulently misrepresented and failed to disclose in written communications with his customers material facts about church bonds they held in their Oakbridge accounts, in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), Exchange Act Rule 10b-5, and FINRA Rules 2020 and 2010. The second cause alleged Larson fraudulently misrepresented and omitted materials facts when he induced some of his Oakbridge customers to purchase church bonds in cross trades with other customers, in violation of Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, and FINRA Rules 2020 and 2010.[3] The third cause alleged Larson failed to provide a full and prompt response to each of three requests for information, which FINRA issued between September 2013 and July 2014, in violation of FINRA Rules 8210 and 2010. The fourth cause alleged Larson backdated documents and provided them to FINRA as legitimate firm records, in violation of FINRA Rules 4511 and 2010. Finally, the fifth cause alleged Larson submitted to FINRA in March 2012 a CMA for Oakbridge that omitted material information and was misleading, in violation of FINRA Rules 1122 and 2010.

Larson answered Enforcement's amended complaint on June 28, 2016. Larson denied all allegations that he had engaged in conduct that violated the federal securities laws or FINRA rules, and he requested a hearing.

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1 Prior to April 23, 2013, Oakbridge operated under the name Forsyth Securities, Inc.

2 Enforcement filed a complaint initiating disciplinary proceedings against Larson on May 11, 2016. FINRA Rule 9212(b) permits Enforcement to file and serve an amended complaint once as a matter of course before the respondent answers the complaint.

3 Enforcement requested findings that Larson willfully violated Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5.

B. The Hearing Panel Issues a Decision After Holding a Hearing

The Hearing Panel held a nine-day hearing from April 3, through April 7, 2017, and after a four-month continuance, from August 14, through August 17, 2017.[4] During the hearing, Enforcement called nine witnesses to testify and present evidence to support its claims. These included Larson; Christopher Anderson, Ph.D. ("Dr. Anderson"), Enforcement's expert on issues involving church bonds; John Huang ("Huang"), the president of Oakbridge at the time of Larson's alleged misconduct; and several other witnesses, including FINRA examiners. Larson testified in narrative fashion as the sole witness called in his defense, and he was cross-examined by Enforcement.

The Hearing Panel issued its decision on June 14, 2018. The Hearing Panel found Larson violated FINRA Rules 8210 and 2010, as alleged in the amended complaint's third cause, by failing to provide full and prompt responses to three FINRA requests for information. The Hearing Panel fined Larson $37,000 and suspended him from associating with any FINRA member in any capacity for a two-year period for cause three. The Hearing Panel further found Larson violated FINRA Rules 4511 and 2010, as alleged in the amended complaint's fourth cause, when he backdated documents related to supervisory reviews he claimed to have performed more than a year earlier and provided these falsified documents to FINRA as accurate firm records. For the fourth cause, the Hearing Panel suspended Larson from associating with any FINRA member in any capacity for 18 months. Finally, the Hearing Panel found Larson violated FINRA Rules 1122 and 2010, as alleged in the amended complaint's fifth cause, because he submitted to FINRA a CMA that omitted material information and was thus materially misleading. The Hearing Panel suspended Larson an additional 18 months for this misconduct. The Hearing Panel ordered that Larson's suspensions be served concurrently.

The Hearing Panel found, however, that Enforcement failed to establish that Larson engaged in fraud, as alleged in the first and second causes of the amended complaint. The Hearing Panel determined that Larson indeed made false and misleading statements about material facts in written communications he sent to his customers about church bonds, omitted material facts from these communications, and arranged cross trades of church bonds between customers without disclosing material facts concerning the market for the bonds. A Hearing Panel majority nevertheless concluded that the evidence did not support finding that Larson acted with the required scienter to establish fraud under the federal securities laws and FINRA rules.[5] The Hearing Panel therefore dismissed Enforcement's claims that Larson engaged in fraud.

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[4] We discuss the events that necessitated the four-month gap between the first and second week of hearing dates in detail below. *See infra* Part III.A.

[5] The Hearing Officer dissented from the majority's findings concerning scienter and concluded that the evidence established Larson, at a minimum, acted with reckless disregard of the facts.

C. Enforcement Appeals, and the Review Subcommittee Calls for Review, Elements of the Hearing Panel's Decision

On July 6, 2018, Enforcement timely appealed the Hearing Panel's decision. Specifically, Enforcement appealed the Hearing Panel's dismissal of causes one and two of the amended complaint, taking issue with the Hearing Panel majority's findings that Larson did not act with the required scienter to commit fraud. Enforcement also appealed the sanctions the Hearing Panel imposed for Larson's violations of FINRA Rules 8210 and 2010, as alleged in cause three of the amended complaint.

Pursuant to FINRA Rule 9312, a Review Subcommittee of the NAC also called for review two additional elements of the Hearing Panel's decision. First, the Review Subcommittee called for review an order the Hearing Officer issued that denied a motion Larson filed seeking to dismiss Enforcement's claims because of its admitted failure to comply timely with the discovery obligations imposed under FINRA Rule 9251.[6] Second, the Review Subcommittee called for review the Hearing Panel's findings that Larson failed to provide full and prompt responses to three requests for information issued by FINRA, in violation of FINRA Rules 8210 and 2010.[7]

The NAC subcommittee empaneled to consider this matter heard the parties' oral arguments after considering their briefs on the foregoing issues.[8]

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[6] On July 24, 2018, Larson filed a notice of cross-appeal that requested that the NAC review the Hearing Officer's order. Although filed late, we accepted Larson's cross-appeal in light of the expanded scope of the NAC's review, as determined by the Review Subcommittee.

[7] The parties did not appeal, and the Review Subcommittee did not call for review, the Hearing Panel's findings of misconduct under causes four and five of the amended complaint, or the sanctions the Hearing Panel imposed for this misconduct. The Review Subcommittee, in its discretion, thus deemed waived and beyond the scope of this appeal proceeding any issues concerning those elements of the Hearing Panel's decision. *See* FINRA Rule 9311(e). Consequently, we affirm the Hearing Panel's findings and sanctions as to the fourth and fifth causes of the amended complaint. We nevertheless address them in this decision to provide FINRA's final decision for purposes of any further review proceedings permitted under the federal securities laws.

[8] Larson attached to his opening appeal brief several documents that were not admitted as evidence in the hearing below. He did not move to adduce this additional evidence under FINRA Rule 9346(b), did not establish good cause for failing to introduce the evidence below, and did not establish that the evidence is material to the issues raised in this appeal. We therefore have not considered the documents for purposes of reaching a decision in this case. *See* FINRA Rule 9346(a).

III. Discussion

A. The Hearing Officer Did Not Err by Denying Larson's Motion to Dismiss Enforcement's Claims

As directed by the Review Subcommittee, we review as a threshold matter the Hearing Officer's handling of Enforcement's failure to comply fully with its obligations to provide Larson with prehearing discovery. Specifically, we review for abuse of discretion the Hearing Officer's decision to deny a motion Larson filed seeking dismissal of Enforcement's disciplinary claims as a sanction for its admitted discovery error. *Cf. Allen v. Exxon Corp.*, 102 F.3d 429, 432 (9th Cir. 1996) ("We review sanctions imposed by a district court [under Fed. R. Civ. P. 37] for abuse of discretion and will not reverse absent a definite and firm conviction that the district court made a clear error of judgment."). After reviewing the circumstances surrounding Enforcement's discovery failure in their entirety, and the steps the Hearing Officer took to mitigate any prejudice to Larson that resulted from this failure, we conclude the Hearing Officer did not commit clear error by denying Larson's motion to dismiss.

1. Facts

a. Enforcement Discloses a Discovery Lapse

On April 7, 2017, before cross-examining Larson on the hearing's fifth day, Enforcement informed the Hearing Officer it had located in FINRA's files an email that FINRA obtained from Oakbridge during the investigations that led to Enforcement instituting disciplinary proceedings against Larson. Enforcement disclosed it had not identified a copy of the email as an exhibit in its prehearing submissions and failed to make a copy of the email available to Larson for his inspection and copying under FINRA Rule 9251, which imposes on Enforcement a duty to provide a respondent specified, prehearing discovery. After the Hearing Officer sought to determine the scope of Enforcement's discovery lapse, Enforcement informed the Hearing Officer that FINRA's files contained additional documents prepared or obtained in connection with its investigations that Enforcement failed to make available to Larson under FINRA Rule 9251, although it did not know the full extent of its discovery omission.

b. The Hearing Officer Adjourns the Hearing and Orders Enforcement to File a Declaration Reporting Its Completion of Discovery

Enforcement's disclosure of a discovery lapse caused the Hearing Officer to adjourn the hearing immediately. The Hearing Officer further ordered Enforcement to file a declaration detailing the steps it had taken to comply fully with FINRA Rule 9251.

Enforcement filed the requested declaration on April 18, 2017. The declaration detailed Enforcement's failure to produce in prehearing discovery a large volume of emails and other documents that FINRA staff obtained in connection with the investigations that led to Enforcement's claims of Larson's alleged misconduct, a failure Enforcement described as "inadvertent[]."

According to the declaration, Enforcement based the amended complaint's claims on findings from five FINRA investigations. FINRA staff maintained the files for three of these investigations electronically. Enforcement's litigation support group copied these files to the platform Enforcement used to review and produce documents electronically in discovery.

The declaration further explained FINRA staff maintained the files for the remaining two investigations, which led to cause three of the amended complaint, primarily in physical form. Enforcement scanned the paper documents in these files, and the litigation support group likewise copied these documents to Enforcement's discovery platform. Prior to the hearing, Enforcement timely produced for Larson's inspection and copying all documents copied to the discovery platform, other than those documents Enforcement could or was required to withhold under FINRA Rule 9251(b).[9]

Enforcement's declaration stated, however, the physical files for the latter two investigations also included a disc that contained more than 30,000 emails, including attachments, FINRA staff obtained from Oakbridge.[10] The litigation support group never copied the disc's contents to Enforcement's discovery platform. Enforcement stated this omission was due to an "apparent miscommunication," but it provided no further details. Because of this oversight, Enforcement did not produce for Larson's inspection and copying the emails contained on the disc, a failure that Enforcement accepted was inconsistent with its duties under FINRA Rule 9251(a).

Enforcement claimed it immediately informed the Hearing Officer of the discovery deficiency when it first learned of it on April 7, 2017. To remediate this error, on April 17, 2017, Enforcement provided Larson all the emails that it failed to produce to him prior to the hearing. To "lessen any prejudice resulting from the late production," Enforcement also provided Larson with a subset of these emails, which consisted of approximately 200 emails that Enforcement determined could arguably be related to the amended complaint's third cause of action or had been identified conducting a keyword search. Finally, Enforcement further reviewed its prehearing discovery production for other possible deficiencies, and it identified and produced to Larson an additional 160 documents and 17 emails that it determined had been "inadvertently omitted."[11] Enforcement's declaration attested that Enforcement did not withhold from this late-

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[9] Enforcement completed this prehearing discovery production on July 22, 2016.

[10] Enforcement explained FINRA staff requested access to review a large selection of Oakbridge emails from which they planned to identify and copy a significantly smaller number of emails relevant to FINRA's investigations. Because of technology problems, however, the firm's email vendor produced to FINRA the entire collection of emails to which Oakbridge provided FINRA staff access.

[11] Enforcement estimated that the volume of discoverable documents it failed to produce prior to the hearing was greater than double the total number of documents Enforcement provided Larson in prehearing discovery.

produced discovery any material exculpatory evidence and that it had complied fully with FINRA Rule 9251.[12]

c. The Hearing Officer Takes Steps to Mitigate Enforcement's Discovery Breakdown

After Enforcement completed its discovery production, the Hearing Officer gave Larson several weeks to review the large volume of emails and other documents. On May 9, 2017, Larson informed the Hearing Officer he had completed his review of these documents and concluded that approximately 225 of them were relevant to his defense against Enforcement's claims. The Hearing Officer thereafter enacted several protections that he concluded were necessary to ensure the fairness of the hearing before it resumed.

First, the Hearing Officer granted Larson leave to file a motion for summary disposition.[13] Second, the Hearing Officer permitted Larson to supplement his exhibit list with any of the newly discovered documents. Finally, the Hearing Officer granted Larson leave to amend his witness list, recall Enforcement's witnesses so that he could cross-examine them using any of the supplemental exhibits he identified, and supplement his own narrative testimony.

Larson filed a motion for summary disposition on May 19, 2017, which Enforcement opposed. The Hearing Officer issued an order denying this motion on June 27, 2017. The Hearing Officer found that Larson did not establish, as required under FINRA Rule 9264(e), that there were no genuine issues regarding any material fact at issue in the case and that Larson was entitled to summary disposition as a matter of law.

Larson also filed, on May 22, 2017, a motion to dismiss Enforcement's disciplinary action in its entirety. In this motion, which Enforcement opposed, Larson argued that Enforcement's failure to timely produce documents he was entitled to receive in prehearing discovery was so "grievous" that the disciplinary proceedings should be dismissed as a sanction under FINRA Rule 9280.[14] The Hearing Officer issued an order denying Larson's motion on June 21, 2017. Although the Hearing Officer found Enforcement's failure to comply with its discovery obligations "disconcerting," based on both the period of Enforcement's noncompliance and the breadth of its discovery error, he found other factors weighed against dismissing Enforcement's claims. These factors included that the record did not show that

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[12] During a status conference on April 21, 2017, Enforcement informed the Hearing Officer that it evaluated the entire production of documents and determined that these documents did not contain any arguably material exculpatory evidence.

[13] The Hearing Officer explained that he granted Larson the opportunity to move for summary disposition because Enforcement's discovery lapse deprived him of the opportunity to request summary disposition with the benefit of having received full discovery.

[14] Larson's motion incorrectly referenced FINRA Rule 9250.

Enforcement engaged in willful or contemptuous conduct or acted in bad faith; Enforcement promptly disclosed and admitted its error after learning of it; and Enforcement undertook substantial remediation efforts and completed its production of the newly discovered documents. The Hearing Officer concluded public policy favored disposing of Enforcement's amended complaint on its merits, and that completing the hearing, after a four-month delay to mitigate any prejudice to Larson, best served the interests of justice in this case.

Larson filed his supplemental witness and exhibit lists on June 30, 2017. The supplemental witness list identified the name of only one new witness whom neither Enforcement nor Larson called during the hearing's first week of testimony. The supplemental exhibit list identified 200 exhibits, selected from Enforcement's late-produced discovery, that Larson claimed were relevant to Enforcement's claims.[15] Although permitted to file objections to Larson's supplemental exhibit and witness lists under the terms of the prehearing scheduling order issued prior to the hearing's resumption, Enforcement chose not to do so and instead reserved any objections for the hearing.

d. The Hearing Ends

The hearing resumed on August 14, 2017, and it concluded on August 17, 2017. During this second week of hearing dates, Larson recalled for additional cross-examination, with the benefit of his supplemental exhibits, Huang and four of the FINRA examiners who testified during the hearing's first week. Larson also took the witness stand to supplement his narrative testimony, and Enforcement cross-examined him. Larson did not call to testify in his defense the additional witness identified on his supplemental witness list who had not testified earlier. The Hearing Panel received as evidence in the hearing's second week 36 of the 200 exhibits Larson identified in his supplemental exhibit list.[16]

2. Findings

FINRA Rule 9251 governs discovery in FINRA disciplinary proceedings. The rule requires Enforcement, with limited exceptions not at issue in this case, to make available for inspection and copying by a respondent any document prepared or obtained by FINRA staff in connection with the investigation that led to the institution of disciplinary proceedings. *See* FINRA Rule 9251(a). This obligation is meant to ensure that a respondent obtains from Enforcement non-privileged and otherwise unprotected documents in advance of a hearing so that the respondent can prepare a defense and the Hearing Officer can preside over a fair

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15 Larson identified most of these exhibits as being relevant to the amended complaint's third cause, although several exhibits were identified as relevant to the amended complaint's remaining causes.

16 As to the remainder of 200 exhibits identified on his supplemental exhibit list that were not admitted into evidence, Larson either did not seek to introduce them or used them for cross-examination and impeachment purposes only.

disciplinary process. *See* Order Approving Proposed Rule Change Regarding Membership Application Procedures, Disciplinary Proceedings, Investigations and Sanctions Procedures, Exchange Act Release No. 38908, 1997 SEC LEXIS 1617, at *132-35 (Aug. 7, 1997). We expect Enforcement to comply thoroughly with its discovery obligations in every case. If Enforcement fails to comply with the requirements of FINRA Rule 9251 without substantial justification, the Hearing Officer, on motion and after giving an opportunity to be heard, may impose sanctions for this failure.[17] *See* FINRA Rule 9280(b)(2). These sanctions may include an order striking Enforcement's pleadings or a specified part of its pleadings.[18] *See* FINRA Rule 9280(b)(1)(A)-(C).

Dismissal, however, is a severe and extreme sanction. *See Weisberg v. Webster*, 749 F.2d 864, 869 (D.C. Cir. 1984) ("[D]ismissal is a severe sanction, and should be resorted to only to the extent necessary to induce future compliance and preserve the integrity of the system." (internal quotation marks omitted)); *see also Trautman Wasserman & Co.*, Exchange Act Release No. 55989, 2007 SEC LEXIS 1408, at *25 (June 29, 2007) ("Barbera still has not demonstrated any prejudice to himself, much less that such prejudice is sufficient to justify the extreme remedy of dismissal of all proceedings."). As such, it may serve as a sanction for a discovery violation only when the violation is due to willfulness, bad faith, or gross negligence. *See Allen*, 102 F.3d at 432 ("Dismissal . . . is authorized only in extreme circumstances and only where the violation is due to willfulness, bad faith, or fault of the party." (internal quotation

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[17] In general, when Enforcement fails without substantial justification to disclose discoverable information to a respondent, FINRA Rule 9280 precludes it from using that information at a hearing, in a motion, or in oral argument, unless such failure is harmless. *See* FINRA Rule 9280(b)(2). In the event a hearing has concluded, or a decision issued, no rehearing or amended decision is required unless the respondent establishes that Enforcement's failure to make the information available to the respondent was not harmless error. *See* FINRA Rule 9251(g). Here, Enforcement had rested its case and did not seek to use the omitted documents when it discovered them, and the Hearing Panel had not concluded the hearing or issued a decision when Enforcement produced this missing discovery. Therefore, we find that there is no basis for us to consider ordering a rehearing or the issuance of an amended decision.

[18] Unlike Federal Rule of Civil Procedure 37, which permits a court to impose the sanction of dismissal for a failure to make discovery disclosures in violation of Federal Rule of Civil Procedure 26, FINRA Rule 9280 does not permit explicitly the dismissal of Enforcement's case as a sanction for violating FINRA Rule 9251. *Compare* Fed. R. Civ. P. 37(b)(2) & (c)(1) *with* FINRA Rule 9280(b)(1)-(2). In this case, however, we see no meaningful distinction between a motion to dismiss Enforcement's disciplinary claims and a motion to strike its amended complaint in its entirety. *See Asay v. Hallmark Cards, Inc.*, 594 F.2d 692, 696 n.2 (8th Cir. 1979) ("We see no difference, in purpose and effect, between an order striking an entire pleading and a dismissal order . . . ."). We therefore find no error in the Hearing Officer's decision to consider Larson's motion to dismiss Enforcement's claims and issue an order denying that motion on its merits.

marks omitted)); *cf. Weisberg*, 749 F.2d at 871 ("Subsequent interpretations continue to require that dismissal under Rule 37 be based on willfulness or at least gross negligence.").

We find several factors support the conclusion that the Hearing Officer did not commit clear error by denying Larson's motion to dismiss Enforcement's disciplinary claims. First, the record supports the Hearing Officer's determination that Enforcement's discovery omissions were neither willful nor accompanied by bad faith, and we find no evidence to suggest otherwise.[19] As Enforcement's declaration attested, it inadvertently omitted the missing documents from its prehearing discovery productions because of miscommunications between Enforcement, its litigation support group, and the FINRA examiners who conducted the investigations that resulted in the initiation of disciplinary proceedings against Larson. Thus, although Enforcement's discovery compliance was negligent, it did not rise to the level of gross negligence necessary to find that the Hearing Officer should have found fault with its actions.[20] *Cf. Ramirez v. T&H Lemont, Inc.*, 845 F.3d 772, 776 (7th Cir. 2016) (finding fault in the context of a dismissal under Federal Rule of Civil Procedure 37 does not require a showing of intent but rather a showing of extraordinarily poor judgment or gross negligence).

Second, the Hearing Officer concluded that although the period of Enforcement's failure to comply fully with its discovery obligations was lengthy, Enforcement promptly reported its discovery omissions and accepted responsibility without any warnings or official intervention concerning its noncompliance. *Cf. Agiwal*, 555 F.3d at 302 (identifying the duration of noncompliance and whether the non-compliant party was warned of the consequences of noncompliance as among the factors to consider when evaluating a district court's exercise of discretion to dismiss an action under Federal Rule Civil Procedure 37). There is no evidence that Enforcement was otherwise slow in providing Larson discovery under FINRA Rule 9251. *See Price v. City of Chicago*, No. 13-cv-1785, 2016 U.S. Dist. LEXIS 8592, at *8-9 (N.D. Ill. Jan. 26, 2016) ("Factors considered in this analysis are . . . a history of dilatoriness.").

Finally, the Hearing Officer appropriately weighed the risk of prejudice to Larson with the public's interest in the prompt resolution of Enforcement's disciplinary claims and the disposition of its case on the merits. *See Allen*, 102 F.3d at 433 (listing the public's interest in the expeditious resolution of litigation, the risk of prejudice to the defendant, and the public policy favoring disposition of cases on their merits among the factors a district court must

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[19] We review the Hearing Officer's determination of whether Enforcement was at fault, or acted willfully or in bad faith, for clear error. *See Agiwal v. Mid Island Mortg. Corp.*, 555 F.3d 298, 302 (2d Cir. 2009).

[20] Larson claims in his appeal brief that the discovery Enforcement provided to him to correct its earlier omission included manufactured evidence and manipulated or altered data. Larson's allegations of staff misconduct, however, find no support in the record, and he did not make these claims below. We therefore give them no credence here. *See DBCC v. Guevara*, Complaint No. C9A970018, 1999 NASD Discip. LEXIS 1, at *35 (NASD NAC Jan. 28, 1999) ("In response to numerous objections raised by Guevara, we find no evidence of prosecutorial or staff misconduct . . . .").

consider in determining whether dismissal is warranted); *see also Tujibikila v. Allyn*, No. 19-C-193, 2020 U.S. Dist. LEXIS 75058, at *4-5 (E.D. Wis. Apr. 29, 2020) ("Factors suggested by the Seventh Circuit for district courts to consider when dismissing a case . . . include . . . whether the misconduct prejudiced the other party . . . [and] the likely merits of the wrongdoer's case."). As the Hearing Officer noted, the breadth of Enforcement's discovery omission was "staggering." Enforcement failed to produce more than 30,000 emails and other documents that Larson was undoubtedly entitled to receive in discovery. Consequently, the Hearing Officer was required to adjourn the hearing, after Enforcement had rested its case and Larson had testified in narrative fashion on his own behalf, to permit Enforcement to complete its production of omitted documents, and give Larson the opportunity to review this large-volume of late produced discovery fully. Enforcement's failure thus prejudiced Larson.[21] *See Comput. Task Grp., Inc. v. Brotby*, 364 F.3d 1112, 1116 (9th Cir. 2004) ("We have held that failure to produce documents as ordered . . . is considered sufficient prejudice.").

The Hearing Officer, however, issued a four-month continuance that mitigated the prejudice caused by Enforcement's violation of FINRA Rule 9251. *See All. Commc'ns Techs., Inc. v. AT&T Corp.*, 245 F. App'x 583, 585 (9th Cir. 2007) ("ATT's violation of Rule 26 was rendered harmless as Alliance had many months to review the contested information . . . ."); *see also Aronstein*, 2017 Bankr. LEXIS 2388, at *14 ("This Court finds that a continuance allowing Aronstein to conduct depositions of the untimely disclosed witnesses would cure the prejudice caused by High Standard's failure."); *Trautman Wasserman & Co.*, 2007 SEC LEXIS 1408, at *23 ("Barbera has not shown how the alleged Division misconduct harmed him. We stayed the proceeding . . . with the exception that the Division must make its entire investigative file available to Respondents."). During this period, the Hearing Officer permitted Larson to supplement his exhibit list with any of the newly discovered documents, to amend his witness list, recall Enforcement's witnesses so that he could cross-examine them using any of the supplemental exhibits, and supplement his own narrative testimony, all of which Larson in fact did.[22] The Hearing Officer did not err in his decision to impose remedies short of the dismissal of Enforcement's case. *Cf. Comput. Task Grp.*, 364 F.3d at 1115 ("In deciding whether a sanction of dismissal . . . is appropriate, the district court must weigh . . . the availability of less drastic sanctions.").

"Against the power to prevent delays must be weighed the sound public policy of deciding cases on their merits." *Reizakis v. Loy*, 490 F.2d 1132, 1135 (4th Cir. 1974). We conclude, based on this record, that the Hearing Officer exercised appropriate discretion in

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[21] "Prejudice analysis focuses more on the effect the nondisclosure has on the other party's ability to prepare for trial rather than the prejudice which may occur if the evidence is used at trial." *Aronstein v. High Standard Mfg. Co.*, No. 15-33794, 2017 Bankr. LEXIS 2388, at *12 (Bankr. S.D. Tex. Aug. 24, 2017).

[22] The additional evidence Larson presented during the hearing's second week proved either duplicative of other evidence already in the record or irrelevant and immaterial to either Enforcement's claims or Larson's defense.

deciding not to dismiss Enforcement's disciplinary claims.[23] *See Flores v. Ethicon, Inc.*, 563 F. Appx 266, 274 (4th Cir. 2014) ("[T]he power to dismiss a case is appropriately exercised only with restraint." (internal quotation marks omitted)).

In his appeal brief, Larson nevertheless claims that the Hearing Officer, despite the targeted steps taken during the hearing, denied him fair process in this case. Larson claims that the Hearing Officer denied him the opportunity to call specific witnesses to testify during the hearing's second week. The record, however, shows that the Hearing Officer granted Larson considerable latitude to supplement his witness list and to call or recall the witnesses he felt were necessary for him to mount a defense. To the extent Larson did not call a witness during the hearing, it was his decision not to do so. *See Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *60 (Jan. 30, 2009) ("We have stated previously that the failure of a respondent to testify and adduce available evidence to meet the charges against him . . . does not entitle him to have the proceedings reopened after the issuance of an adverse decision." (internal quotation marks omitted)), *aff'd*, 416 F. App'x 142 (3d Cir. 2010).

Larson also asserts that the Hearing Officer unfairly restricted the scope of his cross-examination of the witnesses that he recalled during the hearing's second week. We find these claims too are unsupported. FINRA Rule 9235 authorizes a Hearing Officer "to do all things necessary and appropriate to discharge his or her duties," including "regulating the course of the hearing" and "resolving any and all procedural and evidentiary matters." *See* FINRA Rule 9235(a). In this respect, the Hearing Officer was required to receive in the record "relevant evidence" and possessed the discretion to exclude all "irrelevant, immaterial, unduly repetitious, or unduly prejudicial" evidence. *See* FINRA Rule 9263(a). Having reviewed the entirety of the record of the hearing, we find no evidence that Hearing Officer abused the broad discretion granted to him to regulate the course of the hearing. *See Dep't of Enforcement v. Brookstone Sec., Inc.*, Complaint No. 2007011413501, 2015 FINRA Discip. LEXIS 3, at *110 (FINRA NAC Apr. 16, 2015) ("The Hearing Officer is granted broad discretion to accept or reject evidence under this rule.").

The record instead shows that Larson received a fair process in accordance with the Exchange Act and FINRA's Code of Procedure. *See* 15 U.S.C. § 78o-3(b)(8), (h)(1) (requiring that self-regulatory organizations provide fair procedures); *Sundra Escott-Russell*, 54 S.E.C. 867, 873-74 (2000) (finding requirements of the Exchange Act met when FINRA brought specific

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[23] FINRA Rule 9280 authorizes a Hearing Officer or a Hearing Panel, but not the NAC, to impose other sanctions on a party or an attorney for a party for conduct that violates an order or is otherwise contemptuous, including the exclusion of an attorney from a proceeding. *See* FINRA Rule 9280(a)-(b). Larson argues in his appeal brief that we should impose sanctions on Enforcement counsel personally for the discovery lapse that admittedly occurred in this case. Because we do not have the power to impose such sanctions on appeal, and they are beyond the scope of our review as determined by the Review Subcommittee, we take no view as to whether the Hearing Officer or Hearing Panel should have considered them during the course of the proceedings below.

charges, the respondent had notice of such charges, the respondent had an opportunity to defend against such charges, and FINRA kept a record of the proceedings). Indeed, Larson stated at the conclusion of the hearing that the Hearing Panel had given him a full opportunity to place in the record the relevant evidence that he believed necessary to his defense against Enforcement's claims.

B. Enforcement Proved Larson Engaged in Fraud

The Hearing Panel found that Larson misrepresented and failed to disclose material facts in written communications with his customers about church bonds they owned, and when he arranged for some of these customers to purchase church bonds in cross trades with other customers. A Hearing Panel majority, however, found Enforcement did not prove that Larson acted with scienter. The Hearing Panel accordingly dismissed Enforcement's claims that Larson engaged in fraud in violation of the federal securities laws and FINRA rules.

We concur, in part, in the Hearing Panel's assessment of the evidence. We conclude Larson misrepresented and omitted materials facts when dealing with his church bond customers. We nevertheless reverse the findings of the Hearing Panel majority that Larson did not act with the required scienter to commit fraud. We find the evidence supports fully the conclusion that his conduct was, at a minimum, accompanied by a degree of recklessness that warrants findings that he violated Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, and FINRA Rules 2020 and 2010.

1. Facts

a. Church Bonds

Church bonds are debt securities issued by churches and church-affiliated entities to raise money to purchase, develop, and renovate real estate or refinance existing debt.[24] They are secured ordinarily by the issuer's real property.[25] The market for church bonds is small. They are not exchange-traded, and the secondary market to buy and sell them is negligible.

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[24] A bond is a loan a bondholder makes to a corporation, government, federal agency, or other organization, whereby the bond issuer agrees to pay the bondholder interest at regular intervals and repays the original sum loaned at the bond's maturity date. *See* Bond Basics, https://www.finra.org/investors/learn-to-invest/types-investments/bonds/bonds-basics.

[25] The value of the real property pledged for church bonds is ordinarily dependent on the economic fundamentals associated with the issuer's ability to generate cash for repayment of the bonds. Thus, if a church organization cannot gather a large congregation to generate tithing, enroll sufficient numbers of paying students in a school, or generate enough paying customers to cover the costs of constructed facilities, the specialized properties securing the bonds ordinarily suffer impairments in value.

Following an economic downturn in 2008, issuers of church bonds experienced financial difficulties that impeded their ability to make principal and interest payments and adversely affected the value of the real property that secured the bonds. Issuers fell behind in their scheduled payments and defaulted on their obligations, entered into forbearance agreements that reduced or suspended payments to bondholders, restructured their debt by exchanging their bonds for new bonds, experienced property foreclosures whereby sales proceeds were distributed to bondholders for sums substantially less than the amount they owed on their bonds, or filed for bankruptcy.

By early 2013, church bonds had generally suffered material deteriorations in credit quality that affected their value to bondholders. At that time, church bonds were largely illiquid investments and there were no reliable, transaction-based methods for determining their prices. Consequently, church bonds were only sporadically quoted or traded, and usually at substantial discounts to par.

b. Larson's Customers Purchase Church Bonds and Transfer Their Bonds to Oakbridge Accounts

Larson purchased church bonds for some of his customers when he was associated with another broker-dealer. Two dozen of these customers transferred their church bonds to Oakbridge accounts when Larson joined the firm in 2011. The church bonds these customers owned included bonds issued by the following issuers: Bethel Baptist Institutional Church, Inc. ("Bethel Baptist"); Windermere Baptist Conference Center ("Windermere"); Orlando Central Community, Inc., ("Orlando"); Lifepointe Village-Southaven, LLC ("Lifepointe"); Metropolitan Baptist Church ("Metropolitan Baptist"); Church Fellowship Worship Ministries ("Church Fellowship"); New Life Anointed Ministries International, Inc. ("New Life"); and Iglesias Christiana La Nueva Jerusalem, Inc. ("Iglesias").

Larson did not purchase additional church bonds for these customers after he arrived at Oakbridge. Instead, his church bond-related activities consisted primarily of advising the customers about the church bonds they owned or conducting occasional cross trades of church bonds between customer accounts.

c. Oakbridge's Clearing Firm Stops Pricing Church Bonds

Initially, Oakbridge's clearing firm, RBC Capital Markets, LLC ("RBC"), issued monthly account statements to Larson's customers that included current prices for their church bonds. RBC, however, began experiencing problems sourcing reliable information to price church bonds in 2011, and it lost the ability to price the bonds completely in 2012. Consequently, beginning April 1, 2013, RBC's monthly account statements no longer provided prices for the church bonds that Larson's customers held in their Oakbridge accounts. The monthly account statements Larson's customer received from RBC after this point hence showed the church bonds as having zero value.

d. Larson Contacts the Bonds' Trustee and Visits the Trustee's Website

Larson complained that RBC's inability to provide church bond pricing was a "major difficulty" and had caused him to lose customers. His customers became "agitated" and their "patience" began "running thin," which he feared could lead them to "start talking legal relief." Larson tried to "keep a lid on customer worries," and he fought what he termed a "holding action" with customers as he attempted to have RBC resume pricing their church bonds.

When his efforts proved unsuccessful, however, Larson decided to communicate directly with his customers and price or value the church bonds himself. Before doing so, however, Larson contacted the trustee for the bonds his customers owned to obtain information about the performance of the bonds' issuers.

On June 4, 2012, Larson asked the trustee for a "detailed update on those [bonds] currently in foreclosure or bankruptcy." On June 14, 2012, the trustee responded to Larson's request, sending him the "latest bondholder letters for each issuer in default." These bondholder letters provided material information about the issuers for the church bonds that are the subject of this case. For example, Bethel Baptist had failed to make a series of required payments on its bonds and was paying a small fraction of the payments to which it was obligated. Windermere similarly was in arrears by significant sums and had been delinquent in making its monthly sinking fund payments. The trustee was attempting to sell the partially completed property that served as collateral for Orlando's bonds at a price that would yield less than the full amount due on the bonds. Lifepointe had filed for bankruptcy and was seeking to liquidate the real estate that collateralized its bonds. Metropolitan Baptist had failed to make sinking fund payments also and had accumulated significant sums of payments in arrears. Church Fellowship had defaulted.

Larson admitted that he reviewed the bondholder letters and a spreadsheet that the trustee also provided with its June 14, 2012 response that detailed for each of the issuers a history of missed payments and the date on which each had defaulted on its obligations. Larson remained in close contact with the trustee after receiving its response to his June 4, 2012 letter. In November 2012, he told RBC that he was having "weekly conversations on the status of the various issues" with the trustee. Larson also visited regularly the trustee's website for information about his customers' church bonds. That website contained for each of the bonds the prospectus and trust indenture, letters to bondholders, forbearance and restructuring agreements, bankruptcy filings, and "default status comments" that detailed material information concerning the issuer's financial condition and the credit quality of its bonds.

e. Larson Updates His Church Bond Customers

Larson used the information he obtained from the trustee and from the trustee's website to update his customers and develop his own methodology for pricing their bonds. In May 2013, Larson sent customers who owned church bonds a "Church Bond Update." The Church Bond Update, a document Larson created, alerted the customers to the fact that they would soon begin receiving monthly account statements from RBC that no longer priced their bonds. "The problem that RBC has been having," Larson explained, "is that since church bonds are not traded those firms that normally price bonds are unable to provide reliable consistent pricing."

Larson, however, reassured his customers that Oakbridge would begin pricing their church bonds. "Working with RBC, issuers, trustees and other church bond houses, we have come up with a pricing methodology based on the underpinning mortgage value of the property, the issuer's ability to make the interest payments and how timely those payments are being paid to bondholders." He explained that the Church Bond Update included a "supplemental recap" or supplemental account statement with prices for each customer's church bonds. The Church Bond Update described the methodology used to determine these prices as follows:

> A bond priced at $1200 is solid on payments and property is well worth outstanding principle [sic]. A bond priced at $1000 has solid property value is making payments but is sometimes slow. A bond priced at $800 to $950 has solid property value but has gone into default but is still making payments although they are short of full payments needed. Those bonds priced below that are issuers that are in bankruptcy or foreclosure. In these cases[,] it may be that with current real estate markets some principle [sic] may be at risk by the time the property is foreclosed and resold.[26]

"You now have a consistent pricing of your bonds based on their real value," Larson claimed in the Church Bond Update. "We have spent the last couple months preparing the research to provide this pricing service to you. The purpose was to provide you with accurate reporting on all your holdings with us."

The Church Bond Update also provided a "Quick Recap by Issuer" that highlighted the condition of several issuers of bonds Larson's customers owned. For example, it described Bethel Baptist as, "One of the premier rock solid issuers." Of Windermere, it said, "The conference Center had its best year in the last three." It claimed Orlando and Lifepointe "have put together rehabilitation programs to bring them back current with bondholders" and "their facilities are expected to be sold over the next three years and bondholders paid off." Metropolitan Baptist, it asserted, was "still making payments in an effort to correct and rehabilitate so as not to go into foreclosure." In addition, it stated, Church Fellowship was "[m]aking payments on agreed plan to rehabilitate the bond."

These recaps suggested that there had been no deterioration in the creditworthiness of these issuers or any deterioration in credit quality was passing such that bondholders should not be unduly concerned. Indeed, Larson concluded the Church Bond Update with the following claims:

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[26] "When you review the enclosed supplemental recap," the Church Bond Update stated, "you will find the price of the bond per thousand." Bonds are issued generally in multiples of $1,000, which is also known as a bond's "face" or "par value." *See* Bond Basics, *supra* n. 24. A bond's price, however, is subject to market forces and fluctuates above and below par. *Id.* Thus, if a bondholder sells a bond before maturity, he may not receive the full amount of the bond and will not receive any remaining interest payments. *Id.* Bonds priced above par are said to be at a "premium" to par, and bonds priced below par are said to be at "discount" to par. *Id.*

> Churches have gone through a real down swing in revenue. . . . But churches have recently come back into market to request money for expansions or for new projects. Values on properties are on the climb. Remember that most of the property we hold are commercial and are not single use sanctuaries. **There is no market for the bonds. They are designed to be held to maturity, call or liquidation.**

Larson described the Church Bond Update as a "security blanket"—something to "provide comfort" to his customers and a "recommendation to be patient."[27] The Church Bond Update therefore reassured customers that bond pricing "only matters if you are selling." Downplaying the lack of liquidity associated with church bonds, the financial problems of their issuers, and the value of the underlying collateral Larson told his customers:

> Most good bond buyers buy an interest rate that they will hold until the bond matures and pays back principle [sic] (the original money invested). This is what you do with a bank CD. . . . Just wait for maturity and you get the principle [sic] back. For these people the bond is worth what they put in as long as the issuer is in a position to pay.

f. Larson Sends His Customers Supplemental Account Statements <u>Containing Church Bond Prices He Assigned</u>

Although the Church Bond Update claimed that Larson worked with "RBC, issuers, trustees and other church bond houses," to develop a pricing methodology for church bonds, Larson testified he alone created the supplemental account statements that accompanied the Church Bond Update and assigned the church bond prices given in them to customers.[28] Titled "Oakbridge Update on Church Bonds From RBC April 2013 Statement," the supplemental account statements that accompanied the Church Bond Update were intended to supplement the monthly account statements Larson's customers received from RBC.

The supplemental account statements utilized a consistent format, but Larson made the statements unique for each of his customers using data that he entered into a spreadsheet.[29] Each

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27 Larson testified that he intended the Church Bond Update to influence customers "not [to] do something, but to do nothing."

28 Larson had no experience pricing bonds before he prepared the supplemental account statements for his customers. He nevertheless took it upon himself to provide prices for their church bonds without employing the assistance of anyone else.

29 Larson testified that he created a spreadsheet to calculate church bond prices and transferred those prices to the customer's supplemental account statements. After he created the first spreadsheet, he simply changed the church bond prices "based on if there was an upward or downward movement in it."

supplemental account statement included a customer's name and account number, and it listed the names of the church bonds the customer owned. For each church bond listed, the supplemental account statement purported to show, among other information, the bond's "Current Price," "Quantity," and "Total," which was the bond's "Current Price" multiplied by the "Quantity" of bonds the customer owned for a particular issuer. Each supplemental account statement also combined the total value of the customer's church bond portfolio, as determined by Larson, with the total value of the customer's other investments to ostensibly provide the customer with the total value of all of the investments the customer held in their Oakbridge account.[30] Following the Church Bond Update Larson sent to customers in May 2013, which included supplemental account statements for April 2013, he created and sent additional supplemental account statements to his customers for the months of May 2013 to January 2014.[31]

Dr. Anderson, Enforcement's expert, testified about the well-established standards for valuing bonds, including illiquid or thinly traded bonds like church bonds. An illiquid bond's value is ordinarily determined with a pricing equation that values the bond's payment structure at the average yield to maturity for the category of bonds that best matches the illiquid bond's characteristics.[32] An illiquid bond that is not in default, nor expected to be soon, should be valued as the present value of future cash flows from promised interest and principal payments, with the bond's value changing in response to changes in market interest rates and perceptions of the issuer's credit quality. In contrast, if an issuer experiences negative credit events and has had its credit quality deteriorate, it is necessary to assess the impact of this deterioration on its bonds using a higher discount rate to find the bond's present value. Thus, if an issuer is in default, pricing a bond depends less on valuing the promised stream of payments and more on valuing the cash flows bondholders might actually be able to recover from the issuer, including the liquidation value of any collateral securing the bond.[33]

Dr. Anderson testified that Larson deviated from these standards. The church bond prices Larson provided to his customers in the supplemental account statements consisted of conveniently round numbers such as $1,200, $1,000, $950, and $850 that either did not vary or

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30 Larson obtained the value of the customer's other investments from the account statement's RBC issued to the customers monthly.

31 None of the supplemental account statements that Larson sent his customers contained any disclaimers or explanations about their content, the source of their information, or caveats about their reliability.

32 Dr. Anderson opined that the bonds of topic in this case were similar to below-investment grade bonds with S&P credit ratings of BB or B, which meant they were subject to adverse business, financial, or economic conditions that likely would impair the issuer's capacity or willingness to meet its financial obligations.

33 Dr. Anderson cited one study that found the average recovery rate for bonds that have defaulted is about 38 percent.

varied very little over time.[34] The prices Larson assigned to the church bonds were also inconsistent with the facts. Larson did not compute the present value of a bond's cash flows, and he was in fact indifferent to changes in interest rates, issuer creditworthiness, or the market value of collateral when he assigned prices to his customers' bonds. As Larson testified, he instead relied on his "experience" of having observed the pricing that RBC provided to his customers in their monthly account statements. He claimed that he based the church bond prices he provided his customers on "property value not payment," and his "primary determination of putting a price on something" centered "on what the property value was."[35] Larson claimed he therefore considered the appraisals provided in the prospectuses for the properties at the time the bonds were issued, which had little to do with the current values of those properties, and he claimed he talked to local real estate professionals who told him property values were "kind of coming back on line."[36]

Larson did not check the supplemental account statements for errors. On numerous occasions, he provided customers materially different prices for the same church bond. He also made mistakes because he did not understand the terms of the church bonds before pricing them. For example, he priced one of Windermere's bonds at $1,888—a premium of 88 percent above par—because he thought it paid compound interest, even though Windermere's prospectus stated that the bond paid simple interest. Larson did not think it was important to be accurate because he viewed the supplemental account statements as "just a fluff piece." "[P]reciseness" therefore was not a "high priority." In Larson's view, he "wasn't establishing a price to buy or sell." He simply wanted customers to "wait," "hold tight," and "[j]ust hang on."

g. Larson Arranges Church Bond Cross Trades Between Customers

Between January 2012 and July 2014, Larson arranged six trades of church bonds between his customers. Larson testified he arranged these cross trades as an accommodation or service for customers who needed to create liquidity in their accounts but had limited ability to sell their bonds because of the negligible market that existed for them. Larson had discretionary authority for the buyers in three of the six cross trades, and he did not discuss with them his purchase of the church bonds for their accounts. Larson solicited two additional customers to

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34 As noted above, bond prices fluctuate based on changing market conditions. The price of a bond can be above or below its par value for many reasons, including changes to a bond's credit rating, a change in the issuer's creditworthiness, adjustments to the bond's interest payments, supply and demand, or a change in market interest rates. *See* Bond Basics, *supra* n.24.

35 Larson claimed, "Payments had very little to do with church bonds."

36 Larson claimed, with little proof, that the properties collateralizing the church bonds his customers owned were generally appraised at values that far exceeded the issuers' debt obligations, and thus as the properties declined in value they would still provide substantial levels of security to bondholders.

purchase church bonds in the remaining three cross trades. Larson determined the prices paid for the purchase of the bonds in each of the cross trades. In four of the cross trades, Larson purchased the church bonds at, or at a nominal discount to, par. Larson executed the other two cross trades on the same day, and they involved the same issuer's bonds, yet the customers who purchased the church bonds in these cross trades paid materially different prices.

2. Findings

Section 10(b) of the Exchange Act makes it "unlawful for any person, directly or indirectly . . . [t]o use or employ, in connection with the purchase or sale of any security . . . , any manipulative or deceptive device or contrivance in contravention" of Commission rules. 15 U.S.C. § 78j(b). Exchange Rule 10b-5 makes it unlawful, among other things, for any person "directly or indirectly" to "make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading . . . in connection with the purchase or sale of any security."[37] 17 C.F.R. § 240.10b-5(b). A violation of Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5 constitutes a violation of FINRA Rule 2020.[38] *Louis Ottimo*, Exchange Act Release No. 83555, 2018 SEC LEXIS 1588, at *28 (June 28, 2018). Proof of scienter is required to establish a violation of Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, and FINRA Rule 2020.[39] *See Dep't of Enforcement v. Luo*, Complaint No. 2011026346206, 2017 FINRA Discip. LEXIS 4, at *20 (FINRA NAC Jan. 13, 2017). Conduct that violates the federal securities laws or a FINRA rule also violates FINRA Rule 2010.[40] *Luo*, 2017 FINRA Discip. LEXIS 4, at *20-21.

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[37] Exchange Act Rule 10b-5 implements the Commission's authority under Section 10(b) of the Exchange Act through three subsections that are not mutually exclusive. *See Lorenzo v. SEC*, 139 S. Ct. 1094, 1100 (2019) ("[W]e conclude that . . . dissemination of false or misleading statements with intent to defraud can fall within the scope of subsections (a) and (c) of Rule 10b-5."). Exchange Act Rules 10b-5(a) and (c) make it unlawful for any person directly or indirectly to, respectively, "employ any device, scheme, or artifice to defraud" or "engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security." 17 C.F.R. § 240.10b-5(a), (c).

[38] FINRA Rule 2020 states, "No member shall effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or other fraudulent device or contrivance."

[39] Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5 also include jurisdictional elements that prohibit fraud by "any means or instrumentality of interstate commerce." *See* 15 U.S.C. § 78j; 17 C.F.R. § 240.10b-5. Larson stipulated his alleged fraudulent conduct occurred by means or instrumentality of interstate commerce.

[40] FINRA Rule 2010 states, "A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." This and other FINRA rules apply with equal force to persons associated with a member. *See* FINRA Rule

[Footnote continued on next page]

"When making affirmative representations with respect to the purchase or sale of a security there is an 'ever-present duty not to mislead.'" *Id.* at *17 (quoting *Basic, Inc. v. Levinson*, 485 U.S. 224, 241 n. 18 (1988)). Thus, "one who elects to disclose material facts 'must speak fully and truthfully, and provide complete and non-misleading information with respect to the subjects on which he undertakes to speak.'" *Ottimo*, 2018 SEC LEXIS 1588, at *31 (quoting *SEC v. Curshen*, 372 F. App'x 872, 880 (10th Cir. 2010)). A failure to disclose all material facts regarding an enterprise, after making selected favorable disclosures about that enterprise, is a material omission under the anti-fraud provisions of the federal securities laws and FINRA rules. *See Dep't of Enforcement v. Ottimo*, Complaint No. 2009017440201, 2017 FINRA Discip. Lexis 10, at *15-16 (FINRA NAC Mar. 15, 2017) ("[H]e chose to disclose only positive information related to his business dealings . . . ."), *aff'd in relevant part*, Exchange Act Release No. 83555, 2018 SEC LEXIS 1588 (June 28, 2018).

a. Larson's Conduct Was "in Connection with the Purchase or Sale" of a Security

As an initial matter, Larson claims that the Church Bond Update and supplemental account statements he sent to his customers did not recommend that any customer buy or sell a particular church bond. In his view, these written materials therefore cannot serve as a basis for finding fraud under Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5, which require that fraud occur "in connection with the purchase or sale" of a security.[41] 15 U.S.C. § 78j(b); 17 C.F.R. § 240.10b-5. Larson is mistaken.

The "in connection with" requirement of the anti-fraud provisions of the federal securities laws is broadly interpreted and easily satisfied. *See Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*, 547 U.S. 71, 85 (2006) (emphasizing the "broad interpretation" of Section 10(b) of the Exchange Act's "in connection with" requirement, which is satisfied where the alleged fraud "coincide[s]" with a securities transaction); *Superintendent of Ins. v. Bankers Life & Cas. Co.*, 404 U.S. 6, 12-13 (1971) (finding § 10(b) regulates deceptive devices "touching" a sale or purchase of a security). It includes misrepresentations and omissions that encourage an investor to continue to hold their investments and "lulling statements" that mislead an investor about their portfolio and the value of their account in order to delay investor action. *See United States v. Durham*, 766 F.3d 672, 682 (7th Cir. 2014) (rejecting defendants' theory that "a scheme to delay is not a scheme to defraud"); *Dep't of Enforcement v. Ortiz*, Complaint No. 2014041319201,

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0140(a) ("Persons associated with a member shall have the same duties and obligations as a member under the Rules.").

[41] Larson does not dispute that the church bonds of topic in this case are securities. He also does not quarrel with the fact that the cross trades at issue here occurred "in connection with the purchase or sale" of securities for the purpose of establishing fraud under Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5.

2017 FINRA Discip. LEXIS 5, at *26 (FINRA NAC Jan. 4, 2017) ("Ortiz's misrepresentations concerning the value of MV and VE's account, as well as the purported securities held and the purchases and sales in that account, lulled MV and VE into believing that their account was experiencing losses much less significant than were actually occurring . . . .").

The facts here establish that Larson was, among other things, concerned about possible legal action and losing customers. Multiple times during the hearing, he testified that the Church Bond Update, the supplemental account statements, and other written communications were intended as a "security blanket" to "comfort" customers and encourage them not to take any action with respect to their church bonds. In his words, he wanted customers to "wait," "hold tight," and "[j]ust hang on." He unquestionably sought to delay action by his customers. We thus conclude that Larson's representations to them about the value of their church bonds and accounts were "in connection with" with the purchase or sale of a security as required by Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5. *See Ortiz*, 2017 FINRA Discip. LEXIS 5, at *23.

b. Larson Misrepresented and Omitted Material Facts About His Customer's Church Bonds

"[M]ateriality depends on the significance the reasonable investor would place on the withheld or misrepresented information." *Basic*, 485 U.S. at 240. A fact is material if there is a substantial likelihood that a reasonable investor would have viewed it as significantly altering the total mix of information made available. *Id.* at 231-32 (quoting *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)).

"Material facts include those facts that may affect the desires of investors to buy, sell or hold a particular security." *Dep't of Enforcement v. Apgar*, Complaint No. C9B020046, 2004 NASD Discip. LEXIS 9, at *13 (NASD NAC May 18, 2004). Of these facts, "the materiality of information relating to financial condition, solvency and profitability is not subject to serious challenge." *SEC v. Murphy*, 626 F.2d 633, 653 (9th Cir. 1980). It is material to a reasonable investor that the issuer of a security is experiencing financial difficulties that may affect the investor's ability to obtain a return on their investment. *See Dep't of Enforcement v. Donner Corp. Int'l*, Complaint No. CAF020048, 2006 NASD Discip. LEXIS 4, at *34 (NASD NAC Mar. 9, 2006) ("A reasonable investor . . . would consider significant information pertaining to an issuer's financial condition . . . and potential for success."), *aff'd*, Exchange Act Release No. 55313, 2007 SEC LEXIS 334 (Feb. 20, 2007).

In this respect, realities concerning the safety and credit quality of a debt security or bond, and the risk that an issuer will not make principal and interest payments, are material. *See Donald T. Sheldon*, 51 S.E.C. 59, 70-71 (1992) (finding respondent made material misrepresentations and omitted to disclose material information about the safety and creditworthiness of bonds); *Dep't of Enforcement v. Escarcega*, Complaint No. 2012034936005, 2017 FINRA Discip. LEXIS 32, at *3 (FINRA NAC July 20, 2017) ("Escarcega told them that the Debentures 'will be safe.'"); *Luo*, 2017 FINRA Discip. LEXIS 4, at *23 ("Luo knew but did not disclose to GD that WGI had missed interest payments . . . ."); *Dep't of Mkt. Regulation v. Field*, Complaint No. CMS040202, 2008 FINRA Discip. LEXIS 63, at *30 (FINRA NAC Sept.

23, 2008) ("Field misrepresented that the bonds were safe, liquid, and that the customers would get their principal back."). For a bondholder, material facts include information about the bond's collateral, the value of any real estate securing the bond, and the financial soundness of the issuer's operations and its ability to pay its obligations. *See Providence Church Plan, Inc.*, Exchange Act Release No. 9013, 1970 SEC LEXIS 449, at *2-3 (Nov. 3, 1970).

Similarly, information concerning the value of a security or an account is material. *See Marini v. Adamo*, 995 F. Supp. 2d 155, 192 (E.D.N.Y. 2014) (finding misrepresentations about the "value, nature or investment characteristics" of a security are material facts), *aff'd*, 644 F. App'x 33 (2d Cir. 2016); *Charles Michael West*, 47 S.E.C. 39, 40 (1979) ("[H]e made material misrepresentations about the value of the bonds and the financial stability of the issuers."). "[S]ales of securities by broker-dealers carry an implied representation that the prices charged are reasonably related to the prices charged in an open and competitive market." *Grandon v. Merrill Lynch & Co.*, 147 F.3d 184, 192 (2d Cir. 1998). Thus, a registered representative has a duty to disclose material information fully and completely when recommending the purchase or sale of a security. *See De Kwiatkowski v. Bear, Sterns & Co.*, 306 F.3d 1293, 1302 (2d Cir. 2002) (stating a broker "is obliged to give honest and complete information when recommending a purchase or sale"). Knowingly advising a customer to buy a security at an inflated price is a material misrepresentation of fact actionable under the federal securities laws and FINRA rules as fraud. *See Marini*, 995 F. Supp. 2d at 187; *see also Charles Hughes & Co. v. SEC*, 139 F.2d 434, 436 (2d Cir. 1943) ("An over-the-counter firm which actively solicits customers and then sells them securities . . . at prices . . . far above the market . . . must be deemed to commit a fraud.").

i. Misrepresentations in the Church Bond Update and Other Written Communications

Larson made a series of misrepresentations of material fact in the Church Bond Update and in other written communications with customers concerning the security of their church bonds and the soundness of the prices he provided them in the supplemental account statements. First, Larson told customers in the Church Bond Update that he developed the pricing methodology he used to price church bonds in the supplemental account statements by "[w]orking with RBC, issuers, trustees and other church bond houses." This statement was material and false. As Larson testified, he developed the pricing methodology without anyone's assistance, and he alone determined the church bond prices that appear in the supplemental account statements. He did so without any prior experience pricing church bonds or other debt securities.

Second, the Church Bond Update claimed, "The thing to remember is, we are like a bank. We have first claim to the real estate." As to one bond issuer, however, Larson knew this statement was not true. Customers holding New Life's church bonds no longer had first claim on the real estate securing the bonds. A 2011 court order subordinated bondholders' claims to contractors' liens totaling $7.9 million, a result that, according to the bonds' trustee, "[d]iminish[ed] the chance of any substantial recovery" by bondholders.

Finally, in a March 13, 2014 email to customer MF, Larson responded to the customer's concerns about the church bonds she owned. Larson told MF, "Metro Baptist is late in payments but property is worth $50,000,000 and the first mortgage is only for $12,000,000. Quite secure." This statement was a materially false misrepresentation of the facts available from the trustee and the trustee's website. Metropolitan Baptist issued two series of first mortgage bonds secured by the same collateral property. The total amount of principal and interest owed on those bonds was nearly $34 million at the time of Larson's email, not $12 million. Moreover, Larson based the $50 million figure he quoted to MF on the property's appraised value in 2005. Metropolitan Baptist listed the same property for sale in February 2013 at the heavily discounted price of $17,925,000, well less than the $34 million owed on its bonds. In January 2014, before Larson emailed MF, the trustee announced that it would foreclose on the property.

ii. Misrepresentations and Omissions About Specific Church <u>Bonds and Their Prices</u>

Larson misrepresented material facts about the safety and value of the church bonds his customers owned, and he omitted information necessary to make the statements he made about the bonds not misleading. His testimonials about the bonds in the Church Bond Update, and the prices he provided his customers for their bonds in the supplemental account statements, failed to account for numerous material facts about the deteriorating credit quality of the bonds that affected their value and the value of the customers' accounts, facts that Larson knew or must have known from the information provided by the trustee and the trustee's website. When he issued the Church Bond Update and the supplemental account statements, the church bond issuers had experienced financial difficulties that impeded their ability to make principal and interest payments and adversely affected the value of the real property that secured the bonds. Larson's suggestion that property values would rebound, and customers would recover what they put into the bonds if they simply continued to hold them, was misleading. This and other claims that the customers' bonds continued to hold all or most of their face value ignored critical information about the ability of issuers to generate enough cash flows to meet their obligations and the liquidation value of collateral properties. The issuers of the bonds had missed payments, defaulted, entered into forbearance agreements, and restructured their debt. They were attempting to sell or had sold collateral at steep discounts to their prospective appraised value, and in some cases, had filed for bankruptcy. A reasonable bondholder would have viewed the foregoing information as significantly altering the total mix of information Larson made available to them.

(a) <u>Bethel Baptist</u>

Bethel Baptist issued $22.119 million in first mortgage bonds in 2006. The bonds were secured by five church properties that had a prospective appraised value totaling $30.09 million. In the Church Bond Update's "Quick Recap" of Bethel Baptist, Larson claimed it was, "One of the premier rock solid issuers." The supplemental account statements that Larson sent his customers for the months April 2013 through January 2014 uniformly priced Bethel Baptist bonds at $1,200, or 20 percent above par value. As described in the pricing methodology presented in the Church Bond Update, a price of $1,200 meant that the issuer was "solid on payments" and the property securing the bonds "is well worth outstanding principle [sic]."

Larson misrepresented and failed to disclose to customers material facts that made his characterizations of Bethel Baptist's bonds misleading. The information given to him by the trustee and available from the trustee's website made clear that Bethel Baptist defaulted on its bonds in February 2010 after failing to make sufficient monthly payments to the bonds' sinking fund. By March 2012, Bethel Baptist was behind by more than $2.9 million in principal and accrued interest payments to bondholders and making monthly payments that were less than half of what it had promised. In January 2013, Bethel Baptist entered into a forbearance agreement that restructured its payments and reduced significantly the amount it would have to pay bondholders. As part of that restructuring, the trustee began selling the real estate securing Bethel Baptist's church bonds at prices that were significantly less than the appraised values assigned to the properties in the bonds' prospectus.[42]

Simply put, none of the information readily available about Bethel Baptist supported Larson's assessment of the issuer or the prices he provided his customers for its bonds. Bethel Baptist was not "rock solid" or "solid on payments," and the underlying properties that secured its debt fell to values considerably lower than the amount owed bondholders. Based on his own analysis, Dr. Anderson determined that, in 2013 and 2014, Bethel Baptist's church bonds were worth "at best" $650.

(b) Windermere

Windermere issued $14 million in first mortgage church bonds in November 2005. The bonds were split into two series—$12.753 million in simple interest bonds and $1.247 million in compound interest bonds. The bonds were secured by 310 acres of rural property that included several structures, including an auditorium, multi-purpose building, gymnasium, and sports facilities.

The "Quick Recap" that Larson provided for Windermere in the Church Bond Update read:

> The conference Center had its best year in the last three. It is still working to open a waste treatment facility to serve the conference center and surrounding community. They have recently made a large catch-up payment out to bondholders and are consistently sending in payments to the trustee for future payments.

Larson priced Windermere's simple interest church bonds nearly uniformly at $1,000 in the supplemental account statements that he sent to his customers for the months of April 2013 to

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42 As of June 2012, Bethel Baptist's properties appraised at only $1.65 million—5.5 percent of their prospective appraised value and about 7 percent of the amount of the principal and accrued interest owed to bondholders. In August 2013, the trustee sold one property for 7 percent of the appraised value given the property in the bonds' prospectus. The trustee offered another property for sale at 13 percent of its appraised value, but it could not find a buyer.

January 2014. “A bond priced at $1000,” Larson said in the Church Bond Update, “has solid property value is making payments but is sometimes slow.”

Larson’s announcements about Windermere’s bonds and their value omitted material information that made those statements and prices materially misleading to his customers. When he issued the Church Bond Update and the supplemental account statements, he knew or must have been aware of the extent of Windermere’s problems from the trustee and the trustee’s website. This information, as Dr. Anderson remarked, indicated that Windermere was a “cash-poor but land-rich debtor.” Despite the appraised value of its property, Windermere failed to generate enough income to service its bonds. Windermere fell behind in making sinking fund payments and, by May 2011, defaulted, with total arrearages of $465,361, equal to more than four months of scheduled payments. Its failure to make payments on the bonds continued, and in January 2013, when Windermere was more than $2.5 million in arrears, the trustee informed the issuer that a change in management would be necessary. The trustee accelerated the bonds, making the full amount of interest and principal, $15,482,669, immediately due and payable.[43] Consequently, the trustee and Windermere negotiated a forbearance that provided Windermere a path to restructure its debt based on anticipated cash flows.[44] Although Windermere had been working for some time to upgrade water and sewer facilities to generate cash to pay its bonds, these plans remained vaguely uncertain in January 2013 and, by January 2014, were on hold indefinitely due to unresolved litigation.[45]

As the foregoing facts indicate, by early 2013 Windermere’s church bonds were in default and it was behind on its promised payments to bondholders. Larson’s statements about Windermere were again incomplete and at odds with the available information. The prices he provided his customers, as Dr. Anderson opined, ignored the fact that Windermere’s credit quality had deteriorated and failed, given their static nature, to account for changes in interest rates. As Dr. Anderson concluded, “pricing these bonds at or near their implied face values would be completely at odds with facts on the ground.” Larson knew this reality well. He

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[43] Dr. Anderson opined that, at this point, the amount that Windermere would pay bondholders was entirely conjectural. The trustee held only $1,525,244 in trust funds. The trustee distributed $1.3 million of the trust’s funds to bondholders on a pro rata basis as a return of only a portion of the accrued interest owed.

[44] The trustee and Windermere executed a forbearance agreement that reduced the issuer’s required payments on June 7, 2013. At the time, Windermere owed, including late fees, a total of $14,647,590 on the church bonds. The renegotiated payment streams were materially less than what was necessary to rehabilitate the bonds. Dr. Anderson calculated that the present value of the renegotiated stream of payments was only 77 percent of the total amount of unpaid principal owed to bondholders.

[45] Although Windermere’s bonds were secured by its real property, it was using insurance proceeds from several property damage claims to pay its bonds rather than repair the property, thus calling into further question its ability to generate sufficient cash flow to support its debt.

offered to sell Windermere bonds in January 2014 at less than par, and he received a bid of less than 2 percent of par in response to his offer.

(c) Orlando and Lifepointe

Orlando issued $10.275 million in first mortgage church bonds in 2008. Orlando's bonds were secured by land and unconstructed buildings with a prospective appraised value of $13.7 million. Lifepointe issued two series of first mortgage church bonds in 2008 for $8 million to build an assisted-living facility. The prospective appraised value of the facility was $10.675 million.

Larson discussed Orlando and Lifepointe jointly in the Church Bond Update. "These are both long term/assisted living facilities in great areas. Both have put together rehabilitation programs to bring them back current with bondholders. Both facilities are expected to be sold over the next three years and bondholders paid off," he stated. Larson priced Orlando's church bonds uniformly at $1,000 in supplemental account statements until January 2014, when he priced the bonds at $900. He priced Lifepointe's bonds for most customers at either $1000 or $1050 repeatedly in supplemental account statements for the months April 2013 to January 2014. These prices, under Larson's pricing methodology, generally meant that Orlando and Lifepointe each had "solid property value" and were "making payments but . . . sometimes slow."

Despite knowing or having available at a key stroke information about the financial difficulties that Orlando and Lifepointe were both facing, Larson misrepresented and failed to disclose numerous material facts that contradicted his statements that both issuers were on the path to rehabilitation and would pay bondholders what the issuers owed them. Both Orlando and Lifepointe defaulted on their bonds, in August and September 2010, respectively, and the value of the property improvements securing the bonds were seriously impaired when Larson reported prices of $1,000 or more for the bonds in 2013 to his customers. For example, when Orlando defaulted, the property securing the bonds was not complete and Orlando did not have the funds necessary for further construction. In August 2012, the trustee foreclosed, and it attempted to sell the property, at less than 40 percent of the prospectively appraised price and less than 50 percent of the total amount owed bondholders. A sale of the property, however, proved unsuccessful. In January 2014, the trustee agreed to sell the property for $3.8 million, a sum that represented barely 30 percent of the bondholders' principal.

Lifepointe, in fact, filed for bankruptcy in May 2012. Although it completed construction of the assisted living facility that secured the bonds, it lacked funds to commence operations and thus was unable to generate revenues to pay its bond obligations. In December 2012, the bankruptcy court allowed Lifepointe to cancel the bonds. They were replaced by two new bond series, one of which was unsecured. Under the restructured plan of payments, Lifepointe would pay only interest on the secured bonds for a period of three years and the unsecured bonds would be paid only if sufficient funds were available after the secured bonds were paid off. No sale of Lifepointe's collateral was pending or considered in 2013.

As Dr. Anderson opined, and the evidence showed, Larson's statements about Orlando and Lifepointe, and the prices he provided his customers for their bonds, were untethered from reality. Orlando had no plan for rehabilitation, it was not making partial payments on its debt, and its property had been foreclosed upon, facts that meant that bondholders could not expect to be paid in full. Similarly, Lifepointe defaulted, its bonds were restructured in bankruptcy, replaced in part by new unsecured bonds, and repayment on the bonds depended on selling the issuer's collateral, which was worth substantially less than the bondholders' debt. Lifepointe's reduced stream of payments and the value of its collateral property at the time of bankruptcy, facts that Larson omitted to disclose, did not support, under any circumstances, Larson's reassuring statements about Lifepointe and his pricing of its bonds.[46]

(d) Metropolitan Baptist

Metropolitan Baptist issued church bonds totaling $15 million in December 2006, primarily to build a new worship facility. The bonds supplemented $20 million in bonds Metropolitan Baptist issued in January 2006. As noted above, both bond issues were secured by the same church property.

Larson described Metropolitan Baptist in the Church Bond Update as, "One of the largest Baptist congregation [sic] on the east coast. They ran into a long flat economy where revenue inflows did not match previous years. . . . The church is still making payments in an effort to correct and rehabilitate so as not to go into foreclosure." Larson priced the bonds at $820 for some of his customers and $750 for others in supplemental account statements he issued from May 2013 to February 2014. According to Larson's pricing methodology, a price of $820 meant the issuer has "solid property value but has gone into default but is still making payments." A price of $750 indicated, "some principle [sic] may be at risk by the time the property is foreclosed or resold."

Larson's statements that Metropolitan Baptist was making payments to avoid foreclosure, and that its collateral property remained solidly valued, misrepresented and omitted material facts concerning the state of Metropolitan's debt. The information available to Larson from the trustee and the trustee's website showed that Metropolitan failed to make required payments of principal and interest on both bond series and, by July 2011, was indeed in default. The trustee therefore explored a sale of the property that secured the bonds, and in February 2013 Metropolitan agreed to list the property at $17,925,000, a substantial discount to the property's original appraised value and about half of the approximately $34 million owed on its bonds. In April 2013, a month before Larson sent his Church Bond Update, and issued the first of the supplemental account statements, the trustee informed bondholders that Metropolitan Baptist remained in default and was not able to service its debt, refinance its debt, or complete construction on the property. In April 2014, after Metropolitan did not find a viable buyer, the trustee foreclosed on the property and listed it for sale at $14.9 million.

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[46] Dr. Anderson estimated the prices for Orlando's bonds at less than $510. He estimated the price for Liefpointe's bonds at between $628 and $834 based on a range of collateral value estimates at the time of bankruptcy.

Contrary to Larson's depictions, there was no hope for Metropolitan Baptist's rehabilitation in early 2013, and its collateral property was worth substantially less than the amounts of principal and accrued interest it owed on its debt. As Dr. Anderson concluded, Larson's prices of $820 or $750 for Metropolitan Baptist's bonds "bear no sensible relation to the pro-rata share of the collateral property value even at what seems in hindsight as a very rosy estimate of disposition value."[47]

(e) Church Fellowship

Church Fellowship issued $2.299 million church bonds in December 2007. The bonds issued were secured by five properties. Approximately $2 million of the bond proceeds were to be used to pay off an earlier bond issue and debt associated with other loans or liabilities.

The May 2013 Church Bond Update said of Church Fellowship: "Making payments on agreed plan to rehabilitate the bond. Actively looking to sell or refinance the property. This becomes more likely as real estate and refinance market becomes more fluid." Larson priced Church Fellowship's bonds uniformly at $800 until January 2014, at which point he increased the price of the bonds, for some customers, to $1,000. A price of $800, under Larson's methodology, meant that Church Fellowship had "solid property value" and was "still making payments" despite its default.

Larson, however, failed to disclose material facts available from the trustee and the trustee's website that were necessary to make his claims and prices for Church Fellowship's bonds not misleading. Church Fellowship defaulted on its bonds in 2010, and it entered into a forbearance agreement with the trustee in 2011 that required it to sell two of its properties. By late 2012, its payments were "sporadic" and less than 60 percent of the amounts required under the forbearance agreement. In December 2012, Church Fellowship agreed to sell three church properties for 50 percent of their appraised value, but the sales fell through and the trustee determined that a restructuring was unlikely. In April 2013, the situation only became worse for Church Fellowship, and it entered into a second forbearance agreement that reduced its payments to less than 30 percent of the amount originally due bondholders and agreed to sell all five of its properties for a combined listing price of $1.275 million. The church, however, fell behind on its forbearance payments and, in November 2013, stopped making payments altogether.

As the foregoing facts attest, by 2013, the reality was Church Fellowship's bonds had been in default for two and half years and the collateral properties were worth, based on listing prices, only $557 per bond. Its property value was not "solid," and its payments were at best "sporadic." Although Church Fellowship agreed to make some token forbearance payments, these payments, which stopped completely in late 2013, amounted to only 2.9 percent of unpaid principal on an annual basis. In short, as Dr. Anderson opined, there were no rational reasons to

[47] Dr. Anderson estimated the price of Metropolitan Baptist's bonds at approximately $600 before transaction costs and without further delays to the disposition of its collateral property.

price Church Fellowship's bonds at $800, and certainly no reason to increase that price to $1000 for some customers in January 2014.

iii. Misrepresentations and Omissions in Connection with Church Bond Cross Trades

Larson misrepresented and omitted material facts regarding the value of a limited number of church bonds when he arranged for some of his customers to purchase bonds in cross trades with other customers at prices not reasonably related to the market. Larson arranged and executed the cross trades without discussing with the purchasers that they were paying prices that exceeded the value of the bonds or disclosing other material information about their value.

Larson arranged six cross trades of church bonds between some of his customers during the period of January 2012 to July 2014. Larson arranged these cross trades to accommodate four customers he claimed needed to create liquidity in their accounts but could only do so by selling their church bonds into the limited market that existed for them. Selling church bonds in this environment, Larson claimed, would have resulted in seller's receiving "extremely low" prices for their bonds.

Larson therefore executed a series of cross trades for which he determined both the sale and purchase price for the church bonds involved. Larson testified that when he executed the cross trades, he did not find relevant the market price for the bonds. He instead established purchase and sale prices that he considered "fair and equitable" to both parties.

The six cross trades involved bonds issued by three issuers—Bethel Baptist, Windermere, and Iglesias. Larson had discretionary authority for the buyers in three of the six cross trades and did not discuss the trades with them.[48] He solicited two other customers to purchase church bonds in the remaining three cross trades.

Larson arranged and executed the cross trades without disclosing to the purchasers material information about the bonds they purchased and the prices at which they purchased them. For example, in January 2012, Larson used discretion to purchase for customer GC 26,000 Bethel Baptist bonds in two cross trades with customer SR—11,000 bonds at a price of $100 and 15,000 bonds at a price of $98.[49] Larson did not disclose to GC that Bethel Baptist had

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48 When a broker has discretionary authority for a customer, the presence of discretion automatically implies a general fiduciary duty between the broker and his customer. *See United States v. Wolfson*, 642 F.3d 293, 295 (2d. Cir. 2011). "Courts have imposed on a fiduciary an affirmative duty of 'utmost good faith and full and fair disclosure of all material facts,' as well as an affirmative obligation 'to employ reasonable care to avoid misleading' his clients." *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 194 (1963) (quoting 1 Harper and James, *The Law of Torts* 541(1956)).

49 These prices were the equivalent of $1,000 and $980, respectively, under the pricing methodology Larson discussed in the Church Bond update.

been in default since 2010 because it had missed numerous payments on its church bonds. Nor did Larson disclose that the same bonds had been priced at only $90 in December 2011 in monthly account statements that RBC issued to some of Larson's other customers. To Larson, the purchase price GC paid for the bonds "was just a price to make them feel comfortable." "And 90 is just as good as 100."

On May 23, 2012, Larson executed a trade for customer TA through which she purchased 8,000 church bonds issued by Iglesias at a purchase price of $100 from SR. Larson did not disclose to TA that Iglesias had been in default on its bonds for more than a year. He also did not disclose the bonds' collateral property had recently been appraised at a value that was less than the value appraised when Iglesias issued the bonds in 2005 and less than the principal and accrued interest owed on the bonds. Larson further failed to disclose to TA that Iglesias's bonds had been priced at only $90 in April 2012 in monthly account statements that RBC issued to one of Larson's other customers.

On November 5, 2013, Larson exercised discretion to purchase for DF 6,000 Windermere church bonds at a price of $100 from MK. Larson did not disclose to DF that Windermere, at the time of the cross trade, had been in default for more than two and one-half years, that the trustee had accelerated the bonds, making them payable immediately, and that the trustee and Windermere had executed a forbearance agreement whereby Windermere would make reduced payments on its debt.[50]

Finally, on July 14, 2014, Larson used discretion to purchase for JK 10,000 Windermere church bonds at a price of $85 from RB. In addition to the information he failed to disclose to DF concerning Windermere's creditworthiness, Larson did not disclose to JK that Larson purchased Windermere bonds for his wife at a price of only $72 in another cross trade he executed that same day. Nor did he disclose he had offered to sell Windermere bonds just a few months earlier and received a bid of less than two percent of par and all open market transactions executed for Windermere bonds during 2014 had occurred at significant discounts to par, with the highest priced trade executed at only $35.

As the foregoing facts established, Larson executed the cross trades without disclosing material facts about impairments to issuer credit quality and other facts that supported fair values for the bonds well below the purchase prices Larson assigned in each transaction. Larson did not take any steps to qualify in any way his implicit representation that the prices at which the customers purchased the bonds were reasonably related to the prevailing market.

c. Larson Acted with Scienter

Scienter is "a mental state embracing intent to deceive, manipulate, or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976). It includes intentional or reckless conduct.

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[50] Dr. Anderson opined that pricing these bonds at or near their face value during 2013 and early 2014 was completely at odds with the facts.

See Tellabs, Inc. v. Makor Issues & Rights, Ltd., 551 U.S. 308, 319 n.3 (2007). Reckless conduct includes "a highly unreasonable omission, involving not merely simple, or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known . . . or is so obvious that the actor must have been aware of it."[51] *Sundstrand Corp. v. Sun Chem. Corp.*, 553 F.2d 1033, 1045 (7th Cir. 1977).

Although the Hearing Panel found that Larson misrepresented and failed to disclose material facts to his customers, it nevertheless dismissed Enforcement's claims that he engaged in fraud. A Hearing Panel majority concluded that the evidence "did not reflect that Larson intended to deceive his customers," and his conduct "did not rise to the level of recklessness." We do not concur in the Hearing Panel majority's assessment of the evidence and find that Larson acted, at a minimum, recklessly. *See Joseph Abbondante*, 58 S.E.C. 1082, 1104 (2006) ("[T]he NAC acted within its authority in reviewing the Hearing Panel's dismissal of scienter-based fraud allegations."), *aff'd*, 2019 F. App'x 6 (2d Cir. 2006).

Details about the difficulties facing each of the issuers and their bonds were readily available and discernible to Larson from publicly available information. When Larson sent customers the Church Bond Update and their supplemental account statements, he knew or ignored patently obvious symptoms that indicated the church bonds for each of the issuers had suffered more than unimportant degrees of impairment to their credit quality. This included information referencing significant payment arrearages, defaults, forbearance and restructuring agreements, impairments and foreclosures of collateral property, subordinations of debt, bankruptcies, and other setbacks.

Larson began communicating with the bonds' trustee in 2012. Larson specifically sought from the trustee payment histories for each of the issuers whose bonds Larson's customers owned, information about whether the bonds were in default, and information about issuer forbearances and bankruptcies. Larson reviewed the trustee's response, which included bondholder letters that made clear distressing information about each of the relevant issuers. At the time, for example, the trustee had accelerated Bethel Baptist's bonds due to its default and the issuer was negotiating a forbearance and restructuring of its debt. Windermere was in arrears and had defaulted. The trustee had foreclosed on Orlando's collateral property, and it was in the process of selling it for less than the amount owed on the bonds. Lifepointe had filed for bankruptcy and sought to liquidate its collateral. Metropolitan Baptist was in arrears and had defaulted. Church Fellowship was in arrears and had defaulted. A court had subordinated the claims of New Life's bondholders to the claims of other creditors. Iglesias too had filed for bankruptcy. In addition to the letters to bondholders, the trustee provided Larson a spreadsheet that showed the payments missed by issuers since 2009 and specifically indicated that each had defaulted.

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[51] Recklessness may be inferred from circumstantial evidence. *Herman & MacLean v. Huddleston*, 459 U.S. 375, 390 n.30 (1983).

Larson also spoke weekly with the trustee about the status of his customers' bonds. He remained in close contact with the trustee from 2012 and through April 2013. Furthermore, Larson visited and reviewed the trustee's website when he drafted the Church Bond Update and created the supplemental account statements that he sent to his customers beginning in May 2013. The trustee's website included for each issuer copies of the prospectus and trust indenture, letters to bondholders, and "default status comments" that provided, in chronological order, detailed notations about the issuer's payment history, default status, the value of collateral property, any forbearances and restructurings, and other information concerning the issuer's financial condition and the credit quality of its debt. Larson admitted he reviewed this information for Windermere, Orlando Central, Lifepointe, Metropolitan Baptist, Church Fellowship, and Iglesias. Although he did not recall reviewing information on the website about Bethel Baptist, he testified, "It would have been the logical thing to do . . . ." Larson continued to visit the trustee's website periodically after May 2013, a time during which additional documents concerning the issuers and their bonds became available on the website.

Larson further admitted at the hearing that, when he drafted the Church Bond Update, "he was very familiar" with the court order that had subordinated the interest of New Life's bondholders to other creditors. He knew the court's order had the effect of "moving contractors' interests in front of bondholders interest." Larson knew the trustee believed that "most" of New Life's bondholders would not be paid in foreclosure, and "[s]ome of them will not get paid at all." Larson recognized that this type of information would "scare the crap out of people."

Finally, Larson prepared the supplemental account statements and assigned prices for his customers' church bonds without having any experience in pricing or valuing bonds. To bolster his claims that he was providing his customers with an accurate reporting of their church bond holdings, he instead knowingly misrepresented to them that he had developed a methodology for their bonds in conjunction with RBC, bond trustees, issuers, and church bond houses. In fact, Larson alone priced the bonds, and there was little to his methodology. Larson did not follow well-established standards for valuing his customers' bonds, and he relied almost exclusively on old, prospective appraisals for the collateral securing the bonds when assigning bond prices. He admittedly did not seek to compute the present value of any bond's cash flows, and he did not care about the impact that negative credit events and deteriorating credit quality had on an issuer's ability to fulfill its payment obligations. His representations to customers about the value of the church bonds they owned consequently created a substantial and obvious risk of misleading customers. *See Alvin W. Gebhart*, Exchange Act Release No. 58951, 2008 SEC LEXIS 3142, at *29 (Nov. 14, 2008) ("The Gebharts admitted they never sought or examined any information or documents that normally help to estimate . . . value . . . . They simply made no effort to confirm the parks had sufficient assets to pay for the return of the clients' investments . . ."), *aff'd*, 595 F.3d 1034 (9th Cir. 2010); *cf. Dep't of Enforcement v. Murphy*, Complaint No. 2005003610701, 2011 FINRA Discip. LEXIS 42, at *82 (FINRA NAC Oct. 20, 2011) ("Murphy must have known that this [account statement] contained materially misleading information concerning the true status of AL's account."), *aff'd*, Exchange Act Release No. 69923, 2013 SEC LEXIS 1933 (July 2, 2013), *aff'd sub nom, Birkelback v. SEC*, 751 F.3d 472 (7th Cir. 2014).

Larson testified that the purpose of the Church Bond Update and supplemental account statements was to inform and give bondholders the "real value" of their church bonds. *See Ottimo*, 2018 SEC LEXIS 1588, at *40 ("Ottimo . . . acknowledged during the hearing that the purpose of his biography was to give investors 'fair and balanced' information about his 'management experience.'"). The evidence shows, however, that he knew or must have known that his representations concerning the bonds and their prices were materially misleading given his failure to disclose and account for numerous pieces of negative information that the trustee provided him, or to which he had access on the trustee's website, concerning the deteriorating credit quality of his customers' bonds. *See Field*, 2008 FINRA Discip. LEXIS 63, at *33 ("Field reviewed all of the bonds' official statements, which clearly and repeatedly disclosed the bonds' risk and other material facts."). In this case, his "refusal to see the obvious, or to *investigate the doubtful*," undoubtedly gives rise to an inference of reckless misconduct. *See S. Cherry St., LLC v. Hennessee Grp. LLC*, 573 F.3d 98, 109 (2d Cir. 2009). Rather than give customers the information they needed to evaluate in a fully informed fashion the performance of their bonds and accounts, Larson told customers what he believed they needed to hear in order to lull them into a false belief that their bonds and accounts were performing better than they in fact were. *See Ortiz*, 2017 FINRA Discip. LEXIS 5, at *26.

As for the church bond cross trades, the evidence showed that Larson arranged and executed the cross trades, often using discretionary authority, with no discussion with the purchasers of material facts that indicated they were paying prices that exceeded the value of the bonds. He omitted material facts either knowing the issuer whose bonds were the subject of the cross trade had failed to meet its obligations or because he failed to take steps to investigate these facts from available information. For example, he arranged for a cross trade of Bethel Baptist's bonds at or near par even though the issuer had been in default since 2010 and RBC was already pricing the bonds at a discount to par of at least 10 percent. He arranged a cross-trade of Iglesias's bonds at par a year after it defaulted and after the value of its collateral property had deteriorated significantly. Finally, Larson arranged a series of cross trades involving Windermere's bonds despite having available to him material facts concerning Windermere's creditworthiness. In fact, he knew full well that he had offered to sell Windermere bonds earlier at deeply discounted prices, the open market transactions executed for Windermere bonds during the period did not support the purchase prices he assigned to the bonds, and he assigned a purchase price in one transaction that exceeded by $13 the price at which his wife purchased the same bonds on the same day in another cross trade he arranged. We therefore conclude that Larson's conduct with respect to the cross trades likewise was, at a minimum, reckless. *Cf. Michael L. Smirlock*, 51 S.E.C. 849, 852 (1993) ("Respondent ordered [the] execution of the cross trades on behalf of his advisory clients in reckless disregard of his duty to obtain the best price and execution.").

The Hearing Panel majority based its implicit finding of Larson's negligence on his "credible" belief in the "accuracy of his valuations and thought [that] it was in his clients' best interest to hold the securities."[52] Larson's good faith belief in his actions, however, "must be

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52 The Hearing Panel majority also found it "plausible" that Larson did not disclose to customers negative information about their church bonds because he believed the trustee sent

[Footnote continued on next page]

considered with all other evidence of knowledge or recklessness because the reasonableness, and therefore, the credibility of that claim of good faith must be evaluated in light of the circumstances of each case and in light of the conduct expected from a reasonable person." *Gebhart*, 2008 SEC LEXIS 3142, at *34. We must therefore test Larson's belief that he acted in good faith by reference to objective criteria. *See id.* at *35 ("A respondent's asserted good faith belief is not plausible if he ignores facts that place him on notice of a risk of misleading clients.").

Given the plentiful evidence presented on the issue of Larson's scienter, we conclude Larson knew or must have been aware that his conduct was an extreme departure from the standards of ordinary care that presented an obvious danger of misleading customers. *See id.* at *38 ("Our de novo review of the evidence in this case therefore leads us to conclude that, contrary to the Gebharts' assertions, they must have known when they made their misrepresentations that their actions presented an unacceptable danger of misleading their clients."). We thus find, as the Hearing Officer found in his dissent, that Larson acted at least recklessly.[53]

In sum, we conclude that Larson made material misrepresentations and omitted material information when he created and sent to his customers, among other written communications, the Church Bond Update and supplemental account statements, and when he arranged cross trades of church bonds between his customers. We also conclude that Larson acted at least recklessly and, accordingly, with scienter. We therefore find, as alleged in the first and second causes of Enforcement's amended complaint, Larson violated Section 10(b) of the Exchange Act, Exchange Act Rule 10b-5, and FINRA Rules 2020 and 2010.[54]

[cont'd]

information about the bonds' issuers to bondholders. Larson, however, could not rely on the trustee to fulfill his duty to state information accurately and disclose all material facts necessary to make his communications with his customers not misleading. *See Escarcega*, 2017 FINRA Discip. LEXIS 32, at *36 ("He first argues that because he provided to customers other documents, such as the prospectuses, that described the risks of the Debentures in detail, any alleged misrepresentations that he made cannot be considered material . . . . We reject this argument.").

53 The length of Larson's securities industry career and his well-documented familiarity with church bonds bolsters our finding he acted recklessly. *See William Scholander*, Exchange Act Release No. 77492, 2016 SEC LEXIS 1209, at *24 (Mar. 31, 2016) ("Applicants, as experienced securities industry professionals, knew or were reckless in not knowing that the omitted information would be material to a reasonable investor."), *aff'd, sub nom. Harris v. SEC*, 712 F. App'x 46 (2d Cir. 2017).

54 We also find, as alleged in the amended complaint, Larson's conduct was willful. *See Ottimo*, 2018 SEC LEXIS 1588, at *30 & n.27 (finding respondent who was at least reckless in

[Footnote continued on next page]

C. Larson Failed to Respond Fully and Promptly to Multiple FINRA Information Requests

The Hearing Panel found, as Enforcement alleged in the amended complaint's third cause, that Larson failed to comply fully and promptly with three requests for information issued by FINRA staff, in violation of FINRA Rules 8210 and 2010. We affirm the Hearing Panel's findings.

1. Facts

a. Oakbridge Terminates a Registered Representative After Learning Information About His Outside Business Activity

On January 30, 2013, Robert Beyer ("Beyer"), an Oakbridge registered representative, submitted an "Outside Business Activity Disclosure Form" ("OBA Form") notifying the firm of an outside business activity named, "Heroic Life Assurance" ("Heroic"). Beyer described the outside business activity as "Life Assurance" and not investment related, and he described his role at Heroic as "Agent/Owner." Larson reviewed the OBA Form, and he signed and dated it with the date January 30, 2013.

Later in 2013, an individual called Oakbridge and asked to speak with Beyer. The individual claimed that they had invested in Heroic. After the individual called Oakbridge several more times, and Beyer did not return those calls, Larson contacted Beyer by telephone and demanded that he provide an explanation of his outside business activity.

Shortly before September 3, 2013, Beyer responded to Larson's demand for an explanation. He delivered to Oakbridge a signed, handwritten letter that he addressed, "To whom it may concern." In the undated letter, Beyer admitted that he had "failed to fully disclose all details" to Oakbridge about Heroic. He explained:

> I have been raising capital for the purpose of launching [and] distributing a Life Assurance product as a captive Missouri carrier. I have not been successful so far in raising sufficient funding [and] I have poor record keeping [and] no internal company controls to handle associate member funds. I am fully disclosing this information as one of the investors has started a lawsuit against the company to retrieve his investment. However, [Heroic] no longer has sufficient funds to repay any of its investors due to difficulties in raising capital [and] pay income

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[cont'd]

committing fraud willfully violated the federal securities laws). He is accordingly subject to a statutory disqualification on that ground. *See* 15 U.S.C. §§ 78c(a)(39)(F) & 78o(b)(4)(D) (including as a statutory disqualification from the securities industry willful violations of the federal securities laws).

> drawn from the investments. I stand ready to provide a more detailed, clearer, [and] more concise statement regarding [Heroic] as well as I still very much want to be a successful Advisor/Broker with Oakbridge.

Beyer attached to the letter a list comprising Heroic's four investors, who had invested a total of $328,000 in the business.[55]

After Larson received a copy of Beyer's letter, he became concerned that Beyer might be involved in fraud. He therefore scheduled a meeting for September 3, 2013, to discuss the letter with Beyer. To prepare for that meeting, Larson drafted a typewritten agenda titled, "Meeting with Bob Beyer September 3, 2013." It stated, "This meeting is to investigate and help Oakbridge management decide how to handle the current situation brought on by Mr. Beyer's actions previously unknown to the firm." The agenda included several bullet-pointed items that Larson based on Beyer's handwritten, "To whom it may concern" letter, including several questions about Heroic's investors, including those investors who were customers of Oakbridge.

Beyer did not attend the September 3, 2013 meeting. Accordingly, Oakbridge terminated his association with the firm. Larson drafted and signed a memo that explained the reasons for Beyer's termination. Titled, "Termination of Bob Beyer No Exit Interview Performed," and dated September 3, 2013, the memo stated that Beyer had not complied "with reporting of an outside business activity that may result in a lawsuit from one of his investor members," "in direct violation of company policy regarding outside business activities." The memo further explained that Beyer failed to attend the September 3, 2013 meeting and had not responded to several requests that he contact Oakbridge. Given Beyer's "lack of response," the memo explained, "we . . . have no alternative but to terminate him."

On September 9, 2013, Oakbridge filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") terminating Beyer's association with the firm. It stated, in the "Termination Explanation," which Larson drafted, "Mr. Beyer was terminated for cause when it was discovered that his outside business activity was not consistent with activities disclosed which is prohibited by firm policies and procedures."

b. FINRA Commences an Investigation and Issues a Request for <u>Information</u>

Beyer's Form U5 prompted FINRA to commence an investigation. On September 24, 2013, FINRA staff sent Oakbridge a request under FINRA Rule 8210 for specified information and documents. FINRA's request letter, which was addressed to Huang, the firm's president and executive representative, explained FINRA "is conducting an inquiry with respect to the Form U5 Filing alleging that your former registered representative, . . . Beyer, . . . participated in a prohibited Outside Business Activity without prior approval." It required that the firm provide FINRA with several categories of information. These included a signed, written statement from

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55 Two of the four investors Beyer identified were Oakbridge customers.

"an appropriately knowledgeable principal of the firm" describing the circumstances of Beyer's termination and a description of the firm's understanding of the outside business activity referenced in Beyer's Form U5, including the name of the activity and its purpose. FINRA also requested from the firm copies of any documents in the firm's possession, custody, or control about the outside business activity disclosed in Beyer's Form U5. FINRA's request letter established a response deadline of October 4, 2013, and stated, "[Y]ou are obligated to respond to this request fully, promptly, and without qualification. You are also obligated to supplement or correct any response that you later learn to have been incomplete or inaccurate. If you withhold any responsive document or information, you must specifically identify what you are withholding and state the basis for your doing so." "Any failure on your part to satisfy these obligations," FINRA's letter warned, "could expose you to sanctions, including a permanent bar from the securities industry."

c. Larson Responds to FINRA's First Request for Information, but Not Fully

Huang forwarded FINRA's September 24, 2013 request for information to Larson, who was designated by Oakbridge as the person responsible for responding for the firm in all FINRA-related matters. Larson responded to FINRA's request on October 1, 2013. Larson's response letter, which he drafted and signed as "CCO and CEO," explained that Oakbridge terminated Beyer "when he failed to appear at a meeting that was the preliminary event in the beginning of an investigation into [his] outside business activities. We needed more information about his involvement with Heroic Assurance." Larson stated, "We originally understood that it was an outside life insurance company and product, but that is no longer certain. The rest is unknown to us." Finally, Larson represented that Oakbridge did not have any documents relating to the outside business activity referenced in Beyer's Form U5 or that could aid FINRA in its understanding of the matter. "As Mr. Beyer accepted the termination," Larson explained, "we closed or [sic] investigation."

Larson's response letter nevertheless attached three documents. They included a typewritten resignation letter that Beyer signed on September 30, 2013, in which he stated simply, "I am leaving the industry. I will no longer be involved in any investment activities." The documents also included a "Compliance Checklist" that Beyer signed on January 6, 2012. Finally, the documents included an OBA Form that Beyer signed on February 7, 2012, nearly a year before his OBA Form of January 30, 2013. It described Heroic's business as "Fixed Life Products," and defined his position with Heroic merely as "Sales."

Larson's response letter did not indicate that he withheld any responsive information or documents. Larson did not produce to FINRA Beyer's January 30, 2013 OBA Form, which in contrast to the February 7, 2012 OBA Form that Larson produced with his response, identified Heroic's business as "Life Assurance" and labeled him as the business's "Agent/Owner." Larson also did not produce to FINRA Beyer's handwritten, "To whom it may concern" letter, or the agenda Larson drafted for the September 3, 2013 meeting he scheduled with Beyer, which raised questions about of whether Byer had engaged in private securities transactions away from Oakbridge and with firm customers. Finally, Larson did not produce the September 3, 2013 memo that he drafted to explain why Oakbridge terminated Beyer.

d. FINRA Issues a Second Request for Information

On November 1, 2013, after speaking with Beyer, FINRA staff sent Oakbridge a second request for information and documents under FINRA Rule 8210. FINRA's second information request, which FINRA staff addressed to Larson as the firm's chief compliance officer, explained FINRA "is continuing its inquiry with respect to the Form U5 Filing alleging that . . . Beyer . . . participated in a prohibited Outside Business Activity . . . that may have violated the firm's policies and procedures." It requested Larson, Huang, and Michael Standley ("Standley"), who owned Oakbridge with Larson, each provide a signed, written statement detailing their understanding of Beyer's outside business activity with Heroic, Beyer's ownership of Heroic, and Heroic's investors. The request letter also asked that Larson, specifically, provide "any and all documentation" about the firm's discovery of Beyer's outside business activity and describe how that activity, as explained in the Form U5, was inconsistent with what he had disclosed to Oakbridge and violated Oakbridge's policies and procedures. The second request for information set a response deadline of November 15, 2013, and it contained the same reminders and warnings about complying with FINRA Rule 8210 that FINRA's first request for information included.

e. Larson Responds to FINRA's Second Information Request and Fails Again to Include Responsive Documents

On November 4, 2013, before responding to FINRA's second request for information, Larson emailed FINRA staff an undated letter that he signed. The letter stated that Oakbridge "incorrectly recorded" the reason for Beyer's termination on his Form U5. Larson explained Beyer "was terminated for not being in attendance at a required compliance meeting to investigate activities that had come to our attention."[56] He further claimed, "You have his outside business activity form. He showed no interest in Heroic. Any statement by Oakbridge staff would be pure conjecture. Any statement by staff could not be based in fact so would be inappropriate."[57]

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56 Oakbridge submitted a Form U5 amendment on November 4, 2013, that changed the explanation for Beyer's termination. It stated, "Mr. Beyer was terminated for not responding and attending a required compliance meeting investigating activities alleged to be inconsistent with those reported to Oakbridge. His termination is based on his lack of response as activity was not verified to be in breach of company policy and procedures." The new termination explanation thus eliminated the original Form U5's reference to Beyer's "outside business activity," and it disclaimed the original explanation that the activity was "prohibited by firm policies and procedures."

57 The OBA Form to which Larson referenced was Beyer's OBA Form dated February 7, 2012, which described his role with Heroic as "Sales," not the OBA Form dated January 30, 2013, which described his role as "Agent/Owner."

A few days later, on November 7, 2013, Larson emailed a response to FINRA's November 1, 2013 request. Larson's email attached a single typewritten statement titled, "Termination of Bob Beyer 9/4/2013." Larson, Huang, and Standley each signed the typewritten statement, but Larson drafted it.[58] Contrary to the information that Beyer disclosed on his January 30, 2013 OBA Form, and in his handwritten, "To whom it may concern" letter, the statement explained, "It was our understanding that Mr. Beyer was just an agent for Heroic. . . . We did not know he was an owner. . . . As we were unaware of his activities at Heroic we did not know of solicitation activities. Because we were not aware, we took no action." The statement further expounded, "[T]he [September 3, 2013] meeting was in response to unconfirmed 'Rumors,' and we had no knowledge of the extent of his involvement."

The typewritten statement also included Larson's response to FINRA's request for documents about the firm's discovery of the outside business activity reference in Beyer's initial Form U5. This response consisted solely of an undated letter Larson signed terminating Beyer "for cause" on September 3, 2013. Larson specifically denied that he or Oakbridge were in possession of any additional documents that were responsive to FINRA's information request. He stated, "If an investigation had happened we may have had additional information." Larson did not indicate that he withheld any documents from his response to FINRA's second information request. As with his response to FINRA's first request for information, Larson omitted from his second response Beyer's January 30, 2013 OBA Form, Beyer's handwritten, "To whom it may concern" letter, the agenda Larson drafted for the September 3, 2013 meeting with Beyer, and Larson's September 3, 2013 memo about Beyer's termination.

f. FINRA Closes Its Investigation, Later Renews Its Inquiry, and Issues a Third Request for Information

Based on Larson's responses to FINRA's first two requests for information, FINRA closed its investigation of the circumstances surrounding Beyer's termination, and it issued Oakbridge a letter of caution for, among other things, failing to evidence that it had evaluated Beyer's outside business activity properly for private securities transactions.

In May 2014, however, FINRA staff learned from the State of Missouri Securities Division that Oakbridge possessed additional documents relating to Beyer and Heroic that Larson had not provided to FINRA in response to FINRA's first two requests for information, including specifically the agenda Larson drafted for the scheduled September 3, 2013 meeting with Beyer. Therefore, FINRA commenced a new investigation of the firm.

58 FINRA's November 1, 2013 request letter asked for a signed, written statement from each of these individuals. Larson's email transmitting the firm's response stated, however, "We combined our response and each of us has signed it." He explained, "As staff was in close conversation about Bob Beyer, what one knew so did all the others."

On July 11, 2014, FINRA staff sent Oakbridge a third request for information and documents under FINRA Rule 8210.[59] The third request explained that FINRA was "conducting an additional inquiry with respect to your firm's supervision of . . . Beyer and his Outside Business Activity . . . , The Heroic Life Assurance Company." The request letter asked that the firm provide FINRA 12 specific, detailed categories of information. One such category included:

> Copies of all documentation relating to the firm's attempt to meet with Beyer regarding his Heroic OBA, including, but not limited to, documentation of the meeting requests sent to Mr. Beyer, any internal summaries created prior to the meeting discussing its purpose, any agendas prepared for the meeting, and any post-meeting summaries.[60]

FINRA's third request for information and documents directed Oakbridge to respond by July 25, 2014, and it included the same instructions and warnings about compliance with FINRA Rule 8210 that were contained in FINRA's two earlier requests for information.

g. Larson Responds to FINRA's Third Request for Information and Omits Responsive Documents a Third Time

Larson responded to FINRA's third request for information on July 15, 2014, in a letter he signed as "CEO/CCO." The letter stated, "Since FINRA reviewed our termination of Mr. Beyer, we have had investigations by the Missouri Department of Insurance, the FBI and the State of Missouri Securities Division. . . . The result of all these investigation [sic] is that Oakbridge has committed no wrongful act and has breached no criminal or regulatory infraction." It further declared, "Oakbridge's only soft spot in this whole affair was our weakness in our Outside Business Activity Form. That has been addressed in your last examination of this issue and has been corrected for future hires. His activities with Heroic were insurance related and outside the scope of our supervision."

Larson included with his response 12 pages of documents that related, among other things, to a regulatory complaint and police report filed by a Heroic investor. Larson, however, did not include any other documents with his response, and he did not indicate that he withheld

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[59] Because this was the first FINRA Rule 8210 request issued pursuant to the new investigation, FINRA staff addressed the letter to Huang as the firm's executive representative. Huang, however, sent FINRA's request to Larson because, as explained above, he was the person at Oakbridge responsible for responding to all FINRA-related matters.

[60] The remaining categories of documents detailed in FINRA's third information request consisted largely of account documentation, statements, and other information for the two Oakbridge customers who had invested in Heroic.

any documents responsive to FINRA's third request for information.[61] "Please review our response," Larson wrote in the email transmitting the letter and the 12 pages of documents. "If in any way it is not sufficient," Larson concluded, "please give me a call or send an email. I will promptly respond."

Yet again, for the third time, Larson failed to produce documents responsive to FINRA's request for information, including any documents that responded specifically to FINRA's request for, "Copies of all documentation relating to the firm's attempt to meet with Mr. Beyer regarding his Heroic OBA . . . ." He did not produce to FINRA Beyer's January 30, 2013 OBA Form, Beyer's handwritten, "To whom it may concern" letter, the agenda Larson drafted for the September 3, 2013 meeting, or Larson's September 3, 2013 memo explaining Beyer's termination.

h. FINRA Issues a Fourth Request for Information, and Larson Responds Fully

FINRA staff concluded that Larson's July 15, 2014 letter was deficient. Therefore, on July 25, 2014, FINRA staff issued a fourth request for information and documents under FINRA Rule 8210. FINRA's request letter, which staff addressed to Larson as Oakbridge's "CEO/CCO," informed him that his response dated July 14, 2014 did not provide all of the information FINRA requested and, accordingly, Oakbridge "may be in violation of FINRA Rule 8210." FINRA's fourth information request proceeded to highlight specifically how Larson had not provided any documents that were responsive to 10 of the 12 categories of documents requested in FINRA's third request dated July 11, 2014. One of these categories included FINRA's request that the firm provide, "Copies of all documentation relating to the firm's attempt to meet with Mr. Beyer regarding his Heroic OBA . . . ." The letter warned, "If the firm fails to deliver the requested information . . . by August 8, 2014, it may be subject to the institution of an expedited or formal disciplinary proceeding leading to sanctions . . . ."

Larson responded to FINRA's fourth request for information and documents by email on July 30, 2014. Larson's email attached a July 29, 2014 letter that Larson drafted. The letter stated, "You will find attached 122 files with 42 MB's of information." Larson's letter further stated, "This is everything we have on Mr. Beyer and covers all of your questions, all of the questions from other regulators and a few extra." Finally, the letter claimed falsely, "There is a lot more information provided here than in our original response to FINRA on Mr. Beyer's termination. Much of this information was made known to us from requests of other criminal and regulatory request."

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[61] In his letter, Larson claimed Oakbridge had produced over 600 pages of documents in response to investigations conducted by the State of Missouri and the FBI. Larson stated that he would send these documents to FINRA, but he stated, "I believe this annotated response gets to the heart of the concerns on oversight and responsibility."

The files attached to Larson's letter included, at last, Beyer's January 30, 2013 OBA Form that identified him as Heroic's "Agent/Owner," the agenda that Larson prepared for the scheduled September 3, 2013 meeting with Beyer, and the September 3, 2013 memo Larson prepared about Beyer's termination. Larson's response, however, did not include Beyer's handwritten, "To whom it may concern" letter. Larson instead finally produced that letter as an attachment to an email he sent to FINRA on August 14, 2014, in which he stated, "We are currently replying to a second FBI request for information. In reviewing everything that has been sent, we believe that this note that was received from Mr. Beyer after his termination was not sent with the other information." Larson's email did not explain why he had not produced the letter, which in fact Beyer had submitted to Oakbridge before his termination, earlier.

2. Findings

FINRA Rule 8210 requires FINRA members and their associated persons to provide information to FINRA in the course of an investigation.[62] This obligation demands that firms and persons subject to FINRA's jurisdiction provide "full and prompt cooperation" in response to any request for information issued by FINRA. *See CMG Institutional Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *15 (Jan. 30, 2009). The duty that Rule 8210 imposes, the Commission has long held, is "unequivocal."[63] *See Michael Markowski*, 51 S.E.C. 553, 557 (1993), *aff'd*, 34 F.3d 99 (2d Cir. 1994).

The facts of this case are unambiguous. On three occasions in 2013 and 2014—September 24, 2013, November 1, 2013, and July 11, 2014—FINRA issued requests for specified information and documents under FINRA 8210 that sought from Oakbridge information and documents related to Beyer's outside business activity with Heroic and the

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[62] FINRA Rule 8210 states:

> For the purpose of an investigation, complaint, examination, or proceeding authorized by the FINRA By-Laws or rules, an Adjudicator or FINRA staff shall have the right to: (1) require a member, person associated with a member, or any other person subject to FINRA's jurisdiction to provide information orally, in writing, or electronically . . . and to testify at a location specified by FINRA staff . . . with respect to any matter involved in the investigation, complaint, examination, or proceeding; and (2) inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in the investigation, complaint, examination, or proceeding that is in such member's or person's possession, custody, or control.

FINRA Rule 8210(a).

[63] FINRA Rule 8210 further provides, "No member or person shall fail to provide information or testimony or to permit an inspection and copying of books, records, or accounts pursuant to this Rule." FINRA Rule 8210(c).

circumstances surrounding Oakbridge's decision to terminate him. On three occasions in 2013 and 2014—October 1, 2013, November 7, 2013, and July 15, 2014—Larson responded to FINRA's requests on behalf of the firm in letters and statements he drafted and signed. Each of these responses, however, omitted and failed to provide several documents in Oakbridge's possession, custody, and control that were undoubtedly responsive to FINRA's requests. These documents included Beyer's January 30, 2013 OBA Form, Beyer's handwritten, "To whom it may concern" letter, the agenda Larson drafted for the scheduled September 3, 2013 meeting, and Larson's September 3, 2013 memo explaining Beyer's termination.

Larson provided these documents to FINRA only after it issued a fourth request for information and documents—on July 25, 2014, 10 months after FINRA's first request—that warned Larson his firm could be in violation of FINRA Rule 8210 and suggested that FINRA knew of the existence of the documents from other sources. Larson's failure to provide a full response to each of FINRA's first three information requests promptly accordingly violated FINRA Rules 8210 and 2010. *See Dep't of Enforcement v. Harvest Capital Invs., LLC*, Complaint No. 2005001305701, 2008 FINRA Discip. LEXIS 45, at *39 (FINRA NAC Oct. 6, 2008) ("[T]he record shows that Cotto, on behalf of Harvest Capital, failed to respond fully and completely to four of the five written requests."); *see also CMG Institutional Trading*, 2009 SEC LEXIS 215, at *29 (finding member firm and its chief executive officer violated their obligations to respond to an NASD information request "by failing to respond completely and in a timely manner").

Larson testified, and he asserts in his appeal brief, that FINRA should not hold him responsible for failing to provide the omitted documents to FINRA. In this respect, Larson claims he relied on Huang to retrieve from the firm's records copies of the documents needed to draft a response to FINRA's requests for information and documents. Larson claimed that he provided to FINRA all the documents that Huang provided to him. The Hearing Panel, however, did not find Larson's explanation for not providing the missing documents to FINRA credible. Instead, the Hearing Panel found credible Huang's testimony that, although he helped Larson gather documents, Larson determined what documents to include with the responses to FINRA's requests for information, and he provided Larson all of the documents that Larson demanded from the firm's files. Absent substantial contrary evidence, we defer to the Hearing Panel's credibility findings.[64] *See Daniel D. Manoff*, 55 S.E.C. 1155, 1162 n.6 (2002) ("Credibility determinations by a fact-finder deserve 'special weight.' These determinations can be overcome only when there is 'substantial evidence' for doing so.").

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[64] As a factual matter, the evidence showed that Larson was familiar fully with the documents that he failed to provide to FINRA. Larson reviewed and signed Beyer's January 30, 2013 OBA Form. He also reviewed Beyer's handwritten, "To whom it may concern" letter and drafted the agenda for the scheduled September 3, 2013 meeting based on the details of that letter. Lastly, Larson drafted the memo summarizing Beyer's termination the same day Beyer failed to attend the meeting scheduled for September 3, 2013. Three of those events occurred within a mere month of FINRA's first information request and Larson's response to that request. Given Larson's concern that Beyer may have engaged in fraud, it is entirely implausible that he simply forgot about these documents when he responded to FINRA on behalf of his firm.

More importantly, Larson may not evade liability under FINRA Rule 8210 for his incomplete responses to FINRA's first three requests by shifting blame to others. Although Larson may have obtained assistance in responding to FINRA's requests for information and documents, as the individual who oversaw each of his firm's responses, drafted each of those responses, and attested to their responsiveness, he is squarely liable under FINRA Rule 8210 for their deficiencies.[65] *See Dep't of Enforcement v. Merrimac Corp. Sec., Inc.*, Complaint No. 2011027666902, 2017 FINRA Discip. LEXIS 16, at *15 (FINRA NAC May 26, 2017) ("The law is clear that Nash, as the person at Merrimac to whom the Rule 8210 requests were directed, and who oversaw the firm's responses, had responsibility over the falsified responses to FINRA, and cannot shift his responsibility to others."); *see also Hedge Fund Capital Partners*, 2012 FINRA Discip. LEXIS 42, at *65 ("Jahre directly made, was involved in the preparation of, or approved all of the Firm's responses to FINRA's requests.").

Finally, Larson admitted that he intentionally withheld from FINRA, until August 14, 2014, Beyer's handwritten, "To whom it may concern" letter. He nevertheless claimed that he reasonably did so because he had concerns about the letter's authenticity, and he believed it fell outside the scope of FINRA's request. This claim, however, is inconsistent with the facts. Larson scheduled a meeting with Beyer after receiving a copy of Beyer's letter, and he prepared the agenda for that meeting based on his belief that the letter was genuine. He never expressed any concerns about the letter's authenticity to anyone at Oakbridge, nor did he ever notify FINRA that he was withholding the letter from his responses to FINRA's first three information requests. Ultimately, any purported concerns that Larson may have had about the letter's authenticity, or whether it fell within the scope of FINRA's information requests, are beside the point. As a legal matter, Larson was not permitted to withhold the letter, or any other responsive document, based on his view of the document's genuineness or its materiality to FINRA's investigation. *See CMG Institutional Trading*, 2009 SEC LEXIS 215, at *21 ("NASD member firms and their associated persons may not ignore NASD inquiries; nor take it upon themselves to determine whether information is material to an NASD investigation of their conduct." (internal quotation marks omitted)). If Larson had concerns about the letter or any other document he omitted from his responses, he had a duty to raise, discuss, and resolve them with FINRA staff consistent with the "full" and "prompt" cooperation required by FINRA Rule 8210. *See id.* at *24 (citing *Richard J. Rouse*, 51 S.E.C. 581, 584 n. 9 (1993)).

In sum, Larson's duties as a person subject to FINRA's jurisdiction are clear, and he failed to abide by them. We affirm the Hearing Panel's findings that Larson violated FINRA

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[65] Larson, who largely worked remotely in Minnesota, not at his firm's Missouri offices, testified that he had difficulty retrieving documents from the firm's "cloud" filing system and therefore relied on others to provide him the documents necessary to respond to FINRA's requests. Larson's technological difficulties do not excuse the incomplete responses to FINRA that he drafted. *Cf. Dep't of Enforcement v. Hedge Fund Capital Partners, LLC*, Complaint No. 2006004122402, 2012 FINRA Discip. LEXIS 42, at *74 (FINRA NAC May 1, 2012) ("[W]e reject Jahre's argument that his limited knowledge of technology caused the false responses.").

Rule 8210 and 2010 when he failed to provide promptly full responses to FINRA's requests for information dated September 24, 2013, November 1, 2013, and July 11, 2014.

D. Affirmance of the Hearing Panel's Findings Concerning Larson's Other Acts of Misconduct

1. Larson Backdated Documents and Passed Them to FINRA as Firm Records

a. Facts

FINRA began an examination of Oakbridge in November 2014 to review, among other things, the firm's supervisory review of disclosures made by its registered representatives about their outside business activities. As part of that review, a FINRA examiner studied two outside business activity forms that Michael Tsiaklides ("Tsiaklides") submitted to Oakbridge in October 2013. Although Larson was responsible for reviewing the forms, they did not bear his signature indicating that he had conducted his supervisory review of Tsiaklides's disclosed activities.

Oakbridge did not find in its records, and thus could not provide during FINRA's examination, copies of Tsiaklides's two outside business activity forms bearing the signature of Larson or any other firm principal. Consequently, on March 18, 2015, FINRA issued an examination report citing Oakbridge for, among other things, violating FINRA Rule 3270 by failing to review Tsiaklides's disclosures, its third such violation of FINRA Rule 3270 in two years.

Larson's reaction to the examination report was immediate. The day the firm received the report, he emailed several people at Oakbridge and complained, "[W]e are getting nicked because Mike Tsiaklides Outside business were not properly vetted. I was caught flatfooted as I was unaware of the breath [sic] of services [MT] provides to clients . . . . [W]e need to come up with a better way to make sure that everything is checked out especially when it comes to Outside business."

Following FINRA's examination report, Huang forwarded to Larson, on March 20, 2015, an email that Huang first sent to Larson on October 29, 2013. The email Huang forwarded had included as attachments Tsiaklides's two outside business activity forms, which Huang had sent to Larson for his review and signature.

Larson responded to Huang, by email, on March 23, 2015. In his email, Larson claimed that he found in his "paper file" several documents related to Tsiaklides, including his two outside business activity forms. Unlike earlier copies of these forms, however, the forms Larson sent back to Huang included Larson's signature and were dated October 29, 2013, the day on which Tsiaklides submitted the forms and Huang first sent them to Larson.

After receiving Larson's email, Huang and other Oakbridge personnel again searched the firm's records for any copies of Tsiaklides's outside business activity forms bearing Larson's signature. The only such forms the firm was able to locate were those Larson emailed to Huang on March 23, 2015. Nevertheless, Larson thereafter submitted a response to FINRA's examination report in which he took exception with FINRA's examination findings concerning Tsiaklides's outside business activity forms, claiming the forms "were found in his file" "signed and approved by me." Larson included with his response copies of the two forms he sent to Huang on March 23, 2015, bearing Larson's signature and dated October 29, 2013.[66]

At the hearing, Larson testified that he received Tsiaklides's forms on October 29, 2013, and reviewed and signed them on or about that date. The Hearing Panel, however, did not find Larson's testimony credible and determined he instead falsified the documents and backdated them to make it appear as if he had conducted his required supervisory review when Tsiaklides submitted the forms. Moreover, the evidence showed Larson had an admitted practice of backdating such documents, which Larson excused by claiming his signature indicated only that he had conducted his supervisory review and was approving the outside business activity "as of the date" the registered representative, not Larson, signed the form.

b. Findings

FINRA Rule 4511 requires FINRA members to "make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules." FINRA Rule 4511(a). Falsifying records, for example by backdating documents, and providing them to FINRA, violates FINRA Rule 4511. *See Mitchell H. Fillet*, Exchange Act Release No. 75054, 2015 SEC LEXIS 2142, at *49 (May 27, 2015) (finding respondent violated FINRA Rule 4511's predecessor by knowingly backdating customer-related records and providing them to FINRA). Such conduct is also unethical and thus a violation of FINRA Rule 2010. *See id.*

The record supports fully the Hearing Panel's findings Larson backdated two outside business activity forms and provided the forms to FINRA to give the false impression that he conducted his required supervisory review at the time Tsiaklides submitted the documents to Oakbridge, 18 months prior to when Larson actually reviewed and signed the forms. We therefore conclude, as Enforcement alleged and the Hearing Panel found, Larson violated FINRA Rules 4511 and 2010. *See id.* at *49 ("Fillet was responsible for conducting a supervisory review of these transactions. He intentionally backdated the documents to give the false impression he had conducted his supervisory review of the transactions closer to the time that the transactions had been executed.").

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[66] FINRA staff reviewed the metadata for the forms Larson sent to Huang on March 23, 2015, and the forms Larson submitted with his examination response, and determined the forms were identical.

2. Larson Filed a Misleading CMA with FINRA

a. Facts

On July 25, 2011, shortly after Larson joined Oakbridge, the firm filed with FINRA a CMA to permit a transfer of the firms' ownership from its then owner to Larson and two colleagues, Kathryn Winter ("Winter") and Standley. While the application was pending, however, FINRA suspended Winter from associating with any FINRA member in any capacity for a period of six months because she failed to disclose private securities transactions to her member firm and made unsuitable recommendations to customers. Given Winter's disciplinary history, FINRA staff informed Larson FINRA was unlikely to approve a CMA that included her as an owner. Larson thus withdrew the firm's first application.

Winter ostensibly withdrew from the proposed ownership group. On September 15, 2011, however, she loaned $20,000 to Larson and Standley at a nominal rate of interest, and she paid them an additional $10,000 for the right to acquire at a later date one-third of their stock in Oakbridge.[67] Larson and Standley deposited the funds they received from Winter in an escrow account they established to capitalize Oakbridge, and they subsequently withdrew money from that account to fund the firm.

On September 30, 2011, Larson filed with FINRA a second CMA to transfer ownership in Oakbridge to Larson and Standley, but not Winter. As of the date of the second application, Larson intended that Winter would associate with and become an owner of the firm after her suspension ended. Larson did not, while the second CMA was pending, disclose to FINRA his intentions, the payments Winter made to Larson and Standley earlier in September 2011, or their use of funds from these payments to capitalize Oakbridge. Larson withdrew the firm's second application for continuing in FINRA membership on March 12, 2012, because Standley, who the firm proposed would serve as its president, had not passed the examination necessary for him to register as a general securities principal of the firm.

On March 23, 2012, Larson filed with FINRA a third, and final, CMA that again sought approval for Larson and Standley, but not Winter, to purchase Oakbridge.[68] The third application, which included nearly thirty pages that discussed Oakbridge's proposed structure, business plans, compliance systems, and financing, stated that Larson and Standley would be the

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[67] Larson, Standley, and Winter memorialized the existence of these payments and their purpose in a written agreement dated November 18, 2011. The agreement included a confidentiality provision that precluded the parties to the agreement from sharing its terms with anyone else.

[68] Larson and Standley finalized their purchase of Oakbridge from its former owner, who was barred from the securities industry, in December 2011.

firm's sole owners.[69] The application did not disclose that Winter had a acquired the right to purchase some of the firm's stock, the fact that Larson and Standley used funds provided by Winter to capitalize Oakbridge, or the terms of Winter's "confidential," November 18, 2011 agreement with Larson and Standley.[70]

FINRA approved Oakbridge's third CMA on October 2, 2012. On November 18, 2015, Larson signed a stock transfer agreement to convey, consistent with the terms of the November 18, 2011 agreement between Larson, Standley, and Winter, one-third of the stock he owned in Oakbridge to Winter. Although the third CMA did not propose a role with the firm for Winter, she nevertheless had a part in running the firm before she exercised her right to purchase shares in Oakbridge on November 18, 2015. For example, the firm designated Winter as an individual authorized to sign checks for the firm. She guaranteed the payment of some of the firm's office rents. A corporate resolution Winter signed identified her as an "owner" of Oakbridge, with the authority to obtain credit for the firm and pledge the firm's property as security. Lastly, a letter Standley and Winter sent to Larson described Winter as one of the firm's three "owners" or "partners," even if, the letter stated, "Some regulator may define it differently."

b. Findings

A CMA for the approval of a change in a FINRA member's ownership must include "the names of the new owners, their percentage of ownership, and the sources of their funding for the purchase and recapitalization of the member." NASD Rule 1017(b)(2)(A). All such applications must meet several standards for admission to ensure that approving the application is consistent with the public interest and the protection of investors. *See* NASD Rule 1014(a). These standards include, "The Applicant and its Associated Persons are capable of complying with the federal securities laws, the rules and regulations thereunder, and [FINRA] Rules, including observing high standards of commercial honor and just and equitable principles of trade." NASD Rule 1014(a)(3). "Where . . . the Applicant or its Associated Persons are the subject of any [settled regulatory action by FINRA], a presumption exists that the application should be denied." *See* NASD Rule 1014(b). The term "Associated Person," in this context, includes any

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[69] The application stated that Standley would be an inactive owner of the firm and would not have a role in the firm's management.

[70] FINRA did not learn that the November 18, 2011 agreement between Larson, Standley, and Winter existed until early 2016, and then only from another regulator. After commencing an investigation, FINRA staff obtained a copy of the agreement from Oakbridge. In his appeal brief, Larson claimed that he provided the agreement to FINRA as a "whistleblower," and that FINRA retaliated against him with this disciplinary action. The record does not support Larson's claim, and his self-proclaimed whistleblower status does not protect him from discipline in this matter. *See Dep't of Enforcement v. Evansen*, Complaint No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *40 (FINRA NAC June 3, 2014) ("Evansen's self-professed whistleblower status does not provide him with immunity from discipline in these proceedings."), *aff'd*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080 (July 27, 2015).

person, "who will or is anticipated," to be a "partner, officer, director, branch manager of the Applicant, or any person occupying a similar status or performing similar functions," or "directly or indirectly controlling the Applicant whether or not such person is registered or exempt from registration." *See* NASD Rule 1011(b).

The record amply supports the Hearing Panel's conclusion that the CMA Larson filed with FINRA on March 23, 2012, failed to disclose information that caused the application to be incomplete and misleading. Notably, Larson did not disclose that Winter was a source of the money he and Standley used to fund Oakbridge. Larson also did not disclose Winter's anticipated ownership and control of the firm. By failing to disclose this information, Larson prevented FINRA staff from reviewing the application fully to ensure it complied with the standards for admission specified under FINRA's rules. This review would have focused on a determination of whether the firm and Winter were capable of complying with the federal securities laws and FINRA rules in light of a presumption of denial that existed because Winter was the subject of a FINRA action that suspended her from associating with any FINRA member. We accordingly affirm the Hearing Panel's findings Larson, by omitting the foregoing information, violated FINRA Rules 1122 and 2010.

IV. Sanctions

Because we reverse the Hearing Panel's findings concerning scienter, and find that Larson committed fraud, we impose a sanction—a bar—for this misconduct. We further affirm the two-year suspension and $37,000 fine the Hearing Panel assessed for Larson's failure to respond fully and promptly to the three FINRA information requests, although these sanctions are not imposed given the bar we impose for Larson's fraud. Finally, we affirm the sanctions the Hearing Panel assessed for Larson's two other violations—two 18-month suspensions—but they too are not imposed in light of the bar.

A. Larson's Relevant Disciplinary History

The Sanction Guidelines ("Guidelines") instruct us to "always consider a respondent's relevant disciplinary history in determining sanctions."[71] Therefore, before we assess sanctions for the specific violations of the federal securities laws and FINRA rules for which Larson is liable in this matter, we begin with a review of his relevant disciplinary history.

On May 11, 2018, Larson consented to the entry of an order by the State of Missouri's Office of Secretary of State. The state's order permanently enjoined Larson from violating the Missouri Securities Act, permanently enjoined him from offering and selling securities in the state, barred him from registering in the state as an investment adviser, investment adviser representative, broker-dealer, or agent, ordered that he pay $24,000 in restitution, and fined him

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[71] *See FINRA Sanction Guidelines* 2, 7 (2019) (General Principles Applicable to All Sanction Determinations, No. 2 and Principal Considerations in Determining Sanctions, No. 1), https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf [hereinafter *Guidelines*].

$100,000. The order included findings that Larson failed to reasonably supervise an agent who violated the Missouri Securities Act, engaged in dishonest and unethical conduct in the securities business by concentrating reverse convertible securities in client accounts, and engaged in fraudulent and misleading activity in connection with providing investment advice to customers about the value of church bond securities.

The sanctions imposed on Larson by the State of Missouri inform, in part, our assessment of sanctions in this matter. *See John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at *48 (June 14, 2013) ("FINRA properly considered these matters in assessing sanctions because they evidence a disregard for regulatory requirements and are further evidence that he poses a risk to the investing public absent a bar."); *Joseph Ricupero*, Exchange Act Release No. 62891, 2010 SEC LEXIS 2988, at *24 (Sept. 10, 2010) (considering respondent's disciplinary history and finding that it was further evidence that he poses a risk to the investing public should he re-enter the securities industry), *aff'd*, 436 F. App'x 31 (2d Cir. 2011). Larson's disciplinary history, however, is just one of many aggravating factors that we have considered when assessing sanctions in this case.

B. Fraudulent Misrepresentations and Omissions of Material Facts

The Guidelines for intentional or reckless misrepresentations of material fact recommended strongly that we consider barring an individual respondent, unless mitigating factors predominate.[72] Based on the presence of numerous aggravating factors, and the absence of any mitigating ones, we conclude barring Larson is an appropriate unitary sanction for the fraud in which we found he engaged under causes one and two of the amended complaint. *See, e.g.*, *Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at *59 (Sept. 24, 2015) (sustaining FINRA's decision to impose a unitary sanction for violations that "result[ed] from a single systemic problem or cause").

First, Larson engaged in a protracted pattern and repeated episodes of misconduct.[73] Larson misrepresented and omitted material facts on more than two hundred occasions over a period of more than two years when he communicated with two dozen customers about their church bonds and recommended that some of those customers purchase church bonds in cross trades he arranged. Second, although evidence that Larson gained monetarily from his misconduct proved indeterminate, it is nonetheless clear that he benefitted from his misconduct in other intended ways.[74] As Larson's testimony and other evidence established, he sought to advantage himself by calming church bond customers and discouraging them from complaining, closing their accounts, or taking legal action against him and his firm.[75] Larson's efforts to lull

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72 *See Guidelines*, at 89. They also recommend a fine of $10,000 to $155,000. *Id.*

73 *See Guidelines*, at 7 (Principal Considerations in Determining Sanctions, Nos. 8, 9).

74 *See id.* at 8 (Principal Considerations in Determining Sanctions, No. 16).

75 *See id.* at 7 (Principal Considerations in Determining Sanctions, No. 10).

his customers into inactivity or mislead them to deflect their concerns aggravate the seriousness of his misconduct.[76] *See Richard G. Cody*, Exchange Act Release No. 64565, 2011 SEC LEXIS 1862, at *80 (May 27, 2011) ("We are particularly troubled by Cody's responses to Customer questions, which often suggested efforts to deflect their legitimate concerns and lull them into inaction."), *aff'd*, 693 F.3d 251 (1st Cir. 2012); *see also Dep't of Enforcement v. Zaragoza*, Complaint No. E8A2002109804, 2008 FINRA Discip. LEXIS 28, at *39 n. 39 (FINRA NAC Aug. 20, 2008) ("Zaragoza thus attempted to lull DV into inactivity by persuading him not to transfer his funds out of the trading account."). Finally, we find it troubling that Larson has refused to accept responsibility for his conduct, despite the fact that he recklessly misrepresented and omitted material facts that he knew or must have known created an obvious risk of misleading his church bond customers.[77] Larson repeatedly minimized his transgressions by claiming the Church Bond Update and supplemental account statements were mere "comfort" or "fluff" pieces. He also downplayed his misconduct by claiming that accuracy and complete truthfulness were not necessary when communicating with his customers because their church bonds were illiquid investments that they had no choice but to hold until maturity. As Larson asserted in his appeal brief, "I never did anything wrong," "I did what was in my client's best interest even when that meant major handholding." Larson's "refusal to acknowledge his misconduct and attempts to deflect blame increase the likelihood that he would engage in similar misconduct in the future." *See Mitchell H. Fillet*, Exchange Act Release No. 79018, 2016 SEC LEXIS 3773, at *18 (Sept. 30, 2016).

"The risk posed to the investing public by associated persons who engage in fraud is profound and obvious." *Gebhart*, 2008 SEC LEXIS 3142, at *46. We conclude Larson's failure

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[76] Larson asserts in his appeal brief that his customers' church bonds "have paid off or have been restructured and are currently paying off the debts to clients." There is, however, no evidence to support these claims in the record, and even if true, they do not excuse Larson's misrepresentations and omissions at the time he made them. *See Field*, 2008 FINRA Discip. LEXIS 63, at *33 ("We further find that Field acted with scienter and knew that the bonds carried substantial risk at the time he made his misrepresentations and omissions of material facts to his customers."); *cf. Chancellor Capital Mgmt., Inc.*, Investment Advisers Act Release No. 1447, 1994 SEC LEXIS 3184, at *21 (Oct. 18, 1994) ("[T]hat success does not excuse the failure to disclose the conflict of interest that existed at the time the investments were made."). Larson also claimed that his customers did not complain, and his misrepresentations and omissions did not "damage client returns [or] create losses." The absence of customer complaints or proven customer harm in connection with Larson's fraudulent conduct is nevertheless not mitigation. *See Kevin M. Glodek*, Exchange Act Release No. 60937, 2009 SEC LEXIS 3936, at *27 (Nov. 4, 2009) ("The fact that many of the customers did not lose money and did not complain about the violations does not further mitigate Glodek's misconduct."), *aff'd*, 416 F. App'x 95 (2d. Cir. 2011); *Escarcega*, 2017 FINRA Discip. LEXIS 32, at *70 ("We reject Escarcega's argument that it is mitigating that the customers have not lost any money in connection with their investments in the Debentures.").

[77] *See Guidelines*, at 7-8 (Principal Considerations in Determining Sanctions, Nos. 2, 13).

in this case to abide by his obvious duty to refrain from misrepresenting material facts to his church bond customers warrants the severest of sanctions. *See Marshall E. Melton*, 56 S.E.C. 695, 713 (2003) ("[C]onduct that violates the antifraud provisions of the federal securities laws is especially serious and subject to the severest of sanctions . . . ."). Under these circumstances, we conclude Larson poses too great a risk to the investing public to permit him to remain in the securities industry, and we accordingly bar him from associating with any FINRA member in any capacity. *See Gebhart*, 2008 SEC LEXIS 3142, at *46; *see also Field*, 2008 FINRA Discip. LEXIS 63, at *44 ("Under the circumstances, and in light of the numerous aggravating factors associated with Field's egregious misconduct, we find that barring Field in all capacities is the only effective remedial sanction.").

C. Failure to Comply Fully and Promptly with FINRA Information Requests

"FINRA Rule 8210 is the primary means by which FINRA investigators obtain the information necessary to conduct investigations and determine compliance with FINRA Rules." *Dep't of Enforcement v. Jarkas*, Complaint No. 2009017899801, 2015 FINRA Discip. LEXIS 50, at *46 (FINRA NAC Oct. 5, 2015), *aff'd*, Exchange Act Release No. 77503, 2016 SEC LEXIS 1285 (Apr. 1, 2016). "Delay and neglect on the part of members and their associated persons [to comply with FINRA requests for information] undermine the ability of [FINRA] to conduct investigations and thereby protect the public interest." *Rouse*, 51 S.E.C. at 588. A violation of FINRA Rule 8210 is thus serious and subverts FINRA's ability to carry out its responsibilities as a regulator, threatening both investors and the markets. *Plunkett*, 2013 SEC LEXIS 1699, at *33.

The Guidelines for violations of FINRA Rule 8210 recommend sanctions that are consistent with the gravity of the misconduct. A bar is the standard sanction for any individual who does not respond in any manner to a FINRA request for information.[78] A bar is also the standard sanction for any individual who provides a partial but incomplete response to a FINRA information request, unless the individual can demonstrate that the information provided substantially complied with all aspects of the request.[79] When mitigation exists, or the individual did not respond in a timely manner, the Guidelines recommend that we consider suspending the individual in any or all capacities for up to two years.[80]

As discussed, we affirm the Hearing Panel's findings that Larson, in violation of FINRA Rule 8210, failed to provide promptly his full compliance with three requests for information issued by FINRA in 2013 and 2014 concerning Beyer's outside business activity with Heroic and

[78] *See Guidelines*, at 33.

[79] *Id.* For providing a partial but incomplete response, the Guidelines recommend a fine of $10,000 to $77,000. *Id.*

[80] *Id.* For a failure to respond in a timely manner, the Guidelines recommend a fine of $2,500 to $39,000. *Id.*

the circumstances informing Oakbridge's decision to terminate him. Larson withheld from each of his first three answers to the information requests four clearly responsive documents. He provided the missing documents to FINRA only after FINRA issued a fourth request for information.

The Hearing Panel solely considered the Guidelines for a failure to respond timely to a FINRA information request because Larson eventually provided the withheld documents to FINRA. Consistent with these Guidelines, the Hearing Panel fined Larson $37,000 and suspended him from associating with any FINRA member in any capacity for a period of two years. Larson's failure to respond fully to FINRA's first three requests for information was not, however, a matter of mere untimeliness. Each of his first three responses were incomplete. Given this series of requests and incomplete responses before Larson's full compliance, we have considered also the Guidelines that apply where an individual provides a partial but incomplete response to a FINRA Rule 8210 information request.

Having examined the totality of the circumstances of Larson's misconduct, we affirm the sanctions the Hearing Panel assessed. Our decision is supported by the "principal considerations" for determining sanctions where an individual fails to respond in a timely manner or has not provided a complete response to requests for information issued under FINRA Rule 8210.[81]

First, from FINRA's perspective, the information Larson did not provide was important, relevant, and responsive to FINRA's information requests. The documents he failed to produce to FINRA concerned Beyer's outside business activity with Heroic and they indicated that Beyer, among other things, might have engaged in private securities transactions away from his firm. Beyer's undertakings for Heroic, and the potential that Oakbridge was required to supervise them, fit squarely within FINRA's regulatory focus. *See Gregory Evan Goldstein*, Exchange Act Release No. 71970, 2014 SEC LEXIS 1350, at *41 (Apr. 17, 2014) ("[T]he requested information that Goldstein refuses to provide is important. It concerns the nature and scope of Goldstein's outside business activity . . . and potential issues such as selling way . . . ."); *see also* FINRA Rule 3270 (addressing outside business activities of registered persons); FINRA Rule 3280 (concerning private securities transactions of associated persons). The limited information that Larson provided with his first three responses to FINRA's information requests shed no meaningful light on Beyer's activities after January 30, 2013. *See Dep't of Enforcement v. Eplboim*, Complaint No. 2011025674101, 2014 FINRA Discip. LEXIS 8, at *35 (FINRA NAC May 14, 2014) ("FINRA staff sought documentation to determine whether Eplboim committed

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[81] The principal considerations that apply for a failure to provide a timely response are: (1) the "[i]mportance of the information requested as viewed from FINRA's perspective"; (2) the "[n]umber of requests made and the degree of regulatory pressure required to obtain a response"; and (3) the "[l]ength of time to respond." *Id.* In addition to the first and second considerations above, the principal considerations that apply for providing a partial but incomplete response include, "[w]hether the respondent thoroughly explains valid reason(s) for the deficiencies in the response." *Id.*

serious infractions of FINRA rules, and they were unable to do so because they did not have the requested documents.").

Second, FINRA staff exerted a high degree of regulatory pressure to obtain Larson's full compliance with its several requests for information, and his delay in providing this full compliance was lengthy. *See CMG Institutional Trading*, 2009 SEC LEXIS 215, at *35 ("Applicants' failure to give complete and timely responses prevented [FINRA] from fully and expeditiously determining . . . whether misconduct had occurred."). FINRA initially issued two broadly scoped requests for information that asked for "any and all documentation" relating to Beyer's outside business activity and the circumstances surrounding Oakbridge's decision to terminate him. Larson nevertheless failed to produce the four clearly responsive documents. Larson's hindrance of FINRA's investigation caused FINRA initially to close that investigation, and FINRA reopened its investigation only after another regulator, not Larson, provided information indicating Larson was not being fully responsive to FINRA's requests. Yet even then, Larson did not respond completely to FINRA's third information request, even though the request was stated with an even greater degree of specificity that could leave no doubt in Laron's mind about the responsiveness of the documents he withheld. Instead, Larson's first three incomplete responses forced FINRA to issue a fourth request for information to obtain his full response. Although Larson finally provided the four documents he withheld from his earlier responses, he did so only after significant delay. He also did so only after FINRA staff informed him that his prior responses did not provide all of the information requested, they indicated a violation of FINRA Rule 8210 may have occurred, and they warned of disciplinary action should the firm not deliver to FINRA the missing information. As the Commission has stated consistently, FINRA should not have to force compliance with FINRA Rule 8210 information requests by threatening disciplinary action and sanctions. *Cf. Evansen*, 2014 FINRA Discip. LEXIS 10, at *52 ("FINRA should not, as happened here, be required to initiate disciplinary or expedited proceedings, with their threat of debilitating sanctions, to elicit a response to information requests made under FINRA Rule 8210."); *Dep't of Enforcement v. Erenstein*, Complaint No. C9B040080, 2006 NASD Discip. LEXIS 31, at *17 (NASD NAC Dec. 18, 2006) ("Erenstein ultimately provided the requested information, but only after he received a Wells notice informing him that the staff intended to recommend disciplinary action."), *aff'd*, Exchange Act Release No. 56768, 2007 SEC LEXIS 2596 (Nov. 8, 2007). Larson's decision to withhold responsive documents from FINRA caused staff to expend time and limited resources unnecessarily. *See Jarkas*, 2015 FINRA Discip. LEXIS 50, at *48 ("We find it quite disturbing that FINRA staff had to repeatedly send written requests for information, all to be refuted by Jarkas and other Global Crown representatives.").

Finally, Larson has provided no valid reason for his refusal to provide FINRA with all responsive documents until 10 months into FINRA's investigations. He thus has no excuse for his failure to respond fully and promptly to FINRA's first three requests for information. *See Goldstein*, 2014 SEC LEXIS 1350, *42 ("He therefore has no excuse for failing to comply with FINRA's requests, especially considering the numerous opportunities FINRA afforded him to do so . . . ."). The record instead establishes Larson's disconcerting pattern of indifference to his responsibilities under FINRA Rule 8210. He intentionally withheld Beyer's handwritten letter, and his conduct was at least reckless with respect to the other documents he withheld.[82] Moreover, after FINRA commenced its investigation, Larson's first three responses to FINRA's information requests were fraught with now discernibly false statements and misleading information, and he interposed a new explanation for Beyer's termination, all in a palpable attempt to conceal his and Oakbridge's knowledge of Beyer's activities and quiet FINRA into inaction.[83] *See also Mielke*, 2015 SEC LEXIS 3927, at *70 ("Mielke repeatedly refused to provide responsive documents and, when he did provide some documents, his responses only partially fulfilled FINRA's requests and included certain patently false information."). He does not accept responsibility, and he instead blames others for his misconduct.[84] *See also Evansen*, 2014 FINRA Discip. LEXIS 10, at *55 ("Evansen does not accept responsibility for his actions, blaming others, namely FINRA staff . . ."). His only expression of contrition was to claim "poor judgment" in trusting that Huang and other Oakbridge personnel would provide him all of the documents necessary to respond to FINRA's information requests, a claim that we note above the Hearing Panel found was not credible.

Larson's refusal to accept that he was required to respond fully and promptly to FINRA information requests demonstrates a misunderstanding of, or lack of regard for, his obligations as a securities industry professional. *Cf. Wendy McNeeley*, Exchange Act Release No. 68431, 2012 SEC LEXIS 3880, at *62 (Dec. 13, 2012) (finding respondent's testimony and arguments on appeal reflected a continuing failure to grasp her role as a professional). Considering the totality of circumstances presented, however, including that Larson eventually complied fully with FINRA's fourth information request, we conclude that Larson should not be barred for his misconduct. *See Dep't of Enforcement v. Plunkett*, Complaint No. 2006005259801, 2013 FINRA Discip. LEXIS 32, at *13 (FINRA NAC Dec. 17, 2013) ("While Plunkett's responses to FINRA's requests for information were dilatory and his deficient document production without excuse, we acknowledge that he ultimately provided information that complied with the requests."), *aff'd*, Exchange Act Release No. 73124, 2013 SEC LEXIS 1699, at *18 (Sept. 16, 2014). In this case, we determine that a two-year suspension and $37,000 fine are proportionally remedial sanctions that will protect the investing public by encouraging the full and prompt cooperation that assists in the discovery and correction of wrongdoing by FINRA. Accordingly, we affirm the sanctions the Hearing Panel assessed for Larson's violations of FINRA Rule 8210 and 2010. Because we bar Larson for his acts of fraud, these sanctions are nonetheless not imposed.

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82 *See Guidelines*, at 8 (Principal Considerations in Determining Sanctions No. 13).

83 *See id.* at 7 (Principal Considerations in Determining Sanctions Nos. 8, 10).

84 *See Guidelines*, at 7 (Principal Considerations in Determining Sanctions No. 2).

D. Affirmance of the Sanctions the Hearing Panel Imposed for Larson's Remaining Misconduct

1. Sanctions for Backdating Records and Providing Them to FINRA

The Hearing Panel suspended Larson from associating with any FINRA member for a period of 18 months because he backdated and provided to FINRA falsified firm records, in violation of FINRA Rules 4511 and 2010. When assessing this sanction, the Hearing Panel considered the Guidelines for forgery, unauthorized use of signatures, or falsification of records, which in the absence of customer harm or other violations recommend a fine of $5,000 to $155,000, and a suspension of two months to two years.[85] The Hearing Panel also considered the Guidelines for recordkeeping violations, which recommend a fine of $1,000 to $16,000, unless aggravating factors predominate, in which case they recommend a fine of $10,000 to $155,000.[86] The Guidelines for recordkeeping violations also recommend suspending a responsible individual for a period of 10 business days to three months or, where aggravating factors predominate, a longer suspension of up to two years or a bar.

In determining an appropriately remedial sanction, the Hearing Panel considered, as instructed by the foregoing Guidelines, the nature of the falsified documents and that they were supervisory records necessary for FINRA's ability to evaluate the adequacy of a firm's supervision. The Hearing Panel also found aggravating factors, including those discussed in the principal considerations for the specific Guidelines applied, and those that apply when determining sanctions in any disciplinary matter, predominated. These factors are that Larson was at least reckless, his conduct was part of an admitted pattern of backdating documents, he caused his firm to maintain false records, he accepted no responsibility for his actions, and he sought to deceive FINRA.[87]

On balance, the Hearing Panel found, Larson's willingness to falsify important firm records and produce them to FINRA evidenced a serious lack of respect for the rules and regulations that govern the securities industry and warranted a significant suspension of 18 months. Considering the foregoing, we also assess Larson's misconduct worthy of an 18-month suspension. Given the bar we impose elsewhere in this decision, however, we do not impose the suspension for Larson's backdating and providing to FINRA falsified firm records.

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[85] *See Guidelines*, at 37.

[86] *See id.* at 29.

[87] *See id.* at 7-8 (Principal Considerations in Determining Sanctions, Nos. 2, 8, 10, 13); *see also id.* at 29 (Principal Considerations in Determining Sanctions, Nos. 1, 3).

2. Sanctions for Submitting to FINRA a Misleading CMA

The Hearing Panel also suspended Larson from associating with any FINRA member for a period of 18 months because he submitted a misleading CMA to FINRA, in violation of FINRA Rules 1122 and 2010. The Hearing Panel considered the Guidelines for registration violations, which include violations of FINRA Rule 1122, when assessing this sanction.[88] These Guidelines recommend a fine of $2,500 to $77,000 and a suspension, in egregious cases, of up to two years or a bar.[89]

The Hearing Panel found Larson's misconduct egregious based on the presence of several aggravating factors under the Guidelines' principal considerations. They included that Larson's misconduct misled FINRA into approving an application it may well have not approved had Larson been truthful, that Larson was at a minimum reckless, that he gained from his misconduct, and that he failed to accept responsibility.[90]

Given these aggravating circumstances, and because no mitigating circumstances were presented, the Hearing Panel found that an 18-month suspension was warranted to remediate Larson's misconduct and deter him and other securities industry professionals from engaging in similar misconduct. We assess Larson's misconduct worthy of an 18-month suspension too. We nevertheless do not impose this suspension in light of the bar we otherwise impose on Larson in this decision.

V. Conclusion

We find, as alleged in the first and second causes of Enforcement's amended complaint, Larson engaged in fraud in violation of Exchange Act § 10(b), Exchange Act Rule 10b-5, and FINRA Rules 2020 and 2010. Accordingly, we impose a unitary sanction—a bar—for this misconduct.

We also find that Larson violated FINRA Rules 8210 and 2010 when he failed to promptly provide full responses to FINRA's information requests on three occasions. We assess, but do not impose given the bar for Larson's acts of fraud, a two-year suspension and $37,000 fine for this element of Larson's wrongdoing.

We further affirm the Hearing Panel's findings of Larson's other misconduct. He backdated documents and provided them to FINRA as legitimate firm records, in violation of FINRA Rules 4511 and 2010, and he submitted to FINRA in March 2012 a CMA for Oakbridge that omitted material information and was misleading, in violation of FINRA Rules 1122 and

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88 *See id.* at 45.

89 *See id.*

90 *See id.* at 7 (Principal Consideration in Determining Sanctions, Nos. 7, 10, 13, 16).

2010. Considering the bar we impose above, however, we do not impose the two 18-month suspensions assessed for these additional violations of FINRA rules.

Finally, we affirm the Hearing Panel's order that Larson pay hearing costs of $16,895.68. The bars imposed herein are effective upon service of this decision.

On behalf of the National Adjudicatory Council,

Jennifer Piorko Mitchell,
Vice President and Deputy Corporate Secretary