SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 78568 / August 12, 2016

Admin. Proc. File No. 3-16329

In the Matter of the Application of

WEDBUSH SECURITIES, INC.
and
EDWARD WILLIAM WEDBUSH

For Review of Disciplinary Action Taken by FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY PROCEEDINGS

Member firm committed 158 regulatory reporting violations, and member firm and its president failed to reasonably supervise regulatory reporting. *Held*, association's findings of violation and sanction imposed are *sustained*.

APPEARANCES:

John L. Erikson, Jr., for Wedbush Securities Inc. and Edward William Wedbush.
Alan Lawhead, *Gary Dernelle*, and *Megan Rauch*, for FINRA.

Appeal filed: January 8, 2015
Last brief received: May 12, 2015

Applicants Wedbush Securities, Inc. (the "Firm"), a member of the Financial Industry Regulatory Authority, Inc. ("FINRA"), and its president, Edward William Wedbush ("Wedbush") appeal a FINRA disciplinary action in which FINRA fined the Firm $300,000 and Wedbush $50,000 and suspended Wedbush in all principal capacities for 31 days. FINRA found that the Firm committed 158 violations of the rules and by-laws of the National Association of Securities Dealers, Inc. (the "NASD"), the New York Stock Exchange, Inc. (the "NYSE"), and FINRA by failing to file, filing late, and filing inaccurate forms and reports over approximately

five and a half years, from January 2005 to July 2010.[1] FINRA also found that the Firm and Wedbush violated NASD and FINRA rules by failing to supervise regulatory filings.

On appeal, Applicants do not challenge FINRA's findings of regulatory reporting violations. Instead, they argue that FINRA erred in finding that they failed reasonably to supervise, and that FINRA did not provide adequate notice that it might impose a suspension on Wedbush for his failure to supervise. Based on our independent review, we reject Applicants' arguments and find that the record supports FINRA's findings of violation and that the sanctions are neither excessive nor oppressive. Accordingly, we sustain FINRA's action.

I. Facts

Applicants' alleged misconduct involved three forms and a report: Forms RE-3, U4, U5, and Rule 3070 Reports. Form RE-3 reports judgments and settlements; Forms U4 and U5 report events such as arbitrations, civil litigation, or regulatory actions, and, in a Form U5, terminations; and Rule 3070 Reports contain statistical information on customer complaints. Between January 2005 and July 2010, the Firm filed 129 forms or reports late, filed forms or reports containing 18 inaccuracies, and failed to file eleven forms.[2]

A. Wedbush and His Role in the Firm's Regulatory Filings[3]

Wedbush joined the securities industry in 1955, when he founded the Firm. He served as general partner of the Firm when it was a partnership and became president of the Firm when it was incorporated. Wedbush also became Chief Compliance Officer ("CCO") in August 2006. On August 15, 2006, Wedbush became the Firm's Business Conduct Manager ("BCM"). The BCM headed the Firm's Business Conduct Department ("BCD")—the Firm's compliance office—and was responsible for the Firm's compliance system and all regulatory filings. Although Wedbush understood that he needed NYSE approval to serve as BCM and CCO, the Firm listed Wedbush as CCO on its Form BD as of August 25, 2006, before obtaining this approval.

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1 On July 26, 2007, the Commission approved a proposed rule change that the NASD filed seeking to amend its Certificate of Incorporation to reflect its name change to FINRA, in connection with the consolidation of its member firm regulatory functions with NYSE Regulation, Inc. *See* Exchange Act Release No. 56148, 2007 WL 2159604, at *2 (July 26, 2007), 72 Fed. Reg. 42, 146 (Aug. 1, 2007). Following the consolidation, FINRA began developing a new "Consolidated Rulebook" of FINRA Rules. The first phase of the new consolidated rules became effective on December 15, 2008. *See* FINRA Regulatory Notice 08-57, 2008 FINRA LEXIS 50, at *1 (Oct. 2008).

2 Each filing could result in multiple violations. For example, one filing could be counted as two violations: both a late filing and an inaccurate filing.

3 Because Applicants do not challenge the filing violations, our discussion of the facts focuses on the Firm's compliance structure and supervision during the relevant period.

Wedbush admitted that when he became BCM he was already working 80 hours a week and "[couldn't] really add to" his duties and responsibilities. His "focus was not on that area, perhaps at all. If it was, it was very, very little." Wedbush lacked experience and knowledge concerning the regulatory filings that the Firm was required to submit. Wedbush testified that he "should have known" that the BCD handled disclosure filings for the Firm because he "assume[d] that that's the normal process." But he had little understanding of how Forms U4, U5 and RE-3 were filed or updated. He lacked a detailed understanding of what needed to be disclosed on Forms U4 and U5, and he did not know to whom BCD staff should turn if they had questions about whether something needed to be disclosed.

Towards the end of Wedbush's tenure as BCM, the Firm's Management Committee expressed concern about the BCD. Minutes of a September 15, 2007 Management Committee meeting indicate that the Committee "was concerned about the lack of broad and relevant experience of the current business conduct staff and supported [Wedbush] when he stated that he [was] considering hiring an experienced and qualified department manager from the outside." Shortly thereafter, on October 1, 2007, Eric Segall became the Firm's BCM and co-CCO.

B. The Firm's Regulatory Reporting Structure

Under the Firm's procedures, a manager who received a complaint or information about a reportable event was required to forward it to the BCD so that the required form could be timely filed.[4] The managers were required to forward *all* arguably reportable events to the BCD, which would determine whether the event required reporting. Employees were also required to notify the BCD of certain events. In practice, however, managers did not always forward those complaints or information to the BCD.

The BCD could not enforce employees' compliance by suspending or terminating a registered representative or other Firm employee. Although the BCD could recommend internal disciplinary action or heightened supervision, its recommendation could be implemented only if approved by the representative's management chain. As a result, BCD staff had little leverage to compel Firm personnel to provide the information the BCD required.

C. Applicants' Awareness of Regulators' Concerns

On February 14, 2002, Wedbush and other senior executives attended an exit meeting held at the end of an examination of the Firm's supervisory standards and sales practice procedures conducted by the Division of Member Firm Regulation of the NYSE ("Member Firm Regulation"). At the meeting and in the subsequent examination report, Member Firm Regulation identified several problems related to the reporting of customer complaints. In its

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[4] If the event was a reportable customer complaint or reportable on Form RE-3, the BCD was responsible for submitting the Form RE-3 or Rule 3070 Report. If the event was reportable on Form U4 or U5, the BCD was responsible for drafting the form, sending it to the appropriate registered representative or manager, notifying the manager of the event, and filing the signed form after it had been returned to the BCD. Forms U4 were signed by the registered representative and his or her manager. Forms U5 were signed by the manager.

response to the report, the Firm stated that it would review its logging procedures to avoid duplicate or omitted entries.

On October 31, 2006, staff from NYSE Regulation Inc. ("NYSE Regulation"), the regulatory subsidiary of the New York Stock Exchange, discussed with Wedbush and other senior executives reporting problems identified during an examination conducted jointly by NYSE Regulation and the NASD. The ensuing report noted the Firm's failure to file Forms RE-3 for 16 customer litigations and arbitrations settled during the third quarter of 2005 through the second quarter of 2006, with settlement amounts ranging from $22,500 to $1,400,000. The report stated that Wedbush had represented to the examiners that the BCD would "report all settlements to the Exchange" to comply with the requirements of NYSE Rule 351(a). Wedbush responded that the BCMs during the relevant period had not been aware of the requirement to file Forms RE-3 under NYSE Rule 351(a); that the BCD, which reported to Wedbush when the response was submitted, would ensure that all filings would comply with Rule 351(a); and that the Firm had submitted all of the Form RE-3 filings identified in the report.[5]

In an examination exit meeting on November 5, 2008, FINRA examiners informed Wedbush and other senior executives that the Firm was not in compliance with Article V, Sections 2 and 3 of FINRA's Bylaws because 19 Form U4 amendments and four Form U5 amendments were not timely submitted between April 1, 2007, and March 31, 2008.[6] On December 17, 2008, FINRA staff notified Segall that FINRA staff had made a preliminary determination to recommend disciplinary action against the Firm. In its response, the Firm acknowledged that there had been reporting problems and attributed those problems to lack of communication, staff experience, and training. Segall stated that many of the problems predated his tenure as BCM and said that it was his "honest belief" that the firm had corrected the problems. On June 10, 2009, however, FINRA staff wrote Wedbush that the FINRA examiners were referring their findings regarding the Firm's reporting of Forms U4 and U5 amendments to FINRA's Department of Enforcement ("FINRA Enforcement") for review and disposition.

Despite the Firm's representations that it had taken measures to resolve its reporting problems, FINRA staff noted additional problems in a 2009 examination. At an examination exit meeting held on September 17, 2009, at which Wedbush and other senior executives were present, the staff noted exceptions related to the Firm's failure to timely file Rule 3070 Reports

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[5] Despite Wedbush's representation that the Firm would report all settlements, FINRA became aware of an unreported settlement in September 2007, and the Firm subsequently informed FINRA that it had identified more settlements that had not previously been disclosed, casting doubt on the thoroughness with which the Firm attempted to correct its reporting deficiencies. The Firm told FINRA that the last outstanding Forms RE-3 were filed in November 2007.

[6] Previously, the Firm had submitted a Letter of Acceptance, Waiver and Consent ("AWC") to NASD on March 20, 2007, resolving allegations of late filings of Form U5 and supervisory violations for failing to enforce procedures related to the preparation and filing of Forms U5 during the period from June 1, 2003 to August 3, 2005. The Firm was censured and fined $18,000. Wedbush signed the AWC on behalf of the Firm.

and updated Forms U4 and U5 during the review period. The examination report, which was sent to Wedbush in January 2010, stated that the examiners had referred items related to customer complaint reporting and related form filing disclosure to FINRA Enforcement.

Regulators were also in contact with the Firm about regulatory filing problems outside the examination context. Late disclosure fee reports show that FINRA assessed the Firm fees of $11,520 for late filing of 47 Forms U4 and U5 between April 1, 2008 and April 30, 2010. Additionally, FINRA staff contacted the Firm in June 2009 and March 2010 about failures to amend Forms U4 or submit a Rule 3070 Report.

II. Procedural History

In June 2010, FINRA informed the Firm that it had a made a preliminary determination to recommend disciplinary action against the Firm and Wedbush for the Firm's "continued late filing of amended Forms U-4 and Forms U-5," the Firm's "failure to file, late filing and filing of inaccurate statistical information and Forms U-4 and Forms U-5," and Wedbush's "failure to supervise the Firm's regulatory filings during the time period from January 2005 to April 2010."

On October 4, 2010, FINRA Enforcement filed a complaint asserting five causes of action. The Firm was charged with: (1) failure to file, late filing, and filing of inaccurate Forms RE-3; (2) failure to file, late filing, and filing of inaccurate Forms U4 and U5; (3) failure to file, late filing, and filing of inaccurate Rule 3070 Reports; and (4) failure to supervise regulatory filings. Wedbush was charged with (5) failure to supervise regulatory filings. The complaint was amended twice solely to reduce the number of reporting violations charged. In the Second Amended Complaint, FINRA alleged that the Firm was responsible for 160 reporting violations.

After a nine-day hearing, a FINRA hearing panel found in favor of Enforcement on all five causes of action. It found the Firm liable for 158 reporting violations—including 115 violations that Applicants stipulated to. The hearing panel fined the Firm $300,000 and Wedbush $25,000; it also suspended Wedbush from all supervisory activities other than supervising trading and order entry for 31 days. On appeal, FINRA's National Adjudicatory Council ("NAC") affirmed the hearing panel's findings of liability, but modified the sanctions by increasing the fine imposed on Wedbush to $50,000 and suspending him in all principal capacities for 31 days. FINRA's Board of Governors declined to call the case for review, so the NAC's opinion became the final opinion of FINRA. This timely appeal followed.

III. ANALYSIS

A. Standard of Review

In reviewing disciplinary action by a self-regulatory organization ("SRO") like FINRA, we must determine whether the applicants engaged in the conduct found by the SRO, whether such conduct violates the SRO's rules, and whether those rules are, and were applied in a manner, consistent with the purposes of the Securities Exchange Act of 1934 (the "Exchange Act").[7] We base our findings on an independent review of the record and apply a preponderance

[7] 15 U.S.C. § 78(e)(1).

of the evidence standard to determine whether the evidence supports the SRO's findings.[8] As explained below, we find that Applicants engaged in the conduct found by FINRA, that the conduct violated the rules as found by FINRA, and that the rules are, and were applied in a manner, consistent with the purposes of the Exchange Act.

B. Regulatory Filing Violations

We sustain FINRA's findings concerning the Firm's conduct as it relates to the 158 reporting violations that FINRA found. Specifically, we find that the Firm reported a total of 129 events late on Forms RE-3, U4 and U5, and Rule 3070 Reports; that it reported 18 events inaccurately; and that it failed to file a total of 11 Forms RE-3, U4 and U5. As a result, the Firm violated NYSE Rule 351(a) (Form RE-3 filings); NASD and FINRA By-Laws, Article V, Sections 2(c) and 3(b) (Forms U4 and U5 filings); NYSE Rule 351(d) (Rule 3070 Report filings); and NASD Rule 2110 and FINRA Rule 2010 (just and equitable principles of trade).[9]

1. Stipulated Violations

We affirm FINRA's findings as to the 115 violations to which the Firm stipulated. Of those violations, 38 concerned Form RE-3. NYSE Rule 351(a) required member firms to promptly report to FINRA on Form RE-3 any securities or commodities-related litigation, arbitration, or claims that resulted in a judgment, settlement, or award of more than $15,000 against an associated person (or more than $25,000 against the Firm). "Promptly" meant "within 30 days of the reportable event."[10] By failing to file, late filing, and filing inaccurate Forms RE-3, the Firm violated NYSE Rule 351(a) and NASD Rule 2110.[11]

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[8] *See Rani T. Jarkas*, Exchange Act Release No. 77503, 2016 WL 1272876, at *4 (Apr. 1, 2016); *Richard G. Cody*, Exchange Act Release No. 64565, 2011 WL 2098202, at *9 (May 27, 2011) (citing *Seaton v. SEC,* 670 F.2d 309, 311 (D.C. Cir. 1982) (upholding preponderance of evidence standard in FINRA disciplinary proceeding)), *aff'd*, 693 F.3d 251 (1st Cir. 2012).

[9] As a result of the consolidation of the regulatory functions of NASD and NYSE Regulation and the development of a new consolidated FINRA rulebook, *see* note 1 *supra*, the Firm was subject to FINRA, NASD, and NYSE Rules during various parts of the period at issue. FINRA's initial rulebook included both NASD rules and certain NYSE rules (the "Incorporated NYSE Rules"). *See* FINRA Regulatory Notice 08-57, 2008 FINRA LEXIS 50, at *1 n.2. The Incorporated NYSE Rules applied only to FINRA members that, like the Firm, were also members of the NYSE. *Id.* The conduct rules that apply are those in effect at the time of the relevant conduct. *See, e.g., John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 WL 2898033, at*1 nn.3-4 (June 14, 2013) (applying both NASD and FINRA rules, depending on whether conduct occurred before or after consolidation).

[10] *NYSE Information Memo 90-17*, 1990 NYSE Info. Memo LEXIS 41, at *1 (Apr. 30, 1990).

[11] A violation of any NASD rule also constitutes a violation of NASD Rule 2110, which required member firms to "observe high standards of commercial honor and just and equitable principles of trade." *Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 WL 1683914,

(*continued*. . .)

Forty-seven of the stipulated violations related to Form U4 and 26 related to Form U5. Article V, Sections 2(c) and 3(b) of both the NASD and FINRA By-Laws required member firms to report to FINRA on Forms U4 and U5 certain events for registered representatives.[12] Reports must be accurate, and filed within 30 days after the member firm learns of the reportable facts or circumstances.[13] By failing to file, late filing, and filing inaccurate Forms U4 and U5, the Firm violated Article V, Sections 2(c) and 3(b) of the NASD and FINRA By-Laws, NASD Rule 2110, and FINRA Rule 2010.

Finally, four of the stipulated violations related to Rule 3070 Reports. NYSE Rule 351(d) and NASD Rule 3070 required member firms to file with FINRA statistical information concerning customer complaints within 15 days after the end of the quarter in which the complaint was received.[14] Because the requirements under NYSE Rule 351(d) and NASD Rule 3070(c) were similar, NASD members like the Firm who were subject to NYSE Rule 351(d) were exempt from compliance with NASD Rule 3070(c).[15] Thus, the Firm's failure to file four Rule 3070 Reports on time violated NYSE Rule 351(d) and FINRA Rule 2010.[16]

(. . . *continued*)
at *1 n.3 (Apr. 18, 2013), *petition denied*, 575 Fed. App'x 1 (D.C. Cir. Aug. 13, 2014). Similarly, a violation of any FINRA rule also constitutes a violation of FINRA Rule 2010, which is NASD Rule 2110's identically worded successor. *Plunkett*, 2013 WL 2898033, at *1 n.3. FINRA Rule 2010 replaced NASD Rule 2110 effective December 15, 2008. *See* FINRA Regulatory Notice 08-57, 2008 FINRA LEXIS 50, at *32.

[12] NASD By-Laws, Article V, Sections 2(c), 3(b); FINRA By-Laws, Article V, Sections 2(c), 3(b).

[13] NASD By-Laws, Article V, Sections 2(c), 3(b); FINRA By-Laws, Article V, Sections 2(c), 3(b).

[14] *NYSE Information Memorandum 03-39*, 2003 NYSE Info. Memo LEXIS 39, at *1 (Sept. 19, 2003).

[15] *NASD Notice to Members 06-34*, 2006 NASD LEXIS 82, at *1 (July 2006). Effective July 1, 2011, FINRA Rule 4530 replaced NASD Rule 3070 and the corresponding provisions of NYSE Rule 351. *See* FINRA Notice to Members 11-06, 2011 FINRA LEXIS 8, at *1 & n.3 (Feb. 2011) (discussing Rule 4530). Because the stipulated Rule 3070 violations occurred after the Firm was exempted from compliance with the NASD Rule 3070(c) filing requirement and before the effective date of FINRA Rule 4530, the applicable rule is NYSE Rule 351(d).

[16] Due to the exemption noted above, we do not find a violation of NASD Rule 3070. However, we agree with FINRA that the violations of NYSE Rule 351(d) represent conduct inconsistent with just and equitable principles of trade and therefore were also violations of FINRA Rule 2010, which was in effect at the time of the violations in question. *See* note 11 *supra* (discussing replacement of NASD Rule 2110 by FINRA Rule 2010).

2. Disputed Violations

On appeal to the Commission, Applicants do not challenge FINRA's findings as to the 43 reporting violations that they disputed before FINRA. We also sustain FINRA's findings as to these violations of NYSE Rule 351(d); NASD and FINRA By-Laws, Article V, Sections 2(c) and 3(b); and NASD Rule 2110 and FINRA Rule 2010.

a. *Late Filings*

FINRA concluded, despite Applicants' arguments to the contrary, that the Firm failed to timely file Forms U4 and U5 and Rule 3070 Reports on 32 occasions. We agree.

Before FINRA, the Firm argued that the late filings were justified, among other reasons, by a lack of staff cooperation, uncertainty as to whether reporting was required, or delays due to holidays. FINRA rejected these arguments. On appeal, the Firm does not raise contentions regarding these findings of violation made in the proceeding below, and we find that a preponderance of the evidence supports those findings.

b. *Inaccurate Filings*

FINRA found five inaccurate disclosures on Forms U4 and one inaccurate disclosure in a Rule 3070 Report to which the Firm did not stipulate. Most of the inaccuracies relate to dates, including the date of disposition or resolution of a matter, date of receipt of a letter that started the 30-day period for reporting, or dates of the complained-of activity in an account. Two inaccuracies relate to civil litigation involving Wedbush: the status of the matter was incorrectly characterized as "other" rather than "dismissed," and Wedbush was said to have been found "not guilty" when there was no finding as to his liability or lack thereof. On appeal, the Firm does not raise contentions regarding these findings of violations made in the proceeding below, and we find that a preponderance of the evidence supports those findings.

c. *Failures to File*

FINRA found that the Firm failed to file four Forms U4 and U5 and one Rule 3070 Report, rejecting the Firm's arguments about why the complaints and settlements at issue did not have to be disclosed. On appeal, the Firm raises no contentions regarding these findings of violation, which we find established by a preponderance of the evidence.

C. Supervisory Violations

NASD Rule 3010, later superseded in relevant part by FINRA Rule 3110, required member firms to establish and maintain a supervisory system that is "reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable NASD

Rules."[17] It is well established that "[t]he presence of procedures alone is not enough. Without sufficient implementation, guidelines and strictures do not ensure compliance."[18]

The duty to supervise also "'includes the responsibility to investigate "red flags" that suggest that misconduct may be occurring and to act upon the results of such investigation.'"[19] "'[R]ed flags and suggestions of irregularities demand inquiry as well as adequate follow-up and review.'"[20] "'In large organizations it is especially imperative that those in authority exercise particular vigilance when indications of irregularity reach their attention.'"[21] Whether supervision is "reasonable" depends on the particular circumstances of each case.[22]

1. The Firm's Failure to Reasonably Supervise

We find that the Firm violated NASD Rule 3010 and FINRA Rule 3110 because the Firm's supervisory system was not reasonably designed to achieve compliance with applicable rules governing regulatory filings and reports. Although the Firm's supervisory system included procedures that required managers and registered representatives to route customer complaints and reportable events to the BCD, and the BCD to process and file reports and forms, those procedures were not implemented in a way that was reasonably designed to achieve compliance.

As described above, the BCD's role was administrative and it had no ability or leverage to enforce compliance with these procedures. In practice, managers and registered representatives were able to circumvent the procedures without consequence. Instead of routing all events to the BCD that were arguably reportable, managers and registered representatives used their discretion to determine whether to forward the information to the BCD. Even if the BCD received the relevant information and prepared the required filing, the BCD had to return the forms to managers and registered representatives for signatures. Delays sometimes ensued because the person whose signature was needed was not available to sign, or resisted signing, and the BCD was unable to apply pressure to obtain those signatures.

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17 FINRA Rule 3110 substitutes "FINRA rules" for "NASD Rules."

18 *Rita H. Malm*, Exchange Act Release No. 35000, 1994 WL 665963, at *4 n.17 (Nov. 23, 1994).

19 *ACAP Fin., Inc.*, Exchange Act Release No. 70046, 2013 WL 3864512, at *8 (July 26, 2013) (quoting *Michael T. Studer*, Exchange Act Release No. 50534A, 2004 WL 2735433, at *6 (Nov. 30, 2004), *petition denied*, 260 F. App'x 342 (2d Cir. 2008)).

20 *Id.* (quoting *John B. Busacca, III*, Exchange Act Release No. 63312, 2010 SEC LEXIS 3787, at *48 & n.56 (Nov. 12, 2010), *petition denied*, 449 F. App'x 886 (11th Cir. 2011)). *See also, e.g.*, *Ronald Pellegrino*, Exchange Act Release No. 59125, 2008 WL 5328765, at *10 (Dec. 19, 2008) ("'Once indications of irregularity arise, supervisors must respond appropriately.'").

21 *Pellegrino*, 2008 WL 5328765, at *10 (quoting *Wedbush Sec., Inc.*, Exchange Act Release No. 25504, 1998 WL 240521, at *4 (Mar. 24, 1988)).

22 *William J. Murphy*, Exchange Act Release No. 69923, 2013 WL 3327752, at *18 (July 2, 2013), *petition denied sub nom. Birkelbach v. SEC*, 751 F.3d 472 (7th Cir. 2014).

Applicants were repeatedly put on notice that the Firm was failing to file required reports and forms, and filing forms and reports that were either late or inaccurate (or both). Despite this notice, the Firm failed effectively to modify its procedures (or the implementation of those procedures) to address its numerous regulatory reporting deficiencies.

Applicants contend that FINRA's assertion that "the adequacy of the Firm's supervisory system . . . [was] not at issue" is at odds with FINRA's subsequent finding that "[t]he Firm's relegation of [the BCD] to an administrative role . . . was unreasonable under the circumstances." But we agree with FINRA that the shortcomings FINRA found regarding the BCD's role were not inherent in the design of the Firm's supervisory system; they were related to the implementation of that system. FINRA found that the BCD's role was unreasonable "under the circumstances," where "supervisors and executives across the Firm took insufficient steps to ensure that regulatory reporting was completed timely and accurately" and "associated persons, supervisors, and executives suffered no repercussions for failing to report reportable events to [the BCD]."

Applicants attribute the reporting violations to a number of factors, including lack of experience and training among BCD personnel, poor communication between the BCD and the Firm's legal department, and the failure of employees to sign forms or report matters up the chain promptly. Applicants fail to explain why they think these facts demonstrate that the Firm is not responsible: the recurrent and apparently systemic nature of employee noncompliance with procedures points to a supervisory failure. And instead of enhancing supervision over the regulatory filing process, the Firm hired BCD personnel with little experience or knowledge of filing requirements. For example, Charles Huang was hired as BCM despite having never worked for a NYSE member firm and lacking familiarity with the filing requirements under NYSE Rule 351. After Huang left the Firm, Wedbush became BCM and CCO, despite his lack of time for or interest in the details of those positions. Neither Wedbush nor Segall, during their tenures as BCM, rectified the late or under-reporting of disclosable events by employees. The lack of training of BCD personnel, poor communications, and employee failures to report that Applicants cite could all have been addressed through better implementation of procedures by supervisors, and ultimately, the Firm.

Applicants also argue that FINRA placed too much blame on the BCD despite the lack of evidence that BCD employees neglected their duties. FINRA's decision is not premised on a finding that BCD employees neglected their duties; it found that BCD personnel were unqualified to carry out their duties and that the Firm failed to provide adequate leadership, training, and guidance. Segall testified that when he took over as BCM in 2007, BCD staff was "pretty inexperienced as far as background in compliance or even in the brokerage industry in general," and the Firm attributed the late filing problems in part to a lack of knowledge, experience, and training. Further, the record demonstrates Huang's unawareness of the RE-3 reporting requirement and Wedbush's lack of interest in and focus on regulatory filings. Thus, the evidence supports FINRA's findings about the BCD's lack of qualifications and leadership.

Applicants argue that the record does not support FINRA's finding that their supervisory efforts during the relevant period were ineffective, inadequate, and unreasonable under the circumstances. They argue that Wedbush took direct steps to address the reporting problems by raising the issue at management meetings and that the Firm's reporting rates for certain required

filings "improved dramatically" in recent years as a result of Wedbush's management and leadership.[23] Our focus in this proceeding, however, is on the period encompassed by the complaint, not the Firm's subsequent filing record. And we agree with FINRA that the corrective steps Applicants took during the relevant period were insufficient. Supervisors must respond with the utmost vigilance when there is any indication of irregularity,[24] and take decisive action when they are made aware of suspicious circumstances.[25] Applicants' awareness of continuing problems was based not just on suspicious circumstances or indications of irregularity, but on repeated violations identified and documented by regulatory authorities. Therefore, the Firm and Wedbush were required to direct their "prompt and full attention"[26] to remedying the Firm's reporting problems. By Wedbush's own admission, his focus during his tenure as BCM was "not on that area." Applicants' limited remediation—raising the issue of regulatory reporting at management meetings, providing some additional training to BCD and legal department staff, and installing Segall as BCM—were not sufficient to address the Firm's deficiencies, as became clear to the Firm as filing violations continued to occur despite the steps taken.[27]

2. Wedbush's Failure to Reasonably Supervise

To find that Wedbush violated Rule 3010 or Rule 3110, we first must find that he had supervisory authority over the Firm's regulatory filings. We find that he did.[28] Wedbush was the

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[23] Applicants also argue that their filing record is no worse than that of other industry participants. Our finding of failure to supervise is based not merely on Applicants' filing record and the number of reporting violations, but also on the fact that the violations persisted despite numerous warnings.

[24] *Consol. Inv. Servs. Inc.*, Exchange Act Release No. 36687, 1996 WL 20829, at *5 (Jan. 5, 1996); *Michael E. Tennenbaum*, Exchange Act Release No. 31984, 1982 WL 31984, at *6 (Jan. 19, 1982).

[25] *George J. Kolar*, Exchange Act Release No. 46127, 2002 WL 1393652, at *4 (June 26, 2002)

[26] *Busacca*, 2010 SEC LEXIS 3787, at *38.

[27] *See, e.g.*, *id.* at *41-44 (finding president's purported corrective measures—weekly staff meetings to discuss compliance and operational issues, occasional "spot checks" of operations staff, required staff review of procedures, and increased operations and information technology staff—not reasonably designed to address extensive operational dysfunction at firm).

[28] *See, e.g.*, *William J. Murphy*, 2013 WL 3327752, at *6 (finding supervision of options trading by Senior Registered Options Principal/Compliance Registered Options Principal deficient where individual "had ultimate supervisory responsibilities" regarding options trading); *World Trade Fin. Corp.*, Exchange Act Release No. 66114, 2012 WL 32121, at *1-2, *12-13 (Jan. 6, 2012) (finding supervision of trading activities by trade desk supervisor and firm's president, who "shared responsibility for supervising the Firm's registered representatives and trading activity" deficient), *petition denied*, 739 F.3d 1243 9th Cir. 2014); *Busacca*, 2010 SEC LEXIS 3787, at *37 (finding president's supervision deficient during period that he "assumed overall responsibility for the Firm's operations" and did not delegate this responsibility).

Firm's president during the entire relevant period (including when he served as BCM). It is well established that "the president of a member firm bears ultimate responsibility for compliance with all applicable requirements 'unless and until he reasonably delegates particular functions to another person in that firm, and neither knows nor has reason to know that such person's performance is deficient.'"[29] Here, responsibility for making regulatory filings was, in effect, delegated to the BCD, with supervisory responsibility for those filings vested in the BCM as its head. Those delegations did not relieve Wedbush of ultimate responsibility. Wedbush had ample notice that filings were not being made accurately and on time, and he therefore could not reasonably rely on the BCD to ensure Firm compliance with these regulatory requirements.[30]

Once on notice of the Firm's continuing failure to satisfy these requirements, Wedbush was obligated to respond with utmost vigilance and take remedial action.[31] Instead, he took no meaningful action but merely sought to remind his staff of its regulatory responsibilities. Reminding managers of their obligations, even if done repeatedly, was an inadequate response to systemic failures as recurrent and long-standing as those at the Firm.

In addition to his continuing general oversight role as president, Wedbush had more immediate responsibility for the Firm's regulatory filings during his tenure as BCM.[32] Notwithstanding his assumption of that additional position, he effectively made no effort to ensure filing compliance, freely admitting that his "focus was not on that area, perhaps at all." His review, as BCM, of various BCD issues such as organizational structure and overall resources, and his eventual recommendation to the Firm's Management Committee to hire a BCM with more expertise, did not constitute reasonable supervision of the Firm's regulatory filings, especially given his awareness of the Firm's deficiencies.

Wedbush argues that his role as BCM was that of manager of the BCD rather than supervisor, meaning that he saw himself as dealing with "big picture" issues rather than the day-

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[29] *Busacca v. SEC*, 449 F. App'x 886, 889 (11th Cir. 2011) (quoting *Donald T. Sheldon*, 1992 WL 353048, at *13 (Nov. 13, 1992)). *Accord, e.g.*, *Richard F. Kresge*, Exchange Act Release No. 55988, 2007 WL 1892137, at *8 (June 29, 2007); *Michael T. Studer*, 2004 WL 2735433, at *6.

Wedbush argues that unlike the respondents in *Busacca* and *Pellegrino*, he was focused on overall management of the Firm, not primarily on generating additional business. This distinction is not relevant. Regardless of where Wedbush focused his attention, he did not devote enough attention to supervising regulatory filings.

[30] *See, e.g.*, *Charles L. Campbell*, Exchange Act Release No. 26510, 1989 WL 992489, at *4 (Feb. 1, 1989); *Mark James Hankoff*, Exchange Act Release No. 24390, 1987 WL 757990, at *3 (Apr. 24, 1987). To the extent that the Firm's CCO or a co-CCO may have shared responsibility for supervising regulatory filings with the BCM, we find that Wedbush could not rely on that person either, for the same reasons.

[31] *See* notes 19-21, 24-26 *supra* and accompanying text.

[32] Wedbush's failure to exercise reasonable supervision as president alone would establish liability for the supervisory violations and support the sanctions imposed by FINRA.

to-day details of seeing that BCD staff members were doing their jobs. But characterizing himself as a manager did not relieve Wedbush of the supervisory duties he assumed as BCM.[33] If he was unable or unwilling to provide effective supervision of the Firm's regulatory filings, he was required to delegate those duties to someone who could and would provide such supervision.[34] Wedbush does not contend that he made any such delegation, and the preponderance of the evidence does not support a finding that he did so.[35] And even if he had delegated the BCM's supervisory duties, in light of his ultimate supervisory responsibility, he would have been required to take appropriate responsive action when he learned of the Firm's continuing filing deficiencies. While Wedbush stressed the importance of regulatory reporting at periodic management meetings and instructed managers to cooperate in the reporting process, he knew that the filing violations had continued despite his instructions, and that his instructions had not resolved the Firm's noncompliance.

On appeal, Wedbush argues that he "had no responsibility to personally make or directly supervise the filings at issue," and that "for the majority of the time period at issue, the individuals responsible for making such filings were several levels below [him] in the firm's reporting structure." Wedbush argues that "the only logical conclusion," therefore, is that he "was found guilty of lack of supervision simply because he was the firm's president," and that the record "is wholly devoid of any evidence" as to whether a firm president has such responsibility. As noted above, it is well established that a brokerage firm's president is ultimately responsible for supervision, unless he or she has delegated that responsibility to someone else at the firm and does not know or have reason to know that the responsibility is not being properly exercised. Given this precedent, FINRA Enforcement was not required to call an expert witness, or to introduce testimony about industry practice, or to take any of the other steps Applicants mention, to establish Wedbush's supervisory liability.

We thus sustain FINRA's finding that Applicants violated NASD Rules 3010 and 2110, and FINRA Rules 3110 and 2010.[36]

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[33] *Cf. Kirk A. Knapp*, Exchange Act Release No. 30391, 1992 WL 40436, at *5 (Feb. 21, 1992) (finding that although individual "was more or less a figurehead president . . . once he accepted that title, he was required to fulfill the obligations attached to his office for as long as he occupied the position").

[34] Our prior cases permit "reasonabl[e]" delegation, *see* note 29 *supra* and accompanying text, but delegation to someone who was known from the outset to be unable or unwilling to handle the responsibility would not meet this standard.

[35] Wedbush does not argue, and the record does not show, that Wedbush delegated these responsibilities to Vincent Moy when Moy was co-CCO from July 2007 to October 2007.

[36] Violations of NASD Rule 3010 and FINRA Rule 3110 are also violations of NASD Rule 2110 and FINRA Rule 2010 respectively. *See* note 11 *supra* (citing cases that so hold). Under NASD General Rule 115(a) and its successor, FINRA Rule 140, persons associated with a member firm have the same duties and obligations as a member. *Kirlin Sec., Inc.*, Exchange Act Release No. 61135, 2009 WL 4731652, at *1 n.4 (Dec. 10, 2009).

D. The rules are, and were applied in a manner, consistent with the purposes of the Exchange Act.

We find that NYSE Rules 351(a) and (d), and NASD and FINRA By-Laws Article V, Sections 2(c) and 3(b), are, and were applied in a manner, consistent with the purposes of the Exchange Act. Exchange Act Section 15A(b)(6) requires that registered securities associations such as FINRA design their rules to prevent fraudulent and manipulative practices, promote just and equitable principles of trade, and protect investors and the public interest.[37] Form RE-3, Form U5, and Rule 3070 Reports all provide SROs with information useful in setting investigative priorities, thus helping them use their resources to advance the public interest and potentially prevent or curtail fraudulent acts or practices.[38] Form U4 is used to determine and monitor the fitness of securities professionals[39] and Form U5 alerts member firms of the potential risks and accompanying supervisory responsibilities they must assume if they decide to employ individuals with questionable histories.[40] Here, FINRA applied the rules requiring these forms to be filed accurately and timely to the Firm's repeated failures to do so, which deprived the SROs and the public of information important for the protection of investors and the public interest.

We also find that NASD Rule 3010 and FINRA Rule 3110 are, and were applied in a manner, consistent with the purposes of the Exchange Act. We have "'long emphasized that the responsibility of broker-dealers to supervise their employees is a critical component of the federal regulatory scheme.'"[41] FINRA's application of these rules in this case was appropriate given Applicants' repeated supervisory failures.

Finally, we find that NASD Rule 2110 and FINRA Rule 2010 are consistent with the purposes of the Exchange Act,[42] as was FINRA's application of these rules to Applicants' conduct, which we have found inconsistent with just and equitable principles of trade.

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[37] 15 U.S.C. § 78*o*-3(b)(6).

[38] *See infra* notes 60-61, 73, 77 and accompanying text (discussing in more detail importance of Form RE-3, Form U5, and Rule 3070 Reports).

[39] *Amundsen*, 2013 WL 1683914, at *6. *See infra* notes 68-71 and accompanying text (discussing importance of Form U4).

[40] *Henry Irvin Judy, Jr.*, Exchange Act Release No. 38418, 1997 WL 126717, at *4 (Mar. 19, 1997).

[41] *Order Granting Approval of a Proposed Rule Change to Adopt Rules Regarding Supervision in the Consol. FINRA Rulebook, as Modified by Amendment No. 1*, Exchange Act Release No. 71179, 2013 WL 6794111, at *32 (Dec. 23, 2013) (discussing Rule 3110) (quoting SEC, Division of Market Regulation, Staff Legal Bulletin No. 17: Remote Office Supervision (March 19, 2004), 2004 WL 3711970, at *1); *accord Robert Marcus Lane*, Exchange Act Release No. 74269, 2015 WL 627346, at *14 (Feb. 13, 2015) (discussing Rule 3010).

[42] *Notice of Filing of a Proposed Rule Change*, Exchange Act Release No. 58095, 2008 WL 2971979, at *2 (July 3, 2008).

E. Applicants' Procedural Arguments

Applicants' principal argument on appeal is that they did not receive a fair hearing because they were not given fair notice that a suspension and fine in excess of $250,000 could be imposed. According to Applicants, Exchange Act Section 15A(h)(2) required FINRA to notify them of, and give them an opportunity to be heard on, "the specific grounds for . . . [a] bar or [suspension] under consideration."[43] Section 15A(h)(2) applies to procedures by registered securities associations "to determine whether a person shall be denied membership, barred from associating with a member, or prohibited or limited with respect to access to services offered by the association or a member thereof." Applicants cite no authority that Section 15A(h)(2) should apply to disciplinary proceedings like this one, and we decline to apply it here. And even if Section 15A(h)(2) applied, Applicants were given notice of and the opportunity to be heard on the specific grounds for the suspension because the applicable FINRA Sanction Guidelines for the alleged misconduct provided for the imposition of a suspension, and they were free to address these grounds throughout the proceeding.

Applicants argue that, statutory requirements aside, basic notions of fairness require that respondents in a disciplinary proceeding be provided with notice of the sanction sought. They also contend that, absent such notice, respondents cannot make informed decisions about settlement.

First, Applicants knew what sanctions FINRA Enforcement sought. Their opening brief plainly states: "[FINRA] Enforcement . . . specifically informed Applicants of the precise sanctions it sought . . . on at least four occasions." FINRA Enforcement consistently argued that both Applicants should be fined and that Wedbush should also be censured. Applicants contested these sanctions vigorously. Applicants' argument that they could not make informed settlement decisions without knowing the sanctions sought is meritless, because they were well aware of the sanctions FINRA Enforcement was seeking. Indeed, Applicants admit that they prepared and presented a defense based on the charges that FINRA Enforcement had told them about and the sanctions that FINRA Enforcement had requested.

Second, although FINRA Enforcement did not ask that Wedbush be suspended, Applicants were on notice that suspension by the NAC was a possibility. Respondents in FINRA disciplinary proceedings are given notice of the range of potential sanctions; FINRA Rule 8310(a) (cited in the complaint) lists suspension of the registration of an associated person as a sanction that may be imposed in a disciplinary proceeding.[44] In addition, FINRA's Sanction Guidelines, which were published "so that members, associated persons, and their counsel may become more familiar with the types of disciplinary sanctions that may be applicable to various violations,"[45] state that "suspension of the responsible individual in all supervisory capacities for up to 30 business days" (or longer in egregious cases) may be imposed based on a finding of

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43 15 U.S.C. § 80o-3(h)(2).

44 Rule 8310(a)(3).

45 Sanction Guidelines at 1.

failure to supervise.[46] The Guidelines further contemplate that fines of $300,000 or more may be imposed for the various violations charged.[47] Moreover, FINRA's sanctioning determination is supported by precedent, including a prior decision sustaining FINRA action imposing a suspension on a firm's president for failure to supervise.[48]

Applicants were also on notice that the hearing panel has broad discretion in assessing sanctions,[49] and that after the hearing panel has issued its decision, the NAC may still "modify [or] increase . . . any sanction, or impose any other fitting sanction."[50] Thus, Applicants were on notice that the ultimate decision as to an appropriate sanction was not up to FINRA Enforcement, and that sanctions could be increased on appeal.[51]

IV. Sanctions

A. Standard of Review

Exchange Act Section 19(e)(2) requires us to sustain the sanctions imposed by FINRA unless we find, giving due regard to the public interest and the protection of investors, that they are excessive or oppressive or impose an unnecessary or inappropriate burden on competition.[52] As part of our review, we consider aggravating or mitigating factors;[53] and whether the sanctions are remedial or punitive.[54] While we are not bound by FINRA's Sanction Guidelines, we use

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46 *Id.* at 103.

47 *See infra* text accompanying notes 57, 74, 78.

48 *Busacca*, 2010 SEC LEXIS 3787, at *63-64.

49 *See generally* Sanction Guidelines at 2-4.

50 FINRA Rule 9348. *Cf. Caruselle v. N.Y. Mercantile Exch.*, CFTC Docket No. 05-E-1, 2005 WL 1469508, at *2 (June 21, 2005) (finding that mercantile exchange did not err by imposing a lengthier access denial than compliance counsel had recommended where rules put respondent on notice of possible penalties).

51 Applicants argue that FINRA cited cases that did not involve the imposition of sanctions that exceeded those sought by FINRA Enforcement staff. Those cases were cited to support other aspects of FINRA's decision. Applicants also mischaracterize FINRA's decision as "rest[ing] in large part on the NAC's absurd conclusion that no distinction exists between a fine and a suspension." FINRA's finding was that there is no distinction between mitigating factors relevant to a suspension and those relevant to a fine. The Sanction Guidelines support FINRA's finding: they are organized by violation, not by sanction, so the same aggravating or mitigating factors apply regardless of whether a fine, a suspension, or a different sanction is at issue.

52 15 U.S.C. § 78s(e)(2).

53 *Saad v. SEC*, 718 F.3d 904, 906 (D.C. Cir. 2013); *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1064-65 (D.C. Cir. 2007).

54 *PAZ Sec., Inc.*, 494 F.3d at 1065.

them as a benchmark in conducting our review.[55] We find that the sanctions FINRA imposed are consistent with the statutory requirements, and we sustain them.

B. The fines imposed on Applicants for the filing violations are neither excessive nor oppressive.

1. The $75,000 fine for failure to file, late filing, and inaccurate disclosure on Forms RE-3 is neither excessive nor oppressive.

FINRA's Sanction Guidelines do not specifically address Form RE-3 filing violations. In such cases, the Guidelines provide for the consideration of the most closely analogous Guidelines.[56] We agree with FINRA that the Guidelines for late filing, failing to file, and filing false, misleading, or inaccurate Forms U4 or U5 are the most analogous.

For late filing of Forms U4 or U5 or amendments, the relevant Guidelines recommended a fine of between $5,000 and $50,000 on a firm; for failing to file or filing false, misleading, or inaccurate forms or amendments, they recommended a fine of $5,000 to $100,000.[57] Applicants stipulated to violations involving a total of 38 Forms RE-3, comprising 33 late filings, two inaccurate filings, and three failures to file, over a period of approximately two and a half years. FINRA found that "[t]he substantial number of violations, gross inaccuracy, extent of the lateness, . . . and the complete failure to file three reports," as well as "[t]he Firm's failure to take appropriate action and its subsequent repeated misconduct notwithstanding regulators' prior warnings" are aggravating factors demonstrating that "strong sanctions are needed to deter further regulatory reporting failures at the Firm."[58] FINRA found no mitigating factors. FINRA concluded that a fine of $75,000, near the upper end of the Guidelines, would strike an appropriate balance between being commensurate with the misconduct and remediating that misconduct, and would also serve the public interest by encouraging future compliance with regulatory reporting requirements by the Firm and other industry participants.

We agree with FINRA that the Firm's Form RE-3 violations were serious and numerous, that the record supports the aggravating factors FINRA found, and that no mitigating factors were established. We also find that additional considerations support the sanctions. The Sanction Guidelines state that of particular relevance to such violations is the nature and significance of the information at issue.[59] The information that was filed late or inaccurately, or not filed at all, concerned settlements and arbitration awards. Regulatory staff reviewed all Forms RE-3 upon receipt and then decided whether to conduct preliminary investigations into

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55 *See, e.g.*, *Plunkett*, 2013 WL 2898033, at *11.

56 *See* Sanction Guidelines at 1.

57 *Id.* at 69-70. The upper ends of the recommended fines are now higher. *See* FINRA Regulatory Notice 15-15 (May 12, 2015) (indexing high end of monetary sanction for each Guideline to Consumer Price Index, effective immediately).

58 *See* Sanction Guidelines at 6-7 (factors 5, 6, 8, 9, 15, & 16).

59 *Id.* at 69.

the matters reported.[60] Thus, late or inaccurate filings made it harder "to efficiently make informed decisions as to whether review of a reported matter was appropriate,"[61] and a failure to file deprived regulators of this basis for conducting even a preliminary investigation.

Applicants argue that they took effective steps to improve regulatory reporting. The Sanction Guidelines recognize that a firm's voluntary employment of corrective measures to revise procedures to avoid recurrence of misconduct may be a mitigating factor when done before a regulator detects the misconduct.[62] Applicants point to no corrective measures taken before regulators began notifying the Firm of their concerns, so the record does not support consideration of efforts to improve regulatory reporting as a mitigating factor.[63]

Because the $75,000 fine is consistent with the Sanction Guidelines, and the fine should have a remedial effect of deterring further violations by the Firm and encouraging compliance by others in the industry, we affirm FINRA's imposition of the $75,000 fine for these violations.

2. The $100,000 fine for failure to file, late filing, and inaccurate disclosure on Forms U4 and U5 is neither excessive nor oppressive.

We have sustained FINRA's findings that between May 2005 and July 2010, the Firm filed 91 late and 15 inaccurate Forms U4 and U5, and failed to file seven Forms U4 and U5. We agree with FINRA that the numerous violations over an extended period of time are aggravating factors.[64] That the violations continued despite the multiple warnings from regulators is evidence that the Firm did not train and incentivize employees adequately, nor did it develop and implement reasonable supervisory procedures; the Guidelines also recognize these as aggravating factors.[65] For much of the five-year period at issue, the Firm was engaging in this violative conduct despite regulatory warnings.[66] The misconduct cannot be considered an aberration.[67]

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60 *NYSE Information Memo 2003-55*, 2003 NYSE Info. Memo LEXIS 56, at *1 (Dec. 16, 2003).

61 *NYSE Information Memo 2005-65*, 2005 NYSE Info. Memo LEXIS 67, at *4-5 (Sept. 14, 2005).

62 Sanction Guidelines at 6 (item 3).

63 Applicants argue that FINRA Enforcement did not show that any specific person was harmed, but a lack of harm to individual persons is not a mitigating factor. *See, e.g.*, *Mitchell H. Fillet*, Exchange Act Release No. 75054, 2015 WL 3397780, at *15 & n.90 (May 27, 2015).

64 Sanction Guidelines at 6 (factors 8 & 9).

65 *See id.* (factors 5 & 6).

66 *Id.* at 7 (factor 15).

67 *Id.* (factor 16).

Form U4 is "a critically important regulatory tool,"[68] used by self-regulatory organizations, state regulators, and broker-dealers to determine and monitor the fitness of securities professionals.[69] Because of its importance for screening persons entering and remaining in the industry, Form U4 ultimately serves to protect the investing public.[70] The investing public may further benefit from the information entered on Form U4 by using FINRA's BrokerCheck electronic database in evaluating brokers.[71] Form U5 also plays an important role; it "serv[es] as a warning mechanism to member firms of the potential risks and accompanying supervisory responsibilities they must assume if they decide to employ an individual with a suspect history"[72] and provides FINRA with information useful in deciding whether to initiate an investigation.[73] Failure to file these forms accurately and on time frustrates these objectives. Indeed, one of the most common inaccurate disclosures in Firm filings was whether a registered representative was named as a respondent in an arbitration; others included dates of disposition, damage amounts, and details about the outcome of civil litigation.

Applicants' violations limited the ability of regulators to monitor or evaluate the fitness of industry professionals and of the public to choose professionals with whom to do business. There are no mitigating factors. Under the circumstances, we sustain FINRA's sanction as neither oppressive nor excessive, and we find that it should have a remedial effect in encouraging the Firm and other member firms to file these important forms timely and accurately.

3. The $25,000 fine for late filings of and inaccurate disclosures in Rule 3070 Reports is neither excessive nor oppressive.

The Guidelines in effect when FINRA imposed sanctions on Applicants recommended a fine of between $5,000 and $50,000 for late reporting under NASD Rule 3070, and a fine of between $5,000 and $100,000 for filing false, misleading, or inaccurate reports in violation of that rule.[74] Particularly relevant are the number and type of incidents that were not reported or were reported inaccurately and whether the events that were not reported or were reported inaccurately established or would have established a pattern of potential misconduct.[75]

As found above, from July 2008 to July 2009 the Firm committed seven violations with respect to Rule 3070 Reports. It failed to report one customer complaint, filed reports at least 90 days late on five complaints, and misstated the period of violative activity in one report.

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68 *Amundsen*, 2013 WL 1683914, at *6.

69 *E.g.*, *id.*; *Richard A. Neaton*, 2011 WL 5001956, at *5, 8 (Oct. 20, 2011).

70 *Amundsen*, 2013 WL 1683914, at *6.

71 *Id.*

72 *Henry Irvin Judy, Jr.*, 1997 WL 126717, at *4.

73 *Dep't of Enf't v. McCrudden*, 2010 WL 4114004, at *7 (FINRA NAC Oct. 15, 2010) (inaccurate Form U5 "inhibited FINRA's investigatory system from operating as it should").

74 Sanction Guidelines at 74.

75 *Id.*

Although the allegations underlying the complaints involved different representatives and different types of conduct, one customer complained several times about a particular registered representative, which potentially would have established a pattern of misconduct.

FINRA concluded that the number of Rule 3070 reporting violations was small, but that the untimely reports were filed very late, that the complaints alleged serious sales practice violations such as unsuitable recommendations and unauthorized trading (including one in which the complainant sought $156,000 in compensation), and that the complaints suggested a pattern of misconduct. Based on the Firm's failure to file Rule 3070 Reports timely and accurately despite the repeated warnings from regulators detailed above, FINRA found the Firm's conduct reckless and found aggravating that the Firm failed to address the problem.[76] Taking all these factors into consideration, FINRA found that a $25,000 fine was appropriate.

We agree with FINRA's analysis. By submitting Rule 3070 Reports, member firms provide FINRA with important information to identify timely problem members, branch offices, and registered representatives and to detect and investigate possible sales practice violations and operational problems.[77] The failure to file the Rule 3070 Reports accurately and on time deprived FINRA of information that would have helped it efficiently set investigative priorities, which would have benefitted the investing public. The filings were months overdue when made, the late-filed reports contained significant information, and the violations occurred despite multiple warnings that the Firm needed to devote more attention to regulatory filings. Applicants suggest no mitigating factors, and we see none. The $25,000 fine is in the middle of the Guidelines' recommendations for late filings, and below the middle of the Guidelines for inaccurate filings. We therefore sustain the $25,000 fine as neither excessive nor oppressive.

4. The sanctions imposed on Applicants for their failure to supervise are neither excessive nor oppressive.

a. The $100,000 fine imposed on the Firm is neither excessive nor oppressive.

The Sanction Guidelines in effect when FINRA issued its decision recommended a fine of $5,000 to $50,000 for a failure to supervise and a suspension or expulsion in egregious cases.[78] The principal factors to be considered are the extent of the underlying misconduct and whether the respondent ignored "red flag" warnings that should have resulted in additional supervisory scrutiny.[79] FINRA found Applicants' conduct to be egregious but concluded that

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[76] *Id.* at 6-7 (factors 13 & 15).

[77] *NASD Notice to Members 06-34*, 2006 NASD LEXIS 82, at *1; *NASD Notice to Members 96-85*, 1996 NASD LEXIS 107, at *3 (Dec. 1996).

[78] Sanction Guidelines at 103; *see also* note 57 *supra* (regarding subsequent indexing of upper limits of fines).

[79] Sanction Guidelines at 103.

rather than a suspension or expulsion a fine of $100,000, which exceeded the recommended level, would better serve to remediate the misconduct and prevent its recurrence.

We agree that the Firm's violations were egregious, given the number of violations, the lack of effective response despite repeated notifications from regulators, and the Firm's disciplinary history of supervisory violations. The Firm committed extensive reporting violations over a five-and-a-half-year period, and the violations continued despite explicit regulatory notices calling attention to the Firm's reporting failures. The Firm's failure to take effective action despite being thus put on notice is a highly aggravating circumstance. We also find, as FINRA did, that the Firm's purported corrective actions are not a mitigating factor because some were taken only after regulators notified them of the reporting failures[80] and others were so inadequate as to be unreasonable under the circumstances.

We may also consider the Firm's disciplinary history in evaluating whether the sanctions chosen by FINRA are excessive or oppressive.[81] The Sanction Guidelines recognize as a general principle that sanctions should be more severe for recidivists.[82] FINRA's BrokerCheck database shows that regulators have fined the Firm more than $2 million in more than fifteen separate actions involving supervisory failures over the past ten years.[83]

We have discussed above the importance of the regulatory reporting rules in supporting the regulatory system and protecting the public. Without effective supervision, these rules would lose much of their force. Under the circumstances, we find that FINRA's decision to impose a fine that exceeded the Guidelines recommendations, while declining to impose the suspension that the Guidelines would have authorized, did not result in an excessive or oppressive sanction.

b. The sanctions imposed on Wedbush are neither excessive nor oppressive.

The Sanction Guidelines recommended considering independent (rather than joint and several) monetary sanctions for any responsible individuals and a suspension in all supervisory capacities for up to 30 business days.[84] In egregious cases, the Guidelines recommended considering a suspension of the responsible individual in any or all capacities for up to two years

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80 *Id.* at 6 (Principal Considerations, No. 3).

81 *Id.* (Principal Considerations, No. 2).

82 *Id.* at 2 (General Principles, No. 2).

83 As recently as February 25, 2016, according to BrokerCheck, the Firm settled a proceeding initiated by FINRA and The NASDAQ Stock Market in which the Firm agreed to findings that it, among other things, failed to establish, implement and enforce reasonable supervisory procedures related to the Firm's activities involving exchange-traded funds. The Firm was censured, fined $675,000 to be paid jointly to NASDAQ and FINRA, and undertook to revise its written supervisory procedures. We may take official notice of information found on BrokerCheck. *See Amundsen*, 2013 WL 1683914, at * 1 n.1 (citing 17 C.F.R. § 201.323).

84 Sanction Guidelines at 103.

or barring the responsible individual.[85] A principal consideration is the quality and degree of the individual's implementation of the firm's supervisory procedures and controls.[86]

FINRA imposed a $50,000 fine on Wedbush and suspended him for 31 days in all principal capacities. It reiterated that the reporting violations were extensive and widespread and noted that approximately one-fifth of the violations occurred during Wedbush's tenure as BCM and approximately three-fifths occurred while Segall, who reported directly to Wedbush, was BCM. And it found that the evidence established that Wedbush was aware of the regulatory issues at the Firm but failed to act decisively and reasonably to address the issues.

We find that the sanctions imposed are neither excessive nor oppressive. Wedbush's failure to adequately implement the Firm's supervisory procedures contributed to many of the reporting violations at issue. As FINRA found, he was unquestionably aware of the problems at the Firm but chose to direct his attention to other areas, even when he became the BCM. His continued insistence that he is not liable for supervisory violations because he is a manager rather than a supervisor, and that he does not supervise any person who makes regulatory filings, manifests a lack of understanding of his duties as president of the Firm. We find the sanctions appropriate to ensure future compliance by Wedbush and to deter future violations by others.

Wedbush argues that no other CCO of the Firm during the period at issue was charged or disciplined. He points out that he was CCO of the Firm "for less than 20% of the time at issue" and reiterates that "he undertook that role in order to assess the needs of [the BCD], not to directly supervise U4 and U5 filings." He also contrasts his suspension with the lesser sanctions imposed on Huang, during whose tenure the Firm did not file a single Form RE-3, suggesting that Huang received favorable treatment because he formerly worked for NASD.

These comparisons do not show that Wedbush's suspension was excessive or oppressive or establish bias. FINRA has broad prosecutorial discretion in deciding against whom charges should be brought and what those charges should be.[87] Moreover, unlike others who served as CCO, Wedbush was president of the Firm for the entire period. As such, he had a greater degree of responsibility to act, and he received more regulatory warnings of filing violations over a longer period of time than any of the other CCOs.

Nor is there evidence that Huang benefitted from special treatment due to his former employment with NASD. Wedbush points to no evidence other than the lesser sanctions. That Huang received lighter sanctions does not establish preferential treatment given the factual dissimilarities between his situation and Wedbush's and the broad discretion FINRA has in choosing how to respond to rule violations.

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85 *Id.*

86 *Id.*

87 *See, e.g.*, *Nicholas T. Avello*, Exchange Act Release No. 46780, 2002 WL 31487442, at *6 (Nov. 7, 2002), *aff'd*, 454 F.3d 619 (7th Cir. 2006).

Wedbush also argues that the sanctions imposed on him were excessive and oppressive compared to the sanctions imposed in two settled cases involving reporting violations.[88] He argues that the violations in those proceedings were comparable to those involved here, but that no individual was charged or sanctioned in those cases. We find these arguments unpersuasive. The appropriateness of the sanctions in any given case depends on the facts and circumstances.[89]

Finally, Wedbush argues that because he "does not make [regulatory] filings, or supervise any person who does," suspending him would not protect the investing public. But if a suspension serves the intended purpose of impressing on Wedbush (and other industry participants) the importance of carrying out the supervisory responsibilities set forth above, it will protect the public by making a recurrence of such violations less likely.[90]

An appropriate order will issue.[91]

By the Commission (Chair WHITE and Commissioners STEIN and PIWOWAR).

Brent J. Field
Secretary

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[88] Applicants also argue that by imposing a suspension on Wedbush, while not charging any individual in the settled cases that involved large firms, FINRA imposed an unnecessary and inappropriate burden on competition, in that it treated him differently from the "principals at the 'big dogs' of Wall Street." We find that the record does not show that FINRA extended unwarrantedly favorable treatment to principals at the other firms. We further find that neither the imposition of the suspension on Wedbush nor any other action of FINRA in this matter imposed an unnecessary or inappropriate burden on competition.

[89] *See, e.g.*, *Dennis S. Kaminski*, 2011 WL 4336702, at *13 (Sept. 16, 2011).

[90] "[A]lthough general deterrence is not, by itself, sufficient justification for expulsion or suspension . . . it may be considered as part of the overall remedial inquiry." *PAZ Sec., Inc.*, 494 F.3d at 1066 (quoting *McCarthy v. SEC*, 406 F.3d 179, 189 (2d Cir. 2005).

[91] We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion. Because the issues have been thoroughly briefed and can be adequately determined on the basis of the record filed by the parties, Applicant's request for oral argument is denied.

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 78568 / August 12, 2016

Admin. Proc. File No. 3-16329

In the Matter of the Application of

WEDBUSH SECURITIES, INC.
and
EDWARD WILLIAM WEDBUSH

For review of Disciplinary Action Taken by FINRA

ORDER SUSTAINING DISCIPLINARY ACTION TAKEN BY FINRA

On the basis of the Commission's opinion issued this day, it is ORDERED that the disciplinary action taken by FINRA against Wedbush Securities, Inc. and Edward William Wedbush is hereby sustained.

By the Commission.

Brent J. Fields
Secretary