BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Daniel James Gallagher Port Washington, NY, Respondent.	DECISION Complaint No. 2008011701203 Dated: December 12, 2012

Respondent acted as an unregistered principal, refused to respond to questions during on-the-record testimony, willfully failed to amend his Form U4, circumvented heightened supervision requirements, failed to adopt a supervisory control system, and failed to conduct an annual certification of the supervisory control system. Held, findings affirmed and sanctions affirmed in part.

Appearances

For the Complainant: Leo F. Orenstein, Esq.,Vaishali S. Shetty, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Pro Se

Decision

Daniel James Gallagher appeals a Hearing Panel decision issued on June 13, 2011. The Hearing Panel found that Gallagher violated several of FINRA's rules because he: (1) acted as an unregistered principal, (2) refused to respond to questions during on-the-record testimony, (3) willfully failed to amend his Uniform Application for Securities Industry Registration or Transfer ("Form U4") to disclose a Commission complaint and judgment, (4) circumvented heightened supervision requirements, and (5) failed to adopt a supervisory control system and conduct an annual certification of the supervisory control system.

The Hearing Panel barred Gallagher for acting as an unregistered principal, barred him for circumventing heightened supervision requirements, and barred him for refusing to respond to questions during on-the-record testimony. The Hearing Panel stated that it would have imposed sanctions of less than a bar for Gallagher's willful failure to amend his Form U4, failure to adopt a supervisory control system, and failure to conduct an annual certification of the

supervisory control system, but the Hearing Panel declined to impose these additional sanctions in light of the bars that it had imposed for the other causes of action.

After an independent review of the record, we affirm the Hearing Panel's findings of violation and affirm, in part, the Hearing Panel's sanctions. Specifically, we affirm the bar for Gallagher's acting as an unregistered principal, the bar for his refusal to respond to questions during on-the-record testimony, and the bar for Gallagher's circumvention of heightened supervision requirements. We discuss the remaining sanctions later in this decision.

I. Gallagher and Vision Securities, Inc.

Gallagher entered the securities industry in August 1990, when he registered as a general securities representative with a former FINRA firm. Gallagher remained registered with FINRA continuously from August 1990 until the termination of his most recent association in June 2011. During the period relevant to the conduct in this case, Gallagher was registered as a general securities representative with Vision Securities, Inc. Gallagher joined Vision Securities in May 2001. Vision Securities terminated Gallagher's association with the firm in January 2010, when FINRA cancelled the firm's membership for its failure to pay outstanding fees.

II. Procedural History

This case results from a routine cycle examination that began in January 2008. In August 2010, FINRA's Department of Enforcement filed an amended eight-cause complaint against Gallagher and Vision Securities.[1]

The first cause of action alleged that Gallagher acted as an unregistered principal of Vision Securities, in violation of NASD Rules 1021(a) and 2110. The second cause of action alleged that Gallagher circumvented heightened supervision requirements that Maryland, New Jersey, New York, and FINRA imposed on him, in violation of NASD Rule 2110. The third cause of action alleged that Gallagher failed to adopt a supervisory control system and conduct an annual certification of the supervisory control system, in violation of NASD Rules 3012, 3013, and 2110.[2] The seventh cause of action alleged that Gallagher refused to respond to

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[1] Enforcement filed the original six-count complaint against Gallagher and Vision Securities in February 2010. The amended complaint added two causes of action against Gallagher, incorporating a cause of action for Gallagher's refusal to respond to questions during on-the-record testimony and a cause of action for his willful failure to amend his Form U4 to disclose the Commission's complaint and judgment.

[2] Enforcement named Gallagher and Vision Securities as joint respondents in causes one, two, and three. Causes four, five, and six concerned only Vision Securities, while causes seven and eight related only to Gallagher. The fourth cause of action alleged that Vision Securities failed to report, accurately report, and maintain NASD Rule 3070 filings, and asserted that Vision Securities failed to update and timely update Forms U4 and Uniform Termination Notices for Securities Industry Registration ("Forms U5"). The fifth cause of action alleged that Vision Securities failed to conduct independent anti-money laundering testing. The sixth cause of action alleged that Vision Securities failed to administer and maintain records of its continuing

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questions during on-the-record testimony, in violation of FINRA Rules 8210 and 2010.[3] Finally, the eighth cause of action alleged that Gallagher willfully failed to amend his Form U4 to disclose a Commission complaint and judgment, in violation of NASD Rule 2110 and FINRA Rule 2010.

A two-day hearing took place in New York in January 2011. Six witnesses testified at the hearing, including Gallagher and two of Vision Securities' former employees. The Hearing Panel issued its decision in June 2011. This appeal followed.

III. Discussion

A. Gallagher Acted as an Unregistered Principal

The Hearing Panel found that Gallagher violated NASD Rules 1021(a) and 2110 because he acted as an unregistered principal of Vision Securities.[4] We affirm.

1. NASD Rule 1021

NASD Rule 1021(a) states that, "[a]ll persons engaged or to be engaged in the investment banking or securities business of a member who are to function as principals shall be registered as such with NASD." NASD Rule 1021(b) defines the term "principal" and states that principals are "[p]ersons associated with a member . . . who are actively engaged in the management of the member's investment banking or securities business, including supervision, solicitation, conduct of business or the training of persons associated with a member for any of these functions." An individual is "actively engaged in the management of the member's investment banking or securities business," and consequently, should register as a principal, when the individual is involved in the "day-to-day conduct of the member's securities business and the implementation of corporate policies related to such business." *NASD Notice to Members 99-49*, 1999 NASD

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education programs. The Hearing Panel censured Vision Securities and imposed a fine of $60,000 under causes one through six. Vision Securities did not appeal these sanctions.

[3] In October 2010, Enforcement moved for partial summary disposition on this cause of action. Gallagher opposed the motion. The Hearing Panel rendered a decision on the motion in December 2010, before the hearing began. The Hearing Panel granted Enforcement's motion as to liability, but reserved a determination of sanctions until after the hearing occurred.

[4] We discuss the rules in effect when the conduct occurred. Enforcement alleged no independent theory of liability for a violation of NASD Rule 2110 for this cause of action; however, a violation of any FINRA rule constitutes conduct inconsistent with high standards of commercial honor and just and equitable principles of trade and violates NASD Rule 2110. *See Dennis Todd Lloyd Gordon*, Exchange Act Rel. No. 57655, 2008 SEC LEXIS 819, at *4 n.3 (Apr. 11, 2008). NASD Rule 2110 states that, "a member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade." NASD Rule 0115 subjects associated persons to all rules applicable to FINRA firms.

LEXIS 24, at *2 (June 1999) (stating that registration determination turns on functions that individual performs).

2. Gallagher's Activities at Vision Securities

Between December 2006 and October 2007, Gallagher served as Vision Securities' president and was the secretary and chairman of Vision Securities' board of directors. During this same period, Gallagher also was part-owner of Vision Securities' parent company, GCG Holdings, Inc., acted as GCG Holdings' president, and served as the chairman of GCG Holdings' board of directors. Although Gallagher was not registered as a principal, he actively engaged in the management of Vision Securities' securities business and was involved in the firm's day-to-day operations.[5]

For example, Gallagher recruited, hired, and fired several of Vision Securities' key employees, including the firm's financial and operations principal ("FINOP"), bookkeeper, two chief compliance officers, and two successor presidents.[6] He supervised Vision Securities' personnel, directed the filing of Forms U4 and U5 at the firm, and unilaterally controlled the firm's finances, including commission payments to registered representatives and service payments to vendors.[7] Gallagher also held himself out as a supervising principal in correspondence and contracts with Vision Securities' customers, clearing firm, and vendors.[8]

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[5] In late 2001 or early 2002, Gallagher applied to take the General Securities Principal Qualification Examination (Series 24). FINRA initially approved the application and opened a 120-day "window" for Gallagher to take the qualifying examination between January and May 2002. Gallagher, however, allowed the window to expire after FINRA notified him that he was not permitted to obtain a principal's registration. As discussed in further detail below, certain restrictions that Maryland, New Jersey, and New York imposed on Gallagher prohibited him from holding any supervisory or principal position at Vision Securities or any other FINRA firm. *See infra* Part III.D (Gallagher Circumvented Heightened Supervision Requirements).

[6] The hiring and firing of a firm's personnel are activities that favor principal registration. *See Gordon*, 2008 SEC LEXIS 819, at *27 (determining that employee's hiring and firing of firm's registered representatives supports that employee acted as unregistered principal); *Richard F. Kresge*, Exchange Act Rel. No. 55988, 2007 SEC LEXIS 1407, at *50 (June 29, 2007) (finding that employee's active involvement in firm's hiring demonstrates that employee acted as unregistered principal).

[7] Supervision of a firm's employees and control of a firm's finances are activities that suggest that an associated person is actively engaged in a firm's securities business and should register as a principal. *See Kresge*, 2007 SEC LEXIS 1407, at *50 (finding that employee's "substantial role" in firm's finances supports that employee acted as unregistered principal); *Vladislav Steven Zubkis*, 53 S.E.C. 794, 799-800 (1998) (explaining that applicant's financial support of firm evidences need for principal registration).

[8] The representations, which an associated person may make concerning his or her supervision and control of a FINRA firm, are part of the assessment of whether principal registration is necessary. *See Gordon*, 2008 SEC LEXIS 819, at *27 (concluding that employee acted as unregistered principal where, among other things, he held himself out to third parties as

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On appeal, Gallagher states that Vision Securities employed several general securities principals during the relevant period, FINRA knew that these individuals were registered with Vision Securities as principals, and FINRA communicated with these individuals in their principal capacities. Gallagher concludes that the presence of other general securities principals at Vision Securities, and FINRA's acknowledgement of the principals at the firm, establishes that he could not have acted as an unregistered principal. Gallagher's argument misses the point. The presence of other general securities principals at Vision Securities has no bearing on Gallagher's activities at the firm. To the contrary, the record establishes that Gallagher engaged in numerous activities that required registration as a principal, activities such as hiring, firing, and supervision.

Gallagher's activities at Vision Securities, his managerial and supervisory role at the firm, and his control, ownership, and position with Vision Securities' parent company, GCG Holdings, demonstrate that Gallagher actively engaged in Vision Securities' securities business, managed the firm's day-to-day operations, and consequently, acted as an unregistered principal. Gallagher therefore violated NASD Rules 1021(a) and 2110.

B. Gallagher Refused to Respond to Questions During On-the-Record Testimony

The Hearing Panel found that Gallagher violated FINRA Rules 8210 and 2010 because he refused to respond to questions during on-the-record testimony.[9] We affirm.

1. FINRA Rule 8210

FINRA Rule 8210 requires that associated persons provide information orally or in writing with respect to any matter involved in a FINRA investigation, complaint, examination, or proceeding. Because FINRA lacks subpoena power, it must rely on FINRA Rule 8210 "to police the activities of its members and associated persons." *Joseph Patrick Hannan*, 53 S.E.C. 854, 858-59 (1998). "Delay and neglect on the part of members and their associated persons undermine the ability of [FINRA] to conduct investigations and thereby protect the public interest." *Paz Secs., Inc.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *12-13 (Apr. 11, 2008); *see also Morton Bruce Erenstein*, Exchange Act Rel. No. 56768, 2007 SEC LEXIS

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having authority to communicate for and make commitments on behalf of firm); *Kirk A. Knapp*, 50 S.E.C. 858, 861 (1992) (considering applicant's representations concerning his supervision of firm to customers and third parties as factor supporting principal registration).

[9] A violation of any FINRA rule, including FINRA Rule 8210, violates FINRA Rule 2010. *See Dep't of Enforcement v. Reichman*, Complaint No. 200801201960, 2011 FINRA Discip. LEXIS 18, at *28-29 (FINRA NAC July 21, 2011) (finding that respondent's refusal to respond to request made pursuant to FINRA Rule 8210 violated FINRA Rule 2010). NASD Rule 2110, FINRA's ethical standards rule, was transferred without change to FINRA's consolidated rulebook and codified as FINRA Rule 2010. *See FINRA Regulatory Notice 08-57*, 2008 FINRA LEXIS 50, at *32-33 (Oct. 2008). FINRA Rule 0140 subjects associated persons to all rules applicable to FINRA firms.

2596, at *24 (Nov. 8, 2007) (finding that applicant's refusal to respond to questions about his tax return violated NASD Rule 8210).

FINRA Rule 8210 is unequivocal and grants FINRA broad authority to obtain information concerning an associated person's securities-related business ventures. *See Dep't of Enforcement v. Fawcett*, Complaint No. C9A040024, 2007 NASD Discip. LEXIS 2, at *2 (NASD NAC Jan. 8, 2007), *aff'd*, Exchange Act Rel. No. 56770, 2007 SEC LEXIS 2598, at *1 (Nov. 8, 2007). Associated persons therefore must cooperate fully in providing FINRA with information and may not take it upon themselves to determine whether the information FINRA has requested is material. *See CMG Inst. Trading, LLC*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215, at *21 (Jan. 30, 2009) (stating that 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").

2. Gallagher's On-the-Record Testimony

In September 2009, questions began to arise concerning Vision Securities' net capital compliance.[10] FINRA's district office therefore issued a warning letter to Vision Securities, explaining that the firm should cease operations until its net capital compliance could be verified. Shortly after issuance of the warning letter, an examiner in the district office learned that a company, named Nano Acquisition Group, LLC, was operating from Vision Securities' offices, had initiated an offering of securities to raise capital for the company, and had marketed the offered shares to Vision Securities' customers.[11] Having received this information, the examiner in the district office sent Gallagher and Vision Securities requests for information and documents and requested that Gallagher appear to provide on-the-record testimony concerning Nano Acquisition Group. The examiner requested information concerning the company's offering to determine whether Vision Securities was operating without sufficient net capital and whether Gallagher was participating in undisclosed private securities transactions.

Gallagher's on-the-record testimony was scheduled for April 12, 2010. Although Gallagher appeared to provide testimony, he refused to respond to the examiner's questions

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[10] A FINRA examiner became concerned about Vision Securities' net capital compliance after the Commission obtained a civil judgment against Gallagher and the firm in August 2009. *See infra* Parts III.C.2 (Gallagher Failed to Disclose the Commission's Complaint and Judgment Against Him) and IV.A (Gallagher Has an Extensive Disciplinary History). The civil judgment required that Gallagher and Vision Securities pay, jointly and severally, $179,718 in disgorgement, prejudgment interest, and civil penalties.

[11] Nano Acquisition Group was a limited liability company formed in Delaware in September 2009. The company's principal place of business was in Port Washington, New York, where Gallagher resided. According to Nano Acquisition Group's offering documents, the company was "formed to acquire the stock or assets, in whole or in part, of Nanodynamics, Inc., a company currently in [b]ankruptcy." Nanodynamics owned several patented technologies, including a solid oxide fuel cell technology. In April 2012, a jury found that Nano Acquisition Group's offering was a fraudulent investment scheme and found Gallagher guilty of securities and wire fraud. *See infra* Part IV.A (Gallagher Has an Extensive Disciplinary History).

concerning Nano Acquisition Group. In some instances, Gallagher refused to respond to the questions because he believed that FINRA lacked jurisdiction to investigate his involvement with Nano Acquisition Group. In other instances, Gallagher refused to respond because he said that he did not trust that the examiner was able to protect the confidentiality of Nano Acquisition Group's offering. At several junctures during Gallagher's on-the-record testimony, he stated that he intended to respond to the examiner's questions, but he would do so at some later date. When Gallagher refused to respond to the questions regarding Nano Acquisition Group, the examiner advised Gallagher that his failure to respond violated FINRA Rule 8210. Gallagher, however, still refused to respond.

Gallagher also did not answer questions about other matters involving Nano Acquisition Group, including his compensation, emails about Nano Acquisition Group that he sent from his email account at Vision Securities, and whether his work for Nano Acquisition Group constituted undisclosed private securities transactions. Gallagher's complete lack of responsiveness on April 12, 2010, required a continuance of the on-the-record testimony on April 26, 2010. Just as he did during his earlier testimony, Gallagher refused to respond to any of the examiner's questions concerning Nano Acquisition Group, even after the examiner reminded him that a failure to respond during on-the-record testimony violated FINRA's rules.

On appeal, Gallagher reasserts that FINRA did not have jurisdiction to inquire about his involvement with Nano Acquisition Group or his marketing of the company's securities to customers of Vision Securities. Gallagher misunderstands the reach of FINRA Rules 8210 and 2010. These rules provide FINRA with broad discretion to inquire about any matter involved in a FINRA investigation, complaint, examination, or proceeding. *See Dennis A. Pearson, Jr.*, Exchange Act Rel. No. 54913, 2006 SEC LEXIS 2871, at *17 (Dec. 11, 2006) (stating that associated persons "may not second guess [] an NASD information request"). In addition, in this case, the examiner's questions about Nano Acquisition Group were important and directed at legitimate concerns about whether Gallagher's activities with the company and its offering of securities to Vision Securities' customers violated the securities laws and FINRA's rules.

Gallagher refused to respond to questions during his on-the-record testimony. Gallagher's refusals violated FINRA Rules 8210 and 2010. *See Paz Secs.*, 2008 SEC LEXIS 820, at *13 (stating that failure to respond to information requests frustrates FINRA's ability to detect misconduct and threatens investors and markets).[12]

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[12] Gallagher criticizes the Hearing Officer for resolving the issue of liability for the violation of FINRA Rule 8210 prior to the hearing and argues that the Hearing Officer improperly prohibited him from presenting evidence about the violation at the hearing. We disagree and find that the Hearing Officer properly resolved this cause of action on summary disposition. Although Gallagher opposed Enforcement's motion for summary disposition, he failed to identify any material fact to dispute liability. *See* FINRA Rule 9264(d) (endorsing use of summary disposition where "there is no genuine issue with regard to any material fact."); *see also Dep't of Enforcement v. Usher*, Complaint No. C3A980069, 2000 NASD Discip. LEXIS 5, at *4 (NASD NAC Apr. 18, 2000) (affirming Hearing Officer's grant of summary disposition with regard to liability). There is no dispute that Gallagher refused to respond to the examiner's questions during his on-the-record testimony, and under the facts presented, we conclude that the Hearing Officer properly resolved the matter on summary disposition.

C. Gallagher Willfully Failed to Amend His Form U4

The Hearing Panel found that Gallagher violated NASD Rule 2110 and FINRA Rule 2010 because he willfully failed to amend his Form U4 to disclose a Commission complaint and judgment. We affirm.

1. The Obligation to Keep the Form U4 Current

FINRA's By-Laws state that every application for registration, including the Form U4, must be kept current at all times by filing supplementary amendments within thirty days of learning of the facts or circumstances giving rise to the amendment. *See* Section 2(c) of Article V of the FINRA By-Laws. The duty to provide accurate information and amend the Form U4 to provide current information assures that "regulatory organizations, employers, and members of the public have all material, current information about the securities professional with whom they are dealing." *Richard A. Neaton*, Exchange Act Rel. No. 65598, 2011 SEC LEXIS 3719, at *17-19 (Oct. 20, 2011). The failure of an applicant for FINRA registration to accurately, fully, and timely disclose all information required on the Form U4 violates NASD Rule 2110 and FINRA Rule 2010. *See id.* (finding that applicant's failure to timely update Form U4 violated NASD Rule 2110).

2. Gallagher Failed to Disclose the Commission's Complaint and Judgment Against Him

On September 30, 2008, the Commission filed a complaint in the United States District Court for the Southern District of New York against Gallagher, Vision Securities, and several other defendants. The complaint stemmed from allegations that Gallagher and Vision Securities had permitted an individual associated with the firm to act as an unregistered broker-dealer with respect to three offerings of securities. *See SEC v. Castaldo*, No. 08-8397, 2009 U.S. Dist. LEXIS 74620, at *1-2 (S.D.N.Y. Aug. 17, 2009). The Commission personally served Gallagher with the complaint on October 22, 2008. Gallagher therefore was required to amend his Form U4 on or before November 21, 2008, to disclose the Commission's complaint.[13] Specifically, Gallagher's previously negative response to question 14(H)(2) on the Form U4 would have become affirmative. Question 14(H)(2) of the Form U4 requires that registrants disclose any pending investment-related civil action that could result in a court finding that the registrant was involved in the violation of an investment-related statute or regulation.[14] Gallagher did not disclose the Commission's complaint.

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[13] A FINRA examiner learned of the Commission's complaint on July 22, 2009, after the Commission filed a Uniform Disciplinary Action Reporting Form ("Form U6") to disclose the civil action in FINRA's Central Registration Depository ("CRD"®). Regulators, like the Commission, utilize the Form U6 to report administrative, civil, criminal, and disciplinary matters involving associated persons and FINRA firms.

[14] Question 14(H)(2) states, "Are you named in any pending *investment-related* civil action that could result in a "yes" answer to any part of 14(H)(l)?" Question 14(H)(l) states, "Has any domestic or foreign court ever: (a) *enjoined* you in connection with any investment-related activity? (b) *found* that you were *involved* in a violation of any *investment-related* statute(s) or

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On August 17, 2009, after a jury trial, a judgment was entered against Gallagher and Vision Securities. The court ordered Gallagher and Vision Securities to pay, jointly and severally, disgorgement of $126,467, prejudgment interest of $29,251, and a civil penalty of $24,000. Gallagher should have amended his Form U4 to disclose the judgment on or before September 16, 2009, 30 days after the court entered the judgment against him.[15] Specifically, in response to question 14(M) on the Form U4, which requires the disclosure of unsatisfied judgment or liens, Gallagher should have responded, "yes," to disclose that he was subject to an unsatisfied judgment.[16] Gallagher did not amend his Form U4 to disclose the Commission's judgment against him.

On appeal, Gallagher argues that he should not be held accountable for the violation because he relied on Vision Securities' compliance officers and branch managers to update the information contained on his Form U4. Gallagher misunderstands his compliance obligations as they relate to disclosures on the Form U4. Gallagher had an affirmative responsibility to ensure that he informed the proper personnel at Vision Securities of the Commission's complaint and judgment, and further, to ensure that the individual filing the Form U4 on his behalf made a full, accurate, and timely disclosure of the reportable event. *See Dep't of Enforcement v. Mathis*, Complaint No. C10040052, 2008 FINRA Discip. LEXIS 49, at *23 (FINRA NAC Dec. 12, 2008) (finding that respondent had obligation to follow-up with compliance department regarding disclosures on Form U4), *aff'd*, Exchange Act Rel. No. 61120, 2009 SEC LEXIS 4376, at *18 (Dec. 7, 2009), *aff'd*, 671 F.3d 210 (2d Cir. 2011). The record demonstrates that Gallagher failed to make the necessary disclosures in this case. Gallagher therefore violated NASD Rule 2110 and FINRA Rule 2010.[17]

3. Gallagher Is Statutorily Disqualified

Gallagher also is subject to statutory disqualification because the Commission's complaint and judgment constituted material information, and Gallagher's failure to disclose the

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regulation(s)? (c) dismissed, pursuant to a settlement agreement, an *investment-related* civil action brought against you by a state or *foreign financial regulatory authority*?"

[15] The examiner learned of the Commission's judgment on December 15, 2009, after the Commission filed another Form U6.

[16] Question 14(M) states, "Do you have any unsatisfied judgments or liens against you?" To date, the judgment remains unsatisfied. The most recent comment on Gallagher's CRD concerning the Commission's judgment, which was filed in November 2010, states that Gallagher was "working out a payment schedule with the [Commission]."

[17] NASD Rule 2110 applies to Gallagher's failure to disclose the Commission's complaint. The violation occurred prior to December 14, 2008, the effective date of FINRA's consolidated rulebook. *See FINRA Regulatory Notice 08-57*, 2008 FINRA LEXIS 50, at *32-33. FINRA Rule 2010 applies to Gallagher's failure to disclose the Commission's judgment because the judgment was entered (and should have been disclosed) after the effective date of FINRA Rule 2010. *See id.*

complaint and judgment was willful. *See* Section 3(a)(39)(F) of the Securities Exchange Act of 1934; Section 4 of Article III of the FINRA By-Laws; *see also Dep't of Enforcement v. Kraemer*, Complaint No. 2006006192901, 2009 FINRA Discip. LEXIS 39, at *15 (FINRA NAC Dec. 18, 2009) (stating that willful omission of material information on Form U4 results in statutory disqualification).

We find, as an initial matter, that the Commission's complaint and judgment against Gallagher constituted material information that involved serious, securities-related misconduct. *See Dep't of Enforcement v. Knight*, Complaint No. C10020060, 2004 NASD Discip. LEXIS 5, at *13-14 (NASD NAC Apr. 27, 2004) ("Because of the importance that the industry places on full and accurate disclosure of information required by the Form U4, we presume that essentially all the information that is reportable on the Form U4 is material.").

We also conclude that Gallagher's failure to disclose the Commission's complaint and judgment was willful. We need not find that Gallagher intended to violate FINRA's rules to determine that his conduct was willful. *See Mathis*, 671 F.3d 216-218. Rather, we need only find that Gallagher voluntarily committed the act that constituted the violation, i.e., that he voluntarily omitted information about the Commission's complaint and judgment from amendments to his Form U4. *See id.* (finding that respondent was statutorily disqualified where he voluntarily failed to amend Form U4 to disclose tax liens). The record demonstrates that Gallagher was served with the Commission's complaint, knew about the resulting judgment, and yet, he failed to amend his Form U4 to disclose either event. Gallagher therefore acted willfully and is statutorily disqualified.

D. Gallagher Circumvented Heightened Supervision Requirements

The Hearing Panel found that Gallagher violated NASD Rule 2110 because he circumvented heightened supervision requirements that Maryland, New Jersey, New York, and FINRA imposed on him. We affirm.

1. NASD Rule 2110

NASD Rule 2110 requires that associated persons observe high standards of commercial honor and just and equitable principles of trade. The reach of NASD Rule 2110 is not limited to rules of legal conduct, but states a broad ethical principle. *See Timothy L. Burkes*, 51 S.E.C. 356, 360 n.21 (1993). NASD Rule 2110 broadly applies to all business-related misconduct, regardless of whether the misconduct involves securities. *See Dep't of Enforcement v. Saad*, Complaint No. 2006006705601, 2009 FINRA Discip. LEXIS 29, at *11 (FINRA NAC Oct. 6, 2009), *aff'd*, Exchange Act Rel. No. 62178, 2010 SEC LEXIS 1761, at *1 (May 26, 2010), *appeal filed*, No. 10-1195 (D.C. Cir. July 23, 2010). The principal consideration of NASD Rule 2110 is whether the misconduct "reflects on the associated person's ability to comply with the regulatory requirements of the securities business." *Daniel D. Manoff*, 55 S.E.C. 1155, 1162 (2002).

2. Gallagher Circumvented Heightened Supervision

Between 1994 and 2001, while Gallagher was associated with a FINRA firm, he received several customer complaints. Some of the customers filed arbitration claims against Gallagher,

alleging sales practice violations. The arbitration proceedings resulted in more than $1 million in awards or settlements for the customers. Because the customers' complaints involved sales practice violations, several states, including Maryland, New Jersey, and New York, fined, suspended, and/or imposed conditions of heightened supervision on Gallagher.

In 2005 and 2006, Gallagher and Vision Securities signed agreements with New Jersey, New York, and Maryland that detailed heightened supervision requirements as a condition of Gallagher's maintaining his securities licenses in those states. In May 2006, Vision Securities executed an amended membership agreement with FINRA as part of a continuing membership application to expand its business. As a condition of the firm's continued membership, FINRA required that Vision Securities subject Gallagher to heightened supervision. Between December 2006 and October 2007, while serving as the president of Vision Securities, Gallagher circumvented the heightened supervision requirements that Maryland, New Jersey, New York, and FINRA imposed on him.[18]

Maryland, New Jersey, and New York, for example, each prohibited Gallagher from acting in any supervisory capacity. As detailed above, however, Gallagher actively managed and supervised Vision Securities' operations and employees. Gallagher's agreement with New York also banned him from acting in any training or recruiting capacity, yet Gallagher recruited and hired several of Vision Securities' key personnel, including the firm's two compliance officers, FINOP, and two successor presidents.

Gallagher's agreement with New Jersey required that Gallagher provide written notice of any change in supervision and obtain prior approval of any new supervisor. Gallagher's supervisors changed twice during the relevant period, in December 2006 and June 2007. Although Gallagher provided New Jersey with written notice of the first supervisor, he did not provide any notice of the second supervisor and failed to obtain New Jersey's prior approval for either supervisory change.

New Jersey and New York also each required that Gallagher disclose any arbitration claim, regulatory action, or investigation initiated against him. In July 2007, FINRA initiated a regulatory action against Gallagher for failing to pay an arbitration award. The disciplinary proceedings resulted in the suspension of Gallagher's registration until he paid the award.[19] Gallagher did not provide New Jersey or New York with notice of the regulatory action.

Finally, New Jersey, New York, and FINRA each required that Gallagher, in addition to his general reporting requirements under FINRA's rules, document and report any customer complaint made against him. In August 2007, Gallagher received a customer complaint. He did not report the complaint.[20]

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[18] The heightened supervision restrictions, which are at issue in this case, were in effect during the entire period that Gallagher served as Vision Securities' president.

[19] Gallagher paid the arbitration award, and FINRA lifted the suspension on July 24, 2007.

[20] On August 25, 2007, Gallagher's and Vision Securities' customer, FD, exchanged several emails with Gallagher regarding Gallagher's alleged unauthorized use of margin in FD's account. FD wrote, "[y]ou repeatedly did what you wanted and never got authorization from me.

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The record establishes that Gallagher circumvented the heightened supervision requirements that Maryland, New Jersey, New York, and FINRA imposed on him. In doing so, Gallagher acted unethically and violated NASD Rule 2110.

E. Gallagher Failed to Adopt a Supervisory Control System and Conduct an Annual Certification of the Supervisory Control System

The Hearing Panel found that Gallagher violated NASD Rules 3012, 3013, and 2110 because he failed to adopt a supervisory control system for Vision Securities and failed to conduct an annual certification of the supervisory control system.[21] We affirm.

1. NASD Rules 3012 and 3013

NASD Rule 3012(a)(1)(A) requires that each FINRA firm designate one or more principals to establish, maintain, and enforce a written system of supervisory control policies and procedures to test and verify that the firm's supervisory procedures are reasonably designed to comply with the applicable securities laws and regulations.

NASD Rule 3012(a)(l)(B) requires that the firm's designated principal(s) "submit to the member's senior management no less than annually, a report detailing each member's system of supervisory controls, the summary of the test results and significant identified exceptions, and any additional or amended supervisory procedures created in response to the test results."

NASD Rule 3012(a)(2) requires that FINRA firms develop supervisory procedures designed to avoid conflicts of interest on the part of managers, producing managers, and supervisors. NASD Rule 3012(a)(2)(A), for example, requires that firms develop procedures that are reasonably designed to review and supervise customer account activity conducted by the firm's branch office managers, sales managers, regional or district sales managers, or any other person performing a similar supervisory function, including producing managers. NASD Rule 3012(a)(2)(C) compliments this system of supervision by requiring that firms develop procedures to provide heightened supervision of the activities of each producing manager who is responsible for generating 20 percent or more of the revenue of the business units supervised by the producing manager's supervisor.[22]

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I have letter after letter telling you I did not want margin." During his on-the-record testimony, Gallagher stated that he did not report the customer complaint because he "considered those [emails] to be written correspondence by a lunatic."

[21] Gallagher's violation of NASD Rules 3012 and 3013 constitute a violation of NASD Rule 2110. *See Kresge*, 2007 SEC LEXIS 1407, at *42.

[22] For the purposes of NASD Rule 3012(a)(2)(C), the term "heightened supervision" shall mean "those supervisory procedures that evidence supervisory activities that are designed to avoid conflicts of interest that serve to undermine complete and effective supervision because of the economic, commercial, or financial interests that the supervisor holds in the associated persons and businesses being supervised."

Finally, NASD Rule 3013(b) requires that each FINRA firm have its chief executive officer or equivalent officer certify annually that the firm has in place processes to establish, maintain, review, test, and modify written compliance policies and supervisory procedures. Compliance with NASD Rules 3012 and 3013 is imperative to a FINRA firm's securities business because the rules provide an important and overarching regulatory scheme to prevent operational and sales practice abuses that can stem from ineffective supervisory controls. *See Reichman*, 2011 FINRA Discip. LEXIS 18, at *18 n.9; *see also NASD Notice to Members 04-71* (Oct. 2004).

2. Vision Securities' Supervisory Control System

In July 2008, a FINRA examiner issued requests for information and documents to Gallagher and Vision Securities to follow-up on the findings made during the routine compliance examination that began in January 2008. Gallagher responded to the requests on behalf of himself and Vision Securities. In the response, Gallagher acknowledged that he was Vision Securities' president during the relevant period, and that the firm: (1) failed to establish, maintain, and enforce written supervisory control policies and procedures, as required under NASD Rule 3012(a)(1)(A), (2) failed to designate and identify a principal to establish, maintain, and enforce the system of supervisory control policies and procedures, as required under NASD Rule 3012(a)(1)(B), and (3) failed to certify annually that it had processes in place to establish, maintain, review, test, and modify the firm's compliance and supervisory policies and procedures, as required under NASD Rule 3013(b).[23] The record also supports that Vision Securities did not have any policies or procedures in place to monitor, review, or supervise the firm's managers, producing managers, or supervisors, as required under NASD Rules 3012(a)(2)(A) and 3012(a)(2)(C). The record therefore demonstrates that Vision Securities failed to adopt a supervisory control system, failed to conduct an annual certification of the system, and violated NASD Rules 3012 and 3013. In addition, as the president of Vision Securities during the relevant period, Gallagher was responsible for ensuring that Vision Securities adopted a supervisory control system and conducted an annual certification of the supervisory control system. Gallagher therefore violated and caused Vision Securities to violate NASD Rule 3012 and 3013.[24]

On appeal, Gallagher argues that he did not control or manage Vision Securities, and consequently, that it was not his responsibility to implement Vision Securities' supervisory control system or conduct an annual certification of the firm's system. We disagree. As discussed above, we find that Gallagher controlled and managed Vision Securities. *See supra* Part III.A (Gallagher Acted as an Unregistered Principal). Moreover, we conclude that at the point that Gallagher assumed the title of president of Vision Securities and the accompanying responsibilities associated with the control and management of the firm (even if the assumption of such control and management was improper), he was responsible for Vision Securities' compliance with the federal and state securities laws and FINRA's rules, absent delegation of his

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[23] Gallagher's response to the examiner also noted, "I can assure FINRA that if the restrictions put on my abilities were modified/eliminated, [these] issue[s] would be minimal to mute [*sic*]."

[24] NASD Rule 0115 subjects Gallagher to all rules applicable to FINRA firms.

responsibilities to another individual. *See Notice of Filing of Proposed Rule Change to Adopt Rules Regarding Supervision*, Exchange Act Rel. No. 64736, 2011 SEC LEXIS 2181, at *18-19 (June 23, 2011) (explaining that supervisory responsibilities may be delegated, but supervisor "remains ultimately responsible for the performance of all necessary supervisory reviews"); *see also Midas Secs., LLC*, Exchange Act Rel. No. 66200, 2012 SEC LEXIS 199, at *55 (Jan. 20, 2012) ("We have long held that the president of a brokerage firm is responsible for the firm's compliance with all applicable requirements unless . . . he or she reasonably delegated [that] particular function to another person in the firm . . . .").

Gallagher failed to execute or delegate his regulatory responsibilities for Vision Securities' supervisory control system, and under the circumstances presented, we conclude that it is proper to hold Gallagher responsible for that failure. We accordingly find that Gallagher violated NASD Rules 3012, 3013, and 2110.

F. Bias and Selective Prosecution

Gallagher suggests that the Hearing Officer was biased against him, and that the examiner in FINRA's district office unfairly targeted him for prosecution. Gallagher offers no evidence to substantiate his claims, and the record contains no evidence of bias or selective prosecution.

The record before us does not demonstrate bias on the part of the Hearing Officer. *Cf. Scott Epstein*, Exchange Act Rel. No. 59328, 2009 SEC LEXIS 217, at *62 (Jan. 30, 2009) (finding no evidence of Hearing Panel bias and holding that adverse rulings generally do not demonstrate improper bias), *aff'd*, 416 Fed. Appx. 142 (3d Cir. 2010). Moreover, our de novo review of this matter would cure Hearing Officer prejudice if any had existed. *See Dep't of Enforcement v. Dunbar*, Complaint No. C07050050, 2008 FINRA Discip. LEXIS 18, at *33 (FINRA NAC May 20, 2008) (holding that the NAC's de novo review cures alleged Hearing Panel prejudice).

Finally, we conclude that there is no support for Gallagher's argument that he was the subject of selective prosecution. First, this case results from findings made during a routine cycle examination. Second, Gallagher has proffered no facts to support his claim of selective prosecution. To establish a claim of selective prosecution, the respondent must demonstrate that he was singled out unfairly for prosecution based on improper considerations such as race, religion, or the desire to prevent the exercise of a constitutionally protected right. *See Epstein*, 2009 SEC LEXIS 217, at *53; *Nicholas T. Avello*, 55 S.E.C. 1197, 1209 (2002) (rejecting selective prosecution argument and holding that NASD has wide discretion in deciding against whom to proceed), *aff'd*, 454 F.3d 619 (7th Cir. 2006). Gallagher has made no such showing here.

IV. Sanctions

In the proceedings below, the Hearing Panel imposed separate bars on Gallagher for acting as an unregistered principal, circumventing heightened supervision requirements, and refusing to respond to questions during on-the-record testimony. In light of the bars imposed for these three violations, the Hearing Panel declined to impose additional sanctions for Gallagher's

willful failure to amend his Form U4, failure to adopt a supervisory control system, and failure to conduct an annual certification of the supervisory control system.[25]

On appeal, we affirm the bar for Gallagher's acting as an unregistered principal at Vision Securities, the bar for his refusal to respond to questions during on-the-record testimony, and the bar for his circumvention of heightened supervision requirements. We have decided, however, to bar Gallagher for willfully failing to amend his Form U4, and we fine him $10,000 and suspend him in all capacities for one year for failing to adopt a supervisory control system and failing to conduct an annual certification of the supervisory control system.

A. Gallagher Has an Extensive Disciplinary History

As we turn to the application of FINRA's Sanction Guidelines and the formulation of sanctions for each violation at issue in this case, we begin with a review of Gallagher's extensive regulatory history.[26] Within the past 14 years, Gallagher has amassed eight disciplinary events, involving serious infractions of the federal and state securities laws and FINRA's rules.

1. In April 1998, Gallagher entered into a consent order with the Georgia Securities Commission. The case involved allegations that Gallagher made unsuitable recommendations and material misrepresentations and omissions in connection with purchases and sales of securities in Georgia. As part of the settlement, Gallagher paid a $3,000 fine and agreed to refrain from applying for registration as a securities salesperson in Georgia for three years.

2. In November 1998, Gallagher settled a disciplinary matter with FINRA. Enforcement alleged that Gallagher effected unauthorized trades and made baseless price predictions in connection with the purchase and sale of securities, in violation of the Commission's and FINRA's antifraud rules. Gallagher consented to a censure, $15,000 fine, and six-month suspension in all capacities. The settlement also required that Gallagher requalify as a general securities representative.

3. In December 1999, Gallagher entered into a consent order with the Illinois Securities Department. The case stemmed from allegations that Gallagher made unauthorized trades and baseless price predictions when he purchased and sold securities on behalf of Illinois residents. Illinois fined Gallagher $1,000 and suspended his securities license within the state for

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[25] Although the Hearing Panel did not impose any additional sanctions for these violations, it noted that it would have imposed a $10,000 fine and one-year suspension in all capacities for the willful failure to amend the Form U4 and a $10,000 fine for the failure to adopt a supervisory control system and the failure to conduct an annual certification of the supervisory control system.

[26] *See FINRA Sanction Guidelines* (2011), http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf [hereinafter *Guidelines*]. To assist our formulation of sanctions, we consider the specific Guidelines applicable to each violation, in addition to the General Principles Applicable to All Sanction Determinations and Principal Considerations in Determining Sanctions, which adjudicators consult in every disciplinary case. *See Guidelines*, at 2-7. We apply the applicable Guidelines in place at the time of this decision. *See id.* at 8.

15 months. Gallagher also consented to heightened supervision for an additional six months after the 15-month suspension.

4. In March 2005, Gallagher and Vision Securities settled a disciplinary matter with FINRA related to the firm's failure to maintain adequate net capital. FINRA censured Gallagher and Vision Securities and ordered the parties to pay a $7,500 fine. A portion of the fine, $5,000, was to be paid jointly and severally between Gallagher and Vision Securities.

5. In July 2007, FINRA initiated disciplinary proceedings against Gallagher and suspended him for failing to pay an arbitration award to two former customers.[27] Gallagher paid the arbitration award, and FINRA lifted the suspension on July 24, 2007.

6. In September 2008, as discussed *supra* Part III.C (Gallagher Willfully Failed to Amend His Form U4), the Commission filed a complaint in federal district court against Gallagher and Vision Securities and obtained a judgment totaling $179,718 in disgorgement, interest, and penalties.

7. In February 2010, as discussed *supra* Part III.D (Gallagher Circumvented Heightened Supervision Requirements), the New Jersey Bureau of Securities filed an administrative complaint against Gallagher and Vision Securities for Gallagher's failure to adhere to the heightened supervision requirements that New Jersey had imposed on him. Gallagher and Vision Securities settled the matter in November 2010. In the settlement, Gallagher consented to several findings of fact and conclusions of law, including the fact that Gallagher did not notify New Jersey of Commission and FINRA-related disciplinary events, did not maintain satisfactory review reports, and did not seek or obtain approval for changes in supervision. New Jersey ordered Gallagher to pay a civil monetary penalty of $15,000.

8. In November 2011, Gallagher was indicted in the United States District Court for the Eastern District of New York on charges of securities and wire fraud. The case was related to Gallagher's involvement in Nano Acquisition Group's offering, the offering that Gallagher refused to discuss during his on-the-record testimony with FINRA's examiner in April 2010.[28] The complaint alleged that Gallagher obtained $485,000 from 13 investors for investment in Nano Acquisition Group and converted 90 percent of the funds for his personal use. After a jury trial, Gallagher was found guilty of securities and wire fraud.[29] He is awaiting sentencing.

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[27] The claimants alleged that Gallagher recommended that they sell the holdings in their individual retirement account and purchase the firm's promoted "house stocks." *See Luck v. D.L. Cromwell Invs., Inc.*, Case No. 02-03107, 2003 NASD Arb. LEXIS 717, at *3-4 (May 2, 2003). The claimants asserted causes of action for fraud, negligence, breach of fiduciary duty, and unsuitable recommendations. *See id.*

[28] *See supra* Part III.B (Gallagher Refused to Respond to Questions During On-the-Record Testimony).

[29] The felony criminal conviction for securities and wire fraud subjects Gallagher to statutory disqualification. *See* Section 3(a)(39)(F) of the Securities Exchange Act of 1934; Section 4 of Article III of the FINRA By-Laws.

* * *

Gallagher's disciplinary history presents a significant aggravating factor in our determination of sanctions.[30] It is within the context of Gallagher's disciplinary history that we briefly review each of the violations at issue in this appeal.

B. Gallagher Acted as an Unregistered Principal

The Guidelines for registration violations recommend a fine between $2,500 and $50,000.[31] For individuals, the Guidelines suggest a suspension in any or all capacities for up to six months.[32] In egregious cases, the Guidelines recommend a lengthier suspension of up to two years, or a bar.[33] In assessing sanctions for registration violations, the Guidelines advise adjudicators to consider whether the respondent has filed an application for registration and the nature and extent of the respondent's responsibilities.[34]

For nearly one year, Gallagher acted as an unregistered principal of Vision Securities.[35] In doing so, Gallagher misrepresented himself to the investing public and exposed Vision Securities and its customers to substantial risk.[36] Gallagher interacted with Vision Securities' vendors, entered into contracts on behalf of the firm, and recruited and hired several of the firm's registered representatives, representatives who would manage the assets of the firm's customers. Despite these many troubling facts, the most striking aspect of this violation is that Gallagher assumed control and management of Vision Securities, knowing that Maryland, New Jersey, New York, and FINRA had prohibited him from engaging in such activities.[37]

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30 *See Guidelines*, at 2 (General Principles Applicable to All Sanction Determinations, No. 2) (explaining that disciplinary sanctions should be more severe for recidivists), 6 (Principal Considerations in Determining Sanctions, No. 1) (considering respondent's relevant disciplinary history).

31 *See id.* at 45 (Registration Violations).

32 *Id.*

33 *Id.*

34 *Id.*

35 *See id.* at 6 (Principal Considerations in Determining Sanctions, Nos. 8, 9) (considering whether respondent engaged in pattern of misconduct or engaged in misconduct over extended period of time).

36 *See id.* (Principal Considerations in Determining Sanctions, No. 11) (considering whether respondent's misconduct resulted in direct or indirect harm to the investing public).

37 *See id.* at 7 (Principal Considerations in Determining Sanctions, No. 13) (considering whether respondent's misconduct was result of intentional act).

Gallagher knew that he was required to register as a principal to manage Vision Securities' day-to-day securities business. He attempted to register for the general securities principal qualification examination. Gallagher also knew that he was subject to heightened supervision requirements that prohibited him from acting in a supervisory or principal capacity. Gallagher not only signed the heightened supervision agreements with Maryland, New Jersey, and New York, but FINRA also informed him that the states' agreements prevented him from acting as a principal.[38] Gallagher chose to ignore the restrictions imposed on him. The brazen, contemptuous, and egregious nature of Gallagher's misconduct, coupled with his disciplinary history, requires the imposition of a bar. We therefore bar Gallagher in all capacities for acting as an unregistered principal.

C. Gallagher Refused to Respond to Questions During On-the-Record Testimony

When an associated person does not respond in any manner to a request made pursuant to FINRA Rule 8210, the Guidelines state that a bar should be standard.[39] A partial, but incomplete, response to FINRA's request for information, documents, or testimony presents the functional equivalent of a failure to respond in any manner because individuals have selectively kept certain information from FINRA. Under such circumstances, the Guidelines state that "a bar is standard unless the person can demonstrate that the information provided substantially complied with all aspects of the request."[40]

The Guidelines advise adjudicators to consider several factors to determine the appropriate sanctions for a violation of FINRA Rule 8210, including the importance of the information requested that was not provided as viewed from FINRA's perspective, whether the information that was provided was relevant and responsive to the request, the number of requests made, the time the respondent took to respond, the degree of regulatory pressure required to obtain a response, and whether the respondent thoroughly explained valid reasons for the deficiencies in the response.[41]

Because Gallagher appeared for testimony on the scheduled dates and responded to questions concerning matters other than Nano Acquisition Group, we apply the Guidelines for a partial, but incomplete, response and analyze the record to determine whether Gallagher substantially complied with all aspects of FINRA's requests.[42] He did not.

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38 *See id.* (Principal Considerations in Determining Sanctions, No. 15) (considering whether respondent engaged in misconduct notwithstanding prior warnings from FINRA).

39 *See id.* at 33 (Requests Made Pursuant to FINRA Rule 8210).

40 *Id.* The Guidelines also recommend a fine of $10,000 to $50,000. *Id.*

41 *Id.*

42 We distinguish this case from precedent, which relied on prior editions of the Guidelines and presumed that an associated person was unfit for employment in the securities industry when the person failed to respond in any manner to FINRA's requests. *See, e.g., Kent M. Houston*, Exchange Act Rel. No. 66014, 2011 SEC LEXIS 4491, at *24-26 (Dec. 20, 2011); *Paz Secs.*,

[Footnote continued on next page]

In this case, FINRA's district office had concerns about Vision Securities' net capital compliance, after the Commission obtained a $179,718 judgment against Gallagher and the firm. Consequently, an examiner in the district office explained that the firm should cease operations until the firm could verify its net capital compliance. The examiner, however, learned that Nano Acquisition Group was operating from Vision Securities' offices and had initiated an offering of securities marketed to Vision Securities' current customers. In response to this information, the examiner reasonably sought information from Gallagher to determine whether Vision Securities and Nano Acquisition Group were related entities, whether Vision Securities was operating without sufficient net capital, and whether Gallagher was participating in undisclosed private securities transactions. This was not a minor informative inquiry. Rather, the examiner sought information, implicating several serious infractions of the securities laws and FINRA's rules.

In the face of such disconcerting events, Gallagher appeared for on-the-record testimony and completely stonewalled the examiner concerning these areas of inquiry. He stubbornly refused to respond to questions concerning Nano Acquisition Group, even after the examiner advised him that his failure to respond violated FINRA's rules. Gallagher's utter lack of cooperation necessitated a continuance of the on-the-record testimony, where, once again, he refused to respond to any questions concerning Nano Acquisition Group and gave FINRA no information whatsoever concerning these matters. Under these circumstances, we conclude that a bar is appropriate for Gallagher's failure to provide FINRA with any information concerning Nano Acquisition Group.

D. Gallagher Willfully Failed to Amend His Form U4

The Guidelines for failing to file amendments to Forms U4 suggest a fine of $2,500 to $50,000 and a suspension in any or all capacities for five to 30 business days.[43] In egregious cases, such as those involving repeated failures to file, untimely filings or false, inaccurate, or misleading filings, those involving the failure to disclose or timely disclose a statutory disqualification event or customer complaint, or where the failure to disclose or timely disclose delayed the regulatory investigation of terminations for cause, the Guidelines recommend a suspension in any or all capacities for up to two years, or a bar.[44] The principal considerations for determining sanctions for this violation include the nature and significance of the information at issue, whether the failure resulted in a statutorily disqualified individual becoming or remaining associated with a firm, and whether the misconduct resulted in harm to a registered person, another member firm, or any other person or entity.[45]

[cont'd]

2008 SEC LEXIS 820, at *10 (explaining that complete failure to respond renders violator presumptively unfit for employment in securities industry). We apply no such presumption here.

43 *See id.* at 69-70 (Forms U4/U5 – Failing to File Forms or Amendments).

44 *See id.* at 70.

45 *See id.* at 69.

We consider the significance of the Commission's complaint and judgment against Gallagher and conclude that they were important and concerned misconduct of a highly serious nature. The Commission initiated civil administrative proceedings against Gallagher in federal district court, alleging that he permitted an individual associated with Vision Securities to act as an unregistered broker-dealer with respect to three offerings of securities. The allegations of the complaint and the findings of the judgment, which involve significant violations of the federal securities laws, call into question Gallagher's fitness for employment in the securities industry.

We also reflect on the intentional nature of the misconduct.[46] Gallagher's extensive regulatory history implies a familiarity with the disclosure of disciplinary events and suggests that his failure to disclose the Commission's complaint and judgment in this instance was not mere administrative oversight. Finally, we consider Gallagher's persistent failure to acknowledge his role in the misconduct.[47] Throughout these proceedings, Gallagher has refused to accept responsibility for his actions. He continues to blame Vision Securities' former president and compliance personnel for his failure to amend the Form U4. Gallagher's own on-the-record testimony demonstrates the frivolity with which he approaches his compliance and disclosure obligations.[48]

Gallagher's misconduct was egregious, and we conclude that a bar in all capacities will best serve to protect the investing public and deter others from engaging in the troubling conduct at issue here.[49]

E. Gallagher Circumvented Heightened Supervision Requirements

The Guidelines do not contain a specific guideline for an associated person's failure to adhere to heightened supervision requirements. The Hearing Panel, however, consulted the guideline for member agreement violations.[50] The Hearing Panel explained that, when Gallagher circumvented the heightened supervision requirements, he caused Vision Securities to breach certain undertakings contained in the firm's membership agreement with FINRA. We find that

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[46] *See id.* at 7 (Principal Considerations in Determining Sanctions, No. 13) (considering whether respondent's misconduct was result of intentional act).

[47] *See id.* at 6 (Principal Considerations in Determining Sanctions, No. 2) (considering whether respondent accepted responsibility for or acknowledged misconduct).

[48] During his on-the-record testimony, Gallagher stated that he was not focused on updating his Form U4 because "things [at Vision Securities] have been a little – you know, a little busy."

[49] *See McCarthy v. SEC*, 406 F.3d 179, 188-89 (2d Cir. 2005) ("Our foremost consideration must therefore be whether McCarthy's sanction protects the trading public from further harm. We also note that deterrence has sometimes been relied upon as an additional rationale for the imposition of sanctions.").

[50] *See id.* at 44 (Member Agreement Violations).

the guideline for member agreement violations is helpful and analogous, and we consult that guideline to assist our determination of sanctions here.[51]

The guideline for member agreement violations recommends a fine between $2,500 and $50,000.[52] In cases involving a serious breach of a member agreement, the Guidelines propose a suspension of the responsible individual in any or all capacities for up to two years.[53] In egregious cases, the Guidelines suggest barring the responsible individual.[54] The Guidelines advise adjudicators to consider whether the respondent breached a material provision of the agreement and whether the respondent breached a provision of the agreement that contained a restriction that was particular to the firm.[55]

As we review the evidence of aggravating circumstances related to this violation, we consider the affirmative steps that Gallagher implemented to circumvent the heightened supervision requirements and avoid supervision.[56] We note, as an initial matter, that Gallagher wielded such control over Vision Securities and its operations that he was able to position himself to recruit and hire his proposed supervisors, WM and MN. We also find that, after hiring these individuals, Gallagher did nothing to inform them of their responsibilities under the heightened supervision agreements. He did not even provide them with copies of the agreements, so they could determine their own compliance obligations with regard to his heightened supervision.[57]

We also consider the events that gave rise to the heightened supervision requirements in the first instance, Gallagher's prior misconduct. Maryland, New Jersey, New York, and FINRA required Gallagher to adhere to certain conditions because they were concerned with Gallagher's mounting customer complaints and disciplinary events. Gallagher not only failed to satisfy those

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51 *See id.* at 1 (Overview) (encouraging adjudicators to look to analogous Guidelines to determine sanctions for violations that Guidelines do not address specifically); *see also Saad*, 2010 SEC LEXIS 1761, at *23-24 (endorsing NAC's reliance on analogous Guidelines).

52 *See Guidelines*, at 44.

53 *See id.*

54 *See id.*

55 *See id.*

56 *See id.* at 6 (Principal Considerations in Determining Sanctions, No. 10) (considering whether respondent attempted to conceal misconduct).

57 WM and MN each provided on-the-record testimony in conjunction with this matter. WM also testified at the hearing. WM testified that he learned that Gallagher was subject to heightened supervision when he stumbled onto the agreements among the office files and asked another individual in the office about it. MN testified that Gallagher told him that he was under heightened supervision, but did not provide him with any documentation concerning the supervision plan. MN stated that he located the agreements four months into his tenure, when he began searching for the documents among Vision Securities' files.

conditions, he circumvented them and instead received minimal oversight of his activities at Vision Securities. Consequently, we consider the prospect of Gallagher's future compliance with the federal and state securities laws and FINRA's rules to be low.[58] We therefore bar Gallagher in all capacities for his circumvention of heightened supervision requirements.

F. Gallagher Failed to Adopt a Supervisory Control System and Conduct an Annual Certification of the Supervisory Control System

Although there is no specific guideline related to violations of NASD Rules 3012 and 3013, we, like the Hearing Panel, conclude that the guideline concerning deficient written supervisory procedures under NASD Rule 3010(b) is sufficiently analogous to facilitate our determination of sanctions for this cause of action.[59]

The guideline for violations of NASD Rule 3010(b) recommends a fine of $1,000 to $25,000. In egregious cases, the guideline recommends suspending the responsible individual in any or all capacities for up to one year. When determining sanctions for this violation, the Guidelines counsels adjudicators to evaluate whether the deficiencies allowed violative conduct to occur or to escape detection, or made it difficult to determine the individual or individuals responsible for specific areas of supervision or compliance.

As we consider the appropriate sanctions for this violation, we note that this is not a case involving an inadequate or deficient supervisory control system. Rather, during Gallagher's tenure, the firm had no supervisory control system in place at all. During his on-the-record testimony, Gallagher acknowledged that he did not know what NASD Rules 3012 and 3013 required, dismissively shirked his responsibilities for compliance with the rules, and attempted to shift blame for Vision Securities' lack of a supervisory control system to other principals at the firm.[60] When confronted with such an egregious lack of a supervisory system and an abounding refusal to comply with basic regulatory requirements, we conclude that sanctions at the high end of the Guidelines are appropriate. We therefore fine Gallagher $10,000 and suspend him in all capacities for one year for failing to adopt a supervisory control system and failing to conduct an annual certification of the supervisory control system.[61]

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[58] *See id.* at 2 (General Principles Applicable to All Sanction Determinations, No. 1) (disciplinary sanctions should be designed to deter future misconduct and improve overall business standards in securities industry).

[59] *See id.* at 1 (recommending use of analogous Guidelines), 106 (Supervisory Procedures – Deficient Written Supervisory Procedures); *see also Saad*, 2010 SEC LEXIS 1761, at *23-24 (endorsing use of analogous Guidelines).

[60] Gallagher's purported lack of knowledge about the requirements of NASD Rules 3012 and 3013 is not mitigating. Registered representatives are required to know and abide by FINRA's rules. *See Gilbert M. Hair*, 51 S.E.C. 374, 378 n.12 (1993) (rejecting respondent's ignorance of FINRA's rules as basis of mitigation); *see also Mathis*, 2008 FINRA Discip. LEXIS 49, at *1 (rejecting blame-shifting arguments).

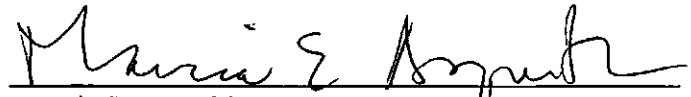
[61] We decline to impose the fine and suspension for this cause of action in light of the bars we have assessed in the other four causes.

V. Conclusion

We affirm the Hearing Panel's findings that Gallagher: (1) acted as an unregistered principal, in violation of NASD Rules 1021(a) and 2110, (2) circumvented heightened supervision requirements, in violation of NASD Rule 2110, (3) refused to respond to questions during on-the-record testimony, in violation of FINRA Rules 8210 and 2010, (4) willfully failed to amend his Form U4, in violation of NASD Rule 2110 and FINRA Rule 2010, and (5) failed to adopt a supervisory control system and conduct an annual certification of the supervisory control system, in violation of NASD Rules 3012, 3013, and 2110.

We affirm the bar that the Hearing Panel imposed for Gallagher's acting as an unregistered principal, the bar imposed for his refusal to respond to questions during on-the-record testimony, and the bar imposed for his circumventing of heightened supervision requirements. We bar Gallagher for willfully failing to amend his Form U4. We also fine Gallagher $10,000 and suspend him in all capacities for one year for failing to adopt a supervisory control system and failing to conduct an annual certification of the supervisory control system. We, however, do not impose this fine or suspension in light of the bars we already have imposed. Finally, we affirm the Hearing Panel's order that Gallagher pay, jointly and severally with Vision Securities, hearing costs of $4,137.00, and we impose on Gallagher appeal costs of $1,468.25.[62] We have considered and reject without discussion all other arguments of the parties.

On behalf of the National Adjudicatory Council,



Marcia E. Asquith,
Senior Vice President and Corporate Secretary

[62] The bars are effective as of the date of this decision. Pursuant to FINRA Rule 8320, the registration of any person associated with a member who fails to pay any fine, costs or other monetary sanction, after seven days' notice in writing, will summarily be revoked for non-payment.