SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 77503 / April 1, 2016

Admin. Proc. File No. 3-16948

In the Matter of the Application of

RANI T. JARKAS
c/o Robert J. Stumpf, Jr.
Sheppard Mullin Richter & Hampton LLP
4 Embarcadero Center, 17th Floor
San Francisco, CA 94111

For Review of Disciplinary Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF DISCIPLINARY PROCEEDINGS

Failure to appear for testimony

Insufficient net capital

Failure to file application for approval of material change in business operations

Associated person of member firm failed to appear for on-the-record testimony, allowed his firm to conduct a securities business with insufficient net capital, and failed to file an application for approval of a material change in business operations. *Held*, association's findings of violation and imposition of sanctions are sustained.

APPEARANCES:

Robert J. Stumpf, Jr., Esq., of Sheppard Mullin Richter & Hampton LLP, for Rani T. Jarkas.

Alan Lawhead, Esq., *Andrew Love, Esq.*, and *Gary Dernelle, Esq.*, for FINRA.

Appeal filed: November 9, 2015
Last brief received: February 17, 2016

Rani T. Jarkas ("Jarkas") has appealed a decision by FINRA's National Adjudicatory Council ("NAC") finding that he failed to appear for on-the-record testimony ("OTR") on two occasions in violation of FINRA Rules 8210 and 2010; allowed Global Crown Capital, LLC ("Global Crown" or the "Firm"), a member firm that he owned and controlled, to conduct a securities business without maintaining sufficient net capital in violation of NASD Rule 2110 and FINRA Rule 2010; and failed to file an application with FINRA for approval of a material change to Global Crown's business operations in violation of NASD Rules 1017 and 2110.[1] FINRA barred Jarkas for the first violation. For the latter two violations, FINRA assessed sanctions but did not to impose them in light of the bar for the first violation.[2] FINRA also ordered that Jarkas pay his proportionate share of hearing costs totaling $5,436.14 and $1,542.02 in appeal costs.[3]

Jarkas generally contends that he was not required to attend the OTRs and was not responsible for the Firm's compliance with the net capital rule. We reject Jarkas's contentions and, based upon our independent review of the record, sustain FINRA's findings of violation, with one exception, and the sanctions imposed.[4]

I. Facts

A. Jarkas and Global Crown

In 2002, Jarkas founded Global Crown, a registered broker-dealer and investment adviser, with co-owners who did not participate in the Firm's business. Jarkas served as Global Crown's CEO and was registered with the Firm as a general securities principal. He managed the Firm and oversaw its finances, bill payments, and outside accountant. Jarkas was also the broker of record for certain institutional accounts and a small number of retail accounts.

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1 The NASD and FINRA conduct rules that apply in this case are those that existed at the time of the conduct at issue, *i.e.*, 2008 through 2009. NASD Rule 2110 and FINRA Rule 2010 both require that member firms and their associated persons "observe high standards of commercial honor and just and equitable principles of trade."

2 FINRA assessed a two-year suspension and $50,000 fine for allowing the Firm to violate the net capital rule, and a 30 business-day suspension and $5,000 fine for failing to file an application for approval of a material change in business operations.

3 Global Crown was not a party to the disciplinary action. FINRA suspended Global Crown in September 2009 for failing to: file its year-end 2008 audit report; file accurate FOCUS reports for the third and fourth quarters of 2008 and first quarter of 2009; comply with an arbitration award or settlement agreement; and comply with FINRA requests for information. FINRA expelled Global Crown from membership six months later. Global Crown also voluntarily withdrew its FINRA registration in September 2009.

4 FINRA's Department of Enforcement did not allege or establish a net capital violation on one of the seven days for which FINRA found a violation, so we do not sustain FINRA's finding as to that specific day. We sustain the FINRA's findings of violation as to the other six days. *See infra* note 10.

On June 9, 2003, Jarkas signed Global Crown's membership agreement with FINRA's predecessor, the NASD, undertaking to operate the Firm as an introducing broker-dealer with a minimum net capital of $50,000.

B. Global Crown's Proprietary Trading Activity

Global Crown was not approved under the membership agreement, or any time thereafter by the NASD or FINRA, to conduct proprietary trading, which requires a minimum net capital of $100,000 under Rule 15c3-1(a)(2)(iii) of the Securities Exchange Act of 1934 ("Exchange Act"). Jarkas does not dispute that as the Firm's CEO, he was responsible for filing an application under NASD Rule 1017 for approval to engage in activities, such as proprietary trading, that increased the Firm's net capital requirement.

Yet without having filed such an application, Jarkas engaged in proprietary trading from August through September 2008, by opening and holding 30 securities positions in the Firm's average price account for multiple business days without allocating them to customer accounts.[5] Jarkas eventually liquidated some of the positions for a profit or loss to the Firm and allocated the remaining positions to customer accounts.[6]

As a result of Jarkas's proprietary trading, the Firm's minimum net capital requirement increased from $50,000 to $100,000.[7] The Firm did not meet that requirement on the following four days in 2008 on which it conducted a securities business (*i.e.*, effected securities transactions): (1) on August 27, it had negative $86,606.97 net capital; (2) on August 29, it had $93,097.89 net capital; (3) on September 29, it had negative $63,892.08 net capital; and (4) on

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[5] The Firm used the average price account to open securities positions for customers during the trading day, and then allocate those positions to customers' accounts by the end of the day, thereby leaving the account flat. The average price account was designed solely to benefit Global Crown customers by facilitating customer transactions at reduced commissions and fees. The Firm's supervisory procedures required its brokers, including Jarkas, to identify a customer for each order prior to execution. Jarkas did not comply with that requirement for the 30 trades at issue.

[6] Jarkas does not dispute any of the details about his 30 trades; he contends only that they should not be deemed proprietary. We find that Jarkas's 30 trades were, in fact, proprietary for the reasons discussed below.

[7] Exchange Act Rule 15c3-1(a)(2)(iii), 17 C.F.R. § 240.15c3-1(a)(2)(iii) (A broker-dealer must "maintain net capital of not less than $100,000" if it "effects more than ten transactions in any one calendar year for its own investment account."); *William K. Cantrell*, Exchange Act Release No. 38570, 1997 SEC LEXIS 990, at *1-2, 12-13 (May 5, 1997) (finding that a broker-dealer that engaged in unauthorized proprietary trading automatically increased its minimum net capital requirement from $5,000 to $100,000).

September 30, it had negative $290,192.03 net capital.[8] Jarkas does not dispute these net capital positions or that his Firm effected securities transactions on these days.

C. FINRA's FINOP Examination of Global Crown

In April 2009, while concluding its 2008 routine examination of the Firm, FINRA staff received a Notice of Levy from the Internal Revenue Service ("IRS") against Global Crown, stating that the Firm owed $244,246.07 for its failure to pay payroll taxes for the quarters ended June and September 2008. FINRA staff commenced a special Financial and Operations Principal ("FINOP") examination to determine the impact of the levy on the Firm's net capital position. As part of that examination, FINRA staff reviewed the Firm's FOCUS filings for the quarters ending December 31, 2008, and March 31, 2009, and discovered that Global Crown had not recorded its payroll taxes as a liability in its books and records and its corresponding IRS levy in its net capital computations.

On April 27, 2009, FINRA staff faxed and mailed Global Crown a letter stating that the Firm "does not appear to be in compliance with the Net Capital Rule" based on the IRS Notice and the Firm's most recent FOCUS filing. The letter warned Global Crown that a "firm out of compliance with the Net Capital Rule is required by the terms of the rule to immediately cease conducting a securities business."

That same day, FINRA staff also called Jarkas, who told the staff that he was unaware of the IRS tax lien and that the Firm would receive a capital contribution within a day to address the net capital deficiency. On April 28, 2009, Global Crown received a wire transfer of $249,980 from Jarkas's silent partner and provided documentation of the transfer and a new net capital calculation to FINRA staff.

FINRA staff then sent Global Crown a series of FINRA Rule 8210 requests for documents and information that would allow the staff to determine the accuracy of Global Crown's net capital computation, including whether the Firm had any unbooked liabilities for amounts owed to the IRS for periods after the second and third quarters of 2008. The staff sent the first request on April 28. In response, Global Crown provided some but not all of the documents requested, and refused to provide the silent partner's bank statements.

Global Crown blocked FINRA staff from continuing their onsite examination on May 1, 2009. The Firm informed the staff that it would only provide records if FINRA first withdrew its April 27 letter advising the Firm that it did not appear to be in compliance with the net capital rule. Despite receiving five subsequent Rule 8210 requests from FINRA, Global Crown provided very little further information.[9]

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[8] In calculating the Firm's net capital for September 30, 2008, FINRA staff included an IRS payroll tax liability owed for the tax period ending September 30, 2008, that the Firm had not included in its net capital calculation. That tax liability is discussed further below.

[9] The only documents that the Firm provided were an invoice in response to one of ten requests in FINRA's Rule 8210 letter to the Firm dated May 5, and documentation concerning

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Based on the available records, FINRA staff calculated Global Crown's net capital and found deficiencies on the following two days in 2009 on which the Firm conducted a securities business: (1) on March 31, net capital of negative $358,775.31; and (2) on April 27, net capital of negative $360,704.02.[10] FINRA staff included the IRS tax lien discussed above in both calculations, and two additional IRS tax liens that it had discovered in the latter calculation.[11] Jarkas does not dispute these net capital calculations or that his Firm effected securities transactions on these days. FINRA staff determined that the Firm did not effect securities transactions on April 28.

D. Jarkas's Failure to Appear for On-the-Record Testimony

On October 21, 2009, FINRA staff sent Jarkas a FINRA Rule 8210 request that he appear for an OTR at FINRA's San Francisco office on November 11, 2009. The request stated that Jarkas was "obligated to appear" for the OTR, and that if he was unavailable on November 11, he must notify FINRA staff "to agree on another mutually acceptable date and time." The request warned Jarkas that "[u]nless and until a postponement is agreed to," he is "still obligated to appear" on November 11, and that if he failed to appear "he may be subject to an FINRA disciplinary action and the imposition of sanctions." It is undisputed that Jarkas did not appear for the OTR on November 11, and that he and FINRA did not agree on a mutually acceptable alternative date for the OTR.

On November 12, 2009, FINRA staff sent Jarkas a second Rule 8210 request that he appear for an OTR at FINRA's San Francisco office on November 30, 2009. The request provided the same warnings and instructions as the first Rule 8210 request. It is again undisputed that Jarkas did not appear for the OTR on November 30, and that he and FINRA did not agree on an alternative date. The FINRA disciplinary action followed.

II. Analysis

A. Standard of Review

We base our findings on an independent review of the record and apply the preponderance of the evidence standard for self-regulatory organization ("SRO") disciplinary actions.[12] Under Exchange Act Section 19(e)(1), in reviewing an SRO disciplinary action, we

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(*. . . continued*)
the Firm's pension fee account in response to one of fourteen requests in FINRA's Rule 8210 letter dated May 12.

[10] FINRA found that Global Crown also had a net capital deficiency on April 28, 2009, but FINRA's Department of Enforcement alleged that Jarkas caused the Firm to conduct a securities business without maintaining sufficient net capital on only the six dates discussed above (August 27 and 29, 2008, September 29 and 30, 2008, March 31, 2009, and April 27, 2009).

[11] The two additional liens that FINRA discovered totaled $226,821.37.

[12] *See Gregory Evan Goldstein*, Exchange Act Release No. 71970, 2014 SEC LEXIS 1350, at *11 (Apr. 17, 2014).

determine whether the aggrieved person engaged in the conduct found by the SRO, whether such conduct violates the relevant SRO rules, and whether such SRO rules are, and were applied in a manner, consistent with the purposes of the Exchange Act.[13]

B. Jarkas engaged in the conduct found by FINRA.

We find that Jarkas engaged in the conduct found by FINRA, with one exception noted below. The preponderance of evidence supports FINRA's finding that Jarkas engaged in proprietary trading in August and September 2008 without seeking prior approval from FINRA. The record demonstrates, and Jarkas does not dispute, that he opened and held 30 securities positions in Global Crown's average price account for multiple business days in August and September 2008 without allocating those positions to customer accounts. By making those proprietary trades, Jarkas caused the Firm's minimum net capital requirement to increase to $100,000. Jarkas, however, did not file an NASD Rule 1017 application with FINRA seeking approval for the Firm to conduct proprietary trading. Jarkas does not dispute that, as Global Crown's CEO, he was responsible for filing that application with FINRA; he did not delegate that responsibility to anyone else at the Firm.

We also sustain FINRA's finding that Jarkas was responsible for Global Crown's operation of a securities business on six days in 2008 and 2009 on which it had less than the minimum required net capital, and that Jarkas's proprietary trading caused the Firm's minimum net capital requirement to increase in 2008 to $100,000. Because Jarkas oversaw the Firm's finances and made the proprietary trades, he knew or should have known that the Firm's minimum net capital requirement had increased and that the Firm did not meet that requirement on (1) August 27, 2008, when it had negative $86,606.97 net capital; (2) August 29, 2008, when it had $93,097.89 net capital; (3) September 29, 2008, when it had negative $63,892.08 net capital; and (4) September 30, 2008, when it had negative $290,192.03 net capital. The record supports, and Jarkas does not dispute, these net capital positions and that Global Crown conducted a securities business on these days.

Jarkas also caused the Firm's failure to pay its payroll taxes for the last three quarters of 2008 and first quarter of 2009. Jarkas oversaw the Firm's bill payment (including payments to the IRS) and decided in 2008 to terminate the Firm's payroll company and instead have the Firm handle payroll processing internally. Because Jarkas oversaw the Firm's finances, he knew or should have known that the Firm did not include its tax liability in its net capital calculations, and that the Firm had negative $358,775.31 net capital on March 31, 2009, and negative $360,704.02 net capital on April 27, 2009. The record supports, and Jarkas does not dispute, these net capital positions and that Global Crown conducted a securities business on these days.[14]

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[13] 15 U.S.C. § 78s(e)(1).

[14] We do not sustain FINRA's finding that Global Crown conducted a securities business on April 28, 2009. The preponderance of the evidence in the record does not demonstrate that Global Crown effected any securities transactions on that day.

Finally, we sustain FINRA's findings that Jarkas failed to appear for two OTRs. As described above, the evidence in the record supports FINRA's findings that Jarkas neither appeared for his OTRs on the two dates that FINRA requested—November 11 and 30, 2009—nor did he and FINRA agree on a mutually acceptable alternative date for the OTRs.

C. Jarkas's conduct violated the FINRA and NASD Rules as found by FINRA.

We sustain all three of FINRA's findings of violation. We find that Jarkas violated NASD Rule 2110 and FINRA Rule 2010 by allowing his Firm to conduct a securities business without maintaining sufficient net capital; NASD Rules 1017 and 2110 by allowing his Firm to materially change its business operations without filing an application for approval; and FINRA Rules 8210 and 2010 by failing to appear for two scheduled OTRs.

1. Jarkas violated NASD Rule 2110 and FINRA Rule 2010 by allowing Global Crown to conduct a securities business without maintaining sufficient net capital.

NASD Rule 2110 and FINRA Rule 2010 require that member firms and their associated persons "observe high standards of commercial honor and just and equitable principles of trade."[15] An associated person violates those rules if, among other things, he is responsible for his firm's violation of Exchange Act Rule 15c3-1, known as the "net capital rule."[16]

Under Exchange Act Rule 15c3-1(a)(2)(iii), a broker-dealer must "maintain net capital of not less than $100,000" if it "effects more than ten transactions in any one calendar year for its own investment account."[17] A broker-dealer effects a transaction for its own account when it holds transactions for multiple business days without allocating them to customer accounts, thus absorbing the market risk from the transactions; or liquidates positions instead of allocating them to customer accounts, resulting in a profit or loss to the firm.[18] We find that Global Crown

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[15] FINRA Rule 2010 ("A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."); FINRA Rule 140(a) ("Persons associated with a member shall have the same duties and obligations as a member under the Rules."). NASD Rules 2110 and 115(a) set forth the same respective provisions as FINRA Rules 2010 and 140(a).

[16] *Fox & Co. Invs., Inc.*, Exchange Act Release No. 52697, 2005 SEC LEXIS 2822, at *28-29 (Oct. 28, 2005) (finding that firm's president violated NASD Rule 2110 because he permitted his firm to conduct a securities business without sufficient net capital); *Paul Joseph Benz*, Exchange Act Release No. 51046, 2005 SEC LEXIS 116, at *10 (Jan. 14, 2005) (finding that firm's president violated NASD Rule 2110 because he was responsible for his firm's violation of the net capital rule). The net capital rule was promulgated under Exchange Act Section 15(c)(3), 15 U.S.C. § 78*o*(c)(3), which prohibits broker-dealers from effecting any securities transactions in contravention of Commission rules providing financial responsibility safeguards.

[17] 17 C.F.R. § 240.15c3-1(a)(2)(iii).

[18] *See, e.g., Cantrell*, 1997 SEC LEXIS 990, at *4-10 (finding that a firm traded for its own investment account when it held trades in its "error account" for multiple days after they had

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effected the 30 transactions discussed above for its "own investment account" because it held all of the transactions for multiple business days without allocating them to customer accounts and liquidated some of those transactions at a profit or loss to the Firm. Global Crown, therefore, violated the net capital rule by conducting a securities business with less than $100,000 net capital on four days in 2008: August 27 and 29, and September 29 and 30.

Jarkas was responsible for these net capital violations. He placed the 30 trades that increased the Firm's net capital requirements. Because he was responsible for the Firm's finances, he knew or should have known that his trading increased the Firm's net capital requirement to $100,000, and that the Firm did not meet that requirement on those four days in August and September 2008.[19] Violations of the net capital rule do not require a finding of scienter.[20]

Second, Global Crown violated Rule 15c3-1 when it conducted a securities business with negative net capital on March 31 and April 27, 2009. These violations resulted largely from the Firm's failure to pay its payroll taxes for the last three quarters of 2008 and first quarter of 2009. Jarkas, who oversaw the Firm's finances and bill payment, decided to terminate the Firm's payroll company in 2008, and instead have the Firm handle payroll processing, including the deposit of payroll tax deduction with the IRS. Jarkas therefore knew or should have known about the Firm's failure to deposit the payroll tax deduction and account for that error in its net capital calculation. As a result, Jarkas was responsible for Global Crown's net capital violation on March 31 and April 27, 2009.

We do not sustain FINRA's additional finding that Jarkas violated NASD Rule 2110 and FINRA Rule 2010 by allowing Global Crown to conduct a securities business without maintaining sufficient net capital on April 28, 2009. FINRA's Department of Enforcement did not allege in its complaint that Global Crown violated the net capital rule on April 28. In any event, FINRA staff determined during its examination that the Firm did not conduct a securities business that day. The net capital rule applies only to those days on which a broker-dealer is

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been rejected by customers as unauthorized, placing the firm "at risk" until the trades were liquidated); *Carrol P. Teig*, Exchange Act Release No. 12812, 1976 SEC LEXIS 809, at *7-8 (Sept. 17, 1976) (finding that where securities refused by a customer were placed in an "error account" to be sold "at a later time," the account was, in fact, the broker-dealer's proprietary account for purposes of the net-capital rule).

[19] *Benz*, 2005 SEC LEXIS 116 at *10 ("Benz, as president of Beacon, was responsible for the Firm's violation [of Rule 15c3-1]. Benz had actual knowledge of the Firm's net capital insufficiency as a result of NASD's notification and was responsible for ensuring that the Firm complied with all regulatory requirements.").

[20] *Id.*

conducting a securities business.[21] The Firm, therefore, could not have violated the net capital rule on April 28.

Jarkas argues that he did not intend to conduct proprietary trading, that the Firm's FINOP was responsible for compliance with the net capital rule, that he had no knowledge of the IRS tax liens, that the net capital violations were technical, and that the Firm's CCO was responsible for the day-to-day operations of the firm at the time of the violations. We reject each of Jarkas's contentions.

Because intent is not required to violate the net capital rule,[22] it is irrelevant whether Jarkas intended to conduct proprietary trading when he caused the Firm to open and hold the 30 securities positions discussed above. In any event, Global Crown had *negative* net capital on three of the four days in 2008 that it violated the net capital rule, and thus would have violated the rule regardless of whether Global Crown was required to maintain $50,000 in net capital or, as a result of Jarkas's proprietary trading, $100,000.

Jarkas contends that the Firm's FINOP was responsible for determining whether the Firm's net capital requirements had changed because of changes in the Firm's business. Because Jarkas oversaw the Firm's finances, he knew or should have known that the Firm had negative net capital on the days in question. Moreover, it was Jarkas's own trading that changed the Firm's business and he should have recognized the potential regulatory implications of that trading and, at the very least, alerted the FINOP. As we have stated, "officers of securities firms bear a heavy responsibility in ensuring that the firm complies with all applicable rules and regulations," including "the net capital requirements."[23]

Jarkas contends that, to the extent any net capital violations resulted from the IRS tax liens, he had no knowledge of the liens until FINRA staff contacted him on April 27, 2009, and he immediately remedied the situation with a capital contribution. Intent is not required to violate the net capital rule. And even if Jarkas did not know about the IRS liens, he knew about the Firm's payroll tax obligation. As discussed, Jarkas oversaw the Firm's finances and bill

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21 *See James Michael Brown*, Exchange Act Release No. 31223, 1992 SEC LEXIS 2688, at *4 n.4 (Sept. 23, 1992) ("Under Section 15(c)(3) of the Exchange Act, our net capital requirements apply only to firms that effect transactions in securities."); *Benz*, 2005 SEC LEXIS 116, at *10 ("Because Beacon customers effected securities transactions while the Firm had a net capital deficiency, the Firm operated a securities business in violation of Exchange Act Rule 15c3-1 . . . .").

22 *Benz*, 2005 SEC LEXIS 116, at *10; *W. N. Whelen & Co., Inc.*, Exchange Act Release No. 28390, 1990 SEC LEXIS 3029, at *11 (Aug. 28, 1990); *Hutchison Fin. Corp.*, Exchange Act Release No. 32215, 1993 SEC LEXIS 1107, at *12-13 (Apr. 26, 1993) (sustaining NASD finding that the president of a member firm violated Article III, Section 1 of the NASD's Rules of Fair Practice (the predecessor to NASD Rule 2110 and FINRA Rule 2010) by allowing his firm's "inadvertent" net capital violation even though there was no showing that he intended a net capital deficiency).

23 *Hutchison Fin. Corp.*, 1993 SEC LEXIS 1107, at *12-13.

payment, and made the decision to terminate the Firm's payroll company in 2008. Jarkas knew or should have known that Global Crown had failed to deposit the payroll tax deduction and, as a result, that the payroll tax owed was not taken into account when calculating the Firm's net capital.

Jarkas contends that any net capital violations were, at most, only "technical" violations, and that it is not unusual for a firm's net capital position to fluctuate widely on a daily basis. But the net capital rule requires "moment-to-moment" compliance,[24] and, in any event, the Firm's significant net capital deficiencies were not the by-product of daily fluctuations; instead, they resulted from Jarkas's proprietary trading and the Firm's significant tax liabilities.

Jarkas contends that the alleged violations in late August 2008 occurred when he was just returning to work, on a limited basis, after being diagnosed with a serious medical condition in March and being incapacitated in July. Jarkas contends that during this time, he had given most of the day-to-day responsibility for running the Firm to its then Chief Compliance Officer and General Counsel, Henry Carter. But as FINRA held, Jarkas cannot shift responsibility to Carter for the Firm's net capital deficiencies. Jarkas produced no evidence showing that Carter had access to the Firm's financial information. To the contrary, the record reflects that Carter had a very limited role in preparing the Firm's financial statements and had been restricted from accessing the Firm's books and records. And Carter testified that he was restricted from seeing the information that supported the FOCUS report.

Accordingly, we find that Jarkas violated NASD Rule 2110 and FINRA Rule 2010 by allowing his Firm to conduct a securities business on six days (August 27 and 29, 2008, September 29 and 30, 2008, March 31, 2009, and April 27, 2009) without maintaining sufficient net capital.

2. Jarkas violated NASD Rules 1017 and 2110 by failing to file an application with FINRA for approval of a material change in business operations.

NASD Rule 1017 requires member firms to file an application with FINRA for approval of "a material change in business operations,"[25] which includes activities such as proprietary trading that increase the firm's net capital requirement.[26] A violation of NASD Rule 1017 also violates NASD Rule 2110.[27]

Here, Jarkas's proprietary trading in August and September 2008 increased the Firm's net capital requirement to $100,000, and thus caused a material change in Global Crown's business

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[24] NASD Notice to Members 07-16, 2007 NASD LEXIS 36, at *1 (Apr. 2007) ("Rule 15c3-1(a) . . . requires a broker or dealer to maintain its required net capital continuously.").

[25] NASD Rule 1017(a)(5).

[26] NASD Rule 1011(k)(3) (defining "material change in business operations" to include "adding business activities that require a higher minimum net capital under SEC Rule 15c3-1").

[27] *Joseph Ricupero*, Exchange Act Release No. 62891, 2010 SEC LEXIS 2988, at *2, 13-14 (Sept. 10, 2010), *petition denied*, 436 F. App'x 31 (2d Cir. 2011).

operations. Because Global Crown did not first seek approval of the change from FINRA, it violated NASD Rule 1017. Jarkas was responsible for that violation because, as Global Crown's CEO, he was responsible for filing Rule 1017 applications for the Firm.[28] Accordingly, we find that Jarkas violated NASD Rules 1017 and 2110.

3. Jarkas violated FINRA Rules 8210 and 2010 by failing to appear for two OTRs.

FINRA Rule 8210 requires associated persons, like Jarkas, to provide FINRA with information orally, in writing, or electronically, and to testify, if necessary, under oath or affirmation with respect to any matter involved in an investigation, complaint, examination, or proceeding.[29] An associated person violates Rule 8210 if he fails to provide the information or testimony requested.[30] A violation of Rule 8210 is also a violation of FINRA Rule 2010.[31]

Here, FINRA sent Jarkas two Rule 8210 requests requiring his appearance at OTRs scheduled for November 11 and 30, 2009, and Jarkas failed to appear for those OTRs. We therefore sustain FINRA's finding that Jarkas violated FINRA Rules 8210 and 2010.

Jarkas contends that he was not required to appear for the scheduled OTRs because the Firm's General Counsel, Melvin K. Patterson, obtained a postponement from FINRA. Specifically, Patterson testified that he called FINRA's David Lee on or about November 11, 2009, and explained that Jarkas was unavailable for the OTR scheduled for that day because he was ill, and that it was unclear "when he will be available." Patterson testified that Lee responded, "okay," which Patterson testified that he understood to mean that Jarkas did not have to appear for the OTR. Jarkas contends that after this conversation, FINRA did not contact him again until January 2011 when it instituted the disciplinary action.[32]

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28 *See id.* (sustaining NASD finding that firm president violated NASD Rules 1017 and 2110 by failing to file an application with NASD for approval for the firm to sell its customer accounts); *Sisung Sec. Corp.*, Exchange Act Release No. 56741, 2007 SEC LEXIS 2562, at *24-25 (Nov. 5, 2007) (sustaining NASD finding that firm president was responsible for the firm's violations of MSRB Rules G-8 and G-9, stating that the "president of a brokerage firm is responsible for the firm's compliance with all applicable requirements unless and until he reasonably delegates a particular function to another person in the firm, and neither knows nor has reason to know that such person is not properly performing his duties").

29 FINRA Rule 8210(a).

30 FINRA Rule 8210(c).

31 *Charles C. Fawcett, IV*, Exchange Act Release No. 56770, 2007 SEC LEXIS 2598, at *11-12 (Nov. 8, 2007).

32 Jarkas also claimed on appeal to the NAC that he did not receive FINRA's Rule 8210 request scheduling the second OTR for November 30, 2009. But that request was sent by U.S. first class and certified mail to Jarkas's personal and business addresses of record with FINRA, and FINRA obtained a signed return receipt confirming that it was received at both addresses.

(*continued*. . .)

Lee testified, however, that he had no such conversation with Patterson, and the FINRA hearing panel "credit[ed] Lee's testimony over Patterson's, finding it unlikely that Lee would simply say 'okay' to an open-ended postponement, without documentation of the medical condition."[33] We find it unlikely that such an important conversation would go undocumented by either party. Indeed, the record reflects that FINRA staff and Patterson routinely exchanged letters memorializing their conversations, including those concerning OTRs for other persons at the Firm. We defer to the hearing panel's credibility determination, and find no basis to disagree with that determination or the panel's decision to credit Lee's version of events over Patterson's.[34]

D. The relevant FINRA and NASD Rules are, and were applied in a manner, consistent with the purposes of the Exchange Act.

We find that the relevant FINRA and NASD Rules are, and were applied in a manner, consistent with the purposes of the Exchange Act. FINRA Rule 8210 is the principal means by which FINRA obtains information from FINRA member firms and associated persons in order to detect and address industry misconduct.[35] The rule therefore is consistent with the purposes of the Exchange Act, which requires SROs such as FINRA to design rules to protect investors and

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Jarkas suggests that he did not receive the request for the second OTR because he had "relocate[ed] to the East Coast." But the two requests for OTRs were served on Jarkas in October and November 2009, respectively, and Jarkas testified that he was living in California until the end of that year. In any event, Jarkas testified that he never updated his address of record with FINRA. It was Jarkas's responsibility to update his CRD address of record with FINRA and FINRA's service of process on a CRD address generally provides constructive notice to associated persons. *See, e.g., David Kristian Evansen*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080, at *29 (July 27, 2015) ("We reject [respondent's] claim that the Rule 8210 requests were deficient because FINRA sent them to his CRD address on record instead of searching for an alternative address . . . . During the period at issue, [respondent] was subject to FINRA's continuing jurisdiction, and, as a result, he was required to update and receive mail at his CRD address on record.").

[33] *Department of Enforcement v. Jarkas*, Complaint No. 2009017899801, 2014 FINRA Discip. LEXIS 13, at *18-19 (FINRA Hearing Panel Feb. 7, 2014).

[34] *Wanda P. Sears*, Exchange Act Release No. 58075, 2008 SEC LEXIS 1521, at *7 (July 1, 2008) ("[T]he credibility determination of the initial decisionmaker [in a FINRA disciplinary proceeding] is entitled to considerable weight and deference, since it is based on hearing the witnesses' testimony and observing their demeanor." (quoting *Jon R. Butzen*, Exchange Act Release No. 36512, 1995 SEC LEXIS 3228, at *5 n.7 (Nov. 27, 1995))).

[35] *Fawcett*, 2007 WL 3306105, at *6 (stating that SROs lack subpoena power and instead must rely on Rule 8210 as a "vitally important" tool to acquire information and satisfy an obligation to police the activities of its members and associated persons).

the public interest, among other things.[36] Here, FINRA found that Jarkas failed to appear for two planned OTRs, which hampered FINRA's ability to investigate possible violations of Exchange Act Rule 15c3-1. Rule 15c3-1 requires registered brokers-dealers to maintain a minimum amount of net capital to ensure that they maintain sufficient liquid assets to promptly satisfy their liabilities (such as claims by customers, creditors, and other broker-dealers).[37] FINRA applied Rule 8210 in a manner that was consistent with the purposes of the Exchange Act—the protection of investors—when FINRA requested that Jarkas appear at the OTRs so that it could continue an investigation of potential net capital violations.

We find that NASD Rule 1017 is consistent with the purposes of the Exchange Act because it requires member firms to file an application with FINRA for approval of "a material change in business operations."[38] Such material changes raise investor protection concerns.[39] As we have stated, "it is in the public interest for [FINRA] to review these changes in its members' business structure" so that it can "ensure that its members' businesses operate in a manner that is consistent with the requirements of the Act" and "prevent members from expanding beyond their capabilities to the detriment of the markets and investors."[40] We also find that FINRA applied NASD Rule 1017 in a manner consistent with the purposes of the Exchange Act because proprietary trading is the kind of change in business operations that is in the public interest for FINRA to first approve.[41]

Finally, we find that NASD Rule 2110 and FINRA Rule 2010, which both require that member firms and their associated persons "observe high standards of commercial honor and just and equitable principles of trade," are consistent with the purposes of the Exchange Act because they reflects the mandate of Exchange Act Section 15A(b)(6). Exchange Act Section 15A(b)(6) requires, among other things, that FINRA design its rules to "promote just and equitable

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36 *See* Exchange Act Section 15A(b)(6), 15 U.S.C. § 78o-3(b)(6), (requiring that SRO rules be designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities, and, in general, to protect investors and the public interest); *Order Approving Proposed Rule Change*, Exchange Act Release No. 42036, 1999 WL 961340, at *2 (Oct. 19, 1999) (finding that amending the definition of "person associated with a member" in the By-Laws of the NASD would expand Rule 8210's applicability and thereby "promote the objectives of Section 15A(b)(6) of the Act by helping the NASD obtain necessary information to conduct its regulatory investigations and proceedings").

37 *Benz*, 2005 SEC LEXIS 116, at *7.

38 *Order Approving Proposed Rule Change*, Exchange Act Release No. 43157, 2000 SEC LEXIS 1688, at *16 (Aug. 15, 2000) (finding that NASD Rule 1017 "is consistent with the requirements of the [Exchange] Act and the rules and regulations thereunder applicable to a national securities association").

39 *Id.*

40 *Id.*

41 *Id.*

principles of trade."[42] This standard "provides more flexibility than prescriptive regulations and legal requirements" and, thus, prohibits dishonest practices even if those practices may not be illegal or violate a specific rule.[43] Therefore, NASD Rule 2110 and FINRA Rule 2010 are consistent with the purposes of the Exchange Act. We also find that FINRA applied NASD Rule 2110 and FINRA Rule 2010 in a manner consistent with the purposes of the Exchange Act.

III. Sanctions.

A. Standard of Review

Under Exchange Act Section 19(e)(2), we will sustain a FINRA sanction unless we find that it is "excessive or oppressive" or imposes an unnecessary or inappropriate burden on competition.[44] As part of this review, we consider any aggravating or mitigating factors[45] and whether the sanctions imposed by FINRA are remedial in nature and not punitive.[46] Although the Commission is not bound by FINRA's Sanction Guidelines, we use them as a benchmark in conducting our review under Exchange Act Section 19(e)(2).[47]

We sustain the sanctions FINRA assessed on Jarkas for all violations: a bar for violating FINRA Rules 8210 and 2110 for failing to appear for two OTRs; a two-year suspension and $50,000 fine for violating NASD Rule 2110 and FINRA Rule 2010 for allowing the Firm to violate the net capital rule; and a 30 business-day suspension and $5,000 fine for violating NASD Rules 1017 and 2110 for failing to file an application for approval of a material change in business operations. And we sustain FINRA's decision to impose only the bar and not the sanctions assessed for the latter two violations.

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42 15 U.S.C. § 78o-3(b)(6).

43 *Notice of Filing of a Proposed Rule Change,* Exchange Act Release No. 58095, 2008 WL 2971979, at *2 (July 3, 2008); *see also Rule Change Approved Without Modification*, Exchange Act Release No. 58643, 2008 WL 4468749, at *2 (Sept. 25, 2008).

44 15 U.S.C. § 78s(e)(2). Jarkas does not claim, and the record does not show, that FINRA's action imposed an unnecessary or inappropriate burden on competition.

45 *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).

46 *Paz Sec., Inc.*, 494 F.3d at 1065; *see also* FINRA Sanction Guidelines at 2 (2013) (hereinafter, "Guidelines") ("Disciplinary sanctions are remedial in nature and should be designed to deter future misconduct and to improve overall business standards in the securities industry.").

47 *John Joseph Plunkett,* Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at *41 (June 14, 2013). We also acknowledge that the Guidelines "do not prescribe fixed sanctions for particular violations" and "are not intended to be absolute." Guidelines at 1.

B. The bar imposed for violating FINRA Rules 8210 and 2110 is neither excessive nor oppressive.

Even when an individual has provided a partial response to requests made by FINRA under Rule 8210, 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."[48] The Guidelines note further that an adjudicator should "consider suspending the individual in any or all capacities for up to two years" where mitigation exists.[49]

The Guidelines identify three "principal considerations" for determining sanctions where an individual has provided a partial but incomplete response to Rule 8210 requests. They are (1) the "[i]mportance of the information requested that was not provided as viewed from FINRA's perspective, and whether the information provided was relevant and responsive to the request"; (2) the "[n]umber of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response"; and (3) "[w]hether the respondent thoroughly explains valid reason(s) for the deficiencies in the response."[50]

All three principal considerations weigh heavily in favor of a bar. First, the information that FINRA sought was important because it concerned the Firm's compliance with the net capital rule. The purpose of that rule "is to ensure that a broker-dealer has sufficient liquidity to protect the assets of its customers and to be able to cover its indebtedness to other broker-dealers."[51] The rule also protects customers and other market participants by enabling firms that "fall below the minimum net capital requirements to liquidate in an orderly fashion without the need for a formal proceeding or financial assistance from the Securities Investor Protection Corporation."[52]

Second, FINRA made two requests for Jarkas' testimony, both of which Jarkas ignored without responding to FINRA. And third, Jarkas has provided no valid explanation for failing to respond or attend the OTRs.

Jarkas disputes these latter two findings. He contends that his counsel, Patterson, obtained a postponement upon calling FINRA staff member, Lee, on or about November 11. But as discussed above, we defer to the hearing panel's decision to credit Lee's testimony that no

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48 Guidelines at 33 (emphasis added). Because Jarkas attended an OTR on March 5, 2009, during FINRA's routine examination of the Firm, FINRA considered his subsequent failure to attend the OTRs during the special FINOP examination to be an incomplete response to requests made by FINRA under Rule 8210.

49 *Id.* The Guidelines include a list of non-exhaustive aggravating and mitigating factors. *Id.* at 6-7.

50 *Id.* at 33.

51 *Benz*, 2005 SEC LEXIS 116, at *7.

52 *Fox & Co. Invs., Inc.*, 2005 SEC LEXIS 2822, at *18.

such conversation with Patterson took place, and Jarkas has provided no evidence, and the record reflects none, of any attempt to schedule testimony on any postponed date.

Jarkas also alleges a number of mitigating factors that we should consider in evaluating the sanctions imposed. We find that none of the circumstances or facts identified is mitigating.

Jarkas contends that Patterson provided him with legal advice that he need not attend the OTRs because in September 2009—after FINRA opened its special FINOP examination but before FINRA sent the first OTR request—Jarkas withdrew his FINRA registration.[53] Patterson testified that he provided this advice after reviewing Article V, Section 4 of FINRA's By-laws, which state that FINRA's jurisdiction over an associated person continues for two years after the person ceases to be registered with FINRA, and that the person "shall continue to be subject to the filing of a complaint" based upon "such person's failure . . . to provide information requested by" FINRA while subject to its jurisdiction.[54] Patterson testified that the plain language of Section 4 "seemed to suggest that the jurisdiction of FINRA was that they could file a complaint" for two years after Jarkas withdrew his registration in September 2009, and that he relayed this information to Jarkas. Nonetheless, Patterson testified that he advised Jarkas that the language of Section 4 means that Jarkas did not have to attend the OTR,[55] but that Jarkas should "[b]ear in mind that FINRA may take a different viewpoint."

It does not appear that Jarkas actually relied on Patterson's advice as a basis for not attending the OTRs.[56] Rather, Jarkas testified that he "never implied that [he] would never"

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[53] Relatedly, Jarkas contends that we should consider that "he was no longer registered" with FINRA when he participated in the hearing. We do not find his participation in the hearing to be a mitigating factor, even if he was no longer registered. Jarkas continued to be subject to FINRA's jurisdiction. FINRA By-laws, Article V, Section 4(a). And Jarkas's current registration status is not an assurance against future misconduct.

[54] FINRA By-laws, Article V, Section 4(a).

[55] Patterson was wrong. The plain language of Section 4 states the opposite. FINRA By-laws, Article V, Section 4(a); NASD Notice to Members 99-77, 1999 NASD LEXIS 49, at *5 (Sept. 1999) (stating that FINRA "may request information from, or file a formal disciplinary action against, persons who are no longer registered with a member for at least two years after their termination from the member"); *Robert Marcus Lane*, Exchange Act Release No. 74269, 2015 SEC LEXIS 558, at *68 n.82 (Feb. 13, 2015) (finding that respondents was subject to FINRA's jurisdiction where Rule 8210 requests were made within two years after they terminated their registrations).

[56] Although reliance on counsel is not a defense to the Rule 8210 violation itself, it may be mitigating as to sanctions. *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *38-40 (Nov. 14, 2008) ("[S]cienter is not an element of a Rule 8210 violation. An advice-of-counsel claim is not relevant to liability . . . , but instead, only potentially as to sanctions."), *petition denied*, 347 F. App'x 692 (2d Cir. 2009); Guidelines at 6 (listing as Principal Consideration 7, "[w]hether the respondent demonstrated reasonable reliance on competent legal or accounting advice").

attend the OTR; he "just wanted to see how we could work it out, if [he] could send something in writing, if [he] could be on the phone, could [they] postpone it, delay it or what have you."

We also find that Patterson's advice—even if Jarkas relied on it—does not mitigate Jarkas's conduct because it left open the possibility that FINRA may, in fact, have retained jurisdiction to require Jarkas's testimony. Indeed, Patterson's advice that "FINRA may take a different viewpoint," combined with the warnings in FINRA's Rule 8210 letters that Jarkas "may be subject to a FINRA disciplinary action and the imposition of sanctions" if he "fail[ed] to appear," put Jarkas on notice that there were risks attendant to not appearing for testimony.[57]

Jarkas then contends that we should consider it mitigating that during the time FINRA scheduled the OTRs, he "was petrified" about his medical condition and that his medical condition prevented him from attending the OTRs in November 2009. Although we credit Jarkas's assertion that he was under stress at the time of his misconduct, the record does not reflect that stress or his medical condition affected his decision not to attend the OTRs. Rather, Jarkas claims that he did not attend the OTRs for the alternative reasons that we rejected above (*i.e.*, the Firm's General Counsel had obtained a postponement and advised Jarkas that he need not attend). Furthermore, the record reflects that at the time, Jarkas was in remission after receiving treatment for a serious medical condition a year earlier. And while it is true that Jarkas's doctors had detected a new serious medical condition in March 2009, that new condition did not prevent Jarkas from working or traveling internationally that year. Jarkas did not seek treatment for the new condition until February 2010. In any event, even if an illness prevented Jarkas from attending the scheduled OTRs, Jarkas was required to notify FINRA staff to agree on another mutually acceptable date and time. Jarkas failed to do so.[58]

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[57] *See Toni Valentino*, Exchange Act Release No. 49255, 2004 SEC LEXIS 330 at *13-14 (Feb. 13, 2004) (finding that respondent could not claim that she relied in good faith on advice of counsel not to attend an OTR because when she "registered with NASD, she agreed that she understood and consented to abide by its rules, including the requirement to provide information requested by NASD for its investigations," and NASD warned her in Rule 8210 letters "that failure to appear could result in disciplinary action against her").

[58] Jarkas suggests that we should consider that he appeared for an OTR in March 2009. Although the Guidelines list as a mitigating factor "[w]hether the respondent provided substantial assistance to FINRA in its examination and/or investigation of the underlying misconduct," Guidelines at 7, we have repeatedly held that "associated persons do not provide substantial assistance by fulfilling their obligations to cooperate with [FINRA] investigations." *Kent M. Houston*, Exchange Act Release No. 71589A, 2014 SEC LEXIS 863, at *32 (Feb. 20, 2014); *Philippe N. Keyes*, Exchange Act Release No. 54723, 2006 SEC LEXIS 2631, at*24 (Nov. 8, 2006) (Respondent's "cooperation in the [NASD] investigation was consistent with the responsibilities he agreed to when he became an associated person and does not constitute substantial assistance."). Also, the OTR in March related to a different FINRA examination—not the examination concerning the Firm's net capital position, and Jarkas's testimony in March was not responsive to FINRA's subsequent Rule 8210 requests concerning the investigation into the Firm's net capital position.

(*continued*...)

Jarkas also contends that we should consider FINRA's misconduct in "in shutting down" the Firm on April 27, 2009, and preventing it from trading "for three and one-half weeks even after [FINRA] confirmed Global Crown's receipt of new capital . . . ." But it was Global Crown that blocked FINRA's efforts to determine the accuracy of its net capital calculations by providing incomplete responses to FINRA's Rule 8210 requests and then refusing to cooperate altogether. As FINRA later discovered, the Firm continued to lack sufficient net capital even after it received the $249,980 wire transfer on April 28, 2009, because it had not paid its payroll taxes for the year prior to the transfer. In any event, even if FINRA had wrongfully suspended the Firm from trading in April, such conduct would not justify Jarkas's decision not to attend the OTRs six months later.

Finally, we conclude that the bar is remedial and not punitive. We have stressed the importance of Rule 8210 to FINRA's "obligation to police the activities of its members and associated persons."[59] Without subpoena power, FINRA "must rely on Rule 8210 to obtain information from its members necessary to carry out its investigations and fulfill its regulatory mandate."[60] It is therefore "critically important to the self-regulatory system that members and associated persons cooperate with [FINRA] investigations."[61] Failure to respond to Rule 8210 requests "impedes [FINRA's] ability to detect misconduct that threatens investors and ets."[62]

(. . . *continued*)

Relatedly, Jarkas contends that we should consider that he has a "sincere desire to rebuild [his] relationship with FINRA," as demonstrated by his participation in the hearing "against medical advice and even though [he] had not been registered with FINRA for four years." In the same vein he says that we should consider his clean disciplinary history and good relations with FINRA staff before the events at issue. But Jarkas's appearance and defense of himself in litigation is not a recognized mitigating factor, and the Guidelines do not consider a clean disciplinary history to be mitigating. Guidelines, at 6 ("[W]hile the existence of a disciplinary history is an aggravating factor when determining the appropriate sanction, its absence is not mitigating.") (citing *Rooms v. SEC*, 444 F.3d 1208, 1214-15 (10th Cir. 2006)); *E.g., Houston*, 2014 SEC LEXIS 863, at *30-31; *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *26-27 (Apr. 11, 2008), *petition denied*, 566 F.3d 1172 (D.C. Cir. 2009).

59 *CMG Institutional Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *15 (Jan. 30, 2009) (quoting *Paz Sec., Inc.*, 2008 SEC LEXIS 820, at *12).

60 *Id.* at *15.

61 *Erenstein v. SEC*, 316 F. App'x 865, 871 (11th Cir. 2008).

62 *Berger*, 2008 SEC LEXIS 3141, at *13-14; *see also Joseph Patrick Hannan*, Exchange Act Release No. 40438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998) ("We have repeatedly stressed the importance of cooperation in [FINRA] investigations . . . . Failures to comply [with Rule 8210 requests] are serious violations because they subvert [FINRA's] ability to carry out its regulatory responsibilities.").

Jarkas's misconduct was therefore serious, and a bar will protect the public by encouraging others to respond to Rule 8210 requests completely and in a timely manner.[63]

Accordingly, we find that the bar imposed on Jarkas is neither excessive nor oppressive within the meaning of Exchange Act Section 19(e)(2).

C. The sanctions assessed for the net capital violation are neither excessive nor oppressive.

For an individual, like Jarkas, who is responsible for his firm's violation of the net capital rule, the Guidelines recommend a 30 business-day suspension or, in egregious cases, "a lengthier suspension (of up to two years) or a bar"; and a fine of $1,000 to $50,000.[64] The Guidelines also identify the following two "principal considerations" for determining the sanction: (1) "[w]hether the firm continued in business while knowing of deficiencies/inaccuracies or voluntarily ceased conducting business because of the deficiencies/inaccuracies"; and (2) "[w]hether respondent attempted to conceal deficiencies or inaccuracies by any means, including "parking" of inventory and inflating "mark-to-market" calculations."[65]

Here, FINRA assessed but did not impose a two-year suspension and $50,000 fine. Even if FINRA had imposed these sanctions for Jarkas's violation of NASD Rule 2110 and FINRA Rule 2010 as a result of Global Crown's net capital violations, we would not find the sanctions to be excessive or oppressive. Jarkas knew or should have known that his proprietary trading had resulted in an increase of the Firm's net capital requirements, and he knew or should have known that the Firm was substantially delinquent in paying its payroll taxes. Therefore, Jarkas knew or should have known that his actions had exposed the Firm and its customers to net capital risk. Further, Global Crown, under Jarkas's control, obstructed FINRA's investigation into its net capital deficiencies, thereby further exposing its customers to risk. As discussed above, we find no mitigating factors.

D. The sanctions assessed for failing to file an NASD Rule 1017 application are neither excessive nor oppressive.

For an individual, like Jarkas, who is responsible for his firm's failure to file an application under NASD Rule 1017, the Guidelines recommend a suspension for up to two years in "cases involving a serious breach of a restrictive agreement" or a bar in "egregious cases"; and a fine of $2,500 to $50,000.[66] The Guidelines also identify the following three "principal considerations" for determining the sanction: (1) "[w]hether the respondent breached a material provision of the agreement"; (2) "[w]hether the respondent breached a provision of the

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63 *See Siegel v. SEC*, 592 F.3d 147, 158 (D.C. Cir. 2010) (noting that deterrence may be considered as part of the overall remedial inquiry in determining sanctions); *McCarthy v. SEC*, 406 F.3d 179, 189 (2d Cir. 2005) (same).

64 Guidelines at 28.

65 *Id.*

66 Guidelines at 44.

agreement that contained a restriction that was particular to the firm"; and (3) "[w]hether the firm had applied for, was in the process of applying for, or had been denied a waiver of a restriction at the time of the misconduct."[67]

Here, FINRA assessed but did not impose a 30 business-day suspension and a $5,000 fine. Even if FINRA had imposed these sanctions, we would not find them to be excessive or oppressive. Indeed, the sanctions assessed are at the low-end of the recommended range, and there are no mitigating factors.

IV. Conclusion

We sustain FINRA's findings that Jarkas violated (1) FINRA Rules 8210 and 2010 by failing to appear for two OTRs; (2) NASD Rule 2110 and FINRA Rule 2010 by allowing Global Crown to conduct a securities business with insufficient net capital on August 27 and 29, 2008, September 29 and 30, 2008, March 31, 2009, and April 27, 2009; and (3) NASD Rules 1017 and 2110 by failing to file an application for approval of a material change in business operations. We set aside FINRA's finding that Jarkas violated NASD Rule 2110 and FINRA Rule 2010 by allowing Global Crown to conduct a securities business with insufficient net capital on April 28, 2009. Also, we sustain the sanctions that FINRA assessed, its decision to impose only one of the sanctions—a bar from associating with any FINRA member in any capacity—and its order that Jarkas pay his proportionate share of hearing costs totaling $5,436.14 and $1,542.02 in appeal costs.

An appropriate order will issue.[68]

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

Brent J. Fields
Secretary

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[67] *Id.*

[68] 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 can be determined on the basis of the record and the papers filed by the parties, Jarkas's request for oral argument is denied. Rule of Practice 451, 17 C.F.R. § 201.451.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 77503 / April 1, 2016

Admin. Proc. File No. 3-16948

In the Matter of the Application of

RANI T. JARKAS
c/o Robert J. Stumpf, Jr.
Sheppard Mullin Richter & Hampton LLP
4 Embarcadero Center, 17th Floor
San Francisco, CA 94111

For Review of Disciplinary Action Taken by

FINRA

ORDER SUSTAINING IN PART DISCIPLINARY ACTION TAKEN BY FINRA

On the basis of the Commission's opinion issued this day, it is

ORDERED that the findings by FINRA that Rani T. Jarkas violated FINRA Rules 8210 and 2010 by failing to appear for on-the-record testimony on two occasions are SUSTAINED; and it is further

ORDERED that the findings by FINRA that Rani T. Jarkas violated NASD Rule 2110 and FINRA Rule 2010 by allowing Global Crown Capital, LLC to conduct a securities business without maintaining sufficient net capital on August 27 and 29, 2008, September 29 and 30, 2008, March 31, 2009, and April 27, 2009, are SUSTAINED; and it is further

ORDERED that the findings by FINRA that Rani T. Jarkas violated NASD Rule 2110 and FINRA Rule 2010 by allowing Global Crown Capital, LLC to conduct a securities business without maintaining sufficient net capital on April 28, 2009, are SET ASIDE; and it is further

ORDERED that the findings by FINRA that Rani T. Jarkas violated NASD Rules 1017 and 2110 by failing to file an application with FINRA for approval of a material change in business operations for Global Crown Capital, LLC are SUSTAINED; and it is further

ORDERED that the sanctions imposed by FINRA against Rani T. Jarkas, and its assessment of costs, are SUSTAINED.

By the Commission.

Brent J. Fields
Secretary