BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Meyers Associates, L.P. (n/k/a Windsor Street Capital, L.P.) New York, NY, and Bruce Meyers New York, NY, Respondents.	DECISION Complaint No. 2010020954501 Dated: January 4, 2018

Member used misleading communications with the public, maintained inaccurate books and records, failed to supervise preparation of books and records, failed to supervise electronic correspondence, failed to report customer complaint information, and did not have an adequate system of supervisory control procedures. Registered principal used misleading public communications and failed to supervise preparation of member's books and records. Held, findings affirmed and sanctions modified.

Appearances

For the Complainant: Dale A. Glanzman, Esq., Leo F. Orenstein, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondents: Fara Daun, Esq., Sarah Klein, Esq., Robert I. Rabinowitz, Esq.

Decision

Meyers Associates, L.P. ("Meyers Associates") and Bruce Meyers ("Meyers") appeal an April 27, 2016 Extended Hearing Panel Decision. The Extended Hearing Panel found that Meyers Associates and Meyers sent unbalanced and misleading sales literature by email and failed to supervise preparation of the firm's books and records. The Extended Hearing Panel

found also that Meyers Associates maintained inaccurate books and records, did not supervise reasonably the firm's electronic correspondence, failed to report customer complaints, and did not maintain an adequate system of supervisory control procedures. For this misconduct, the Extended Hearing Panel fined Meyers Associates a total of $700,000. It also fined Meyers $75,000 and barred him from acting in any supervisory or principal capacity.

After a thorough review of the record, we affirm the Extended Hearing Panel's findings. We modify, however, the sanctions it imposed.

I. Background

Meyers Associates became a FINRA member in 1994.[1] It engages in a retail securities business and investment banking. The firm operated 10 branch offices and employed 75 registered representatives at the time of the hearing held in this matter.

Meyers entered the securities industry in 1982 and associated with several FINRA members before founding Meyers Associates in 1994. Meyers acted as the firm's chief executive officer, performed investment banking work, and was registered as a general securities representative and a general securities principal.[2] The firm terminated his association with it in June 2016. He is not currently associated with another FINRA member.[3]

II. Procedural History

The Department of Enforcement ("Enforcement") filed a nine-cause complaint initiating this disciplinary proceeding on October 6, 2014, following a cycle examination of Meyers Associates that uncovered potential violations of FINRA rules. The first cause of action alleged that Meyers Associates and Meyers offered to sell securities that did not meet the registration requirements of Section 5 of the Securities Act of 1933 ("Securities Act"), in violation of FINRA Rule 2010.[4] The second cause of action alleged that Meyers Associates and Meyers emailed unbalanced and misleading communications to the public, in violation of NASD Rule 2210(d)

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[1] The firm is known now as Windsor Street Capital, L.P.

[2] Meyers owned the firm indirectly through another entity.

[3] Meyers is subject to a statutory disqualification because of a 2015 final order issued by the Connecticut Department of Banking that effectively barred Meyers from acting as an agent of Meyers Associates for, among other things, failing reasonably to supervise aspects of the firm's operations. *See Continued Ass'n of Bruce Meyers*, Decision No. SD-2069, slip. op. at 3 (FINRA NAC May 9, 2016), http://www.finra.org/sites/default/files/SD-2069-Meyers_0.pdf, *aff'd*, Exchange Act Release No. 81778, 2017 SEC LEXIS 3096 (Sept. 29, 2017).

[4] The conduct rules that apply in this case are those that existed at the time of the conduct at issue.

and FINRA Rule 2010. The third cause of action, which Enforcement withdrew prior to a hearing, claimed that Meyers failed to timely file with FINRA a private placement memorandum for an entity that he controlled, in violation of FINRA Rules 5122 and 2010. The fourth cause of action asserted that Meyers Associates, Meyers, and Imtiaz A. Khan ("Khan") maintained, or caused the firm to maintain, inaccurate books and records, in violation of Section 17 of the Securities Exchange Act of 1934 ("Exchange Act"), Exchange Act Rules 17a-3, 17a-4, and 17a-5, NASD Rule 3110, and FINRA Rules 4511 and 2010. The fifth cause of action alleged that Meyers Associates, Meyers, and Khan falsified, or caused to be falsified, federal tax forms, in violation of FINRA Rule 2010. The sixth cause of action claimed that Meyers Associates and Meyers failed to supervise reasonably preparation of the firm's books and records, in violation of NASD Rule 3010 and FINRA Rule 2010. The seventh cause of action alleged that Meyers Associates failed to supervise reasonably the firm's electronic correspondence, in violation of NASD Rules 3010 and 2110, as well as FINRA Rule 2010. The eighth cause of action claimed that Meyers Associates failed to report to FINRA, or failed to report timely, information concerning customer complaints, in violation of NASD Rules 3070 and 2110, as well as FINRA Rule 2010. Finally, the ninth cause of action alleged that Meyers Associates failed to establish and maintain an adequate system of supervisory control procedures, in violation of NASD Rule 3012 and FINRA Rule 2010.

The respondents filed an answer on December 8, 2014, denying all allegations that their conduct violated FINRA rules. The Extended Hearing Panel conducted a six-day hearing that concluded on October 27, 2015.

In its decision, the Extended Hearing Panel dismissed as unproven the first and fifth causes of action. The Extended Hearing Panel also dismissed as unproven the allegations against Meyers and Kahn in the complaint's fourth cause of action. The decision nevertheless found Meyers Associates and Meyers liable for the misconduct otherwise alleged in the second, fourth, sixth, seventh, eighth, and ninth causes of action. Assessing sanctions by cause, the Extended Hearing Panel fined Meyers Associates a total of $700,000. The Extended Hearing Panel also fined Meyers $75,000 and barred him from acting in any supervisory or principal capacity.

On May 23, 2016, Meyers Associates and Meyers appealed the Extended Hearing Panel's decision.[5]

III. Discussion

We affirm the Extended Hearing Panel's findings that Meyers Associates and Meyers violated FINRA rules. We discuss each of these violations in detail below.

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[5] Enforcement did not cross-appeal the decision. We therefore do not revisit the Extended Hearing Panel's dismissal of the first and fifth causes of action, or those elements of the fourth cause of action pertaining to Meyers and Kahn. Because the Extended Hearing Panel dismissed the two causes of action that named Khan as a respondent, he is not a party to this appeal.

A. Meyers Associates and Meyers Violated the Content Standards that Apply to the Public Communications of FINRA Members

The Extended Hearing Panel found that Meyers Associates and Meyers emailed sales literature that failed to uphold the content standards that apply to a FINRA member's communications with the public, in violation of NASD Rule 2210 and FINRA Rule 2010. We affirm these findings.

1. FINRA Standards for Public Communications

NASD Rule 2210 imposes content standards that apply to all FINRA member communications with the public, as well as standards that apply specifically to advertisements and sales literature.[6] *See* NASD Rule 2210(d). These standards require, among other things, that FINRA members base their public communications on principles of fair dealing and good faith, and ensure that their communications are fair and balanced. *See* NASD Rule 2210(d)(1)(A). Members must provide a sound basis for evaluating the facts about any particular security or type of security, industry, or service discussed within their communications and disclose any material fact if the omission of that fact, in light of the material presented, would cause the communications to be misleading. *Id.* A member may not make "any false, exaggerated, unwarranted or misleading statement or claim in any communication with the public," or publish, circulate, or distribute any communication the member "knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading." *See* NASD Rule 2210(d)(1)(B). Member communications with the public "may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast." *See* NASD Rule 2210(d)(1)(D). Finally, all advertisements and sales literature must, among other things, prominently disclose the name of the member and reflect any relationship between the member and any non-member or individual who is also named. *See* NASD Rule 2210(d)(2)(C).

2. Meyers Associates' Public Communications

SignPath Pharma, Inc. ("SignPath"), is a biotechnology company that Meyers and LH founded in 2006 to develop synthesized, proprietary formulations of curcumin, a compound found in the turmeric plant, for medicinal use.[7] When Enforcement filed the complaint in this matter, SignPath had not generated any revenue from its operations and held an accumulated deficit of $13,416,598.

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[6] FINRA Rule 2210, which replaced NASD Rule 2210, became effective on February 4, 2013. FINRA Rule 2210 did not alter, in any material manner, any of the content standards applied in this case.

[7] LH served as the company's chief executive officer and sole employee.

Meyers Associates provided investment-banking services to SignPath and worked as the exclusive placement agent for the company's securities offerings.[8] In May 2008, Meyers Associates began raising between $1.5 million and $6 million for SignPath through a private offering of unregistered securities.[9]

From January to June 2011, Meyers Associates raised more than $350,000 for SignPath through this offering. During those six months, Meyers sent 1,037 emails that concerned SignPath from his Meyers Associates email address. Meyers composed the emails as "form letters" and sent them to individuals associated with venture capital and hedge funds that invest in biotechnology companies, investors in biotechnology companies, and biotechnology industry analysts and service providers.[10] Meyers often, but not always, signed the emails as "President, Meyers Associates," and sometimes referred to SignPath as "my biotech company" and to himself as a "principal" of the company.

Meyers testified that he intended the emails to generate interest in SignPath by familiarizing biotechnology industry professionals and institutional investors with the company and its products. The emails usually referred to SignPath as a "development phase" company and discussed its various formulations of curcumin and their progress through various stages of testing and development. The emails often stated, among other things, that SignPath "is a public company which anticipates trading shares in the [first] quarter of 2011" and which is "currently seeking prospective investors" and "capital."[11] The emails routinely encouraged recipients to "take advantage of the opportunity presented to you" by contacting Meyers for additional information.

3. The Firm's Communications Violated FINRA Standards

We conclude that the SignPath emails sent by Meyers, on behalf of Meyers Associates, constituted sales literature that violated NASD Rule 2210.[12] Hundreds of the emails made

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[8] Meyers Associates raised approximately $13 million in capital for SignPath and earned greater than $1 million in compensation for its efforts, including commissions, fees, and options to purchase SignPath securities.

[9] The offering was for $1,000 units consisting of one share of SignPath's Series A convertible preferred stock and one warrant that entitled the holder to purchase 1,177 shares of common stock. SignPath claimed an exemption from the Securities Act's registration requirements under Section 4(2) of the Securities Act and Securities Act Rule 506.

[10] Meyers compiled the list of email recipients from a database that he created. Three of the recipients were Meyers Associates customers.

[11] The emails did not reference any specific offering of SignPath securities.

[12] The phrase "communications with the public" includes the term "sales literature." *See* NASD Rule 2210(a). Sales literature is any written or electronic communication, other than an

[Footnote continued on next page]

unwarranted and misleading claims about SignPath's future. They declared that SignPath "has a unique opportunity in obtaining an oral incretin-mimetic [Dutogliption] designed for individuals with type II diabetes which will catapult SignPath Pharma's direct entry into clinical Phase III and IV within the next several months." The opportunity to acquire Dutogliptin, however, was not unique to SignPath, and the emails failed to disclose, among other things, that SignPath needed to raise $3 million to entertain the possibility of purchasing the drug and an additional $12.5 million for clinical trials.

A large number of the emails also predicted, "financial returns on investment within the two immediate years will enhance the stature of SignPath . . . as a young but imposing pharmaceutical company." The emails nevertheless did not provide a basis to evaluate this unwarranted forecast. They omitted to disclose SignPath's lack of experience in manufacturing, marketing, selling, and distributing its products, the company's history of significant losses, that the company did not anticipate revenues necessary to bring its products successfully to market in the near future, and that any investment in the company was inherently illiquid and risky in nature.

Finally, hundreds of emails failed to disclose prominently that Meyers Associates sent the emails and did not identify Meyers's role at the broker-dealer. They omitted to reflect also the ongoing relationship that existed between Meyers Associates and SignPath, and did not disclose the material fact that, at the time, Meyers Associates and Meyers collectively owned greater than 60 percent of SignPath's common stock.

In sum, the SignPath emails Meyers sent on behalf of Meyers Associates defied the content standards that apply to all FINRA member communications with the public, including

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advertisement, independently prepared reprint, institutional sales material, and correspondence, that is generally distributed or made available to customers or the public, including form letters, circulars, research reports, and market letters. *See* NASD Rule 2210(a)(2). Meyers Associates and Meyers contend that the emails at issue were not sales literature but "institutional sales material," which is defined as "any communication that is distributed or made available only to institutional investors." *See* NASD Rule 2211(a)(2). The evidence, however, shows that Meyers Associates and Meyers did not limit the audience for the SignPath emails only to institutional investors. Moreover, with one limited exception, the content standards at issue in this case apply to both sales literature and institutional sales material. *See* NASD Rule 2210(d)(1). Consequently, the distinction drawn by the respondents between sales literature and institutional sales material is largely irrelevant. *See Dep't of Enforcement v. Hedge Fund Capital Partners, LLC*, Complaint No. 2006004122402, 2012 FINRA Discip. LEXIS 42, at *17 (FINRA NAC May 1, 2012) ("The fact that the recipient of respondents' communications were institutional and sophisticated does not excuse respondents' flagrant disregard for the content standards of NASD Rules 2210(d) and 2211(d), including their failures to provide a fair and balanced assessment of the risks of the particular investments at issue.").

those that apply specifically to sales literature. We therefore affirm the Extended Hearing Panel's findings that Meyers Associates and Meyers violated NASD Rule 2210 and FINRA Rule 2010.[13]

B. Meyers Associates Created and Maintained Inaccurate Books and Records

The Extended Hearing Panel found, and Meyers Associates does not dispute on appeal, that Meyers Associates kept inaccurate books and records, in violation of Section 17 of the Exchange Act, Exchange Act Rules 17a-3, 17a-4, and 17a-5, NASD Rule 3110, and FINRA Rules 4511 and 2010. We affirm these findings.

1. Exchange Act and FINRA Recordkeeping Requirements

Exchange Act Section 17(a)(1) requires that broker-dealers make and keep records as prescribed by the Commission. Exchange Act Rule 17a-3(a)(2) prescribes that these records include ledgers or other records that reflect "all assets and liabilities, income and expense and capital accounts" of the broker-dealer. Under Exchange Act Rule 17a-5(a) and (d), they must include also monthly or quarterly FOCUS Reports and Annual Audit Reports that are filed with the Commission and incorporate a statement of income or loss reflecting the broker-dealer's revenues and expenses, including employee compensation and benefits.[14]

FINRA rules extend these recordkeeping requirements to its members. NASD Rule 3110(a) required, until December 5, 2011, that each FINRA member make and preserve records in conformity with "all applicable laws, rules, and regulations," including Exchange Act Rule 17a-3. Its successor, FINRA Rule 4511 requires that FINRA members "make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules."

2. Meyers Associates Violated Recordkeeping Requirements

On November 1, 2010, Meyers Associates entered into employment agreements with Meyers and Kahn that required the firm to advance or reimburse them "each month for all expenses and disbursements of any kind or nature incurred" in connection with their duties on behalf of the firm. The expenses covered by this provision included, but were not limited to,

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[13] FINRA Rule 2010 requires FINRA members, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade. The rule applies also to individuals that are associated with FINRA members. *See* FINRA Rule 0140(a). A violation of any FINRA rule constitutes also a violation of FINRA Rule 2010. *See Wedbush Sec., Inc.*, Exchange Act Release No. 78568, 2016 SEC LEXIS 2794, at *15 n.11 (Aug. 12, 2016), *appeal docketed*, No. 16-73284 (9th Cir. Oct. 10, 2016).

[14] Exchange Act Rule 17a-4 requires that firms keep the foregoing records for a minimum three years.

"travel, entertainment, meals, car expense, airline travel and certain personal expenses" to the sum of $10,000 per month for Meyers and $7,5000 for Kahn "on a non-accountable basis." Meyers and Kahn each understood the employment agreements to provide that the firm would reimburse them for personal expenses up to $10,000 and $7,500, respectively.

In 2011 and 2012, Meyers and Kahn charged both business and personal expenses to their corporate and personal credit cards. In accordance with the expense reimbursement clause in their employment agreements, Meyers Associates paid Meyers and Kahn for these expenses, including $60,769.95 for their personal expenses, such as jewelry, clothing, spa services, and personal travel for their family members.

Meyers Associates, however, inaccurately recorded the personal expenses reimbursed to Meyers and Kahn as business expenses in the firm's general ledger. This caused Meyers Associates to underreport the compensation that it paid Meyers and Kahn on the firm's FOCUS Reports and Annual Audited Reports during and for the years 2011 and 2012.[15]

By inaccurately reflecting as business expenses the payments that Meyers Associates made to Meyers and Kahn for their personal expenses, the firm incorrectly reported in its general ledger and on routinely filed FOCUS Reports and Annual Audit Reports the compensation that it paid these individuals. We thus affirm the Extended Hearing Panel's findings that Meyers Associates violated Exchange Act Section 17, Exchange Act Rules 17a-3, 17a-4, and 17a-5, NASD Rule 3110, and FINRA Rules 4511 and 2010.[16] *See Dep't of Enforcement v. Wood Co.*, Complaint No. 2011025444501, 2017 FINRA Discip. LEXIS 30, at *31 (FINRA NAC Mar. 15, 2017) (finding FINRA member violated recordkeeping requirements under the Exchange Act, Exchange Act rules, and FINRA rules by failing to accrue a liability that caused it to maintain inaccurate books and records).

C. Meyers Associates and Meyers Failed to Supervise the Firm's Business

The Extended Hearing Panel found that Meyers Associates and Meyers failed to supervise reasonably preparation of the firm's books and records, and that the firm also did not supervise the review of electronic correspondence. We affirm the Extended Hearing Panel's findings that Meyers Associates and Meyers violated NASD Rule 3010, and thus violated too NASD Rule 2110 and FINRA Rule 2010.

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[15] These inaccuracies did not affect the firm's total amount of reported expenses or income and had no impact on its net capital computations.

[16] Enforcement alleged that the foregoing violations of the Exchange Act and Exchange Act rules were "willful," rendering the firm statutorily disqualified. The Extended Hearing Panel, however, did not find this conduct willful. Enforcement did not appeal this element of the Extended Hearing Panel's decision. We therefore do not revisit it here.

1. The Respondents Failed to Supervise the Firm's Books and Records

NASD Rule 3010 requires that each FINRA member establish and maintain a system to supervise the activities of the persons that are associated with it that is reasonably designed to achieve compliance with the federal securities laws and FINRA rules.[17] *See* NASD Rule 3010(a). It must include written procedures to supervise the types of business in which the firm engages and the activities of its registered representatives, registered principals, and other associated persons. *See* NASD Rule 3010(a)(1), (b)(1).

During 2011 and 2012, Meyers Associates' supervisory system did not include procedures to account for accurately in the firm's books and records the personal expenses that the firm reimbursed Meyers and Kahn under the terms of their employment agreements. Meyers and Kahn were not required under the firm's procedures to share the terms of their employment agreements with the individuals within the firm that were responsible for the firm's accounting and financial reporting. Nor were Meyers and Kahn required to differentiate between the business and personal expenses that they submitted to Meyers Associates for reimbursement. Instead, the firm permitted them both to provide the firm's accounting personnel with the cover page of their credit card statements that provided the total expenses only that each of them incurred monthly. Consequently, the firm's accounting personnel accounted for and reported as business expenses the personal expenses Meyers and Kahn submitted for reimbursement.

Meyers Associates' written supervisory procedures made Meyers, the firm's chief executive officer, responsible for "ultimate supervision" of the firm's supervisory personnel, including the firm's chief financial officer and FINOP. Meyers executed both his and Kahn's employment agreements on behalf of Meyers Associates and knew well the terms of those agreements. Nevertheless, he took no steps to ensure that the firm had in place procedures to account for the reimbursements of personal expenses that he and Kahn received from the firm appropriately. He instead withheld copies of his employment agreement from the firm's accounting personnel, did not inform them that the charges that he incurred on his credit card included those for personal expenses, and made no effort to provide the firm with a breakdown of his business and personal expenses.

Based on the foregoing facts, we affirm the Extended Hearing Panel's findings that Meyers Associates and Meyers failed to supervise reasonably preparation of the firm's books and records, in violation of NASD Rule 3010 and FINRA Rule 2010. *See Wedbush Sec.*, 2016 SEC LEXIS 2794, at *28-29 (finding FINRA member and its president liable for failing to supervise reasonably the firm's regulatory filings where such filings were, among other things, knowingly inaccurate).

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[17] FINRA Rule 3110 recodifies NASD Rule 3010, effective December 1, 2014.

2. Meyers Associates Failed to Supervise Electronic Correspondence

The requirement that a FINRA member establish and maintain an adequate supervisory system includes the development of written procedures for a registered principal's review of the member's incoming and outgoing written and electronic correspondence with the public concerning its investment banking and securities business. *See* NASD Rule 3010(d)(2).

From March 2007 to September 2010, Meyers Associates did not establish and maintain policies and procedures designed to achieve the firm's review of its electronic correspondence. Its supervisory procedures failed to address how supervisors were to review electronic correspondence, the frequency of such reviews, and the manner in which to document a review. The firm thus did not maintain any records that identified which business-related electronic correspondence the firm reviewed, the registered principal that reviewed the correspondence, and the dates on which the reviews, if any, took place.

We thus affirm the Extended Hearing Panel's findings that Meyers Associates violated NASD Rule 3010 and 2110, as well as FINRA Rule 2010, by failing to supervise reasonably the firm's incoming and outgoing electronic correspondence.[18] *See Dep't of Enforcement v. North*, Complaint No. 2010025087302, 2017 FINRA Discip. LEXIS 7, at *21-22 (FINRA NAC Mar. 15, 2017) ("We, like the Hearing Panel, find that North failed to establish and maintain a reasonable supervisory system for the review of electronic correspondence."), *appeal docketed*, Admin. Proc. No. 3-17909 (SEC Apr. 6, 2017).

D. Meyers Associates Failed to Report Customer Complaints

NASD Rule 3070 requires a FINRA member to report to FINRA statistical and summary information about customer complaints.[19] It must do so by the 15th day of the month following the calendar quarter in which the member received the customer complaints. *Id.*

Meyers Associates did not report to FINRA any statistical and summary information about 49 written customer complaints that the firm received from March 2007 to July 2010.[20] Meyers Associates failed also to timely report to FINRA summary and statistical information regarding three customer complaints the firm received in 2009.[21]

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[18] FINRA Rule 2010 succeeded NASD Rule 2110, effective December 15, 2008.

[19] NASD Rule 3070 defines the term "customer" to include any person, other than a broker-dealer, with whom the member sought to, or did in fact, engage in securities activities. *See* NASD Rule 3070(c). The term "complaint" includes any written grievance involving the member, or a person associated with the member, by a customer. *Id.*

[20] Meyers Associates had not reported the information as of the date Enforcement filed the complaint in this matter.

[21] The firm reported each of these reports more than one year late.

Accordingly, we affirm the Extended Hearing Panel's findings that Meyers Associates violated NASD Rules 3070 and 2110, and FINRA Rule 2010.

E. Meyers Associates Failed to Maintain Adequate Supervisory Controls

NASD Rule 3012 requires each FINRA member to designate one or more principals who must establish, maintain, and enforce a system of supervisory control policies and procedures. *See* NASD Rule 3012(a)(1). The system must verify, after testing, that the member reasonably designed its supervisory procedures to achieve compliance with the federal securities laws and FINRA rules and create additional or amended supervisory procedures the member identifies the need.[22] *Id.* A member must design its procedures to review and monitor independently the customer account activity of the firm's producing managers; review and monitor all transmittals of customer funds or securities to third-party accounts, customer address changes, and changes of customer investment objectives; and provide heightened supervision of the activities of each producing manager that generates 20 percent or more of the revenue of the business units supervised by the producing manager's supervisor. *See* NASD Rule 3012(a)(2). The principal or principals responsible for the firm's supervisory control system must submit no less than annually to the member's senior management a report that details the member's system of supervisory controls, summarizes the results of the testing performed and any significant identified exceptions, and any new or amended supervisory procedures created in response to the test results. *See* NASD Rule 3012(a)(1).

From 2009 to June 2011, Meyers Associates' supervisory control policies and procedures did not explain how the firm identified producing managers, reviewed the customer account activities of those managers, or determined if they were in need of heightened supervision because they generated 20 percent or more of the revenue of the business units supervised by the manager's supervisor. They also did not discuss how the firm monitored the transmittals of customer funds and securities. Moreover, the 2009, 2010, and 2011 annual reports detailing the firm's system of supervisory controls did not adequately explain the procedures used to test and verify the efficacy of the system. The report instead contained conclusory, generic statements about unspecified testing of the system that claimed to justify the adequacy of the firm's supervisory controls.

Based on this evidence, it is clear to us that Meyers Associates failed to establish, maintain, and enforce a system of supervisory control policies and procedures reasonably designed to achieve compliance with the federal securities laws and FINRA rules. We thus affirm the Extended Hearing Panel's findings that the firm violated NASD Rule 3012 and FINRA Rule 2010.

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[22] NASD Rule 3012 was amended and renumbered as FINRA Rule 3120, effective December 1, 2014.

IV. Sanctions

The Extended Hearing Panel fined Meyers Associates a total of $700,000 for the firm's misconduct. The Extended Hearing Panel also fined Meyers a total of $75,000 for his misconduct and barred him from associating with any FINRA member in any supervisory or principal capacity. We modify the sanctions imposed by the Extended Hearing Panel.

A. The Respondents' Disciplinary Histories

The Sanction Guidelines ("Guidelines") instruct us to consider "always" a respondent's disciplinary history in determining sanctions.[23] Therefore, before we assess sanctions for the specific violations of the federal securities laws and FINRA rules for which we hold Meyers Associates and Meyers liable, we review their relevant disciplinary histories.

The NAC previously called Meyers Associates' disciplinary history "highly troubling." *See Continued Ass'n of Bruce Meyers*, slip op. at 29. The firm has been the subject of 16 final disciplinary actions since 2000, and it has paid approximately $390,000 in monetary sanctions as result of these actions. These actions concerned misconduct the same as, or similar to, the misconduct that we find occurred in this case: supervisory failure, making untrue statements or omitting to state material facts in connection with a securities offering, failing to keep adequate books and records, inadequate review of electronic correspondence, and failing to report or timely report customer complaints. *Id.* at 17-18. Other violations comprised failing to produce documents to regulators and in FINRA arbitrations, failing to comply with regulatory reporting requirements, and registration violations. *Id.*

Meyers too possesses an "extensive" and "troubling" disciplinary history. *Id.* at 31. He has been the subject of six final disciplinary actions since 1990, the most recent of which, an action by the Connecticut Department of Banking in March 2015, resulted in Meyers's statutory disqualification. All but one of these actions concerned Meyers's failure to fulfill his supervisory responsibilities. *Id.* at 13-14. To settle one of these actions, Meyers served a four-month suspension in all principal and supervisory capacities.

The prior actions taken against Meyers Associates and Meyers serve, in part, to inform our assessment of sanctions in this matter. As the Guidelines state, in order to deter and prevent future misconduct, sanctions imposed in the disciplinary process should be more severe for recidivists.[24] The disciplinary histories of both Meyers Associates and Meyers evidence, in our view, a disregard for fundamental regulatory and supervisory requirements and support stark

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[23] *See FINRA Sanction Guidelines* 2 (2017) (General Principles Applicable to All Sanction Determinations, No. 2), 6 (Principal Considerations in Determining Sanctions, No. 1), http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf [hereinafter *Guidelines*].

[24] *See Guidelines*, at 2 (General Principles Applicable to All Sanction Determinations, No. 2).

sanctions in this case to emphasize the need for corrective action and discourage future misconduct by these and other respondents.[25]

The Extended Hearing Panel's Conduct-Specific Sanctions

The Extended Hearing Panel assessed sanctions by cause for Meyers Associates' and Meyers's misconduct. For their wrongful public communications, the Extended Hearing Panel fined Meyers Associates $50,000 and Meyers $25,000.[26] For Meyers Associates' recordkeeping violations, the Extended Hearing Panel fined the firm $50,000.[27] The Extended Hearing Panel fined Meyers Associates $100,000 and Meyers $50,000 and barred him in all principal or supervisory capacities for their failures to supervise books and records.[28] The Extended Hearing Panel fined Meyers Associates $200,000 for egregiously failing to supervise the firm's electronic correspondence. The Extended Hearing Panel fined Meyers Associates an additional $200,000 for failing to report to FINRA customer complaint information, finding aggravating the number of unreported complaints and the length of time over which the omissions occurred, the nature of wrongdoing alleged in the unreported complaints and their potential to establish a pattern of

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25 *See id.*

26 For public communications that violate communication standards, the Guidelines recommend a fine of $1,000 to $29,000. *Id.* at 80 (Communications with the Public). For the intentional or reckless use of misleading communications, the Guidelines recommend a fine of $10,000 to $146,000. *Id.* at 81. The Guidelines recommend also that adjudicators consider suspending the member with respect to any or all activities or a responsible individual in any or all capacities for up to two years and imposing "pre-use" filing requirements. *Id.* at 80-81. The sole principal consideration for such violations is whether the communications circulated widely. *Id.* at 80.

27 The Guidelines for recordkeeping violations recommend a fine of $1,000 to $15,000, and in egregious cases, $10,000 to $146,000. *Id.* at 29 (Recordkeeping Violations). The Guidelines recommend also that adjudicators consider suspending or expelling the firm or responsible FINOP or individual. *Id.* Principal considerations include the nature and materiality of the information, the proportion and size of the firm records at issue, whether the respondent intentionally or recklessly omitted facts, whether the misconduct involved a pattern of misconduct, and whether the violations allowed other misconduct to go undetected. *Id.*

28 The Guidelines for failures to supervise recommend a fine of $5,000 to $73,000, suspending the firm with respect to any or all activities for up to 30 business days, and suspending or barring the responsible individual. *Id.* at 104 (Supervision-Failure to Supervise). Principal considerations include whether "red flags" were ignored, the nature, extent, and character of the underlying misconduct, and the quality and degree of the implementation of the firm's supervisory procedures and controls. *Id.*

misconduct at the firm, and the firm's failure to implement appropriate supervisory controls.[29] Finally, for failing to establish adequate supervisory controls, the Extended Hearing Panel fined Meyers Associates $100,000.[30]

B. Sanctions Imposed by Respondent

We have determined to modify the sanctions the Extended Hearing Panel imposed on both Meyers Associates and Meyers. First, we increase to $200,000 the fine imposed on Meyers Associates for its use of misleading communications with the public. We conclude that the communications used by the firm in this case resulted, at a minimum, from reckless misconduct.[31] *See CapWest Sec., Inc.*, Exchange Act Release No. 71340, 2014 SEC LEXIS 4604, at *41 (Jan. 17, 2014) ("The [Guidelines] for Rule 2210 violations also recommend differing sanctions depending on whether the adjudicator finds that the violations were 'inadvertent,' as opposed to finding them to have been 'intentional or reckless.'"). The communications made unwarranted and misleading claims, failed to disclose material information, included unwarranted forecasts, and omitted to disclose key information concerning potential conflicts of interest, all with the view of creating an unbalanced, positive view of SignPath and enticing capital investments in the company. *Cf. Fuad Ahmed*, Exchange Act Release No. 81759, 2017 SEC LEXIS 3078, at *43 (Sept. 28, 2017) ("[T]he defendants either knew that the representations they made to investors were false or were reckless in disregarding a substantial risk that they were false." (Internal quotation omitted)). The large number of misleading communications, the extended period over which they were sent, their wide dissemination, and the potential for the firm to gain monetarily in this case lead us to conclude that Meyers Associates' misconduct was decidedly egregious and merits a significant fine.[32]

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[29] For late reporting of reportable events under NASD Rule 3070, the Guidelines recommend a fine of $5,000 to $73,000. *Id.* at 74 (Reportable Events under NASD Rule 3070). For failures to report such events, the Guidelines recommend a fine of $5,000 to $146,000. *Id.* Principal considerations include the number and types of incidents not reported or reported late and whether the events not reported would have established a pattern of potential misconduct. *Id.*

[30] There are no guidelines specific to violations of NASD Rule 3012. The Extended Hearing Panel therefore applied the analogous Guidelines for a failure to supervise and deficient supervisory procedures.

[31] *Id.* at 81.

[32] *See Guidelines*, at 7-8 (Principal Considerations in Determining Sanctions, Nos. 8, 9, 16); *see also id.* at 80 (Principal Considerations in Determining Sanctions, No. 1).

Second, we impose a unitary sanction for the remaining misconduct in which Meyers Associates engaged.[33] We view the rule violations that we find occurred as alleged in the complaint's fourth, sixth, seventh, eighth, and ninth causes of action to have resulted fundamentally from the firm's persistent supervisory failures. *See Hedge Fund Capital Partners, LLC*, 2012 FINRA Discip. LEXIS 42, at *97 ("[W]e find that it is appropriate to impose a unitary sanction for these remaining violations because the remaining violations of FINRA rules all resulted from the broad and systematic supervisory failures at the firm."). We therefore apply the Guidelines for systemic supervisory failures when assessing the appropriate sanctions to impose on the firm.[34] They recommend fines of $10,000 to $292,000 for the firm, or higher fines where aggravating factors are prominent.[35]

We impose a $500,000 fine for Meyers Associates' supervision-related misconduct. In determining the appropriateness of this sum, we have considered a number of aggravating factors. First, we conclude that the firm's supervisory failures allowed misconduct to occur.[36] The evidence establishes that the firm's recordkeeping violations and failure to report customer complaint information resulted directly from the firm's failure to implement written supervisory procedures reasonably designed to ensure the accuracy of the firm's books and records and fulfill its review of electronic correspondence. Second, Meyers Associates failed to respond to warnings from FINRA and other regulators.[37] Particularly disquieting is the existence of FINRA action against the firm for recordkeeping violations and a failure to review emails that Meyers Associates settled just prior to the misconduct that occurred in this case. Failure to increase to even a minimal level its scrutiny of the firm's activities in these areas is deeply troubling. Third, it is clear that Meyers Associates failed to allocate its resources to prevent or detect supervisory failures.[38] It instead persistently ignored its supervisory shortcomings and chose to pay significant fines rather than strengthen its system of controls. FINRA sanctions to date have not served to deter Meyers Associates' misconduct. Fourth, the firm's supervisory failures affected the integrity of, among other things, the firm's financial and regulatory reporting.[39] The firm maintained inaccurate books and records for two years by incorrectly accounting for Meyers's

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33 The Guidelines permit the aggregation or batching of similar violations for assessing sanctions. *See id.* at 4 (General Principles Applicable to All Sanction Determinations, No. 4).

34 *Guidelines*, at 105.

35 *Id.* The Guidelines permit adjudicators to consider suspending firm activities or expelling a firm, as well as imposing undertakings. *Id.* at 106.

36 *Id.* at 105 (Principal Considerations in Determining Sanctions, No. 1).

37 *Id.* (Principal Considerations in Determining Sanctions, No. 2).

38 *Id.* (Principal Considerations in Determining Sanctions, No. 3).

39 *Id.* at 106 (Principal Considerations in Determining Sanctions, No. 7).

and Kahn's personal expenses as business expenses and its failure to supervise electronic correspondence resulted in no reporting of customer complaint information for two years, thus hiding from FINRA information concerning a potentially serious pattern of sales practice abuse. Finally, the firm's controls and procedures were poorly implemented or not at all.[40] Meyers Associates had no procedures to account for personal expenses as compensation, its procedures for reviewing electronic correspondence were grossly deficient, and the firm's system of controls failed to address material requirements of NASD Rule 3012. Considering that aggravating factors predominate, a $500,000 fine—that is higher than the recommended fine range—is appropriate.[41]

Third, we increase to $50,000 the fine the Extended Hearing Panel imposed on Meyers for his role in Meyers Associates' wide dissemination of violative public communications.[42] The numerous pieces of unbalanced and misleading sales literature used, the extended period of their use, and the potential for Meyers's financial gain support a sanction at the high end of the Guidelines for advertising violations.[43] Meyers drafted and knowingly sent the misleading communications at issue in this case. His misconduct too was egregious and, at a minimum, reckless.[44]

Finally, we fine Meyers $50,000 and bar him in any principal or supervisory capacity for his failure to supervise. In reaching this conclusion, we considered the quality and degree of

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40 *Id.* (Principal Considerations in Determining Sanctions, No. 8).

41 The respondents assert on appeal that the firm has demonstrated an inability to pay monetary sanctions. They point to Meyers Associates' documented losses and testimony that Meyers has supported the firm with contributions of his personal funds. Under the Guidelines, "[a]djudicators are required to consider a respondent's bona fide inability to pay when imposing a fine or ordering restitution." *Id.* at 6. Settled precedent, however, establishes that respondents bear the burden of demonstrating an inability to pay and their burden is very high. *See Dep't of Enforcement v. Merrimac Corp. Sec., Inc.*, Complaint No. 2009017195204, 2015 FINRA Discip. LEXIS 4, at *15 (FINRA NAC Apr. 29, 2015). The respondents in this case have not met their significant burden. A firm's net capital does not govern monetary sanctions imposed on a member. *See ACAP Fin., Inc.*, Exchange Act Release No. 70046, 2013 SEC LEXIS 2156, at *76 & n.158 (July 26, 2013) (citing 2011 *Guidelines*, at 5), *aff'd*, 783 F.3d 763 (10th Cir. 2015). The respondents provided no evidence of the firm's financial condition as of the time the hearing, and they did not seek to supplement the record on appeal. Nor have they shown that the firm cannot obtain financing, employ other sources of funds to discharge a monetary liability, or agree to an installment plan or an alternative payment option with FINRA. *Id.* at *77.

42 *See supra* n.26.

43 *Guidelines*, at 7-8 (Principal Considerations in Determining Sanctions, Nos. 8-9, 16).

44 *See id.* at 80-81.

Meyers's implementation of Meyers Associates' system of supervisory procedures and controls. Over an extended period, Meyers has proven himself incapable of adopting, implementing, and maintaining supervisory procedures and controls necessary to ensure his firm's compliance with the federal securities laws and FINRA rules. His hearing testimony showed him to be largely distanced from, and indifferent to, Meyers Associates' obligation to maintain an effective supervisory system.[45] It is entirely fitting therefore that we bar Meyers from acting in any principal or supervisory capacity. *See Ronald Pellegrino*, Exchange Act Release No. 59125, 2008 SEC LEXIS 2843, at *66 (Dec. 19, 2008) ("The principal bar will protect investors from dealing with securities professionals who are not adequately supervised." (Internal quotation omitted)).

V. Conclusion

We affirm the Extended Hearing Panel's findings that Meyers Associates and Meyers emailed unbalanced and misleading communications to the public, in violation of NASD Rule 2210 and FINRA Rule 2010; the firm maintained inaccurate books and records, in violation of Section 17 of the Exchange Act, Exchange Act Rules 17a-3, 17a-4, and 17a-5, NASD Rule 3110, and FINRA Rules 4511 and 2010; Meyers Associates and Meyers failed to supervise reasonably the preparing of the firm's books and records, in violation of NASD Rule 3010 and FINRA Rule 2010; the firm failed to supervise reasonably its electronic correspondence, in violation of NASD Rules 3010 and 2110, as well as FINRA Rule 2010; Meyers Associates failed to report to FINRA, or failed to report timely, information concerning customer complaints, in violation of NASD Rules 3070 and 2110, and FINRA Rule 2010; and the firm failed to establish and maintain an adequate system of supervisory control procedures, in violation of NASD Rule 3012 and FINRA Rule 2010. Accordingly, we fine Meyers Associates $200,000 for its advertising violations and impose a unitary sanction, a $500,000 fine, for its supervision-related misconduct. We also fine Meyers $50,000 for his role in the firm's use of misleading public communications, and fine him $50,000 and bar him from acting in any supervisory or principal capacity for his failure to supervise. The bar is effective immediately upon issuance of this decision. We also

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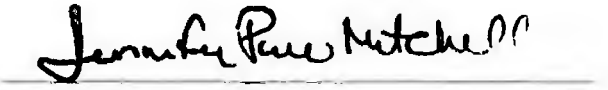
[45] In their appeal brief, Meyers Associates and Meyers assert that they have undertaken corrective actions that serve to remediate their misconduct. This claim is irrelevant. Purported corrective actions are not mitigating when taken after the identification of their misconduct. *See Dep't of Enforcement v. N. Woodward Fin. Corp.*, Complaint No. 2011028502101, 2016 FINRA Discip. LEXIS 35, at *52-53 & n.51 (quoting *Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 3)). Moreover, the evidence of the respondents' purported voluntary, remedial actions was conclusory in nature and not substantiated meaningfully within the record. Indeed, they are belied by the respondents' ongoing disciplinary problems, which prove that the firm's supervisory system remains lacking and that neither Meyers Associates nor Meyers recognizes the significance and meaning of the numerous regulatory actions taken against them.

affirm the order that Meyers Associates and Meyers pay, jointly and severally, hearing costs of $13,626.32.[46]

On behalf of the National Adjudicatory Council,



Jennifer Piorko Mitchell
Vice President and Deputy Corporate Secretary

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[46] Pursuant to FINRA Rule 8320, FINRA will revoke for non-payment the membership of any member, or the registration of any person associated with a member, who fails to pay any fine, costs, or other monetary sanctions after seven days' notice in writing.