SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 74913 / May 8, 2015

Admin. Proc. File No. 3-15990

In the Matter of the Application of

NORTH WOODWARD FINANCIAL CORPORATION
and
DOUGLAS A. TROSZAK

For Review of Disciplinary Action Taken by

FINRA

CORRECTED OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY PROCEEDINGS

Failure to Provide Requested Information

Failure to Timely Amend Form U4

Associated person, officer, and control person of member firm failed to respond fully to FINRA's requests for information made pursuant to FINRA Rule 8210. Associated person also failed to timely amend his Form U4 to disclose a federal tax lien. *Held*, association's findings of violations and sanctions imposed are *sustained*.

APPEARANCES:

Douglas A. Troszak, pro se and for North Woodward Financial Corporation.

Alan Lawhead and *Jennifer C. Brooks*, for FINRA.

Appeal filed: August 28, 2014
Last brief received: December 1, 2014

North Woodward Financial Corporation, a FINRA member firm, and Douglas A. Troszak, North Woodward's president, chief financial officer, chief compliance officer, financial and operations principal ("FINOP"), and sole registered representative (together "Applicants"), appeal from FINRA disciplinary action. FINRA found that Applicants provided only partial responses to FINRA's information requests in violation of FINRA Rules 8210 and 2010. FINRA also found that Applicants did not timely amend Troszak's Uniform Application for Securities Industry Registration ("Form U4") to disclose that he was subject to a federal tax lien and, as a result, violated Article V, Section 2 of FINRA's By-Laws, FINRA Rule 2010, and NASD Rule 2110. FINRA expelled North Woodward from membership and barred Troszak in all capacities for the Rule 8210 violation. FINRA declined to impose any other sanctions. Applicants claim, among other things, that FINRA's requests were beyond the scope of Rule 8210, that the failure to timely amend the Form U4 was justifiable, and that sanctions were unwarranted. Based on our independent review of the record, we sustain FINRA's findings of violations and imposition of sanctions.

I. Background

The relevant facts are largely undisputed. In 2000, Troszak founded North Woodward, a general securities firm. Troszak is a certified public accountant and has owned and operated Troszak CPA, an accounting firm, since the mid-1980s. All of North Woodward's customers are also Troszak CPA's accounting clients.

A. FINRA investigated the circumstances under which Troszak borrowed money from North Woodward's customers to pay off his defaulted mortgage.

In February 2010, FINRA began investigating Applicants after receiving a tip that Troszak borrowed money from North Woodward's customers. On February 12, 2010, FINRA requested information from Applicants pursuant to Rule 8210. On March 10, 2010, Applicants, who were represented by counsel throughout the investigation, provided complete and timely responses.[1] As a result, FINRA learned the following:

In February 2009, Troszak was unable to pay the mortgage on a commercial condominium unit that he owned in Michigan. In November 2009, after the unit went into foreclosure, Troszak sought and acquired a total of $200,000 in loans from ten North Woodward customers to redeem ownership of the property. Troszak issued a promissory note to each of the ten customers that required repayment of the principal plus 10% annual interest over six consecutive quarterly installments. Troszak arranged to make payments to the firm's customers through Troszak Capital Corp., an entity that he created for the purpose of receiving a tax deduction on the interest portion of the payments.[2] On December 8, 2009, Troszak redeemed his ownership in the property using $188,689.52 of the loan proceeds.

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1 Applicants discharged their counsel on December 7, 2011, the day before FINRA held a hearing in this matter.

2 Troszak was the president and sole shareholder of Troszak Capital Corp.

B. FINRA made additional requests for information and documents pursuant to Rule 8210, but Applicants did not provide complete responses.

On April 22, 2010, FINRA requested information and documents pursuant to Rule 8210 to learn more about the circumstances surrounding the loans and Troszak's ability to repay North Woodward's customers. FINRA also informed Troszak that he was required to amend his Form U4 to disclose that he was subject to a federal tax lien and requested an explanation as to why he had not yet amended his Form U4.[3]

On May 20, 2010, Applicants sent FINRA a letter that answered only some of FINRA's questions and failed to provide any of the requested documents. Applicants did not provide:

- copies of the firm's customer new account forms, account amendments, and account statements for 2009 and 2010 for each North Woodward customer who loaned Troszak money;
- explanations about whether such customer account statements reflected the promissory notes, including supporting documentation;
- an accounting, with documentation, of the $11,310.48 difference between the amount Troszak borrowed from the customers and the mortgage payoff total;
- a statement showing the February 2010 and May 2010 principal and interest payments that Troszak made to each of the ten North Woodward customers at issue;
- documentation about negotiated debt forgiveness for a credit card Troszak owned;
- copies of bank and brokerage statements for accounts in which Troszak had a beneficial interest for the period January 2009 to April 2010, including the account statements for Troszak Capital Corp.; and
- copies of all correspondence with the IRS in connection with the tax lien.

Applicants variously stated that they could not provide the information and documents listed above because they were "personal and confidential" and "irrelevant" to FINRA's investigation or that they were not within their possession or control. Applicants further contended that Troszak was not required to amend the Form U4 because the tax lien "originated with his CPA practice."

On May 25, 2010, FINRA sent a further Rule 8210 request to Applicants seeking the outstanding information and documents. FINRA's letter also reminded Troszak that he was required to amend his Form U4 to disclose the tax lien. Applicants responded by letter dated June 8, 2010, refusing to provide any of the requested documents. Applicants reiterated their view that the information sought by FINRA was "private and confidential" or was not within their possession or control.

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[3] Question 14M on the Form U4 asked: "Do you have any unsatisfied judgments or liens against you?" The record contains a "Notice of Federal Tax Lien," sent by the Internal Revenue Service ("IRS") to Applicants in October 2008, that identifies "Douglas A. Troszak" as one of the taxpayers subject to the lien in the amount of $19,802.07.

FINRA sent another Rule 8210 request to Applicants on June 10, 2010, attaching the prior requests (including the requirement to amend Troszak's Form U4 to disclose the tax lien) and cautioning Applicants that failure to comply could result in disciplinary action against them. On the same day, FINRA staff spoke by telephone with Applicants' counsel to stress the importance of responding in full to the Rule 8210 requests and to warn counsel that FINRA would pursue formal action against Applicants if the requested documents were not provided. Applicants responded by letter dated June 18, 2010, again refusing to provide any of the requested documents and asserting that the information was "personal and confidential" and "irrelevant" to FINRA's investigation or "not within [their] control."

C. FINRA pursued formal action against Applicants, prompting them to produce some information and update Troszak's Form U4.

On February 15, 2011, FINRA notified Applicants that it intended to recommend formal disciplinary action against them and invited them to make a Wells submission in response. Troszak, by letter dated February 25, 2011, claimed that Applicants already had supplied a large amount of documents and that FINRA was requesting privileged documents. Applicants included no documents with the response.

On May 18, 2011, FINRA filed a complaint against Applicants, alleging that they failed to respond to information requests in violation of FINRA Rules 8210 and 2010, and failed to timely amend Troszak's Form U4 in violation of Article V, Section 2 of FINRA's By-Laws, FINRA Rule 2010, and NASD Rule 2110. Between October 5, 2011 and November 23, 2011, Applicants produced 5,601 documents to FINRA, including correspondence with the IRS; litigation records related to Applicants' taxes and liens; various bank account statements held in Troszak's name or in which he had a beneficial interest; and some of North Woodward's securities account statements for the customers who loaned Troszak the money at issue.[4] But these documents were not entirely responsive to FINRA's earlier Rule 8210 requests because FINRA still had not received:

- an accounting, with documentation, of the $11,310.48 difference between the amount that Troszak borrowed from his customers and the mortgage payoff total;
- a statement showing the February 2010 and May 2010 principal and interest payments that Troszak made to each of the ten customers at issue; and
- copies of bank and brokerage statements for accounts in which Troszak had a beneficial interest for the period January 2009 to April 2010, including the account statements for Troszak Capital Corp.

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[4] The description of the documents listed above is based on an index, prepared by FINRA staff, that the parties agreed to admit at the hearing. The documents themselves are not in the record.

D. FINRA held a hearing, and Applicants appealed the FINRA decisions.

During a hearing held on December 8, 2011, the FINRA examiner who sent the Rule 8210 letters testified that she requested the information and documents to determine whether Applicants misused customer funds and whether the promissory notes were suitable investments for the customers. For example, FINRA knew that some of the customers were elderly and withdrew funds from their retirement accounts ("IRAs") to loan Troszak money, but it was unclear whether the customers suffered tax consequences or had any retirement savings left after the withdrawals. FINRA also wanted to determine whether Applicants were financially stable enough to repay the customers in full. The examiner testified that she could not make any of those determinations because Applicants did not provide all of the information and documents requested.

At the hearing, Troszak testified that accounting rules and federal tax laws prevented him from disclosing the customers' information to FINRA without their written consent. But Troszak also testified that he never sought such consent. He admitted that his counsel "tried to educate" him and "explain in great detail" why FINRA was entitled to the information notwithstanding the accounting rules and federal tax laws, and had told him, "You have no choice. You just have to give them everything they ask for." Troszak testified that one of his lawyers "guaranteed[d] that this is all sealed," yet still had to "wrestle him down and make [the information] go towards [FINRA]."

As to the tax lien, Troszak admitted in on-the-record testimony taken in November 2011 that the IRS notified him about the lien in October 2008. At the hearing, Troszak testified that he satisfied the lien on October 13, 2010. But Troszak also testified that he did not update his Form U4 to disclose the details about the tax lien until one year later, after others had convinced him that an update was necessary.

A Hearing Panel found that Applicants committed the violations alleged in the complaint. For the Rule 8210 violation, the Hearing Panel expelled North Woodward and barred Troszak. The Hearing Panel found other sanctions to be appropriate but declined to impose them in light of the bar and expulsion—those sanctions included, for the Rule 8210 violation, a $50,000 fine, to be paid jointly and severally, and, for the violations regarding the Form U4, a $10,000 fine, to be paid jointly and severally, and a thirty-business-day suspension. Applicants appealed the Hearing Panel decision to the National Adjudicatory Council ("NAC"), which affirmed the findings of violations and modified the sanctions. The NAC expelled North Woodward and barred Troszak for the Rule 8210 violation. The NAC declined to impose any other sanctions. It found that, absent a bar and expulsion, it would have been appropriate to impose the fines ordered by the Hearing Panel, but would have suspended Troszak for sixty days for failing to amend his Form U4. This appeal 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 disciplinary actions.[5] Pursuant to Exchange Act Section 19(e)(1), in reviewing an SRO disciplinary action, we determine whether the aggrieved person engaged in the conduct found by the SRO, whether such conduct violates the SRO's rules, and whether such SRO rules are, and were applied in a manner, consistent with the purposes of the Exchange Act.[6]

B. Applicants violated FINRA Rules 8210 and 2010 by providing only partial responses to FINRA's requests.

Rule 8210(a)(1) requires member firms and their associated persons to provide information to FINRA in the course of an investigation.[7] There is no dispute that Applicants provided complete and timely responses to FINRA's Rule 8210 request made in February 2010. But, from April to June 2010, FINRA sent three Rule 8210 requests to Applicants seeking additional information and documents regarding the loans that Troszak received from the Firm's customers and his ability to repay them, and Applicants did not provide FINRA with any documents responsive to these requests until after FINRA filed a complaint. And that belated response was incomplete: At no point did FINRA receive an accounting, with supporting documentation, of the $11,310.48 difference between the loan amount and the payoff amount; proof that the interest and principal payments that were required by the promissory notes were made to the customers; and the 2009 to 2010 securities account statements for Troszak Capital Corp. We therefore find that the record supports FINRA's finding that Applicants failed to provide information and documents that fully responded to FINRA's requests, and we sustain FINRA's finding that Applicants violated Rules 8210 and 2010.[8]

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5 *See David M. Levine*, Exchange Act Release No. 48760, 2003 WL 22570694, at *9 n.42 (Nov. 7, 2003).

6 15 U.S.C. § 78s(e)(1).

7 *CMG Inst'l Trading, LLC & Shawn D. Baldwin*, Exchange Act Release No. 59325, 2009 WL 223617, at *5 (Jan. 30, 2009).

8 *Gregory Evan Goldstein*, Exchange Act Release No. 71970, 2014 WL 1494527, at *2-6 (Apr. 17, 2014) (finding that applicant violated Rule 8210 by providing responses to some, but not all, of FINRA's requests for information). A violation of FINRA rules constitutes conduct inconsistent with just and equitable principles of trade and therefore also establishes a violation of FINRA Rule 2010. *See William J. Murphy*, Exchange Act Release No. 69923, 2013 WL 3327752, at *8 n.29 (July 2, 2013).

C. FINRA sought information that was within the scope of its regulatory authority and Applicants' control, and did not seek customer tax return information.

We reject Applicants' arguments that FINRA exceeded the scope of its regulatory authority by seeking information about loans rather than securities, by seeking documents that were not in Applicants' control, and by seeking information that was provided to Troszak CPA as a tax preparer. As discussed below, FINRA's Rule 8210 requests concerning the loans fell within the scope of its regulatory authority because the requests probed whether Applicants' conduct contravened the high ethical standards to which all members and associated person must adhere. Further, the information FINRA sought was within Applicants' control, and FINRA did not seek information provided to a tax preparer. Rather, FINRA requested information about Troszak's own principal and interest payments to customers.

1. FINRA may request information even if the conduct at issue does not involve a security.

We reject Applicants' argument that Rule 8210 does not apply here because the loans at issue are not securities. FINRA's disciplinary authority is broad enough to encompass business-related conduct that may contravene the high ethical standards to which members and associated persons must adhere, even if that conduct does not involve a security.[9] The fact that Troszak sought and received a substantial amount of money in the form of loans from customers of North Woodward to address his financial difficulties logically raised questions for FINRA about whether his business-related conduct comported with those ethical standards. FINRA has emphasized that "[l]oans between registered persons and their customers are of legitimate interest to [FINRA] and member firms because of the potential for misconduct."[10] Thus, FINRA

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[9] *See Daniel C. Adams*, Exchange Act Release No. 19915, 1983 SEC LEXIS 1367, at *5 (June 27, 1983) (finding that Article III, Section 1 of the NASD's Rules of Fair Practice (now FINRA Rule 2010) required member firms and their associated persons "in the conduct of [their] business . . . [to] observe high standards of commercial honor and just and equitable principles of trade" and that "the NASD's disciplinary authority is broad enough to encompass business-related activity that contravenes those standards even if that activity does not involve a security"); *see also Dante J. DiFrancesco*, Exchange Act Release No. 66113, 2012 WL 32128, at *5 n.18 (Jan. 6, 2012) (finding that FINRA's disciplinary authority under NASD Rule 2110 (now FINRA Rule 2010) was broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security) (citing *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996) (per curiam)).

[10] *See* NASD Notice to Members 03-62, 2003 WL 22324879, at *1 (Oct. 8, 2003) (stating that FINRA "has brought disciplinary action against registered persons who have violated just and equitable principles of trade by taking unfair advantage of their customers by inducing them to lend money in disregard of the customers' best interests, or by borrowing funds from, but not repaying, customers").

was within its authority to investigate the circumstances surrounding the loans regardless of whether they are securities.[11]

2. The record does not support Applicants' contention that certain information and documents did not exist or were not in their possession, custody, or control.

FINRA never received an accounting, with documentation, for the $11,310.48 difference between the loan amount and the mortgage payoff amount or all of the bank and brokerage statements for accounts in which Troszak had a beneficial interest. Applicants argue that they could not respond to FINRA's request because the information and documents did not exist or were not in their possession, custody, or control. We disagree.

At the time of this conduct in 2010, Rule 8210(a)(2) stated in part that FINRA may, for the purpose of an investigation, "inspect and copy the books, records, and accounts of such member or person [associated with a member] with respect to any matter involved in the investigation."[12] The plain text of the rule required that the information requested be "of" the member or associated person. Thus, the information and documents at issue here fall within the scope of Rule 8210(a)(2) because they were "of" Troszak or the firm.

Applicants argue that "Troszak could not possibly complete an accounting on the remaining [$11,310.48] because he does not have all of the necessary information, which is possessed and controlled, not by Troszak or any of his associated entities, but by Bayview Title." Applicants state in their brief on appeal that, "[o]nce Troszak had the [loan] funds, he turned them over to Bayview Title, the title company handling the redemption transaction." Applicants miss the point. The $11,310.48 was the remainder of the money that North Woodward's customers loaned to Troszak, not Bayview. Whether the money was with Bayview Title or in another account held by Troszak or one of his entities, Troszak owned and controlled the money. Therefore, FINRA's request was within the scope of its authority because the records it sought were "of " Troszak under Rule 8210(a)(2).[13]

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[11] *See Adams*, 1983 SEC LEXIS 1367, at *5 (finding that, even if the instrument at issue was not a security, "it was entirely proper for the NASD to investigate" the circumstances surrounding applicant's solicitation and sale of that instrument).

[12] In December 2012, we approved FINRA's proposed amendments to Rule 8210, which became effective on February 25, 2013 and expressly requires members and associated persons to provide FINRA with information that is in their "possession, custody, or control." *Order Granting Accelerated Approval*, Exchange Act Release No. 68386, 2012 WL 6100226, at *9 (Dec. 7, 2012); *see also* FINRA Regulatory Notice 13-06, 2013 WL 392397, at *1 (Jan. 25, 2013) (providing notice that the Commission approved FINRA's proposed amendments to Rule 8210). We apply the 2010 version of Rule 8210 because that was the version in effect when Applicants were subject to FINRA's Rule 8210 requests.

[13] *See Goldstein*, 2014 WL 1494527, at *5 (finding that information and documents were "of" applicant because he had an ownership interest in the entity subject to FINRA's Rule 8210

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Moreover, during on-the-record testimony and in Applicants' brief on appeal, Troszak admitted that he set up the escrow account with Bayview Title, he instructed Bayview Title about what to do with the funds, and he remained in constant contact with Bayview Title to ensure that taxes were being paid from the escrow account. If Troszak did not have the information necessary to complete an accounting, he simply needed to ask Bayview Title for the information.[14]

Applicants also argue that they could not provide the bank or brokerage statements for all of the accounts in which Troszak had a beneficial interest. But the parties agree that the only account statements at issue are those of Troszak Capital Corp., a tax relief vehicle created by Troszak specifically for repaying the loans. Although Applicants claim that Troszak Capital Corp.'s account statements "would have been generated by First Southwest, a company that Troszak has no ownership interest in and no control over," Troszak owns and controls Troszak Capital Corp., including information about its assets and account statements generated by third party providers. Thus, Troszak Capital Corp.'s account statements are "of" Troszak.[15]

According to Applicants, "it is possible that no such account statements exist" because First Southwest "does not generate account statements when there is no activity in such a small account." Yet, Troszak testified at the hearing that Troszak Capital Corp. "has a securities statement, and it's down at First Southwest . . . ." We find that the evidence does not support Applicants' claim that the information was out of their control or was unavailable.

In any event, Applicants have an obligation beyond a mere statement that information is unavailable. "If such a person cannot readily provide the information sought by [FINRA], such a person ha[s] an obligation to explain, as completely as possible, his efforts, and his inability to do so."[16] Applicants offer no evidence that they asked Bayview Title or First Southwest for any information at all in an effort to respond to FINRA's request. The record demonstrates that Applicants neither attempted to obtain the information that FINRA sought nor provided any meaningful explanation to FINRA as to why Applicants could not obtain the information.

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request).

14 *See CMG Inst'l Trading*, 2009 WL 223617, at *7 (rejecting applicant's claim that he fully responded to NASD's Rule 8210 request for his firm's foreign exchange dealer account statements where applicant "merely stated" that he could not access the online account and did not explain his efforts to obtain the requested information or why, as an account holder, he did not possess hard copies of the statements).

15 *Goldstein*, 2014 WL 1494527, at *5.

16 *CMG Inst'l Trading*, 2009 WL 223617, at *7 (citation omitted).

3. FINRA may obtain confidential information.

Applicants never responded to FINRA's request for a statement showing the February 2010 and May 2010 principal and interest payments that Troszak made to each of the ten North Woodward customers. Applicants assert that two federal tax statutes would have subjected Troszak to criminal punishment if he had produced the requested statement.[17] Those statutes generally prohibit preparers of tax returns from disclosing information given to them in connection with the preparation of tax returns. Applicants state that the information regarding the interest payments was included in the North Woodward customers' tax returns, which were prepared by Troszak CPA, and thus was not subject to disclosure.[18] But FINRA did not ask Troszak CPA for any information. Rather, FINRA requested information from Troszak about principal and interest payments *Troszak* made to the customers. This information originated with Troszak even if the customers independently gave the same information to Troszak CPA in connection with the preparation of their tax returns. The fact that the information also appeared in the customers' tax returns does not excuse Troszak's obligation to provide it to FINRA.

Applicants refer to Regulation S-P, which limits disclosure by broker-dealers of a customer's non-public personal information to nonaffiliated third parties.[19] FINRA was correct in finding that Regulation S-P contains exceptions that permit a broker-dealer to disclose customer information to an SRO, such as FINRA, for certain purposes without first giving the customer notice of and an opportunity to opt out of the disclosure.[20] Such an exception is consistent with the fact that "FINRA investigations are non-public and confidential."[21] We find that Regulation S-P did not preclude Applicants from providing FINRA with the information it requested.

Applicants acknowledge that FINRA's "authority to request documents pursuant to Rule 8210 stems from the contractual relationship entered into voluntarily by [FINRA] members and associated persons with [FINRA]."[22] But they assert that a contract is void if it requires illegal

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17 26 U.S.C. §§ 6713, 7216.

18 Applicants argue that, while only the interest portion of the payments falls under these statutes, they could not provide the principal portion of the payments either because "payments of principal were sometimes included in the same check as interest payments." Applicants fail to explain why they could not have prepared a statement for FINRA showing at least the principal portion of the payments.

19 17 C.F.R. § 248.10.

20 *See, e.g.*, 17 C.F.R. § 248.15(a)(4) (excepting certain disclosures to law enforcement and regulatory authorities, including disclosures to an SRO pursuant to SRO rules); 17 C.F.R. § 248.15(a)(7)(i) (excepting disclosures made to comply with laws and other applicable legal requirements, including applicable SRO rules). We find that Regulation S-P did not preclude Applicants from providing FINRA with the information it requested.

21 FINRA Regulatory Notice 09-17, 2009 WL 741194, at *2 (Mar. 18, 2009).

22 *Jay Alan Ochanpaugh*, Exchange Act Release No. 54363, 2006 WL 2482466, at *5 (Aug.

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conduct. Applicants reason that their contract with FINRA is void because it required them to disclose confidential information in violation of the two federal tax statutes and Regulation S-P. As discussed above, those laws did not prohibit Applicants from responding to FINRA's request.

Applicants urge us to excuse their failure to provide all of the information to FINRA "even if the contractual basis for FINRA's authority to issue 8210 requests to the Applicants is not void." We decline to do so. When Applicants registered with FINRA, they agreed to abide by its rules, which are unequivocal with respect to their obligation to provide information requested by FINRA.[23] We repeatedly have held that members and their associated persons may not "second guess" FINRA's requests for information.[24] "Because much of the information that FINRA needs to conduct its investigations is non-public and confidential, FINRA's ability to police the activities of its members and associated persons would be eviscerated if FINRA could not request such information under Rule 8210."[25] If Applicants had concerns about responding to FINRA's requests, they should have "raised, discussed, and resolved [them] with [FINRA] in the cooperative spirit and prompt manner contemplated by the Rules."[26] Instead, Applicants refused to comply with FINRA's requests in violation of FINRA Rule 8210.

Applicants assert that FINRA did not find that they violated FINRA Rule 3240 by borrowing money from their customers and, therefore, their conduct was "consistent with just and equitable principles of trade." But Rule 3240 is not at issue. While FINRA did not charge Applicants with violating Rule 3240, borrowing from customers is regulated by that rule and such conduct is within FINRA's authority to investigate, including through information requests made pursuant to Rule 8210.

In summary, FINRA's requests were within its regulatory authority pursuant to Rule 8210. Yet Applicants failed to respond to those requests in two significant respects. First, Applicants did not provide any documents in response to the three Rule 8210 letters that FINRA sent from April to June 2010 until after FINRA instituted proceedings. Second, even after proceedings began, Applicants failed to provide three important categories of information.

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25, 2006); *see also Morton Bruce Erenstein*, Exchange Act Release No. 56768, 2007 WL 3306103, at *6 (Nov. 8, 2007) ("Erenstein's contractual relationship with [FINRA], entered into when he became an associated person with [a FINRA] member, included his agreement to abide by all its rules.").

23 *Joseph G. Chiulli*, Exchange Act Release No. 42359, 2000 WL 91733, at *5 (Jan. 28, 2000); *see also Goldstein*, 2014 WL 1494527, at *10 (finding that applicant consented as an associated person to FINRA's ability under Rule 8210 to request information).

24 *CMG Inst'l Trading*, 2009 WL 223617, at *8 (citation omitted).

25 *Goldstein*, 2014 WL 1494527, at *10 (rejecting applicant's argument that FINRA was precluded from requesting confidential information).

26 *Richard J. Rouse*, Exchange Act Release No. 32658, 1993 WL 276149, at *3 n.9 (July 19, 1993).

Applicants offer no persuasive reason for failing to respond fully to FINRA's information requests. We find that Applicants' incomplete responses to FINRA's information requests violated Rules 8210 and 2010.

D. Applicants violated Article V, Section 2(c) of FINRA's By-Laws, NASD Rule 2110, and FINRA Rule 2010 by not timely amending Troszak's Form U4.

Article V, Section 2(c) of FINRA's By-Laws provides that every Form U4 filed with FINRA be kept current at all times by supplementary amendments that must be filed within thirty days of learning of the facts or circumstances giving rise to the amendment. The duty to maintain an accurate Form U4 lies primarily with an associated person who is in the best position to provide information about the questions presented in the form. But a member, which is required to file the Form U4, also is subject to that duty and therefore can be held liable for failing to satisfy it.[27] Question 14M on the Form U4 asked: "Do you have any unsatisfied judgments or liens against you?" There is no dispute that Applicants did not timely amend the answer to that question. As FINRA found, the IRS notified Troszak in October 2008 that he was subject to a tax lien, and FINRA repeatedly reminded him of that fact in mid-2010. Applicants nonetheless waited until October 2011 to amend the Form U4. We therefore find that Applicants violated Article V, Section 2(c) of FINRA's By-Laws.[28]

NASD Rule 2110 and FINRA Rule 2010 require members and associated persons to observe high standards of commercial honor and just and equitable principles of trade.[29] Consistent with those rules, the duty to amend a Form U4 assures regulatory organizations, employers, and members of the public that they have all material, current information about the securities professionals with whom they are dealing.[30] Applicants undermined those assurances

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[27] *See Order Approving Proposed Rule Change*, Exchange Act Release No. 60348, 2009 WL 2176837, at *2 (July 20, 2009) (stating that a new electronic filing rule "merely codifies a member's existing obligation under Article V, Section 2(c) of FINRA's By-Laws that every U4 be kept current, and implicit in this duty is the expectation that the member will seek to ensure that such information is accurate and complete").

[28] FINRA, an SRO, is authorized to impose sanctions for violations of its By-Laws, among other things. Art. XIII, Sec. 1(b), FINRA By-Laws. When an applicant seeks review by the Commission of a sanction imposed by an SRO, the Commission must determine, among other things, whether the applicant's conduct violated the provisions found by the SRO, including any of the SRO's rules. Exchange Act Section 19(e)(1), 15 U.S.C. § 78s(e)(1). "Rules" are defined in the Exchange Act to include an SRO's bylaws. Exchange Act Section 3(a)(27), (28), 15 U.S.C. § 78c(a)(27), (28).

[29] NASD Rule 2110 was effective until December 15, 2008, when its identical successor, FINRA Rule 2010, became effective. *See* FINRA Regulatory Notice 08-57, 2008 WL 4685588, at *3 (Oct. 16, 2008). The conduct at issue covers a period when each rule was effective. We therefore apply both rules.

[30] *Richard A. Neaton*, Exchange Act Release No. 65598, 2011 WL 5001956, at *6 (Oct. 20, 2011).

when they failed to update Troszak's Form U4 to include the tax lien. The timeliness of disclosing that information was particularly important because, as FINRA found, North Woodward's customers should have been able to consider the potential impact the tax lien had on the risks associated with the loans Troszak sought, such as his ability to repay the loans, *before* they decided to loan money to Troszak. Moreover, FINRA was unable to engage in basic oversight of Applicants.[31] We find that Applicants' failure to timely amend Troszak's Form U4 is inconsistent with just and equitable principles of trade.[32]

Applicants argue that their failure was justifiable. Applicants assert that "it was the position of [Applicants'] counsel that the lien did not need to be disclosed because [Troszak] was not personally subject to it." But the record contradicts this assertion. Form U4 specifically asks whether the associated person has any unsatisfied liens against him. A notice sent by the IRS identifies "Douglas A. Troszak" as one of the taxpayers subject to the lien. The fact that his accounting firm was identified as a taxpayer subject to the tax lien does not negate the fact that Troszak also was subject to the lien. Applicants had no basis, much less a justifiable basis, for failing to timely amend Troszak's Form U4. We therefore reject Applicants' argument.

E. FINRA's rules are and were applied in a manner consistent with the purposes of the Exchange Act.

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.[33] The rule therefore is consistent with the purposes of the Exchange Act.[34] Here, FINRA found that

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[31] *See Scott Mathis*, Exchange Act Release No. 61120, 2009 WL 4611423, at *9 (Dec. 7, 2009) (finding that information about applicant's tax liens "would have allowed [investors] to assess whether [his] tax problems and large financial obligations had a bearing on their confidence in him" and would have provided regulators "with an early notice about his financial difficulties and information on his ability to manage his financial obligations"), *petition denied*, 671 F.3d 210 (2d Cir. 2012).

[32] *See Mathis*, 2009 WL 4611423, at *6 (finding that applicant's failure to timely amend his Form U4 to disclose that he was subject to tax liens and customer complaints was inconsistent with just and equitable principles of trade).

[33] *Charles C. Fawcett, IV*, Exchange Act Release No. 56770, 2007 WL 3306105, at *6 (Nov. 8, 2007) (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).

[34] *See* Exchange Act Section 15A(b)(6), 15 U.S.C. § 78o-3(b)(6), (requiring that registered securities association's 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

(continued...)

Applicants violated Rule 8210 by hampering FINRA's ability to investigate possible improprieties with respect to the loans that Troszak received from North Woodward's customers. Some of these customers were elderly and used their IRAs to fund the loan—facts that raise questions about whether the loans were proper. Potential conflicts of interest such as this are of particular concern in the industry, and it is important for FINRA to be able to monitor members and associated persons who may be putting their interests ahead of their customers.[35] In fact, Troszak admits in his brief on appeal that he has not repaid all of the loans in full, claiming that repayment "has since been delayed upon the wishes of the lenders." Troszak's self-serving statement, absent any other corroborating evidence, underscores the need for FINRA's oversight. We therefore find that FINRA applied Rule 8210 in a manner consistent with the purposes of the Exchange Act.

Form U4 "is critical to the effectiveness of the screening process used to determine who may enter (and remain in) the industry" because it enables regulators and the public to determine and monitor the fitness of securities professionals.[36] Thus, the form "ultimately serves as a means of protecting the investing public."[37] Article V, Section 2 of FINRA's By-Laws is designed to ensure such protection by requiring members and associated persons to update crucial information in the Form U4. We find that the rule is consistent with the purposes of the Exchange Act.[38] The tax lien against Troszak called into question his ability to repay the customers' loans and was a specific disclosure item on his Form U4.[39] We further find that

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(...continued)
"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").

[35] *See, e.g.*, *John Edward Mullins and Kathleen Maria Mullins*, Exchange Act Release No. 66373, 2012 WL 423413, at *11 (Feb. 10, 2012) (finding that applicants' failure to disclose to their firm a sizeable loan from an elderly customer with a fixed income carried a significant potential for conflicts of interests and misconduct); *William Louis Morgan*, Exchange Act Release No. 32744, 1993 WL 307557, at *6 (Aug. 12, 1993) (finding that applicant's failure to disclose to his firm over $345,000 in loans from customers illustrated the potential for substantial harm to investors, resulted in substantial losses by the customers, and undermined the NASD's ability to carry out its self-regulatory functions).

[36] *Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 WL 1683914, at *6 (Apr. 18, 2013).

[37] *Id.*

[38] *See* Exchange Act Section 15A(b)(6) (requiring that registered securities association's rules be designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest).

[39] *See Robert D. Tucker*, Exchange Act Release No. 68210, 2012 WL 5462896, at *11 (Nov. 9, 2012) (finding that disclosure on Form U4 about judgments, bankruptcies, and tax liens was significant "because they cast doubt on Tucker's ability to manage his personal financial affairs and provide investors with appropriate financial advice").

FINRA applied Article V, Section 2 of FINRA's By-Laws here in a manner consistent with the purposes of the Exchange Act.

NASD Rule 2110 and FINRA Rule 2010 reflect the mandate of Exchange Act Section 15A(b)(6), which requires, among other things, that FINRA design its rules to "promote just and equitable principles of trade."[40] As we have stated, "[t]his general ethical standard . . . is broader and provides more flexibility than prescriptive regulations and legal requirements. NASD Rule 2110 [and FINRA Rule 2010] protect[] investors and the securities industry from dishonest practices that are unfair to investors or hinder the functioning of a free and open market, even though those practices may not be illegal or violate a specific rule or regulation. NASD Rule 2110 [and FINRA Rule 2010] ha[ve] proven effective through nearly 70 years of regulatory experience."[41] We agree with FINRA's determination that Applicants engaged in conduct inconsistent with just and equitable principles of trade by failing to timely amend Troszak's Form U4. We therefore find that NASD Rule 2110 and FINRA Rule 2010 are, and were applied in a manner, consistent with the purposes of the Exchange Act.

III. Sanctions

A. Standard of Review

Exchange Act Section 19(e)(2) directs us to sustain FINRA's sanctions unless we find, having due regard for the public interest and the protection of investors, that the sanctions are excessive or oppressive or impose an unnecessary or inappropriate burden on competition.[42] As part of this review, we must consider any aggravating or mitigating factors[43] and whether the sanctions imposed by FINRA are remedial in nature and not punitive.[44] As discussed below, we find the sanctions imposed on Applicants to be consistent with the statutory requirements and sustain them.

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[40] 15 U.S.C. § 78o-3(b)(6).

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

[42] 15 U.S.C. § 78s(e)(2). Applicants do not allege, and the record does not show, that FINRA's sanctions imposed an undue burden on competition.

[43] *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).

[44] *Paz Sec.*, 494 F.3d at 1065 ("The purpose of the order [must be] remedial, not penal.") (quoting *Wright v. SEC*, 112 F.2d 89, 94 (2d Cir. 1940)); *see also* FINRA Sanction Guidelines at 2 ("Disciplinary sanctions are remedial in nature and should be designed to deter future misconduct and to improve overall business standards in the securities industry.").

B. The sanctions imposed by FINRA are neither excessive nor oppressive.

For the Rule 8210 violation, FINRA barred Troszak and expelled North Woodward.[45] 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).[46] Where, as here, an individual has provided a partial response to Rule 8210 requests made by FINRA, the Sanction Guidelines state that a bar is standard "unless the person can demonstrate that the information provided substantially complied with all aspects of the request."[47] The Sanction Guidelines recommend expelling a firm in an egregious case.[48] The Sanction Guidelines note further that an adjudicator should consider suspending the individual or the firm in any or all capacities for up to two years where mitigation exists.[49]

The Sanction Guidelines also identify three "principal considerations" for determining sanctions where an individual or firm has provided a partial response to Rule 8210 requests. They are (i) 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"; (ii) 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 (iii) "[w]hether the respondent thoroughly explains valid reason(s) for the deficiencies in the response."[50]

Applicants have not demonstrated that the information they provided to FINRA substantially complied with all aspects of FINRA's Rule 8210 requests. Applicants did not provide any of the documents requested by FINRA in April 2010; nor did they answer all of FINRA's questions. As FINRA found, Applicants "never provided three critical categories of information," including "an accounting, with supporting documentation, of the $11,310.48 difference between the amount that Troszak borrowed from his customers and the redemption payment"; "proof that the interest and principal payments that were required by the promissory notes were made to the customers"; and "the 2009 and 2010 securities account statement for the entity that issued the promissory notes, Troszak Capital Corp."

From FINRA's perspective, the requested information was important and Applicants' failure to provide the information frustrated the staff's efforts to determine whether the

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45 FINRA determined that other sanctions for the Rule 8210 violation and the violations regarding the failure to timely amend Troszak's Form U4 "would be appropriate," but FINRA declined to impose them. We therefore do not address those sanctions.

46 *Goldstein*, 2014 WL 1494527, at *10 (citation omitted).

47 FINRA Sanction Guidelines at 33.

48 *Id.*

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

50 *Id.* at 33.

promissory notes were a legitimate investment and suitable for the Firm's customers, especially given that some of the customers were elderly and loaned Troszak money from their IRAs. FINRA also could not evaluate whether Troszak could and would repay the loans. We agree with FINRA that the staff also was unable to determine if Troszak engaged in other serious misconduct, such as the misappropriation or conversion of North Woodward's customers' funds. The limited information that Applicants provided, while helpful to some degree, did not adequately shed light on the circumstances surrounding the propriety of Troszak's conduct or his ability to repay the loans.

FINRA exerted a high degree of regulatory pressure in seeking the requested information. Applicants supplemented their May 2010 partial response only after FINRA sent three Rule 8210 requests to Applicants in mid-2010, provided Applicants with an opportunity to make a Wells submission in early 2011, and filed a complaint in mid-2011. Applicants submitted some information to FINRA approximately eighteen months after FINRA first requested it and five months after FINRA filed a complaint—but they still failed to provide key information and documents.

Applicants did not provide a valid reason for the deficiencies in their responses. They claimed that the requested information was not within their possession, custody, or control, or was irrelevant and confidential. But as discussed above, the information was "of" Troszak, was relevant, and FINRA was entitled to it notwithstanding Troszak's concerns. And for the information that Applicants claim they did not have, Applicants made no attempt to obtain it elsewhere or explain to FINRA why the information was not available.

Applicants assert that they relied on the advice of counsel in refusing to respond to FINRA's Rule 8210 requests. A claim of reliance on the advice of counsel requires a showing that the party claiming it "made complete disclosure to counsel, sought advice as to the legality of his conduct, received advice that his conduct was legal, and relied on that advice in good faith."[51] Applicants have not satisfied those elements. To the contrary, Troszak's own testimony shows that Applicants' counsel encouraged full compliance by explaining why Applicants were required to respond to FINRA's requests notwithstanding Troszak's concerns. Instead, Applicants repeatedly chose not to respond fully.

Applicants argue that FINRA erred in finding that there were several aggravating factors and no mitigating factors. FINRA found that Applicants acted intentionally and did not accept responsibility for their actions.[52] Applicants state that they have "not accepted responsibility for misconduct only because [they] ha[ve] legitimate legal concerns given the fact that federal law prohibits [them] from disclosing documents requested by FINRA." Applicants are entitled to present a vigorous defense. But Applicants' continued refusal to acknowledge that they were required to respond fully to FINRA's requests, even after their counsel explained the necessity of

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51 *Markowski v. SEC*, 34 F.3d 99, 104-05 (2d Cir. 1994) (citing *SEC v. Savoy Indus., Inc.*, 665 F.2d 1310, 1314 n.28 (D.C. Cir. 1981)).

52 Sanction Guidelines at 6-7.

doing so, demonstrates a misunderstanding of, or lack of regard for, their professional obligations.[53]

FINRA considered Applicants' disciplinary history to be another aggravating factor. It cited a 2009 Commission opinion in which we affirmed FINRA's findings that North Woodward violated Exchange Act Rule 17a-3 and NASD Rules 3110 and 2110 by failing to prepare and maintain a current general ledger and trial balance for two months and that Troszak, who was responsible for North Woodward's violations, violated NASD Rule 3110 and 2110 ("2009 Final Action").[54] Applicants were fined $5,000. FINRA also cited a January 6, 2005 settled action in which Applicants consented to findings that the firm, acting through Troszak, engaged in securities-related activities without a FINOP for thirteen months.[55] Applicants agreed to pay a $5,000 fine ("2005 Settled Action"). Based on the 2009 Final Action and the 2005 Settled Action, we agree with FINRA that Applicants' disciplinary history "reflects a serial disregard of fundamental regulatory obligations, including requirements to keep accurate records and to operate with a necessary principal registration."

In a footnote, FINRA noted the existence of a Hearing Panel decision issued on May 16, 2014 ("2014 Pending Action"). FINRA briefly recited the violations found by the Hearing Panel and sanctions imposed and stated that the "case is not final and is currently pending on appeal." Applicants assert that "[t]he NAC's consideration of ongoing regulatory matters [involving Applicants] was erroneous and may have led to an increased sanction for the Applicants."[56] But the footnote regarding the 2014 Pending Action appeared the end of a three-paragraph passage in which the NAC focused its analysis on whether the 2009 Final Action and 2005 Settled Action were aggravating factors. Based on that context, coupled with the fact that the footnote did not elaborate or discuss the import of the 2014 Pending Action, we find that the NAC did not rely on the 2014 Pending Action as part of their sanctions analysis. In any event, the 2009 Final Action and the 2005 Settled Action by themselves support FINRA's finding that "respondents are recidivists whose disregard for FINRA rules and regulatory requirements place the public

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53 *See Wendy McNeeley, CPA*, Exchange Act Release No. 68431, 2012 WL 6457291, at *18 (Dec. 13, 2012) (finding that, while the respondent had the right to present a vigorous defense, her testimony and arguments on appeal reflected a continuing failure to grasp her role as a professional); *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 WL 2790633, at *8 (Sept. 26, 2007) (finding respondent's denial that his conduct was wrongful demonstrated either a misunderstanding or a lack of recognition of his duties as a professional and of his regulatory obligations).

54 *North Woodward Fin. Corp. and Douglas A. Troszak*, Exchange Act Release No. 60505, 2009 WL 2488066, at *5 (Aug. 14, 2009).

55 *Id.* at *6.

56 Sanction Guidelines at 2 (stating that "pending investigations or the existence of ongoing regulatory proceedings prior to a final decision are not relevant" to the determination of sanctions).

interest at risk."[57] Moreover, Applicants' disciplinary history was just one of many aggravating factors that FINRA considered. Even aside from any consideration of Applicants' disciplinary history, the record supports the imposition of a bar and expulsion. We therefore reject Applicants' argument.

Applicants urge us to reduce the sanctions because they "have not engaged in fraudulent activity or activity which was harmful to [their] customers or non-client investors." But, "a Rule 8210 violation will rarely, in itself, result in direct harm to a customer."[58] "The purpose of the rule is to give [FINRA], in the absence of subpoena power, the ability to detect misconduct among its members and associated persons in the interest of protecting investors and the integrity of the markets."[59]

Applicants argue that the sanctions are punitive because "NWFC is a small firm with relatively few clients and a low level of trading activity." But "an otherwise remedial sanction does not become punitive simply because its imposition might cause some harm to a small firm. Rather, such harm is one factor, among others, to consider as part of the overall remedial inquiry."[60] Here, a bar and expulsion are remedial because Applicants pose a continuing danger to the investing public. Nor do we find mitigating Applicants' assertions that they made an "honest mistake" and that they acted out of fear of facing criminal charges for potentially violating two federal tax statutes. Applicants ignored FINRA's information requests despite repeated efforts by Applicants' counsel and FINRA staff to explain why a full response was necessary. A failure to fully respond to FINRA's Rule 8210 requests "threatens the self-regulatory system and, in turn, investors by impeding [FINRA's] detection of violative

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[57] *Id.* ("Adjudicators should consider imposing more severe sanctions when a respondent's disciplinary history includes . . . past misconduct that evidences disregard for regulatory requirements, investor protection or commercial integrity.").

[58] *CMG Inst'l Trading*, 2009 WL 223617, at *9 (rejecting applicants' argument that the absence of customer harm or fraud in connection with their Rule 8210 violation was mitigating) (citing *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 WL 1697153, at *5 (Apr. 11, 2008), *pet. for review denied*, 566 F.3d 1172 (D.C. Cir. 2009)); *see also* Sanction Guidelines at 33 n.2 (stating that the lack of harm to customers is not mitigating).

[59] *CMG Inst'l Trading*, 2009 WL 223617, at *9 (citing *Paz Sec., Inc.*, 2008 WL 1697153, at *5).

[60] *World Trade Fin. Corp.*, Exchange Act Release No. 66114, 2012 WL 32121, at *15 & n.81 (Jan. 6, 2012) (citing *Hans N. Beerbaum*, Exchange Act Release No. 55731, 2007 WL 1376365, at *5 (May 9, 2007) (rejecting argument by firm's president and sole owner who claimed barring him would cause him "great economic hardship" and "unfair" punishment because, effectively, "[he] is the Firm")); *see also Ashton Noshir Gowadia*, Exchange Act Release No. 40410, 1998 WL 564575, at *4 (Sept. 8, 1998) (stating that "economic harm alone is not enough to make the sanctions imposed . . . by [FINRA] excessive or oppressive").

conduct."[61] A bar and expulsion will protect investors by encouraging full and timely cooperation and deter others who might ignore FINRA's requests for information.[62]

An appropriate order will issue.[63]

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

Brent J. Fields
Secretary

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61 *CMG Inst'l Trading*, 2009 WL 223617, at *9.

62 *See Erenstein*, 2007 WL 3306103, at *10 (finding that a bar for a Rule 8210 violation served as a deterrent to others who might ignore NASD's information requests and protected the investing public by encouraging the timely cooperation essential to promptly discovering and remedying industry misconduct).

63 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.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 74913 / May 8, 2015

Admin. Proc. File No. 3-15990

In the Matter of the Application of

NORTH WOODWARD FINANCIAL CORPORATION
and
DOUGLAS A. TROSZAK

For Review of Disciplinary Action Taken by

FINRA

CORRECTED ORDER SUSTAINING DISCIPLINARY ACTION TAKEN BY FINRA

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

ORDERED that the disciplinary action taken by FINRA against North Woodward Financial Corporation and Douglas A. Troszak is hereby sustained.

By the Commission.

Brent J. Fields
Secretary

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 74913 / May 8, 2015

Admin. Proc. File No. 3-15990

In the Matter of the Application of

NORTH WOODWARD FINANCIAL CORPORATION
and
DOUGLAS A. TROSZAK

For Review of Disciplinary Action Taken by

FINRA

CORRECTED OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY PROCEEDINGS

Failure to Provide Requested Information

Failure to Timely Amend Form U4

Associated person, officer, and control person of member firm failed to respond fully to FINRA's requests for information made pursuant to FINRA Rule 8210. Associated person also failed to timely amend his Form U4 to disclose a federal tax lien. *Held*, association's findings of violations and sanctions imposed are *sustained*.

APPEARANCES:

Douglas A. Troszak, pro se and for North Woodward Financial Corporation.

Alan Lawhead and *Jennifer C. Brooks*, for FINRA.

Appeal filed: August 28, 2014
Last brief received: December 1, 2014

North Woodward Financial Corporation, a FINRA member firm, and Douglas A. Troszak, North Woodward's president, chief financial officer, chief compliance officer, financial and operations principal ("FINOP"), and sole registered representative (together "Applicants"), appeal from FINRA disciplinary action. FINRA found that Applicants provided only partial responses to FINRA's information requests in violation of FINRA Rules 8210 and 2010. FINRA also found that Applicants did not timely amend Troszak's Uniform Application for Securities Industry Registration ("Form U4") to disclose that he was subject to a federal tax lien and, as a result, violated Article V, Section 2 of FINRA's By-Laws, FINRA Rule 2010, and NASD Rule 2110. FINRA expelled North Woodward from membership and barred Troszak in all capacities for the Rule 8210 violation. FINRA declined to impose any other sanctions. Applicants claim, among other things, that FINRA's requests were beyond the scope of Rule 8210, that the failure to timely amend the Form U4 was justifiable, and that sanctions were unwarranted. Based on our independent review of the record, we sustain FINRA's findings of violations and imposition of sanctions.

I. Background

The relevant facts are largely undisputed. In 2000, Troszak founded North Woodward, a general securities firm. Troszak is a certified public accountant and has owned and operated Troszak CPA, an accounting firm, since the mid-1980s. All of North Woodward's customers are also Troszak CPA's accounting clients.

A. FINRA investigated the circumstances under which Troszak borrowed money from North Woodward's customers to pay off his defaulted mortgage.

In February 2010, FINRA began investigating Applicants after receiving a tip that Troszak borrowed money from North Woodward's customers. On February 12, 2010, FINRA requested information from Applicants pursuant to Rule 8210. On March 10, 2010, Applicants, who were represented by counsel throughout the investigation, provided complete and timely responses.[1] As a result, FINRA learned the following:

In February 2009, Troszak was unable to pay the mortgage on a commercial condominium unit that he owned in Michigan. In November 2009, after the unit went into foreclosure, Troszak sought and acquired a total of $200,000 in loans from ten North Woodward customers to redeem ownership of the property. Troszak issued a promissory note to each of the ten customers that required repayment of the principal plus 10% annual interest over six consecutive quarterly installments. Troszak arranged to make payments to the firm's customers through Troszak Capital Corp., an entity that he created for the purpose of receiving a tax deduction on the interest portion of the payments.[2] On December 8, 2009, Troszak redeemed his ownership in the property using $188,689.52 of the loan proceeds.

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1 Applicants discharged their counsel on December 7, 2011, the day before FINRA held a hearing in this matter.

2 Troszak was the president and sole shareholder of Troszak Capital Corp.

B. FINRA made additional requests for information and documents pursuant to Rule 8210, but Applicants did not provide complete responses.

On April 22, 2010, FINRA requested information and documents pursuant to Rule 8210 to learn more about the circumstances surrounding the loans and Troszak's ability to repay North Woodward's customers. FINRA also informed Troszak that he was required to amend his Form U4 to disclose that he was subject to a federal tax lien and requested an explanation as to why he had not yet amended his Form U4.[3]

On May 20, 2010, Applicants sent FINRA a letter that answered only some of FINRA's questions and failed to provide any of the requested documents. Applicants did not provide:

- copies of the firm's customer new account forms, account amendments, and account statements for 2009 and 2010 for each North Woodward customer who loaned Troszak money;
- explanations about whether such customer account statements reflected the promissory notes, including supporting documentation;
- an accounting, with documentation, of the $11,310.48 difference between the amount Troszak borrowed from the customers and the mortgage payoff total;
- a statement showing the February 2010 and May 2010 principal and interest payments that Troszak made to each of the ten North Woodward customers at issue;
- documentation about negotiated debt forgiveness for a credit card Troszak owned;
- copies of bank and brokerage statements for accounts in which Troszak had a beneficial interest for the period January 2009 to April 2010, including the account statements for Troszak Capital Corp.; and
- copies of all correspondence with the IRS in connection with the tax lien.

Applicants variously stated that they could not provide the information and documents listed above because they were "personal and confidential" and "irrelevant" to FINRA's investigation or that they were not within their possession or control. Applicants further contended that Troszak was not required to amend the Form U4 because the tax lien "originated with his CPA practice."

On May 25, 2010, FINRA sent a further Rule 8210 request to Applicants seeking the outstanding information and documents. FINRA's letter also reminded Troszak that he was required to amend his Form U4 to disclose the tax lien. Applicants responded by letter dated June 8, 2010, refusing to provide any of the requested documents. Applicants reiterated their view that the information sought by FINRA was "private and confidential" or was not within their possession or control.

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[3] Question 14M on the Form U4 asked: "Do you have any unsatisfied judgments or liens against you?" The record contains a "Notice of Federal Tax Lien," sent by the Internal Revenue Service ("IRS") to Applicants in October 2008, that identifies "Douglas A. Troszak" as one of the taxpayers subject to the lien in the amount of $19,802.07.

FINRA sent another Rule 8210 request to Applicants on June 10, 2010, attaching the prior requests (including the requirement to amend Troszak's Form U4 to disclose the tax lien) and cautioning Applicants that failure to comply could result in disciplinary action against them. On the same day, FINRA staff spoke by telephone with Applicants' counsel to stress the importance of responding in full to the Rule 8210 requests and to warn counsel that FINRA would pursue formal action against Applicants if the requested documents were not provided. Applicants responded by letter dated June 18, 2010, again refusing to provide any of the requested documents and asserting that the information was "personal and confidential" and "irrelevant" to FINRA's investigation or "not within [their] control."

C. FINRA pursued formal action against Applicants, prompting them to produce some information and update Troszak's Form U4.

On February 15, 2011, FINRA notified Applicants that it intended to recommend formal disciplinary action against them and invited them to make a Wells submission in response. Troszak, by letter dated February 25, 2011, claimed that Applicants already had supplied a large amount of documents and that FINRA was requesting privileged documents. Applicants included no documents with the response.

On May 18, 2011, FINRA filed a complaint against Applicants, alleging that they failed to respond to information requests in violation of FINRA Rules 8210 and 2010, and failed to timely amend Troszak's Form U4 in violation of Article V, Section 2 of FINRA's By-Laws, FINRA Rule 2010, and NASD Rule 2110. Between October 5, 2011 and November 23, 2011, Applicants produced 5,601 documents to FINRA, including correspondence with the IRS; litigation records related to Applicants' taxes and liens; various bank account statements held in Troszak's name or in which he had a beneficial interest; and some of North Woodward's securities account statements for the customers who loaned Troszak the money at issue.[4] But these documents were not entirely responsive to FINRA's earlier Rule 8210 requests because FINRA still had not received:

- an accounting, with documentation, of the $11,310.48 difference between the amount that Troszak borrowed from his customers and the mortgage payoff total;
- a statement showing the February 2010 and May 2010 principal and interest payments that Troszak made to each of the ten customers at issue; and
- copies of bank and brokerage statements for accounts in which Troszak had a beneficial interest for the period January 2009 to April 2010, including the account statements for Troszak Capital Corp.

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[4] The description of the documents listed above is based on an index, prepared by FINRA staff, that the parties agreed to admit at the hearing. The documents themselves are not in the record.

D. FINRA held a hearing, and Applicants appealed the FINRA decisions.

During a hearing held on December 8, 2011, the FINRA examiner who sent the Rule 8210 letters testified that she requested the information and documents to determine whether Applicants misused customer funds and whether the promissory notes were suitable investments for the customers. For example, FINRA knew that some of the customers were elderly and withdrew funds from their retirement accounts ("IRAs") to loan Troszak money, but it was unclear whether the customers suffered tax consequences or had any retirement savings left after the withdrawals. FINRA also wanted to determine whether Applicants were financially stable enough to repay the customers in full. The examiner testified that she could not make any of those determinations because Applicants did not provide all of the information and documents requested.

At the hearing, Troszak testified that accounting rules and federal tax laws prevented him from disclosing the customers' information to FINRA without their written consent. But Troszak also testified that he never sought such consent. He admitted that his counsel "tried to educate" him and "explain in great detail" why FINRA was entitled to the information notwithstanding the accounting rules and federal tax laws, and had told him, "You have no choice. You just have to give them everything they ask for." Troszak testified that one of his lawyers "guaranteed[d] that this is all sealed," yet still had to "wrestle him down and make [the information] go towards [FINRA]."

As to the tax lien, Troszak admitted in on-the-record testimony taken in November 2011 that the IRS notified him about the lien in October 2008. At the hearing, Troszak testified that he satisfied the lien on October 13, 2010. But Troszak also testified that he did not update his Form U4 to disclose the details about the tax lien until one year later, after others had convinced him that an update was necessary.

A Hearing Panel found that Applicants committed the violations alleged in the complaint. For the Rule 8210 violation, the Hearing Panel expelled North Woodward and barred Troszak. The Hearing Panel found other sanctions to be appropriate but declined to impose them in light of the bar and expulsion—those sanctions included, for the Rule 8210 violation, a $50,000 fine, to be paid jointly and severally, and, for the violations regarding the Form U4, a $10,000 fine, to be paid jointly and severally, and a thirty-business-day suspension. Applicants appealed the Hearing Panel decision to the National Adjudicatory Council ("NAC"), which affirmed the findings of violations and modified the sanctions. The NAC expelled North Woodward and barred Troszak for the Rule 8210 violation. The NAC declined to impose any other sanctions. It found that, absent a bar and expulsion, it would have been appropriate to impose the fines ordered by the Hearing Panel, but would have suspended Troszak for sixty days for failing to amend his Form U4. This appeal 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 disciplinary actions.[5] Pursuant to Exchange Act Section 19(e)(1), in reviewing an SRO disciplinary action, we determine whether the aggrieved person engaged in the conduct found by the SRO, whether such conduct violates the SRO's rules, and whether such SRO rules are, and were applied in a manner, consistent with the purposes of the Exchange Act.[6]

B. Applicants violated FINRA Rules 8210 and 2010 by providing only partial responses to FINRA's requests.

Rule 8210(a)(1) requires member firms and their associated persons to provide information to FINRA in the course of an investigation.[7] There is no dispute that Applicants provided complete and timely responses to FINRA's Rule 8210 request made in February 2010. But, from April to June 2010, FINRA sent three Rule 8210 requests to Applicants seeking additional information and documents regarding the loans that Troszak received from the Firm's customers and his ability to repay them, and Applicants did not provide FINRA with any documents responsive to these requests until after FINRA filed a complaint. And that belated response was incomplete: At no point did FINRA receive an accounting, with supporting documentation, of the $11,310.48 difference between the loan amount and the payoff amount; proof that the interest and principal payments that were required by the promissory notes were made to the customers; and the 2009 to 2010 securities account statements for Troszak Capital Corp. We therefore find that the record supports FINRA's finding that Applicants failed to provide information and documents that fully responded to FINRA's requests, and we sustain FINRA's finding that Applicants violated Rules 8210 and 2010.[8]

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5 *See David M. Levine*, Exchange Act Release No. 48760, 2003 WL 22570694, at *9 n.42 (Nov. 7, 2003).

6 15 U.S.C. § 78s(e)(1).

7 *CMG Inst'l Trading, LLC & Shawn D. Baldwin*, Exchange Act Release No. 59325, 2009 WL 223617, at *5 (Jan. 30, 2009).

8 *Gregory Evan Goldstein*, Exchange Act Release No. 71970, 2014 WL 1494527, at *2-6 (Apr. 17, 2014) (finding that applicant violated Rule 8210 by providing responses to some, but not all, of FINRA's requests for information). A violation of FINRA rules constitutes conduct inconsistent with just and equitable principles of trade and therefore also establishes a violation of FINRA Rule 2010. *See William J. Murphy*, Exchange Act Release No. 69923, 2013 WL 3327752, at *8 n.29 (July 2, 2013).

C. FINRA sought information that was within the scope of its regulatory authority and Applicants' control, and did not seek customer tax return information.

We reject Applicants' arguments that FINRA exceeded the scope of its regulatory authority by seeking information about loans rather than securities, by seeking documents that were not in Applicants' control, and by seeking information that was provided to Troszak CPA as a tax preparer. As discussed below, FINRA's Rule 8210 requests concerning the loans fell within the scope of its regulatory authority because the requests probed whether Applicants' conduct contravened the high ethical standards to which all members and associated person must adhere. Further, the information FINRA sought was within Applicants' control, and FINRA did not seek information provided to a tax preparer. Rather, FINRA requested information about Troszak's own principal and interest payments to customers.

1. FINRA may request information even if the conduct at issue does not involve a security.

We reject Applicants' argument that Rule 8210 does not apply here because the loans at issue are not securities. FINRA's disciplinary authority is broad enough to encompass business-related conduct that may contravene the high ethical standards to which members and associated persons must adhere, even if that conduct does not involve a security.[9] The fact that Troszak sought and received a substantial amount of money in the form of loans from customers of North Woodward to address his financial difficulties logically raised questions for FINRA about whether his business-related conduct comported with those ethical standards. FINRA has emphasized that "[l]oans between registered persons and their customers are of legitimate interest to [FINRA] and member firms because of the potential for misconduct."[10] Thus, FINRA

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[9] *See Daniel C. Adams*, Exchange Act Release No. 19915, 1983 SEC LEXIS 1367, at *5 (June 27, 1983) (finding that Article III, Section 1 of the NASD's Rules of Fair Practice (now FINRA Rule 2010) required member firms and their associated persons "in the conduct of [their] business . . . [to] observe high standards of commercial honor and just and equitable principles of trade" and that "the NASD's disciplinary authority is broad enough to encompass business-related activity that contravenes those standards even if that activity does not involve a security"); *see also Dante J. DiFrancesco*, Exchange Act Release No. 66113, 2012 WL 32128, at *5 n.18 (Jan. 6, 2012) (finding that FINRA's disciplinary authority under NASD Rule 2110 (now FINRA Rule 2010) was broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security) (citing *Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996) (per curiam)).

[10] *See* NASD Notice to Members 03-62, 2003 WL 22324879, at *1 (Oct. 8, 2003) (stating that FINRA "has brought disciplinary action against registered persons who have violated just and equitable principles of trade by taking unfair advantage of their customers by inducing them to lend money in disregard of the customers' best interests, or by borrowing funds from, but not repaying, customers").

was within its authority to investigate the circumstances surrounding the loans regardless of whether they are securities.[11]

2. The record does not support Applicants' contention that certain information and documents did not exist or were not in their possession, custody, or control.

FINRA never received an accounting, with documentation, for the $11,310.48 difference between the loan amount and the mortgage payoff amount or all of the bank and brokerage statements for accounts in which Troszak had a beneficial interest. Applicants argue that they could not respond to FINRA's request because the information and documents did not exist or were not in their possession, custody, or control. We disagree.

At the time of this conduct in 2010, Rule 8210(a)(2) stated in part that FINRA may, for the purpose of an investigation, "inspect and copy the books, records, and accounts of such member or person [associated with a member] with respect to any matter involved in the investigation."[12] The plain text of the rule required that the information requested be "of" the member or associated person. Thus, the information and documents at issue here fall within the scope of Rule 8210(a)(2) because they were "of" Troszak or the firm.

Applicants argue that "Troszak could not possibly complete an accounting on the remaining [$11,310.48] because he does not have all of the necessary information, which is possessed and controlled, not by Troszak or any of his associated entities, but by Bayview Title." Applicants state in their brief on appeal that, "[o]nce Troszak had the [loan] funds, he turned them over to Bayview Title, the title company handling the redemption transaction." Applicants miss the point. The $11,310.48 was the remainder of the money that North Woodward's customers loaned to Troszak, not Bayview. Whether the money was with Bayview Title or in another account held by Troszak or one of his entities, Troszak owned and controlled the money. Therefore, FINRA's request was within the scope of its authority because the records it sought were "of " Troszak under Rule 8210(a)(2).[13]

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[11] *See Adams*, 1983 SEC LEXIS 1367, at *5 (finding that, even if the instrument at issue was not a security, "it was entirely proper for the NASD to investigate" the circumstances surrounding applicant's solicitation and sale of that instrument).

[12] In December 2012, we approved FINRA's proposed amendments to Rule 8210, which became effective on February 25, 2013 and expressly requires members and associated persons to provide FINRA with information that is in their "possession, custody, or control." *Order Granting Accelerated Approval*, Exchange Act Release No. 68386, 2012 WL 6100226, at *9 (Dec. 7, 2012); *see also* FINRA Regulatory Notice 13-06, 2013 WL 392397, at *1 (Jan. 25, 2013) (providing notice that the Commission approved FINRA's proposed amendments to Rule 8210). We apply the 2010 version of Rule 8210 because that was the version in effect when Applicants were subject to FINRA's Rule 8210 requests.

[13] *See Goldstein*, 2014 WL 1494527, at *5 (finding that information and documents were "of" applicant because he had an ownership interest in the entity subject to FINRA's Rule 8210

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Moreover, during on-the-record testimony and in Applicants' brief on appeal, Troszak admitted that he set up the escrow account with Bayview Title, he instructed Bayview Title about what to do with the funds, and he remained in constant contact with Bayview Title to ensure that taxes were being paid from the escrow account. If Troszak did not have the information necessary to complete an accounting, he simply needed to ask Bayview Title for the information.[14]

Applicants also argue that they could not provide the bank or brokerage statements for all of the accounts in which Troszak had a beneficial interest. But the parties agree that the only account statements at issue are those of Troszak Capital Corp., a tax relief vehicle created by Troszak specifically for repaying the loans. Although Applicants claim that Troszak Capital Corp.'s account statements "would have been generated by First Southwest, a company that Troszak has no ownership interest in and no control over," Troszak owns and controls Troszak Capital Corp., including information about its assets and account statements generated by third party providers. Thus, Troszak Capital Corp.'s account statements are "of" Troszak.[15]

According to Applicants, "it is possible that no such account statements exist" because First Southwest "does not generate account statements when there is no activity in such a small account." Yet, Troszak testified at the hearing that Troszak Capital Corp. "has a securities statement, and it's down at First Southwest . . . ." We find that the evidence does not support Applicants' claim that the information was out of their control or was unavailable.

In any event, Applicants have an obligation beyond a mere statement that information is unavailable. "If such a person cannot readily provide the information sought by [FINRA], such a person ha[s] an obligation to explain, as completely as possible, his efforts, and his inability to do so."[16] Applicants offer no evidence that they asked Bayview Title or First Southwest for any information at all in an effort to respond to FINRA's request. The record demonstrates that Applicants neither attempted to obtain the information that FINRA sought nor provided any meaningful explanation to FINRA as to why Applicants could not obtain the information.

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request).

14 *See CMG Inst'l Trading*, 2009 WL 223617, at *7 (rejecting applicant's claim that he fully responded to NASD's Rule 8210 request for his firm's foreign exchange dealer account statements where applicant "merely stated" that he could not access the online account and did not explain his efforts to obtain the requested information or why, as an account holder, he did not possess hard copies of the statements).

15 *Goldstein*, 2014 WL 1494527, at *5.

16 *CMG Inst'l Trading*, 2009 WL 223617, at *7 (citation omitted).

3. FINRA may obtain confidential information.

Applicants never responded to FINRA's request for a statement showing the February 2010 and May 2010 principal and interest payments that Troszak made to each of the ten North Woodward customers. Applicants assert that two federal tax statutes would have subjected Troszak to criminal punishment if he had produced the requested statement.[17] Those statutes generally prohibit preparers of tax returns from disclosing information given to them in connection with the preparation of tax returns. Applicants state that the information regarding the interest payments was included in the North Woodward customers' tax returns, which were prepared by Troszak CPA, and thus was not subject to disclosure.[18] But FINRA did not ask Troszak CPA for any information. Rather, FINRA requested information from Troszak about principal and interest payments *Troszak* made to the customers. This information originated with Troszak even if the customers independently gave the same information to Troszak CPA in connection with the preparation of their tax returns. The fact that the information also appeared in the customers' tax returns does not excuse Troszak's obligation to provide it to FINRA.

Applicants refer to Regulation S-P, which limits disclosure by broker-dealers of a customer's non-public personal information to nonaffiliated third parties.[19] FINRA was correct in finding that Regulation S-P contains exceptions that permit a broker-dealer to disclose customer information to an SRO, such as FINRA, for certain purposes without first giving the customer notice of and an opportunity to opt out of the disclosure.[20] Such an exception is consistent with the fact that "FINRA investigations are non-public and confidential."[21] We find that Regulation S-P did not preclude Applicants from providing FINRA with the information it requested.

Applicants acknowledge that FINRA's "authority to request documents pursuant to Rule 8210 stems from the contractual relationship entered into voluntarily by [FINRA] members and associated persons with [FINRA]."[22] But they assert that a contract is void if it requires illegal

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17 26 U.S.C. §§ 6713, 7216.

18 Applicants argue that, while only the interest portion of the payments falls under these statutes, they could not provide the principal portion of the payments either because "payments of principal were sometimes included in the same check as interest payments." Applicants fail to explain why they could not have prepared a statement for FINRA showing at least the principal portion of the payments.

19 17 C.F.R. § 248.10.

20 *See, e.g.*, 17 C.F.R. § 248.15(a)(4) (excepting certain disclosures to law enforcement and regulatory authorities, including disclosures to an SRO pursuant to SRO rules); 17 C.F.R. § 248.15(a)(7)(i) (excepting disclosures made to comply with laws and other applicable legal requirements, including applicable SRO rules). We find that Regulation S-P did not preclude Applicants from providing FINRA with the information it requested.

21 FINRA Regulatory Notice 09-17, 2009 WL 741194, at *2 (Mar. 18, 2009).

22 *Jay Alan Ochanpaugh*, Exchange Act Release No. 54363, 2006 WL 2482466, at *5 (Aug.

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conduct. Applicants reason that their contract with FINRA is void because it required them to disclose confidential information in violation of the two federal tax statutes and Regulation S-P. As discussed above, those laws did not prohibit Applicants from responding to FINRA's request.

Applicants urge us to excuse their failure to provide all of the information to FINRA "even if the contractual basis for FINRA's authority to issue 8210 requests to the Applicants is not void." We decline to do so. When Applicants registered with FINRA, they agreed to abide by its rules, which are unequivocal with respect to their obligation to provide information requested by FINRA.[23] We repeatedly have held that members and their associated persons may not "second guess" FINRA's requests for information.[24] "Because much of the information that FINRA needs to conduct its investigations is non-public and confidential, FINRA's ability to police the activities of its members and associated persons would be eviscerated if FINRA could not request such information under Rule 8210."[25] If Applicants had concerns about responding to FINRA's requests, they should have "raised, discussed, and resolved [them] with [FINRA] in the cooperative spirit and prompt manner contemplated by the Rules."[26] Instead, Applicants refused to comply with FINRA's requests in violation of FINRA Rule 8210.

Applicants assert that FINRA did not find that they violated FINRA Rule 3240 by borrowing money from their customers and, therefore, their conduct was "consistent with just and equitable principles of trade." But Rule 3240 is not at issue. While FINRA did not charge Applicants with violating Rule 3240, borrowing from customers is regulated by that rule and such conduct is within FINRA's authority to investigate, including through information requests made pursuant to Rule 8210.

In summary, FINRA's requests were within its regulatory authority pursuant to Rule 8210. Yet Applicants failed to respond to those requests in two significant respects. First, Applicants did not provide any documents in response to the three Rule 8210 letters that FINRA sent from April to June 2010 until after FINRA instituted proceedings. Second, even after proceedings began, Applicants failed to provide three important categories of information.

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25, 2006); *see also Morton Bruce Erenstein*, Exchange Act Release No. 56768, 2007 WL 3306103, at *6 (Nov. 8, 2007) ("Erenstein's contractual relationship with [FINRA], entered into when he became an associated person with [a FINRA] member, included his agreement to abide by all its rules.").

23 *Joseph G. Chiulli*, Exchange Act Release No. 42359, 2000 WL 91733, at *5 (Jan. 28, 2000); *see also Goldstein*, 2014 WL 1494527, at *10 (finding that applicant consented as an associated person to FINRA's ability under Rule 8210 to request information).

24 *CMG Inst'l Trading*, 2009 WL 223617, at *8 (citation omitted).

25 *Goldstein*, 2014 WL 1494527, at *10 (rejecting applicant's argument that FINRA was precluded from requesting confidential information).

26 *Richard J. Rouse*, Exchange Act Release No. 32658, 1993 WL 276149, at *3 n.9 (July 19, 1993).

Applicants offer no persuasive reason for failing to respond fully to FINRA's information requests. We find that Applicants' incomplete responses to FINRA's information requests violated Rules 8210 and 2010.

D. Applicants violated Article V, Section 2(c) of FINRA's By-Laws, NASD Rule 2110, and FINRA Rule 2010 by not timely amending Troszak's Form U4.

Article V, Section 2(c) of FINRA's By-Laws provides that every Form U4 filed with FINRA be kept current at all times by supplementary amendments that must be filed within thirty days of learning of the facts or circumstances giving rise to the amendment. The duty to maintain an accurate Form U4 lies primarily with an associated person who is in the best position to provide information about the questions presented in the form. But a member, which is required to file the Form U4, also is subject to that duty and therefore can be held liable for failing to satisfy it.[27] Question 14M on the Form U4 asked: "Do you have any unsatisfied judgments or liens against you?" There is no dispute that Applicants did not timely amend the answer to that question. As FINRA found, the IRS notified Troszak in October 2008 that he was subject to a tax lien, and FINRA repeatedly reminded him of that fact in mid-2010. Applicants nonetheless waited until October 2011 to amend the Form U4. We therefore find that Applicants violated Article V, Section 2(c) of FINRA's By-Laws.[28]

NASD Rule 2110 and FINRA Rule 2010 require members and associated persons to observe high standards of commercial honor and just and equitable principles of trade.[29] Consistent with those rules, the duty to amend a Form U4 assures regulatory organizations, employers, and members of the public that they have all material, current information about the securities professionals with whom they are dealing.[30] Applicants undermined those assurances

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[27] *See Order Approving Proposed Rule Change*, Exchange Act Release No. 60348, 2009 WL 2176837, at *2 (July 20, 2009) (stating that a new electronic filing rule "merely codifies a member's existing obligation under Article V, Section 2(c) of FINRA's By-Laws that every U4 be kept current, and implicit in this duty is the expectation that the member will seek to ensure that such information is accurate and complete").

[28] FINRA, an SRO, is authorized to impose sanctions for violations of its By-Laws, among other things. Art. XIII, Sec. 1(b), FINRA By-Laws. When an applicant seeks review by the Commission of a sanction imposed by an SRO, the Commission must determine, among other things, whether the applicant's conduct violated the provisions found by the SRO, including any of the SRO's rules. Exchange Act Section 19(e)(1), 15 U.S.C. § 78s(e)(1). "Rules" are defined in the Exchange Act to include an SRO's bylaws. Exchange Act Section 3(a)(27), (28), 15 U.S.C. § 78c(a)(27), (28).

[29] NASD Rule 2110 was effective until December 15, 2008, when its identical successor, FINRA Rule 2010, became effective. *See* FINRA Regulatory Notice 08-57, 2008 WL 4685588, at *3 (Oct. 16, 2008). The conduct at issue covers a period when each rule was effective. We therefore apply both rules.

[30] *Richard A. Neaton*, Exchange Act Release No. 65598, 2011 WL 5001956, at *6 (Oct. 20, 2011).

when they failed to update Troszak's Form U4 to include the tax lien. The timeliness of disclosing that information was particularly important because, as FINRA found, North Woodward's customers should have been able to consider the potential impact the tax lien had on the risks associated with the loans Troszak sought, such as his ability to repay the loans, *before* they decided to loan money to Troszak. Moreover, FINRA was unable to engage in basic oversight of Applicants.[31] We find that Applicants' failure to timely amend Troszak's Form U4 is inconsistent with just and equitable principles of trade.[32]

Applicants argue that their failure was justifiable. Applicants assert that "it was the position of [Applicants'] counsel that the lien did not need to be disclosed because [Troszak] was not personally subject to it." But the record contradicts this assertion. Form U4 specifically asks whether the associated person has any unsatisfied liens against him. A notice sent by the IRS identifies "Douglas A. Troszak" as one of the taxpayers subject to the lien. The fact that his accounting firm was identified as a taxpayer subject to the tax lien does not negate the fact that Troszak also was subject to the lien. Applicants had no basis, much less a justifiable basis, for failing to timely amend Troszak's Form U4. We therefore reject Applicants' argument.

E. FINRA's rules are and were applied in a manner consistent with the purposes of the Exchange Act.

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.[33] The rule therefore is consistent with the purposes of the Exchange Act.[34] Here, FINRA found that

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[31] *See Scott Mathis*, Exchange Act Release No. 61120, 2009 WL 4611423, at *9 (Dec. 7, 2009) (finding that information about applicant's tax liens "would have allowed [investors] to assess whether [his] tax problems and large financial obligations had a bearing on their confidence in him" and would have provided regulators "with an early notice about his financial difficulties and information on his ability to manage his financial obligations"), *petition denied*, 671 F.3d 210 (2d Cir. 2012).

[32] *See Mathis*, 2009 WL 4611423, at *6 (finding that applicant's failure to timely amend his Form U4 to disclose that he was subject to tax liens and customer complaints was inconsistent with just and equitable principles of trade).

[33] *Charles C. Fawcett, IV*, Exchange Act Release No. 56770, 2007 WL 3306105, at *6 (Nov. 8, 2007) (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).

[34] *See* Exchange Act Section 15A(b)(6), 15 U.S.C. § 78o-3(b)(6), (requiring that registered securities association's 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

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Applicants violated Rule 8210 by hampering FINRA's ability to investigate possible improprieties with respect to the loans that Troszak received from North Woodward's customers. Some of these customers were elderly and used their IRAs to fund the loan—facts that raise questions about whether the loans were proper. Potential conflicts of interest such as this are of particular concern in the industry, and it is important for FINRA to be able to monitor members and associated persons who may be putting their interests ahead of their customers.[35] In fact, Troszak admits in his brief on appeal that he has not repaid all of the loans in full, claiming that repayment "has since been delayed upon the wishes of the lenders." Troszak's self-serving statement, absent any other corroborating evidence, underscores the need for FINRA's oversight. We therefore find that FINRA applied Rule 8210 in a manner consistent with the purposes of the Exchange Act.

Form U4 "is critical to the effectiveness of the screening process used to determine who may enter (and remain in) the industry" because it enables regulators and the public to determine and monitor the fitness of securities professionals.[36] Thus, the form "ultimately serves as a means of protecting the investing public."[37] Article V, Section 2 of FINRA's By-Laws is designed to ensure such protection by requiring members and associated persons to update crucial information in the Form U4. We find that the rule is consistent with the purposes of the Exchange Act.[38] The tax lien against Troszak called into question his ability to repay the customers' loans and was a specific disclosure item on his Form U4.[39] We further find that

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"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").

[35] *See, e.g.*, *John Edward Mullins and Kathleen Maria Mullins*, Exchange Act Release No. 66373, 2012 WL 423413, at *11 (Feb. 10, 2012) (finding that applicants' failure to disclose to their firm a sizeable loan from an elderly customer with a fixed income carried a significant potential for conflicts of interests and misconduct); *William Louis Morgan*, Exchange Act Release No. 32744, 1993 WL 307557, at *6 (Aug. 12, 1993) (finding that applicant's failure to disclose to his firm over $345,000 in loans from customers illustrated the potential for substantial harm to investors, resulted in substantial losses by the customers, and undermined the NASD's ability to carry out its self-regulatory functions).

[36] *Joseph S. Amundsen*, Exchange Act Release No. 69406, 2013 WL 1683914, at *6 (Apr. 18, 2013).

[37] *Id.*

[38] *See* Exchange Act Section 15A(b)(6) (requiring that registered securities association's rules be designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest).

[39] *See Robert D. Tucker*, Exchange Act Release No. 68210, 2012 WL 5462896, at *11 (Nov. 9, 2012) (finding that disclosure on Form U4 about judgments, bankruptcies, and tax liens was significant "because they cast doubt on Tucker's ability to manage his personal financial affairs and provide investors with appropriate financial advice").

FINRA applied Article V, Section 2 of FINRA's By-Laws here in a manner consistent with the purposes of the Exchange Act.

NASD Rule 2110 and FINRA Rule 2010 reflect the mandate of Exchange Act Section 15A(b)(6), which requires, among other things, that FINRA design its rules to "promote just and equitable principles of trade."[40] As we have stated, "[t]his general ethical standard . . . is broader and provides more flexibility than prescriptive regulations and legal requirements. NASD Rule 2110 [and FINRA Rule 2010] protect[] investors and the securities industry from dishonest practices that are unfair to investors or hinder the functioning of a free and open market, even though those practices may not be illegal or violate a specific rule or regulation. NASD Rule 2110 [and FINRA Rule 2010] ha[ve] proven effective through nearly 70 years of regulatory experience."[41] We agree with FINRA's determination that Applicants engaged in conduct inconsistent with just and equitable principles of trade by failing to timely amend Troszak's Form U4. We therefore find that NASD Rule 2110 and FINRA Rule 2010 are, and were applied in a manner, consistent with the purposes of the Exchange Act.

III. Sanctions

A. Standard of Review

Exchange Act Section 19(e)(2) directs us to sustain FINRA's sanctions unless we find, having due regard for the public interest and the protection of investors, that the sanctions are excessive or oppressive or impose an unnecessary or inappropriate burden on competition.[42] As part of this review, we must consider any aggravating or mitigating factors[43] and whether the sanctions imposed by FINRA are remedial in nature and not punitive.[44] As discussed below, we find the sanctions imposed on Applicants to be consistent with the statutory requirements and sustain them.

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[40] 15 U.S.C. § 78o-3(b)(6).

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

[42] 15 U.S.C. § 78s(e)(2). Applicants do not allege, and the record does not show, that FINRA's sanctions imposed an undue burden on competition.

[43] *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).

[44] *Paz Sec.*, 494 F.3d at 1065 ("The purpose of the order [must be] remedial, not penal.") (quoting *Wright v. SEC*, 112 F.2d 89, 94 (2d Cir. 1940)); *see also* FINRA Sanction Guidelines at 2 ("Disciplinary sanctions are remedial in nature and should be designed to deter future misconduct and to improve overall business standards in the securities industry.").

B. The sanctions imposed by FINRA are neither excessive nor oppressive.

For the Rule 8210 violation, FINRA barred Troszak and expelled North Woodward.[45] 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).[46] Where, as here, an individual has provided a partial response to Rule 8210 requests made by FINRA, the Sanction Guidelines state that a bar is standard "unless the person can demonstrate that the information provided substantially complied with all aspects of the request."[47] The Sanction Guidelines recommend expelling a firm in an egregious case.[48] The Sanction Guidelines note further that an adjudicator should consider suspending the individual or the firm in any or all capacities for up to two years where mitigation exists.[49]

The Sanction Guidelines also identify three "principal considerations" for determining sanctions where an individual or firm has provided a partial response to Rule 8210 requests. They are (i) 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"; (ii) 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 (iii) "[w]hether the respondent thoroughly explains valid reason(s) for the deficiencies in the response."[50]

Applicants have not demonstrated that the information they provided to FINRA substantially complied with all aspects of FINRA's Rule 8210 requests. Applicants did not provide any of the documents requested by FINRA in April 2010; nor did they answer all of FINRA's questions. As FINRA found, Applicants "never provided three critical categories of information," including "an accounting, with supporting documentation, of the $11,310.48 difference between the amount that Troszak borrowed from his customers and the redemption payment"; "proof that the interest and principal payments that were required by the promissory notes were made to the customers"; and "the 2009 and 2010 securities account statement for the entity that issued the promissory notes, Troszak Capital Corp."

From FINRA's perspective, the requested information was important and Applicants' failure to provide the information frustrated the staff's efforts to determine whether the

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45 FINRA determined that other sanctions for the Rule 8210 violation and the violations regarding the failure to timely amend Troszak's Form U4 "would be appropriate," but FINRA declined to impose them. We therefore do not address those sanctions.

46 *Goldstein*, 2014 WL 1494527, at *10 (citation omitted).

47 FINRA Sanction Guidelines at 33.

48 *Id.*

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

50 *Id.* at 33.

promissory notes were a legitimate investment and suitable for the Firm's customers, especially given that some of the customers were elderly and loaned Troszak money from their IRAs. FINRA also could not evaluate whether Troszak could and would repay the loans. We agree with FINRA that the staff also was unable to determine if Troszak engaged in other serious misconduct, such as the misappropriation or conversion of North Woodward's customers' funds. The limited information that Applicants provided, while helpful to some degree, did not adequately shed light on the circumstances surrounding the propriety of Troszak's conduct or his ability to repay the loans.

FINRA exerted a high degree of regulatory pressure in seeking the requested information. Applicants supplemented their May 2010 partial response only after FINRA sent three Rule 8210 requests to Applicants in mid-2010, provided Applicants with an opportunity to make a Wells submission in early 2011, and filed a complaint in mid-2011. Applicants submitted some information to FINRA approximately eighteen months after FINRA first requested it and five months after FINRA filed a complaint—but they still failed to provide key information and documents.

Applicants did not provide a valid reason for the deficiencies in their responses. They claimed that the requested information was not within their possession, custody, or control, or was irrelevant and confidential. But as discussed above, the information was "of" Troszak, was relevant, and FINRA was entitled to it notwithstanding Troszak's concerns. And for the information that Applicants claim they did not have, Applicants made no attempt to obtain it elsewhere or explain to FINRA why the information was not available.

Applicants assert that they relied on the advice of counsel in refusing to respond to FINRA's Rule 8210 requests. A claim of reliance on the advice of counsel requires a showing that the party claiming it "made complete disclosure to counsel, sought advice as to the legality of his conduct, received advice that his conduct was legal, and relied on that advice in good faith."[51] Applicants have not satisfied those elements. To the contrary, Troszak's own testimony shows that Applicants' counsel encouraged full compliance by explaining why Applicants were required to respond to FINRA's requests notwithstanding Troszak's concerns. Instead, Applicants repeatedly chose not to respond fully.

Applicants argue that FINRA erred in finding that there were several aggravating factors and no mitigating factors. FINRA found that Applicants acted intentionally and did not accept responsibility for their actions.[52] Applicants state that they have "not accepted responsibility for misconduct only because [they] ha[ve] legitimate legal concerns given the fact that federal law prohibits [them] from disclosing documents requested by FINRA." Applicants are entitled to present a vigorous defense. But Applicants' continued refusal to acknowledge that they were required to respond fully to FINRA's requests, even after their counsel explained the necessity of

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51 *Markowski v. SEC*, 34 F.3d 99, 104-05 (2d Cir. 1994) (citing *SEC v. Savoy Indus., Inc.*, 665 F.2d 1310, 1314 n.28 (D.C. Cir. 1981)).

52 Sanction Guidelines at 6-7.

doing so, demonstrates a misunderstanding of, or lack of regard for, their professional obligations.[53]

FINRA considered Applicants' disciplinary history to be another aggravating factor. It cited a 2009 Commission opinion in which we affirmed FINRA's findings that North Woodward violated Exchange Act Rule 17a-3 and NASD Rules 3110 and 2110 by failing to prepare and maintain a current general ledger and trial balance for two months and that Troszak, who was responsible for North Woodward's violations, violated NASD Rule 3110 and 2110 ("2009 Final Action").[54] Applicants were fined $5,000. FINRA also cited a January 6, 2005 settled action in which Applicants consented to findings that the firm, acting through Troszak, engaged in securities-related activities without a FINOP for thirteen months.[55] Applicants agreed to pay a $5,000 fine ("2005 Settled Action"). Based on the 2009 Final Action and the 2005 Settled Action, we agree with FINRA that Applicants' disciplinary history "reflects a serial disregard of fundamental regulatory obligations, including requirements to keep accurate records and to operate with a necessary principal registration."

In a footnote, FINRA noted the existence of a Hearing Panel decision issued on May 16, 2014 ("2014 Pending Action"). FINRA briefly recited the violations found by the Hearing Panel and sanctions imposed and stated that the "case is not final and is currently pending on appeal." Applicants assert that "[t]he NAC's consideration of ongoing regulatory matters [involving Applicants] was erroneous and may have led to an increased sanction for the Applicants."[56] But the footnote regarding the 2014 Pending Action appeared the end of a three-paragraph passage in which the NAC focused its analysis on whether the 2009 Final Action and 2005 Settled Action were aggravating factors. Based on that context, coupled with the fact that the footnote did not elaborate or discuss the import of the 2014 Pending Action, we find that the NAC did not rely on the 2014 Pending Action as part of their sanctions analysis. In any event, the 2009 Final Action and the 2005 Settled Action by themselves support FINRA's finding that "respondents are recidivists whose disregard for FINRA rules and regulatory requirements place the public

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53 *See Wendy McNeeley, CPA*, Exchange Act Release No. 68431, 2012 WL 6457291, at *18 (Dec. 13, 2012) (finding that, while the respondent had the right to present a vigorous defense, her testimony and arguments on appeal reflected a continuing failure to grasp her role as a professional); *Conrad P. Seghers*, Advisers Act Release No. 2656, 2007 WL 2790633, at *8 (Sept. 26, 2007) (finding respondent's denial that his conduct was wrongful demonstrated either a misunderstanding or a lack of recognition of his duties as a professional and of his regulatory obligations).

54 *North Woodward Fin. Corp. and Douglas A. Troszak*, Exchange Act Release No. 60505, 2009 WL 2488066, at *5 (Aug. 14, 2009).

55 *Id.* at *6.

56 Sanction Guidelines at 2 (stating that "pending investigations or the existence of ongoing regulatory proceedings prior to a final decision are not relevant" to the determination of sanctions).

interest at risk."[57] Moreover, Applicants' disciplinary history was just one of many aggravating factors that FINRA considered. Even aside from any consideration of Applicants' disciplinary history, the record supports the imposition of a bar and expulsion. We therefore reject Applicants' argument.

Applicants urge us to reduce the sanctions because they "have not engaged in fraudulent activity or activity which was harmful to [their] customers or non-client investors." But, "a Rule 8210 violation will rarely, in itself, result in direct harm to a customer."[58] "The purpose of the rule is to give [FINRA], in the absence of subpoena power, the ability to detect misconduct among its members and associated persons in the interest of protecting investors and the integrity of the markets."[59]

Applicants argue that the sanctions are punitive because "NWFC is a small firm with relatively few clients and a low level of trading activity." But "an otherwise remedial sanction does not become punitive simply because its imposition might cause some harm to a small firm. Rather, such harm is one factor, among others, to consider as part of the overall remedial inquiry."[60] Here, a bar and expulsion are remedial because Applicants pose a continuing danger to the investing public. Nor do we find mitigating Applicants' assertions that they made an "honest mistake" and that they acted out of fear of facing criminal charges for potentially violating two federal tax statutes. Applicants ignored FINRA's information requests despite repeated efforts by Applicants' counsel and FINRA staff to explain why a full response was necessary. A failure to fully respond to FINRA's Rule 8210 requests "threatens the self-regulatory system and, in turn, investors by impeding [FINRA's] detection of violative

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57 *Id.* ("Adjudicators should consider imposing more severe sanctions when a respondent's disciplinary history includes . . . past misconduct that evidences disregard for regulatory requirements, investor protection or commercial integrity.").

58 *CMG Inst'l Trading*, 2009 WL 223617, at *9 (rejecting applicants' argument that the absence of customer harm or fraud in connection with their Rule 8210 violation was mitigating) (citing *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 WL 1697153, at *5 (Apr. 11, 2008), *pet. for review denied*, 566 F.3d 1172 (D.C. Cir. 2009)); *see also* Sanction Guidelines at 33 n.2 (stating that the lack of harm to customers is not mitigating).

59 *CMG Inst'l Trading*, 2009 WL 223617, at *9 (citing *Paz Sec., Inc.*, 2008 WL 1697153, at *5).

60 *World Trade Fin. Corp.*, Exchange Act Release No. 66114, 2012 WL 32121, at *15 & n.81 (Jan. 6, 2012) (citing *Hans N. Beerbaum*, Exchange Act Release No. 55731, 2007 WL 1376365, at *5 (May 9, 2007) (rejecting argument by firm's president and sole owner who claimed barring him would cause him "great economic hardship" and "unfair" punishment because, effectively, "[he] is the Firm")); *see also Ashton Noshir Gowadia*, Exchange Act Release No. 40410, 1998 WL 564575, at *4 (Sept. 8, 1998) (stating that "economic harm alone is not enough to make the sanctions imposed . . . by [FINRA] excessive or oppressive").

conduct."[61] A bar and expulsion will protect investors by encouraging full and timely cooperation and deter others who might ignore FINRA's requests for information.[62]

An appropriate order will issue.[63]

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

Brent J. Fields
Secretary

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61 *CMG Inst'l Trading*, 2009 WL 223617, at *9.

62 *See Erenstein*, 2007 WL 3306103, at *10 (finding that a bar for a Rule 8210 violation served as a deterrent to others who might ignore NASD's information requests and protected the investing public by encouraging the timely cooperation essential to promptly discovering and remedying industry misconduct).

63 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.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 74913 / May 8, 2015

Admin. Proc. File No. 3-15990

In the Matter of the Application of

NORTH WOODWARD FINANCIAL CORPORATION
and
DOUGLAS A. TROSZAK

For Review of Disciplinary Action Taken by

FINRA

CORRECTED ORDER SUSTAINING DISCIPLINARY ACTION TAKEN BY FINRA

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

ORDERED that the disciplinary action taken by FINRA against North Woodward Financial Corporation and Douglas A. Troszak is hereby sustained.

By the Commission.

Brent J. Fields
Secretary