BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Wood (Arthur W.) Company, Inc., Respondent.	DECISION Complaint No. 2011025444501 Dated: March 15, 2017

Member firm failed to implement and enforce its AML procedures; failed to conduct adequate independent AML tests; charged excessive commissions; failed to supervise commissions; conducted a securities business while net capital deficient; failed to file a notice of net capital deficiency; and maintained inaccurate books and records. Held, findings affirmed and sanctions modified.

Appearances

For the Complainant: Leo F. Orenstein, Esq., Bonnie S. McGuire, Esq., Robert C. Kennedy, Esq., John Luburic, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Alan M. Wolper, Esq., Heidi E. VonderHeide, Esq.

Decision

Respondent Wood (Arthur W.) Company, Inc. ("Wood") appeals an October 29, 2015 Hearing Panel Decision. The Hearing Panel found that Wood: (1) failed to implement and enforce its anti-money laundering ("AML") program and failed to conduct adequate independent AML tests, in violation of NASD Rules 3011 and 2110 and FINRA Rules 3310 and 2010; (2) charged excessive commissions on equity transactions, in violation NASD Rule 2440, IM-2440-1, and FINRA Rule 2010; (3) failed to establish, maintain, and enforce a supervisory system with respect to commissions, in violation of NASD Rule 3010 and FINRA Rule 2010; (4) prepared and maintained inaccurate books and records, in violation of the Securities Exchange Act of 1934 ("Exchange Act") Section 17(a), Exchange Act Rule 17a-3, NASD Rule 3110, and FINRA Rule 2010; (5) failed to file a required net capital notice, in violation of Exchange Act Section

17(a), Exchange Act Rule 17a-11, and FINRA Rule 2010; and (6) conducted a securities business while net capital deficient, in violation of Exchange Act Section 15(c), Exchange Act Rule 15c(3)-1, and FINRA Rule 2010.[1]

For the AML violations, the Hearing Panel imposed a censure and a $50,000 fine and suspended Wood from liquidating penny stocks in new accounts for a period of two years. For charging excessive commissions and the related supervisory violations, the Hearing Panel censured Wood and ordered it to pay a fine of $10,000 and restitution to customers in the amount of $40,229.28 plus interest. For the net capital and books and records violations, the Hearing Panel censured Wood and fined it $15,000.

After an independent review of the record, we affirm the Hearing Panel's findings of violations and modify its sanctions.

I. Background

Wood is a retail brokerage firm based in Boston. Wood has been a FINRA member firm since 1937. The firm is owned by four principals: Paul Testa, its majority owner, CEO, and chief compliance officer ("CCO"); Kristen Kennedy, Wood's Financial and Operations Principal ("FINOP") and designated AML program compliance officer ("AMLCO"); Donald McCarthy, its sales manager; and Paul Wessling. The record demonstrates that Testa was generally responsible for compliance, including reviewing Wood's supervisory procedures, supervising Kennedy, and approving new accounts.

II. Procedural History

This disciplinary action arose out a cycle examination of Wood which focused on, among other things, Wood's financials, its compliance with AML rules, and commissions. On April 25, 2014, the Department of Enforcement ("Enforcement") filed a seven-cause complaint against Wood alleging a number of violations during the time period from June 2008 through November 2011.

In cause one, Enforcement alleged that, from June 2008 through September 2011, Wood failed to detect and investigate certain red flags related to the penny stock trading of one of its registered representatives, and failed to adequately respond to red flags raised by its clearing firm, in violation NASD Rules 3011 and 2010 and FINRA Rules 3310 and 2010. In cause two, Enforcement alleged that, from June 2008 through November 2011, Wood failed to conduct adequate independent testing of its AML procedures, in violation of NASD Rules 3011(c) and 2110 and FINRA Rules 3310(c) and 2010. In cause three, Enforcement alleged that, from January 14, 2009 to September 8, 2011, Wood charged excessive commissions which ranged from more than 5% to more than 18% on 367 equity transactions, in violation of NASD Rule

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

2440, IM-2440-1, and FINRA Rule 2010. In cause four, Enforcement alleged that Wood failed to properly supervise and detect these excessive commissions, in violation of NASD Rule 3010 and FINRA Rule 2010. In cause five, Enforcement alleged that, from October 2010 through November 2011, Wood failed to ensure accurate books and records by failing to take into account payments it owed in connection with Wood's purchase of a portion of another firm's business, in violation of Exchange Act Section 17(a), Exchange Act Rule 17a-3, NASD Rule 3110, and FINRA Rules 4511 and 2010. In cause six, Enforcement alleged that Wood failed to file required net capital notices when its net capital declined below the required minimum amount, in violation of Exchange Act Section 17(a), Exchange Act Rule 17a-11, and FINRA Rule 2010. Finally, in cause seven, Enforcement alleged that on June 29, July 31, and August 31, 2012, Wood conducted a securities business while net capital deficient, in violation of Exchange Act Section 15(c), Exchange Act Rule 15c3-1, and FINRA Rule 2010. Wood filed an answer denying the alleged violations.

After presiding over a four-day hearing, the Hearing Panel issued its decision on October 29, 2015. The Hearing Panel found that Wood had engaged in all the alleged violations, except for the allegation that its conduct violated FINRA Rule 4511.[2] For this collective misconduct, the Hearing Panel censured Wood, fined the firm $75,000, and ordered it to pay $40,229.28 in restitution. The Hearing Panel also prohibited Wood for a period of two years from executing liquidating transactions in penny stocks for new accounts. This appeal followed.

III. Discussion

A. Wood Failed to Implement and Enforce Its AML Procedures

The Hearing Panel found that Wood failed to implement its AML procedures by not properly investigating, or ignoring, red flags relating to customers' account activity and concerns raised by Wood's clearing firm, Pershing, in violation NASD Rules 3011 and 2010 and FINRA Rules 3310 and 2010. We affirm these findings.

We first review Wood's AML procedures and the facts relevant to the allegations before turning to the applicable law and our findings.

1. Wood's AML Procedures

During the relevant time period, Wood's written supervisory procedures included AML policies and procedures. The procedures stated that it was Wood's policy to "prohibit and actively prevent money laundering and any activity that facilitates money laundering or the

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[2] FINRA Rule 4511 requires that FINRA members make and preserve books and records required by FINRA rules. FINRA Rule 4511 was effective December 5, 2011. We, like the Hearing Panel, find that FINRA Rule 4511 does not apply because Wood's relevant misconduct occurred between October 2010 and November 2011.

funding of terrorist or criminal activities." The procedures designated Kennedy as the AMLCO and provided for "monitoring for compliance of all AML areas by all employees."

The procedures included a non-exhaustive list of red flags that might "signal possible money laundering or terrorist financing." The red flags enumerated in Wood's AML procedures include:

- The customer exhibits unusual concern about the firm's compliance with government reporting requirements and the firm's AML policies . . . .

- The customer (or a person publicly associated with the customer) has a questionable background or is the subject of news reports indicating possible criminal, civil, or regulatory violations.

- The customer exhibits a lack of concern regarding risks, commissions, or other transaction costs.

- The customer, for no apparent reason, or *in conjunction with other red flags*, engages in transactions involving certain types of securities, such as *penny stocks* . . . which although legitimate, have been used in connection with fraudulent schemes and money laundering activity. (*Such transactions may warrant further due diligence to ensure the legitimacy of the customer's activity.)* (Emphasis added.)

When red flags were identified, Wood's AML procedures required the firm to "investigate further under the direction of the [AMLCO]." The AML procedures also required Wood to retain documentation related to its investigation of red flags and documentation sufficient to show the enforcement of its AML program. Where an investigation led the firm to "know, suspect, or have reason to suspect" that some illegal activity may be occurring, the AML procedures required Wood to file a Suspicious Activity Report ("SAR").

2. Wood Hires Quinones and Permits Him to Begin a New Business Liquidating Penny Stocks

In June 2008, Wood hired Edwin Quinones as a registered representative and placed him under heightened supervision. Prior to joining Wood, Quinones had been associated with thirteen other firms, had been discharged by one previous employer, and was the subject of two customer complaints. Quinones also was the subject of internal reviews for allegedly forging a branch manager's signature on a sell ticket, engaging in unauthorized trades, and removing firm property without authorization. Quinones's CRD also reflected 5 judgments and liens.

Despite Quinones's background and the need for heightened supervision, Wood almost immediately allowed Quinones to open accounts for related clients who deposited large quantities of penny stocks, a new line of business for Wood. In August 2008, Quinones opened

accounts for four customers, CE, GE, AG, and TM. CE and GE were brothers, and CE, TM, and Quinones had all previously worked together at another member firm. That same month, shortly after opening their accounts, CE, GE, AG, and TM all deposited shares of the same penny stock, BSTK. Together, these four customers deposited 2,365,000 shares of BSTK over a period of several days. Over the next few weeks, three of them sold portions of their shares and disbursed the proceeds. Several of these sales occurred in connection with positive press releases concerning BSTK's product. Over the next year, these customers made additional sales, disbursements, or transfers of the shares.

In 2009, GE, AG, and TM deposited shares of another penny stock, IVOB. In June and July 2010, Quinones opened two new accounts for a new customer, MH, and an entity owned by GE called LVH. Within weeks of opening those accounts, MH and LVH also deposited shares of IVOB. Together, 1,388,000 shares of IVOB were deposited into these five accounts. In all of the accounts, portions of the IVOB positions were then sold and the proceeds disbursed or used to purchase other securities.

3. Wood Failed To Adequately Investigate Red Flags in Violation of Its AML Procedures

Wood failed to detect and investigate certain red flags related to the penny stock trading of one of its registered representatives, Quinones, and failed to adequately respond to red flags raised by its clearing firm, in violation NASD Rules 3011 and 2010 and FINRA Rules 3310 and 2010.

The Bank Secrecy Act ("BSA")[3] provides the framework for the AML obligations applicable to financial institutions. The Department of the Treasury delegated its authority to administer the BSA to the Financial Crimes Enforcement Network ("FinCEN").[4] NASD Rule 3011, now FINRA Rule 3310, required FINRA members to develop and implement a written AML program reasonably designed to achieve and monitor compliance with the requirements of the BSA and its implementing regulations.[5] *See Dep't of Enforcement v. N. Woodward Fin. Corp.*, Complaint No. 2011028502101, 2016 FINRA Discip. LEXIS 35, *29 (FINRA NAC July 19, 2016). The rule sets forth the minimum requirements for an AML compliance program, including the requirement that a firm establish and implement policies, procedures, and internal

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[3] 31 U.S.C. 1051 *et seq.*

[4] *See* Amendment to Bank Secrecy Act Regulations—Requirement that Broker Dealers in Securities Report Suspicious Transactions, 67 Fed. Reg. 44048, at 44053 (July 1, 2002).

[5] NASD Rule 3011 was adopted as FINRA Rule 3310 without substantive changes, effective January 1, 2010. *See FINRA Regulatory Notice 09-60*, 2009 FINRA LEXIS 171 (Oct. 2009). NASD Rule 3011 and FINRA Rule 3310, in the relevant part, provide that "each member shall develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the member's compliance with the requirements of the Bank Secrecy Act . . . and the implementing regulations promulgated thereunder."

controls reasonably designed to achieve compliance with the BSA and the implementing regulations thereunder. *See* NASD Rule 3011(b); FINRA Rule 3310(b); *see also N. Woodward Fin. Corp.*, 2016 FINRA Discip. LEXIS 35, at *29. A violation of NASD Rule 3011 or FINRA Rule 3310 also constitutes a violation of FINRA Rule 2010. *See Kenny Akindemowo*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769, at *13 (Sept. 30, 2016) (finding that it is "well established that a violation of an SRO rule is conduct inconsistent with just and equitable principles of trade and therefore is also a violation of FINRA Rule 2010").

FINRA has provided explicit guidance concerning firms' AML compliance obligations. *See NASD Notice to Members 02-21*, 2002 NASD LEXIS 24, at *19-20 (Apr. 2002). A firm's AML procedures must be tailored to "reflect the firm's business model and customer base" and take into account factors such as the firm's "business activities, the types of accounts it maintains, and the types of transactions in which its customers engage." *Id.; see also Dep't of Enforcement v. Domestic Sec., Inc.*, Complaint No. 2005001819101, 2008 FINRA Discip. LEXIS 44, at *11 (FINRA NAC Oct. 2, 2008). Notice to Members 02-21 reminds member firms of their duty to detect and investigate red flags indicating potential money laundering and sets forth a non-exhaustive list of such red flags. *See NASD Notice to Members 02-21*, 2002 NASD LEXIS 24, at *37-42. Red flags include, without limitation, the questionable background of the customer, a customer's lack of concern with commissions, and whether the customer tries to avoid the firm's documentation procedures. *Id.* at *37-40. Transactions involving speculative, low-priced, "penny" stocks also can constitute a red flag requiring further inquiry. *Id.* at *40. Once a firm identifies suspicious activity, it is required to file a SAR with FinCEN. *Id.* at *42-43.

Wood was aware of a number of red flags with respect to Quinones's customers' trading, but failed to investigate as required by its AML procedures.

First, Quinones, a broker with a troubled disciplinary history who Wood had placed under heightened supervision, opened several accounts for related customers who deposited large quantities of the same penny stock, portions of which were liquidated. The coordinated deposits of penny stocks under these circumstances constituted red flags under Wood's written supervisory procedures that should have triggered an investigation. The record, however, shows that Wood did not subject Quinones's trading to the required scrutiny.

Wood also learned that one of Quinones's customers, GE, provided a false social security number on his new account opening form, which was approved by Testa, the CCO. This was another red flag that should have resulted in a closer look at this and related customers. Wood could have discovered with little effort that GE had also falsely listed his employment as "fraud examiner" for the "Massachusetts Bureau of Investigat [sic]," a non-existent entity.

Wood also failed to properly investigate additional red flags that were raised by its clearing firm, Pershing. In March 2009, Pershing began sending alerts and inquiries concerning the trading in Quinones's accounts. On March 11, 2009, Pershing sent Kennedy an email inquiring about AG's deposits and sales of BSTK and IVOB and his relationship to the issuers. Kennedy forwarded the inquiry to Quinones who gave brief, incomplete responses that were forwarded to Pershing. Kennedy did not follow up. In July 2010, Pershing sent a similar inquiry

about transactions in IVOB in MH's account. Finally, in August 2010, Pershing sent an additional inquiry concerning an additional account opened by Quinones for a customer, PL, into which the customer deposited 2.5 million shares of a penny stock called Searchpath, which he immediately began to sell and to disburse the proceeds. Kennedy again forwarded the inquiry to Quinones, who again gave short, incomplete answers. Quinones's response prompted further questions from Pershing, which recommended that Wood close PL's account and not open any more accounts for low-priced securities. We find that forwarding Pershing's emails to Quinones and forwarding Quinones's responses to Pershing was not an adequate investigation under Wood's AML procedures.

Finally, a series of email communications between Quinones and CE starting in August 2008 and continuing through 2010 raised additional red flags concerning the trading in BSTK and IVOB. For example, on August 12, 2008, CE wrote to Quinones that he would wait to sell BSTK because "he has lots of PR starting this week." On April 28, 2009, CE asked Quinones if another individual was selling and stated that he was "trying to get something going." On April 30, 2009, CE again wrote to Quinones that he was "trying to get something going for next week." On May 27, 2009, CE wrote to Quinones about IVOB saying his "buddies" had "lots of power" and "went crazy on volume." On June 16, 2009, CE wrote Quinones about his activity on twitter and claimed "massive volume [was] coming in." In September 2009, CE wrote to Quinones that BSTK was "in play" and would "get more expensive in coming days." Finally, in November 2010, CE emailed Quinones to ask if it was "true that you can deposit up to $100,000 shares without scrutiny."

Wood's email review consisted of a biweekly review of a random sample of the emails flagged by its system which conducted searches using 14 search terms. Those terms were not altered after Quinones began his penny stock business or after the red flags discussed above were detected, and, accordingly, Wood failed to detect the emails between Quinones and CE, which constituted additional red flags.

Wood makes several arguments on appeal. First, Wood argues that no single red flag was sufficient to trigger its obligation to investigate and that the Hearing Panel improperly found that the numerous red flags taken together were sufficient to trigger an investigation. Related to this argument, Wood argues that the trading here was not consistent with a traditional "pump and dump" scheme because the customers retained portions of their penny stock holdings or reinvested the proceeds from liquidations into other securities.

We reject Wood's arguments. The question is not whether the trading here constituted a "pump and dump" scheme. The issue is whether there were sufficient red flags raised to require Wood to conduct an investigation as required by its written supervisory procedures. We agree with the Hearing Panel that there were. Wood allowed a new registered representative, who had negative disclosures on his CRD and who Wood had placed under heightened supervision, to engage in penny stock liquidations. This was a new line of business for Wood, and one which Wood's procedures recognized was vulnerable for use in fraudulent schemes and money laundering. Quinones opened accounts for several customers on the same day who deposited the same penny stock. Several of these customers were related or knew each other. Several of these customers liquidated portions of these penny stock deposits and disbursed some or all of the

proceeds out of their Wood accounts, sometimes on the same day or within a few days of each other. This pattern was repeated by these customers and in additional accounts opened by Quinones for a second penny stock. The penny stock transactions were primarily sales and for many of these sales the commission charged exceeded 8%. As discussed below, these commission were excessive, yet there is no evidence in the record that any customer complained about this unusually high commission. These red flags were sufficient to trigger Wood to conduct an investigation under its written supervisory procedures and FINRA guidance. Despite these numerous red flags, however, there is no evidence that Wood conducted or documented the required investigation into this trading.

In addition to the red flags raised by the trading in Quinones's customers' accounts, Wood's clearing firm, Pershing, raised additional red flags. On three occasions, Pershing sent inquiries concerning Quinones's trades of penny stocks. In particular, Pershing's inquiries noted the timing of the sales following positive news about the issuer. Rather than investigate Pershing's concerns, however, Wood simply forwarded its inquiries to Quinones, who provided cursory responses, and conducted no additional investigation.

The Hearing Panel found that its findings were supported by Enforcement's expert witness's testimony, who the Hearing Panel found was "well qualified to opine on issues regarding AML compliance." Among other things, Enforcement's expert testified that Quinones's trading and Pershing's inquiries raised numerous red flags that should have prompted an investigation by Wood. The Hearing Panel found the expert credible and his report and testimony "well reasoned and supported." We agree with this assessment.[6] *See Eliezer Gurfel*, 54 S.E.C. 56, 62 n.11 (1999), *aff'd*, 205 F.3d 400 (D.C. Cir. 2000) (explaining that while we conduct a de novo review of hearing panel decisions, we give substantial weight and deference to the Hearing Panel's credibility findings).

The record also shows additional, troubling red flags in Quinones's email communications with CE. Among other things, CE's communications with EQ suggest efforts to inflate the volume of trading and prices of the penny stocks at issue and concern with depositing shares into his accounts without scrutiny from Wood. Wood did not detect these emails and argues that it was unreasonable to expect it to have discovered them. We agree with the Hearing Panel, however, that given the numerous red flags raised by the trading of a registered representative on heightened supervision, Wood should have conducted an investigation that included a more thorough review of Quinones's email communications. This conclusion was supported by Enforcement's expert, who testified that a more comprehensive review of Quinones's emails was warranted based on the red flags.[7]

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[6] We have considered and reject Wood's argument that the expert's testimony was unreliable because he relied on inaccurate trading data. We find that the record supports the red flags identified by Enforcement's expert.

[7] Enforcement also alleged that Wood should have discovered information about the criminal backgrounds and disciplinary and regulatory history in the securities industry of Quinones's customers—additional red flags. We, like the Hearing Panel, however, find that

[Footnote continued on next page]

We find that by failing to conduct and document an investigation into numerous red flags, Wood failed to implement and enforce its AML procedures, in violation of NASD Rules 3011 and 2110 and FINRA Rules 3310 and 2010.

B. Wood's AML Testing Was Inadequate and Not Independent

The Hearing Panel found that Wood failed to conduct adequate independent testing of its AML procedures, in violation of NASD Rules 3011(c) and 2110 and FINRA Rules 3310(c) and 2010. We affirm these findings.

NASD Rule 3011(c) and FINRA Rule 3310(c) provide that member firms must conduct annual independent tests for AML compliance. IM-3311-1 and FINRA Rule 3310 provide that independent testing must be conducted by a "designated person with a working knowledge of applicable requirements under the [BSA] and its implementing regulations." In order to preserve the independent nature of the testing, testing may not be conducted by (1) a person who performs the functions being tested, (2) the designated AMLCO, or (3) a person who reports to either of these prohibited people.[8]

The Hearing Panel found that the testing conducted by Wood was neither adequate nor independent. We agree. Wood failed to test trading in penny stocks, a potentially high-risk area which was new to the firm.[9] Wood's testing reports were conclusory and did not explain how the AML procedures were being tested or the results of the testing. The reports neither reflected any risk-based monitoring of red flags, nor any sampling of transactions to see if red flags were

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Enforcement failed to prove that this information was readily discoverable during the relevant time period.

[8] Prior to being superseded by FINRA Rule 3310 effective January 1, 2010, IM-3011-1 provided a limited exception that allowed a person who reports to the AMLCO or the person conducting the function being tested to conduct the testing if four conditions were met, including: (1) there is no other qualified internal personnel to conduct the test; (2) the member established written policies and procedures to address conflicts, including anti-retaliation procedures; (3) the person conducting the tests reports to a person more senior than one of the prohibited persons to the extent possible; and (4) the member documents a reasonable rationale for its determination that it has no alternative but to use this exception. Wood argues that its tests were independent and does not rely on this exception. Moreover, the exception does not apply to testing after January 1, 2010.

[9] Wood argues that the rules do not require testing of every business sector. We find, however, that Wood's failure to test this new and potentially high risk area of trading, along with the inadequacy of the testing it did do, constituted inadequate testing under FINRA rules.

being detected. Wood's testing amounted to little more than checking the box and was not adequate.

During the relevant period from 2008 through 2011, Wood's CEO and CCO, Testa, conducted its AML testing. Testing conducted by Testa was not independent. Testa was responsible for all of compliance at Wood. He approved account applications and verified the completeness of new account forms. Testa supervised Kennedy, the AMLCO, and was the alternative AML officer. He received requests from FinCEN and was an alternative AML Compliance Contact for Wood for a period of time. Under these circumstances, Testa could not conduct independent AML testing, a fact Wood ultimately acknowledged to FINRA during a 2011 examination, after which it engaged an outside consultant for AML testing.

Accordingly, we find that Wood failed to conduct adequate independent AML testing, in violation of NASD Rules 3011(c) and 2110 and FINRA Rules 3310(c) and 2010.

C. Wood Charged Excessive Commissions and Failed to Properly Supervise Excessive Commissions

The Hearing Panel found that Wood charged excessive commissions, in violation of NASD Rule 2440, IM-2440-1, and FINRA Rule 2010, and Wood failed to properly supervise and detect these excessive commissions, in violation of NASD Rule 3010 and FINRA Rule 2010. We affirm these findings.

1. Wood's Commission Charges

In 1992, Wood began using a default commission schedule provided by its then clearing firm. Wood continued to use the commission schedule to determine commissions during the period from January 2009 through September 2011 when Quinones's customers had begun trading low-priced securities. The application of the schedule during this period resulted in 367 transactions for which a commission in excess of 5% was charged. A number of customers were charged commissions of more than 5% to more than 18% of the principal amount of the trade. For 185 of these 367 trades, the commission charged was 7% or more.

Wood's written supervisory procedures provide for a review of commissions for reasonableness by Testa. Testa, however, testified that the trade blotter review he conducted did not actually focus on commissions. While it contained the amount of the commission, it did not set forth the commission as a percentage of the amount of the trade. Wood ultimately learned of the excessive commissions from FINRA during a cycle exam and amended the schedule to comply after the problem was identified by FINRA.

2. Wood's Commission Charges Were Excessive Under the Applicable Rules

NASD Rule 2440 provides that when a firm purchases or sells securities for a customer's account, the firm "shall not charge [the] customer more than a fair commission or service charge,

taking into consideration all relevant circumstances." IM-2440-1 provides that it is a violation of Rule 2440 and Rule 2110 to charge a commission which is not reasonable.

While the reasonableness of a commission depends upon all relevant factors, commissions in excess of 5% may be deemed unreasonable under FINRA's long-standing 5% guideline. While a commission may be unreasonable even if it is less when 5%, where a firm charges a commission in excess of 5%, the burden shifts to the firm to justify its reasons for the higher commissions with adequate documentation. *See Notice to Members 92-16*, 1992 NASD LEXIS 47 (Apr. 1, 1992); *see also Steven P. Sanders*, 53 S.E.C. 889, 895 (1998) (holding that "[o]nce the NASD presented evidence that the Firm's markups exceeded 5% over its contemporaneous cost, the burden properly shifted to the applicants to show that the facts surrounding these transactions justified higher markups"); *First Honolulu Sec., Inc.*, 51 S.E.C. 695, 701 n.23 (1993) (same).

The record shows that Wood charged commissions in excess of 5% for 367 transactions. For 185 of these, the commission charged was 7% or more, and one exceeded 18%. While Wood disputed that the commissions charged were excessive, it provided no evidence to support that argument. Because Wood failed to overcome its burden to show that the transactions justified the higher markups, we find that the commissions were unreasonable and excessive, in violation of NASD Rule 2440, IM-2440-1, and FINRA Rule 2010.

3. Wood Failed to Supervise the Reasonableness of Commissions

NASD Rule 3010(a) requires firms to "establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD [and FINRA] rules." This includes the obligation to "establish, maintain, and enforce written procedures to supervise the types of business in which [the firm] engages." *See* NASD Rule 3010(b).

While Wood's written supervisory procedures required Wood to review commissions for reasonableness, the evidence shows that Wood relied on a mechanical application of its default commission schedule and did not in fact conduct the required review. Wood attempted to excuse its failure to detect the excessive commissions by arguing that it relied on a report that did not adequately reflect the commission charged as a percentage of the transaction amount. This argument does not excuse Wood's failure to adequately supervise the commissions it charged. Therefore, we find that Wood violated NASD Rule 3010 and FINRA Rule 2010.

D. Wood Kept Inaccurate Books and Records By Failing to Accrue the Detwiler Payments

The Hearing Panel found that Wood willfully failed to ensure accurate books and records by failing to take into account payments it owed in connection with Wood's purchase of a portion of another firm's business, in violation of Exchange Act Section 17(a), Exchange Act Rule 17a-3, NASD Rule 3110, and FINRA Rule 2010. We affirm these findings.

1. The Detwiler Acquisition

In October 2010, Wood entered into a letter of understanding ("LOU") for the acquisition of certain registered representatives from another member firm, Detwiler Fenton & Co. ("Detwiler"). The LOU provided that Wood would make a total payment of $90,617 to Detwiler, consisting of an initial payment of $10,000, with the balance paid in four equal installments to be paid on February 15, May 15, August 15, and November 15, 2011. The LOU also provided for a reduction of these amounts should the Detwiler registered representatives who moved to Wood leave prior to each payment being made.

While Wood and Detwiler never executed a promissory note in connection with the acquisition as contemplated, Wood made all five payments to Detwiler based on invoices sent by Detwiler. Wood, however, did not accrue any of the amounts owed to Detwiler until November 24, 2011, and the amounts owed were not taken into account in Wood's net capital computations for the period from October 2010 through November 2011.

2. Wood's Failure to Accrue the Detwiler Liability Caused it to Keep Inaccurate Books and Records

Exchange Act Rule 17(a) requires brokers or dealers to make and keep for proscribed periods such records as required by applicable rules. Exchange Act Rule 17a-3 provides that all brokers or dealers "make and keep current all [l]edgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts." NASD Rule 3110 further requires member firms to "make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations, and statements of policy promulgated thereunder and with the [r]ules of [FINRA] and as prescribed by [Exchange Act] Rule 17a-3." Thus, NASD Rule 3110 encompasses the obligation to make and keep current records relating to income, expenses, and capital accounts set forth in Exchange Act Rule 17a-3. A violation of FINRA Rule 3110 is also a violation of FINRA Rule 2010. *See Blair C. Mielke and Frederick W. Shultz*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at *51 (Sept. 24, 2015); *Dep't of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *12-13 (NASD NAC June 2, 2000). Wood failed to record the Detwiler expense when it entered into the LOU and did not do so until the amount was fully paid.

Wood argues that it was not required to accrue the Detwiler liability because the amount of the liability was "too contingent." We, however, agree with the Hearing Panel that the LOU contained sufficiently clear and definite terms—including amounts and dates—and should have been included in Wood's net capital computations.

Wood also argued that in determining not to accrue the Detwiler liability, it relied on the advice of its accountant. Wood's defense of reliance on an accountant fails for two reasons. First, Wood cannot shift the burden of complying with its recordkeeping obligations to its accountant. *See, e.g., Davrey Fin. Services, Inc.*, 58 S.E.C. 474, at 480 (2005) (holding that a FINOP could not place the "ultimate burden for compliance with the net capital and recordkeeping requirements on an accountant"). Moreover, Wood did not establish reasonable reliance on advice from the accountant. In order to make such an argument, Wood would need

to establish that it made a complete disclosure to the accountant, sought advice as to the conduct in question, received advice, and relied on that advice in good faith. *See Markowski v. SEC*, 34 F.3d 99, 105 (2d Cir. 1994) (setting forth the requirements in the context of reliance on advice from counsel); *Richard J. Lanigan*, 52 S.E.C. 375, 377 (1995) (same). Wood did not meet this standard here. Wood did not seek the accountant's advice at the time the LOU was executed, but rather the issue came up briefly in a conversation when the accountant noticed a payment to Detwiler. Moreover, the record does not reflect whether all the relevant facts were disclosed to the accountant, or what advice the accountant actually provided. Finally, the timing of Wood's conversation with the accountant supports that Wood did not actually rely on that advice in determining not to accrue the liability.

We find that Wood violated Exchange Act Section 17(a) and Exchange Act Rule 17a-3, and violated NASD Rule 3110 and FINRA Rule 2010 when it failed to accrue the Detwiler liability, causing it to maintain inaccurate books. We also find that Wood's violation of Exchange Action Section 17a and Exchange Act Rule 17a-3 was willful. A violation is deemed willful if "the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000). To find that Wood's actions were willful, therefore, we need not find that the firm intentionally violated securities laws or acted with a culpable state of mind, but only that the firm voluntarily engaged in the misconduct. *See id.* (finding that the law does not require that the willful actor "also be aware that he is violating one of the Rules or Acts") (internal quotations omitted); *see also Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *13 (Dec. 22, 2008) (finding that the law only requires that the willful actor "voluntarily committed the acts that constituted the violation"). Here, Wood's action—i.e., failing to accrue the Detwiler liability—was voluntary. Thus, we conclude that Wood's violations Exchange Act Section 17(a) and Exchange Act Rule 17a-3 were willful.[10]

E. Wood Willfully Failed to File a Required Net Capital Notice

The Hearing Panel found that Wood failed to file a required net capital notice when it was net capital deficient, in willful violation of Exchange Act Section 17(a) and Exchange Act Rule 17a-11 and in violation of FINRA Rule 2010. We affirm these findings.

Exchange Act Rule 17a-11(c)(3) provides that every broker or dealer "shall send notice promptly" if "a computation by [the] broker or dealer . . . shows that its total net capital is less than 120 percent of the broker's or dealer's required minimum net capital." A violation of Exchange Act Rule 17a-11(c)(3) is also a violation of FINRA Rule 2010. *See Litwin Sec., Inc.*, 52 S.E.C. 1339, at 1340-41 (May 27, 1997); *Fundclear, Inc.*, Exchange Act Release No. 34735, 1994 SEC LEXIS 2956, at *2 n.2, and *11 (Sept. 28, 1994).

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[10] Because of its willful violation of Exchange Act Section 17(a) and Rule 17a-3 and, as discussed *infra* Sections III.E and III.F, its willful violations Exchange Act Section 17(a), Exchange Act Rule 17a-11, Exchange Act Section 15(c), and Exchange Act Rule 15c3-1, Wood is statutorily disqualified.

In response to a FINRA examination, Wood accrued the Detwiler liability in November 2011 and recalculated its net capital computations for the relevant period, resulting in a net capital deficiency for June 2011. Wood, however, did not file the required notice of net capital deficiency. Wood failed to file required net capital notices when it was net capital deficient, in violation of Exchange Act Section 17(a), Exchange Act Rule 17a-11, and FINRA Rule 2010. Wood's violation of the Exchange Act was willful because it voluntarily failed to accrue the Detwiler liability and to file the required notice. *See Wonsover*, 205 F.3d at 414.

F. Wood Conducted a Securities Business While Net Capital Deficient

The Hearing Panel found that Wood conducted a securities business while net capital deficient, in willful violation of Exchange Act Section 15(c) and Exchange Act Rule 15c3-1 and in violation of FINRA Rule 2010. We affirm these findings.

Exchange Act Section 15(c) provides that no broker or dealer shall effect any transaction "in contravention of such rules and regulations as the Commission shall prescribe as necessary or appropriate in the public interest or for the protection of investors to provide safeguards with respect to the financial responsibility and related practices of brokers." Exchange Act Section 15(c)(3)(A). This provision includes requirements concerning the "maintenance of reserves" and the "establish[ment of] minimum financial responsibility requirements for all brokers and dealers." *Id.* Exchange Act Rule 15c3-1 requires that every broker or dealer must at all times have and maintain its required minimum net capital, as calculated under applicable rules. A violation of Exchange Act Rule 15c3-1 is willful if the firm voluntarily engages in the underlying conduct. A violation of Rule 15c3-1 is a violation of FINRA Rule 2010. *See Fox & Co. Inv., Inc.*, Exchange Act Release No. 52697, 2005 SEC LEXIS 2822, at *27 n.29 (Oct. 28, 2005).

Wood stipulated that it was net capital deficient for three days during which it continued to operate a securities business. For a period in 2012, Wood improperly classified the funds held in the joint bank account of a principal and her mother as an allowable asset for purposes of calculating net capital. As a result, Wood was net capital deficient for three days. Wood's net capital was calculated using the Aggregate Indebtedness Standard pursuant to Exchange Act Rule 15c3-1(a)(i). On June 29, 2012, Wood's minimum required net capital was $11,093. Its actual net capital that day, however, was $10,012, resulting in a deficiency of $1,081. On July 31, 2012, Wood's minimum required net capital was $10,387. Its actual net capital that day was $1,653, resulting in a deficiency of $8,734. Finally, on August 31, 2012, Wood's required minimum net capital was $12,478. Its actual net capital that day was $2,501, for a deficiency of $9,977. On all three days, the deficiency was caused by the improper classification of the principal's account as an allowable asset, and on all three days, Wood conducted a securities business while net capital deficient.

Accordingly, we find that Wood violated Exchange Act Section 15(c), Exchange Act Rule 15c3-1, and FINRA Rule 2010. Wood's violation of the Exchange Act was willful because it voluntarily classified the account as a firm asset. *See Wonsover*, 205 F.3d at 414.

IV. Sanctions

In assessing sanctions for Wood's violations, we have considered FINRA's Sanction Guidelines ("Guidelines"),[11] including the Principal Considerations in Determining Sanctions (the "Principal Considerations"). For the reasons set forth below, we modify the sanctions imposed by the Hearing Panel to increase the fine for Wood's AML violations and remove the censures for all violations.

A. Wood's AML Violations

For Wood's AML violations, the Hearing Panel censured the firm, imposed a fine of $50,000, and prohibited Wood from liquidating penny stocks in new accounts for a period of two years. We modify these sanctions.

The Hearing Panel imposed a unitary sanction for Wood's AML violations—i.e., the failure to adequately enforce its AML procedures and its failure to conduct adequate independent tests. In the absence of a specific guideline for AML violations, the Hearing Panel applied the guidelines for a failure to supervise. *See Dep't of Enforcement v. Domestic Sec., Inc.*, Complaint No. 2005001819101, 2008 FINRA Discip. LEXIS 44, at *21 n.9 (FINRA NAC Oct. 2, 2008) (applying guideline for failure to supervise in an AML violation case). In this instance, we agree.

For a failure to supervise, the Guidelines recommend a fine of $5,000 to $73,000.[12] In egregious cases, the Guidelines recommend considering limiting the activities of a firm for up to 30 days or a longer suspension of up to two years where the firm's violations involve systemic supervision violations.[13] The Guidelines instruct us to consider three principal considerations: (1) whether the firm ignored "red flags" which should have resulted in additional supervisory scrutiny; (2) the nature, extent, size, and character of the underlying misconduct; and (3) the quality and degree of the supervisor's implementation of the firm's supervisory procedures.[14] All of these considerations are aggravating here.

As discussed above, Wood ignored and failed to detect numerous red flags concerning the trading in Quinones's accounts which should have triggered further investigation under its AML procedures. The red flags were numerous, occurred over an extended period of time, and

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[11] *See FINRA Sanction Guidelines* (2016), http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf [hereinafter *Guidelines*]. We apply the Sanction Guidelines in effect at the time of the decision.

[12] *Guidelines*, at 103.

[13] *Id.*

[14] *Id.*

were potentially indicative of serious misconduct. Other than forwarding Pershing's inquiries to Quinones and relaying his responses back to the clearing broker, Wood took virtually no steps to implement its AML procedures and conduct the required investigation of these red flags.

In addition, a number of other aggravating factors apply to Wood's misconduct. Wood's AML violations were serious, reckless, and occurred over an extended period of time.[15] Wood ignored numerous red flags with respect to the penny stock transactions in Quinones's accounts and showed no appreciation of the risks associated with the trading in Quinones's accounts or of its responsibility to monitor that trading for potential AML violations. We are also troubled by the fact that Wood has failed to take any responsibility for its failures with respect to AML supervision and has demonstrated a disdain for these proceedings.[16] Based on the numerous applicable aggravating factors and Wood's continuing and persistent refusal to take any responsibility for its egregious failures in implementing its AML procedures, we increase the fine imposed by the Hearing Panel to $73,000. We also affirm the two-year prohibition from liquidating penny stocks in new accounts. We dismiss, however, the censure for this and Wood's other violations based on the two-year suspension related to penny stocks.[17]

B. Wood's Charging of Excessive Commissions and Its Failure to Supervise Commissions

For Wood's charging of excessive commissions and its failure to supervise commissions, the Hearing Panel imposed unitary sanctions of a censure, a $10,000 fine, and an order of restitution to customers of $40,229.28 plus interest. We affirm the fine and restitution, but based on the imposition of a suspension, we dismiss the censure as discussed above.

The Guidelines for excessive commissions provide for a fine of $5,000 to $146,000 plus, where restitution is not ordered, the gross amount of the excessive commissions.[18] In egregious cases, the Guidelines recommend considering a suspension for up to two years or an expulsion.[19] The relevant considerations include whether the firm dominated or controlled the market in the

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15 *Id.* at 6-7 (Principal Considerations No. 9, 13, 18).

16 *Id.* at 6 (Principal Considerations No. 2).

17 The Guidelines instruct adjudicators to generally not impose a censure where a bar, expulsion, or suspension has been imposed. *Id.* at 9. In light of the two-year suspension imposed with respect to liquidating penny stocks in new accounts, we do not impose censures for Wood's violations.

18 *Id.* at 90.

19 *Id.*

subject securities and whether the respondent had discretion as to the amount of the commission charged.[20]

We agree with the Hearing Panel that while the specific considerations in the Guideline for excessive commissions do not apply here, several of the Principal Considerations apply and are aggravating factors. Wood charged excessive commissions over an extended period of time.[21] Wood's excessive commission violations constituted numerous acts, a pattern of misconduct, and resulted in monetary gain to the firm.[22] Wood's misconduct was reckless and injured customers.[23] Moreover, Wood did not accept responsibility for its violations, did not take any corrective action until the misconduct was detected by FINRA, and attempted to shift the blame to FINRA for failing to earlier detect the misconduct.[24]

For Wood's failure to supervise in connection with charging excessive commissions, the Guidelines for failure to supervise recommend a fine of $5,000 to $73,000.[25] As discussed above, the principal considerations include: (1) whether the firm ignored "red flags" which should have resulted in additional supervisory scrutiny; (2) the nature, extent, size, and character of the underlying misconduct; and (3) the quality and degree of the supervisor's implementation of the firm's supervisory procedures.[26] All of these considerations are aggravating here. The firm's misconduct involved numerous instances of overcharging numerous customers, who were harmed.[27] Wood's conduct was reckless, occurred over a two-year period, and resulted in financial gain to Wood.[28] Wood failed to take any responsibility for reviewing the reasonableness of commissions and failed to develop and properly implement procedures to prevent the charging of excessive commissions.[29] Rather, it mechanically applied a commission

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20 *Id.*

21 *Id.* at 6 (Principal Considerations No. 9).

22 *Id.* at 6-7 (Principal Considerations No. 8, 17).

23 *Id.* at 6-7 (Principal Considerations No. 11, 13).

24 *Id.* at 6 (Principal Considerations No. 2).

25 *Id.* at 103.

26 *Id.*

27 *Id.* at 6-7 (Principal Considerations No. 11, 18).

28 *Id.* at 6-7 (Principal Considerations No. 9, 13, 17).

29 *Id.* at 6 (Principal Considerations No. 5).

schedule it had used for years with no oversight and attempted to shift the blame to FINRA for not detecting the excess commissions sooner.[30]

We agree with the Hearing Panel that this is an appropriate case for an order of restitution to remediate Wood's misconduct. Restitution is appropriate where an identifiable party has suffered a quantifiable loss as a result of a respondent's misconduct.[31] *See, e.g.*, *Joseph R. Butler*, Exchange Act Release No 77884, 2016 SEC LEXIS 1989, at *37 (June 2, 2016). Here, there are 367 identifiable transactions in which Wood charged commissions in excess of 5%. We affirm the Hearing Panel's order that Wood pay restitution in the amount of $40,229.28—the amount by which these commission exceeded 5%—to the affected customers as set forth in the Hearing Panel's Decision, plus interest calculated as specified in the Hearing Panel Decision.

Accordingly, for Wood's excessive commission violations, we affirm the Hearing Panel's sanction of a $10,000 fine and $40,229.28 in restitution plus interest to be paid as specified in the Hearing Panel Decision. For the reason discussed above, we dismiss the censure.

C. Wood's Net Capital and Books and Records Violations

For Wood's books and records and net capital violations, the Hearing Panel imposed a unitary sanction of a censure and a $15,000 fine. We affirm the fine but here again, dismiss the censure.

For books and records violations, the Guidelines recommend a fine of $1,000 to $15,000 or, in egregious cases, a fine of $10,000 to $146,000.[32] The Guidelines also recommend that adjudicators consider suspending the firm with respect to any or all activities for up to 30 days or up to two years in egregious cases.[33] The principal consideration in determining sanctions for recordkeeping violations is the nature and materiality of the inaccurate or missing information.[34]

For net capital violations, the Guidelines recommend a fine of $1,000 to $73,000.[35] The Guidelines also direct adjudicators to consider suspending the firm with respect to any or all activities for up to 30 business days, or up to two years in egregious cases.[36] The principal

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30 *Id.* at 6 (Principal Considerations No. 2).

31 *Id.* at 4 (General Principles Applicable to All Sanction Determinations No. 5).

32 *Id.* at 29.

33 *Id.*

34 *Id.*

35 *Id.* at 28.

36 *Id.*

considerations applicable to net capital violations include: (1) whether the firm continued business while knowing of the net capital deficiencies or voluntarily ceased business; and (2) whether the firm attempted to conceal its net capital deficiencies by any means.[37]

We agree with the Hearing Panel that the missing information—the Detwiler liability—was important. It caused the net capital violations and the resulting reporting violation. We also agree that while Wood was negligent in conducting a securities business while net capital deficient because of its improper classification of an account as a firm asset, it did not do so knowingly. Wood did not know that the improper classification of the principal's joint account had caused a net capital violation on three days until it reclassified the account.

Based on the facts and circumstances, we agree that a $15,000 fine is an appropriately remedial sanction. We also dismiss the censure for this violation.

D. Wood Has Not Established An Inability to Pay

Wood argues that it is unable to pay the monetary sanctions imposed and, accordingly, the sanctions would be punitive. We find, however, that Wood has not established a bona fide inability to pay.

Under FINRA's Guidelines, "[a]djudicators are required to consider a respondent's bona fide inability to pay when imposing a fine."[38] "It is well settled that a respondent bears the burden of demonstrating an inability to pay." *William J. Murphy*, Exchange Act Release No. 69923, 2013 SEC LEXIS 1933, at *109 (July 2, 2013) (internal quotation marks omitted); *see also ACAP Fin., Inc.*, 2013 SEC LEXIS 2156, at *75 & n.156 (July 26, 2013) (citing cases and explaining that the party claiming an inability to pay has the burden of demonstrating that inability by providing evidence thereof), *aff'd*, 2015 U.S. App. LEXIS 5384 (10th Cir. Apr. 3, 2015); *Guang Lu*, 58 S.E.C. 43, 62 (2005) (same), *aff'd without opinion*, 179 F. App'x 702 (D.C. Cir. May 9, 2006). The party asserting inability to pay bears the burden of proof because the scope of the party's assets "is particularly within [its] knowledge." *Bruce M. Zipper*, 51 S.E.C. 928, 931 (1993); *see also Robert Tretiak*, 56 S.E.C. 209, at 221 (2003) (stating that the party asserting inability to pay has "the obligation to come forward with full documentation of his financial situation"). In turn, the adjudicator is entitled to make a "searching inquiry" into Wood's claim of inability to pay. *Tretiak*, 56 S.E.C. at 220; *see also William Gallagher*, 56 S.E.C. 163, at 169 (2003) (stating that FINRA is entitled to make a "rigorous inquiry" into a claim of inability to pay).

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37 *Id.*

38 *Id.*, at 5 (General Principals Applicable to All Sanction Determinations, No. 8).

A respondent asserting an inability to pay is held to "a very high standard of proof." *Dist. Bus. Conduct Comm. v. Escalator Sec., Inc.*, Complaint No. C07930034, 1998 NASD Discip. LEXIS 21, at *12 (NASD NBCC Feb. 19, 1998). In rejecting a firm's claim of inability to pay a fine, the FINRA Board of Governors held that "[a] respondent claiming an inability to pay must show that - in seeking to pay a fine - it is unable to obtain the needed funds by, among other things, reducing expenses and salaries, raising capital, or borrowing money." The Board further explained that:

> [A] fine that otherwise appropriately sanctions a firm's violative conduct . . . may not be limited by claims that the payment will cause the firm to be in noncompliance with its net capital requirement, or to close its doors. Because of the overriding public interest, member firms should be appropriately sanctioned based on their violative conduct, and not merely on the projected effect of the monetary sanction on the firm's balance sheet. *Id.* at *44-45 (internal quotation marks omitted).

Dep't of Enforcement v. Merrimac Corp. Sec., Inc., Complaint No. 2007007151101, 2012 FINRA Discip. LEXIS 43, at *44 (FINRA Bd. of Governors May 2, 2012).

The record shows that Wood has failed to meet its burden here. While Wood cites small operating losses in 2013 and 2014 and a total compensation for its four principals totaling approximately $168,000, the record also shows stable revenues in 2013 and 2014 and, for 2014, excess net capital of $81,000 and assets exceeding liabilities of approximately $248,000. Wood has failed to come forth with sufficient evidence that it is unable to pay the fines imposed here.[39]

While Wood has not established an inability to pay that would render the sanctions here punitive, we, like the Hearing Panel, have considered Wood's small size in determining the amount of the fines for its excessive commission and net capital violations, which otherwise would have been higher.[40] Considering all the circumstances and the numerous applicable aggravating factors, we find that monetary and other sanctions imposed are not punitive and are appropriately remedial.

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[39] Even when a respondent proves an inability to pay, however, such proof "need not result in a reduction or waiver of a fine, restitution or disgorgement order, but could instead result in the imposition of an installment payment plan or another alternate payment option." *Guidelines*, at 5 (General Principals Applicable to All Sanction Determinations, No. 8). On a case by case basis, FINRA has allowed for such plans, which are generally limited to two years and require execution of a promissory note to track the installment payment plan. *See id.* at 11.

[40] *Id.* at 2 (General Principals No. 1) (directing adjudicators to consider a firm's size when tailoring sanctions).

V. Conclusion

Wood failed to implement and enforce its AML procedures and failed to conduct adequate independent tests of its AML procedures, in violation of NASD Rules 3011 and 2110 and FINRA Rules 3310 and 2010. For these violations, we impose a $73,000 fine and prohibit Wood from liquidating penny stocks in new accounts for a period of two years. We also find that Wood charged excessive commissions and failed to implement its supervisory procedures in connection with monitoring commissions, in violation of NASD Rules 2440 and 3010, IM-2440-1, and FINRA Rule 2010. For these violations, we impose a $10,000 fine and order Wood to pay restitution totaling $40,229.28 plus interest to affected customers as set forth in the Hearing Panel decision. We also find that Wood maintained inaccurate books and records, in willful violation of Exchange Act Section 17(a) and Exchange Act Rule 17a-3 and in violation NASD Rule 3110 and FINRA Rule 2010. We further find that Wood failed to file a required net capital deficiency notice, in willful violation of Exchange Act Section 17(a) and Exchange Act Rule 17a-11 and in violation of FINRA Rule 2010. Finally, we find that Wood operated a securities business while net capital deficient, in willful violation of Exchange Act Section 15(c) and Exchange Act Rule 15c3-1 and in violation of FINRA Rule 2010. For these violations, we impose a $15,000 fine. As a result of its willful violations, Wood is statutorily disqualified. We also affirm the Hearing Panel's order that Wood pay $11,844.41 in hearing costs and order it to pay appeal costs in the amount of $1,514.77.[41]

On behalf of the National Adjudicatory Council,

Marcia E. Asquith
Executive Vice President and Corporate Secretary

[41] Pursuant to FINRA Rule 8320, any member that fails to pay any fine, costs, or other monetary sanction imposed in this decision, after seven days' notice in writing, will summarily be suspended or expelled from membership for non-payment. Similarly, the registration of any person associated with a member who fails to pay any fine, costs, or other monetary sanction, after seven days' notice in writing, will summarily be revoked for non-payment.