BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Dakota Securities International, Inc. and Bruce Martin Zipper Miami, FL, Respondents.	Decision Complaint No. 2016047565702 Dated: March 18, 2019

Registered person associated with member firm and engaged in activities requiring registration while suspended and statutorily disqualified and falsified member firm's books and records. Member firm allowed registered person to associate with the firm and engage in activities requiring registration while suspended and statutorily disqualified, failed to maintain accurate books and records, and failed to supervise. Held, findings modified and sanctions affirmed.

Appearances

For the Complainant: Janine D. Arno, Esq., Savvas A. Foukas, Esq., David B. Klafter, Esq., Leo F. Orenstein, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For Respondent Dakota Securities International, Inc.: Gary Cuccia, Chief Financial Officer

For Respondent Bruce Martin Zipper: Pro Se

Decision

Dakota Securities International, Inc. ("Dakota"), and Bruce Martin Zipper appeal a June 18, 2018 Hearing Panel Decision pursuant to FINRA Rule 9311. The Hearing Panel found that Zipper associated with Dakota and engaged in activities requiring registration while he was

suspended in all capacities and statutorily disqualified, and that Dakota improperly permitted Zipper to do so. The Hearing Panel also found that Zipper intentionally misidentified the representative of record for hundreds of customer transactions, and that Dakota intentionally maintained inaccurate books and records with respect to those transactions. Last, the Hearing Panel found that Dakota failed to establish and maintain a supervisory system that was reasonably designed to achieve compliance with applicable securities laws and regulations and FINRA rules.

For this misconduct, the Hearing Panel imposed two bars on Zipper—one for associating with Dakota and engaging in activities requiring registration while suspended and statutorily disqualified, and another for intentionally misidentifying the representative of record on customer transactions. The Hearing Panel imposed three expulsions on Dakota—one for allowing Zipper to associate with the firm and engage in activities requiring registration while suspended and statutorily disqualified, one for intentionally maintaining inaccurate books and records, and one for failing to supervise.

After reviewing the entire record, we modify the Hearing Panel's findings of violations and affirm the sanctions imposed.

I. Factual Background

A. Bruce Zipper and Dakota Securities

Zipper has more than 35 years of experience in the securities industry. Zipper founded Dakota in 2004, and Dakota became a FINRA member in 2005. Zipper was the majority owner of Dakota until January 2018, when he sold his 90 percent ownership stake in the firm to his wife. Dakota's primary business is selling equities, options, and corporate debt to retail customers.

Between 2005 and 2017, Zipper was registered with Dakota as a general securities principal, general securities representative, and registered options principal. Zipper has served as Dakota's president, chief executive officer ("CEO"), chief compliance officer ("CCO"), and financial operations principal ("FINOP").

B. Zipper and FINRA Enter into a Letter of Acceptance, Waiver and Consent

In early 2016, Zipper and FINRA's Department of Enforcement ("Enforcement") discussed the terms of a settlement to resolve charges arising from Zipper's failure to disclose three unsatisfied judgments on his Uniform Application for Securities Industry Registration or Transfer ("Form U4"). As a sanction, Enforcement proposed a three-month, all-capacities suspension and a $5,000 fine.

Zipper initially objected to Enforcement's proposal because, under an all-capacities suspension, he would not be allowed to service his retail customers' accounts. In an email to Enforcement attorney Kevin Rosen, Zipper asked Enforcement to consider a suspension in a principal capacity only so that he could "still have conversations with lifetime clients," and

asserted that those clients would "be harmed . . . by not having the ability to discuss their investments" with him. Enforcement rejected Zipper's counteroffer and insisted on an all-capacities suspension.

On April 1, 2016, Zipper executed a Letter of Acceptance, Waiver and Consent (the "AWC") in which he agreed to serve a three-month suspension in all capacities and pay a $5,000 fine for failing to disclose the three unsatisfied judgments on his Form U4. The AWC prohibited Zipper from associating with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the suspension. Moreover, the AWC provided that, because Zipper had "willfully failed to timely amend his Form U4 to disclose [the] judgments," he was "subject to a statutory disqualification with respect to association with a member." FINRA accepted the AWC on April 22, 2016.

Approximately two weeks later, on or around May 5, 2016, Zipper tried to withdraw from the AWC. Zipper was concerned about the implications of his statutory disqualification, which would continue even after his suspension ended.[1] When Zipper asked Rosen about withdrawing, Rosen informed Zipper that FINRA already had accepted the AWC and it was final and non-appealable.[2]

C. Zipper and Dakota Fail to Comply with the AWC

FINRA informed Zipper that his suspension would begin on May 31, 2016, and continue through August 31, 2016 (the "Suspension Period").

Zipper arranged for Dakota to operate in his absence during the Suspension Period. He chose his longtime friend, Robert Lefkowitz, who was already registered with Dakota, to serve as the firm's president, CEO, and CCO during the Suspension Period.[3] Zipper also brought in a

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[1] Under Article III, Section 3(b) of FINRA's By-Laws, a statutorily disqualified person cannot become or remain associated with a FINRA member unless the disqualified person's member firm applies for relief from the statutory disqualification under Article III, Section 3(d) of the By-Laws. Dakota applied for relief in July 2016. FINRA denied Dakota's application in October 2017. FINRA's denial was affirmed by the SEC in 2018.

[2] Zipper attempted to appeal the AWC to the SEC, but the SEC dismissed his application because the AWC is not appealable, Zipper was not entitled to the relief he requested, and Zipper's appeal was untimely. *Bruce Zipper*, Exchange Act Release No. 81788, 2017 SEC LEXIS 3107 (Sept. 29, 2017).

[3] Lefkowitz submitted a Letter of Acceptance, Waiver and Consent to resolve the charges against him arising from this matter. Lefkowitz was fined $5,000 and suspended from associating in any principal capacity with any FINRA member for five months for allowing Zipper to associate with Dakota and engage in activities requiring registration while suspended and statutorily disqualified. *Robert Brian Lefkowitz*, AWC No. 2016047565701 (June 29, 2017), https://www. finra.org/sites/default/files/fda_documents/2016047565701_FDA_SL678203.pdf.

new FINOP and registered options principal. Zipper revised the firm's written supervisory procedures (the "WSPs") to read, in part, that "[s]tarting on June 1, 2016 [*sic*] and ending on August 31, 2016 Bruce Zipper . . . will be on a 90 day suspension and will not be involved in the company's business for that time period."[4]

In a letter to FINRA, Zipper confirmed that Dakota had "taken steps to make sure the firm can continue operations without Bruce Zipper for the 3 months of the suspension." Zipper explained that Lefkowitz would "take over as the CEO and supervisor of the firm," and would "handle all day to day business of the firm." Zipper stated that his "e-mail and phone numbers w[ould] be redirected to Robert Lefkowitz," and "[t]here w[ould] be no remuneration paid to Bruce Zipper during his suspension."

On May 31, 2016, the first day of the Suspension Period, Lefkowitz assumed his new duties running Dakota. Lefkowitz had worked in the securities industry for more than 25 years, but he had never been a supervisor at Dakota or any other firm. Other than taking the general securities principal exam (Series 24), which he did shortly before taking over the firm, Lefkowitz had no training to prepare him for his new position. At the hearing, Lefkowitz explained that he "took the Series 24 very rapidly," and that "within two weeks of [his] license, [he] was handed over the keys to the car." Lefkowitz testified: "I was running [Dakota], but I didn't know what I could and couldn't do."

Dakota continued to operate from Zipper's home, its principal place of business, throughout the Suspension Period. The firm received its mail there, and Dakota's files, including its customer records, were in a cabinet in Zipper's living room. Zipper's Dakota computer remained in his home office. Lefkowitz, who normally worked from his own home, visited Zipper's home periodically to perform his "administrative duties," including getting the firm's mail, paying bills, and filing new account paperwork.

Dakota did not restrict Zipper's access to the firm's email system during the Suspension Period. While suspended, Zipper sent and received emails freely through his Dakota email account, including emails to customers regarding their accounts at the firm. The emails Zipper sent from his Dakota email account typically included an electronic signature identifying him as the "President" of the firm. Lefkowitz was responsible for reviewing all of the firm's electronic correspondence during the Suspension Period, but he did not review Zipper's emails to ensure that Zipper was not using his Dakota email account to conduct the firm's securities business.

Dakota also did not restrict Zipper's access to the firm's trading system during the Suspension Period. Zipper could log into the trading system through the Dakota computer in his home office, and he used the system to monitor the firm's trading activity and review customer accounts. Although numerous trades were entered into Dakota's trading system from Zipper's computer and under Zipper's representative code while Zipper was suspended, Zipper denied entering any of them. Lefkowitz testified that he, not Zipper, entered the trades from Zipper's computer using Zipper's representative code rather than his own.

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[4] Zipper's suspension was effective May 31, 2016, not June 1, 2016.

Indeed, Zipper and Lefkowitz routinely misidentified the representative of record when entering trades into Dakota's trading system before, during, and after the Suspension Period. Most of those trades were for customers who lived in New Jersey. Zipper was not registered in New Jersey and did not want to pay the fee to register there. When entering trades for his New Jersey customers, Zipper typically used a representative code that belonged to CM, a former Dakota employee Zipper believed was registered in New Jersey. As a result, Dakota's books and records were inaccurate with respect to hundreds of trades entered between February and November 2016.

II. Procedural History

A. Origin of the Investigation

During a routine cycle examination that began in November 2016, FINRA's Department of Member Regulation ("Member Regulation") found evidence that Zipper had violated the terms of the AWC and also noted anomalies in Dakota's books and records. Examiners identified several emails between Zipper and the firm's customers, as well as emails between Zipper and the firm's vendors, sent during the Suspension Period and relating to Dakota's securities business. Examiners also noted that Zipper had accessed and reviewed customer accounts during the Suspension Period, and that Zipper was identified as the representative of record for numerous transactions entered during the Suspension Period. Additionally, the examiners noted that CM was identified as the representative of record on transactions entered after he had left the firm. Member Regulation referred its findings to Enforcement, which conducted an investigation that led to these proceedings.

B. Disciplinary Proceedings

On November 8, 2017, Enforcement filed a five-cause complaint against Zipper and Dakota. Cause one alleged that Zipper breached the terms of the AWC by associating with Dakota during the Suspension Period, in violation of FINRA Rule 2010. Cause two alleged that Zipper violated NASD Rule 1031, Article III, Section 3(b) of FINRA's By-Laws, and FINRA Rule 2010 by engaging in activities requiring registration while suspended and statutorily disqualified. Cause three alleged that Dakota violated NASD Rule 1031, Article III, Section 3(b) of FINRA's By-Laws, and FINRA Rules 8311 and 2010 by allowing Zipper to associate with the firm and engage in activities requiring registration while suspended and statutorily disqualified. Cause four alleged that Dakota violated FINRA Rules 3110 and 2010 by failing to establish and maintain a supervisory system reasonably designed to achieve compliance with applicable securities laws and regulations and FINRA rules. Cause five alleged that Dakota and Zipper violated FINRA Rules 4511 and 2010, and that Dakota willfully violated Section 17(a) of the Securities Exchange Act of 1934 (the "Exchange Act") and Exchange Act Rule 17a-3 by misidentifying in Dakota's books and records the representative of record for certain trades entered before, during, and after the Suspension Period.

Dakota and Zipper each filed an answer to the complaint in which both admitted many of the underlying factual allegations. Additionally, before the hearing, the parties submitted joint stipulations as to most of the relevant facts.

The Hearing Panel conducted a hearing on March 13 and 14, 2018, and issued its decision on June 18, 2018. The Hearing Panel found Zipper and Dakota liable on all causes of action alleged against each of them. The Hearing Panel barred Zipper and expelled Dakota from FINRA membership. Zipper and Dakota appealed.

III. Discussion

A. Zipper and Dakota Violated NASD Rule 1031, Article III, Section 3(b) of FINRA's By-Laws and FINRA Rule 2010; Dakota Violated FINRA Rule 8311

The Hearing Panel found that (1) Zipper violated FINRA Rule 2010 and Article III, Section 3(b) of FINRA's By-Laws by associating with Dakota during the Suspension Period (causes one and two); (2) Zipper violated NASD Rule 1031 and FINRA Rule 2010 by engaging in activities requiring registration during the Suspension Period (cause two); and (3) Dakota violated NASD Rule 1031, Article III, Section 3(b) of FINRA's By-Laws, and FINRA Rules 8311 and 2010 by allowing Zipper to associate with the firm and engage in activities requiring registration during the Suspension Period (cause three).[5] For the reasons set forth below, we affirm these findings of violations.[6]

1. Zipper Was Prohibited from Associating With Dakota or Engaging in Activities Requiring Registration During the Suspension Period

The AWC imposed a three-month suspension prohibiting Zipper from associating in any capacity with any FINRA member. Failure to comply with a FINRA suspension order is a violation of FINRA Rule 2010, which requires member firms and their associated persons to "observe high standards of commercial honor and just and equitable principles of trade."[7] *Michael A. Usher*, Complaint No. C3A980069, 2000 NASD Discip. LEXIS 5, at *5 (NASD NAC Apr. 18, 2000) (failure to comply with terms of suspension order was violation of identical predecessor to FINRA Rule 2010).

Additionally, under FINRA's By-Laws, Zipper was prohibited from associating with Dakota, and Dakota was prohibited from allowing Zipper to associate with the firm. Zipper was statutorily disqualified as a result of the AWC. Article III, Section 3(b) of FINRA's By-Laws provides that "[n]o person shall become associated with a member, [or] continue to be associated with a member . . . if such person is or becomes subject to a disqualification . . . and no member

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[5] We apply the NASD and FINRA Rules in effect when the alleged misconduct occurred.

[6] Our findings of violations on causes one, two, and three are limited, as were the allegations in the complaint, to the misconduct that occurred during the Suspension Period.

[7] FINRA Rule 2010 applies to FINRA members and their associated Persons. FINRA Rule 0140.

shall be continued in membership, if any person associated with it is ineligible . . . under this subsection."[8]

Dakota also was prohibited from associating with Zipper under FINRA Rule 8311, which provides that "[if] a person is subject to a suspension . . . or other disqualification, a member shall not allow such person to be associated with it in any capacity that it is inconsistent with the sanction imposed or disqualified status, including a clerical or ministerial capacity." A violation of FINRA Rule 8311 is also a violation of FINRA Rule 2010. *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *23 (Aug. 22, 2008) ("An associated person violates Rule [2010] when he or she violates any other [FINRA] rule.").

Because Zipper was prohibited from "associating" with Dakota, he could not be involved in any way with the firm's securities business. FINRA's By-Laws define the term "associated person" to include any person "engaged in the . . . securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration" with FINRA.[9] FINRA's By-Laws define the term "securities business" to include underwriting or distributing securities, purchasing securities and offering them for sale as a dealer, and purchasing and selling securities upon the order and for the account of others.[10] "[O]ne whose functions are part of the conduct of a securities business is an associated person engaged in that business." *Bruce Zipper*, 2018 SEC LEXIS 2709, at *14. The definition of associated person is interpreted broadly, and includes even clerical staff if their duties are part of the conduct of a firm's securities business. *See, e.g.*, *Stephen M. Carter*, 49 S.E.C. 988, 989 (1988) (employee who worked as a "dealer cashier" was an associated person because he received checks and securities and entered them in the firm's computer system, prepared firm checks for signature in payment of customer balances, prepared deposit slips, and furnished account balances and other information to customers).

Additionally, because all of Zipper's FINRA registrations were suspended during the Suspension Period, he could not engage in any activities requiring registration. NASD Rule 1031 provides that any person engaged in the securities business of a FINRA member firm and functioning as a "representative" must be registered with FINRA. Activities requiring registration are a subset of those that constitute "associating" with a FINRA member firm. They include communicating with members of the public to determine their interest in making investments, discussing the nature or details of particular securities or investment vehicles, recommending the purchase or sale of securities, and accepting orders for the purchase or sale of securities. *Dist. Bus. Conduct Comm. v. Gallison*, Complaint No. C02960001, 1999 NASD Discip. LEXIS 8, at *51 (NASD NAC Feb. 5, 1999).

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[8] FINRA's By-Laws define "disqualification" to include a "statutory disqualification," as defined in Section 3(a)(39) of the Exchange Act. FINRA By-Laws, Art. III, § 4.

[9] FINRA By-Laws, Art. I(rr).

[10] FINRA By-Laws, Art. I(u).

2. Zipper Associated with Dakota and Engaged in Activities Requiring Registration During the Suspension Period

Zipper associated with Dakota and engaged in activities requiring registration throughout the Suspension Period.

Zipper engaged in activities requiring registration by using his Dakota email account to communicate with customers about specific securities in their brokerage accounts and to recommend particular securities transactions. For example, during the Suspension Period, Zipper sent an email to two customers in which he recommended they both purchase a particular stock. Zipper wrote, in part, that it was a "stock I like a lot and has been getting high analyst praise," and that the stock would "look good in each of your portfolios." The next day, one of the customers replied to Zipper's email and asked several questions about the stock. Zipper responded by email, and the customer then replied "Please call[.]" Later that day, the customer's spouse purchased 2,000 shares of the stock in her Dakota account. In another email to a customer, Zipper recommended the sale of two particular stocks the customer held in his Dakota account. And in yet another email to a customer, Zipper recommended the purchase of additional shares of a stock the customer held in his Dakota account. Zipper sent several other similar emails to customers during the Suspension Period. By discussing specific securities with customers, and recommending particular transactions, Zipper was associating with Dakota and functioning as a representative of the firm, thereby engaging in activities requiring registration.

Zipper also associated with Dakota by facilitating and conducting Dakota's securities business during the Suspension Period. On the first day of his suspension, for example, Zipper used his Dakota email account to contact Dakota's email provider and promise immediate payment of the firm's past-due invoices.[11] The same day, Zipper used his personal (i.e., non-Dakota) email account to exchange emails with Dakota's clearing firm regarding Dakota's failure to meet its excess net capital requirement. Zipper wrote, in part, "I know you are asking about the net cap excess. . . . I give you my word that the May numbers will be there." Zipper then emailed Dakota's minority owner and asked for an assurance that the minority owner would write off a debt owed to him by the firm so the firm could meet its excess net capital requirement. Zipper testified that he "needed to get the Dakota financing position in a better spot or Dakota could lose its clearing firm[.]" Several weeks later, Zipper emailed Dakota's minority owner about Zipper's efforts to negotiate a settlement to a securities arbitration claim filed against the firm. Zipper wrote, in part, that he had spoken with the attorney for the claimant "today," and that Zipper wanted to meet with the minority owner "later this week" to "come up with a strategy going forward for Dakota." Zipper testified that he had "worked with the attorney on that arbitration case for weeks" to resolve it.

Zipper further admits that he regularly accessed the firm's trading system during the Suspension Period. Zipper testified that he used the system on a daily basis to obtain reports that "let [him] know what the company was doing" and "to view customer accounts."

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[11] Later in the Suspension Period, Zipper sent additional emails to Dakota's email provider to set up an email account for a new broker and to authorize Lefkowitz to make changes to the firm's email system.

3. Dakota Allowed Zipper to Associate with It and Engage in Activities Requiring Registration During the Suspension Period

Dakota, through Lefkowitz, was aware of Zipper's conduct during the Suspension Period but did virtually nothing to stop it. The firm continued to operate out of Zipper's home, its principal place of business, even though it knew Zipper could not be involved in its securities business in any way. Dakota knew that Zipper had access to his Dakota computer, and that he could use the computer to log into the firm's trading system. Dakota knew that Zipper was using its email system to communicate with customers, and that he was even recommending particular securities transactions to some of those customers. And Dakota knew that Zipper also was using the firm's email system to communicate with third parties regarding Dakota's securities business.

4. FINRA Staff Did Not Grant Permission for Zipper to Associate with Dakota During the Suspension Period

Zipper and Dakota argue in their defense that a FINRA staff member, Dawn Colange, granted permission for Zipper to associate with Dakota during the Suspension Period. Zipper asserts that Lefkowitz and another Dakota employee, Gary Cuccia, asked Colange "about getting Mr. Zipper to intercede in a problem with Dakota that only he knew the answer to," and that "Colange admitted [at the hearing that] she was asked by these two about interceding and yes she did give them permission to have Mr. Zipper address those issues."[12] Based on our review of the entire record, we find that neither Colange nor any other FINRA staff member granted permission for Zipper to associate with Dakota during the Suspension Period.

As an initial matter, Zipper's story on this point has been inconsistent. In his answer, Zipper wrote that it was Rosen who gave Zipper permission to associate with Dakota during the Suspension Period. At the hearing, Zipper testified in detail about the conversation he had with Rosen during which that purportedly occurred. In his brief on appeal, however, Zipper concedes that Rosen did not grant him permission, but instead told Zipper that "he [Rosen] didn't have the authority to make that decision," and referred Zipper to Colange. Zipper claims that Colange granted permission during a conversation she had with Lefkowitz and Cuccia.

At the hearing, Zipper testified that, before he executed the AWC, Rosen gave him permission to intercede in Dakota's affairs if an issue arose that only Zipper could handle. According to Zipper, he asked Rosen "if this should happen . . . Bruce Zipper is the only one in that 90 days [suspension period] when I'm out of the company [who] can answer it, so that the firm and/or client would not be hurt, could I do that. His [Rosen's] answer was yes. Period."

Following Zipper's testimony, Lefkowitz testified that Zipper told him about the alleged conversation Zipper had with Rosen, and how Rosen had granted permission for Zipper to intercede in Dakota's business if a situation arose that Lefkowitz could not handle. Lefkowitz further testified that he had his own conversation with Colange and another FINRA staff

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[12] There is no evidence in the record that Cuccia discussed Zipper's suspension with Colange. Cuccia did not begin working at Dakota until after Zipper's suspension ended.

member, AB, about the same issue. According to Lefkowitz, he asked Colange and AB "if any situation comes up that I am not able to handle because I don't have the knowledge or experience or whatever, and only Bruce Zipper has that knowledge or information, would he [Zipper] be allowed to take care of that. And they [Colange and AB] said yeah, don't worry about it."

Rosen and Colange disputed Zipper's and Lefkowitz's accounts of these conversations. Rosen acknowledged that, before Zipper signed the AWC, Zipper asked whether a firm principal could contact Zipper if an issue arose that the principal could not handle. Rosen testified, however, that he told Zipper the principal had to handle all of Zipper's responsibilities while Zipper was suspended, and that if any issue should arise, the principal should not contact Zipper but should contact FINRA staff instead.

Colange testified that Lefkowitz never even asked about Zipper interceding in the firm's business during the Suspension Period, and that she expressly told Lefkowitz that Zipper "could not associate with the firm in any capacity." She further testified that she was not aware of any other FINRA staff member granting permission for Zipper to associate with Dakota while he was suspended.

Zipper argues on appeal that Colange admitted granting permission for him to associate with Dakota. But Zipper mischaracterizes what Colange said. Under Zipper's cross-examination, Colange acknowledged that there had been occasions when FINRA staff did not object to a suspended person intervening in a member firm's business. She also acknowledged that, while Lefkowitz was serving a suspension in 2017 (after Zipper's suspension had ended), Cuccia emailed her to ask whether Lefkowitz could assist with a "technical issue," and that FINRA did not object to Cuccia's request.[13] Colange explained that if Zipper or Lefkowitz had approached FINRA staff and raised a similar issue requiring Zipper's involvement, the staff "would evaluate the facts of that circumstance, and then we would tell you whether or not we would object to something or not." Contrary to Zipper's assertion, Colange did not state that she or any other FINRA staff member actually had such a conversation with Zipper, Cuccia, or Lefkowitz, or that she or any other FINRA staff member granted permission for Zipper to intercede in Dakota's business during the Suspension Period. Colange further stated that, to her knowledge, FINRA had never allowed a suspended person to recommend a securities transaction to a customer and she "cannot even imagine a scenario where [FINRA] would do that."

The Hearing Panel found Rosen and Colange credible. The Hearing Panel noted that Rosen's testimony was consistent with a contemporaneous email he sent to his FINRA colleagues shortly after his conversation with Zipper. In that email, Rosen wrote that Zipper had "raised a concern that the principal who will cover for him during the suspension may need to call [Zipper] to ask a question." He further wrote: "Rather than Zipper possibly crossing the suspension line, I told Zipper to tell his principal, now, to instead contact our office during his suspension." The Hearing Panel noted that Colange's testimony was consistent with Rosen's.

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[13] According to Colange, the "technical issue" was "clearly" related to Cuccia's efforts "to get set up to be the CCO and CEO of the firm" while Lefkowitz was suspended.

The Hearing Panel found that Zipper and Lefkowitz were not credible on this issue. The Hearing Panel noted that Zipper's hearing testimony was contradicted by his prior, sworn testimony during an on-the-record interview ("OTR") with FINRA staff. During that OTR, when asked about his understanding of his all-capacities suspension, Zipper said he understood he was "not to have anything to do with the company." He further testified he understood he was not allowed to email clients or solicit securities transactions while suspended. With respect to Lefkowitz, the Hearing Panel noted that he and Zipper were long-time friends, and that Lefkowitz's testimony on this issue was elicited by Zipper's leading questions. The Hearing Panel concluded that Lefkowitz was trying "to help his friend and to justify his own misconduct as a supervisor."

We accept the Hearing Panel's credibility findings. "[C]redibility determinations of an initial fact-finder, which are based on hearing the witnesses' testimony and observing their demeanor, are entitled to considerable weight and deference, and can be overcome only where the record contains substantial evidence for doing so." *John Montelbano*, Exchange Act Release No. 47227, 2003 SEC LEXIS 153, at *21 (Jan. 22, 2003). After a careful review of the record, we see no reason to disturb the Hearing Panel's credibility determinations, and conclude that no FINRA staff member granted permission for Zipper to associate with Dakota during the Suspension Period.

In sum, we find that Zipper associated with Dakota during the Suspension Period by facilitating and conducting Dakota's securities business, thereby violating Article III, Section 3(b) of FINRA's By-Laws and FINRA Rule 2010. We also find that Zipper engaged in activities requiring registration during the Suspension Period by discussing specific securities with customers and recommending particular securities transactions, thereby violating NASD Rule 1031 and FINRA Rule 2010.

Additionally, we find that Dakota allowed Zipper to associate with the firm and engage in activities requiring registration during the Suspension Period, thereby violating Article III, Section 3(b) of FINRA's By-Laws, NASD Rule 1031, and FINRA Rules 8311 and 2010.

B. Zipper and Dakota Violated FINRA Rules 4511 and 2010, and Dakota Willfully Violated Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-3 Thereunder

The Hearing Panel found that Zipper and Dakota violated FINRA Rules 4511 and 2010 by intentionally misidentifying the representative of record for hundreds of transactions in the firm's books and records. For the reasons set forth below, we affirm the Hearing Panel's findings of violations. We further find that, as a result of this misconduct, Dakota willfully violated Section 17(a) of the Exchange Act and Exchange Act Rule 17a-3 by maintaining inaccurate books and records, as alleged in cause five of the complaint.[14] Because Dakota willfully violated the Exchange Act, the firm is statutorily disqualified.

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[14] The Hearing Panel did not make a finding as to whether Dakota violated Exchange Act Section 17(a) and Exchange Act Rule 17a-3.

FINRA Rule 4511 requires every FINRA member firm to "make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules."[15] Exchange Act Rule 17a-3 requires every FINRA member firm to make and keep current a memorandum of each brokerage order that includes, among other information, the identity of the person who entered or accepted the order on behalf of the customer. 17 C.F.R. § 240.17a-3(a)(6)(i). Implicit in the SEC's recordkeeping rules is a requirement that the information contained in a required book or record be accurate. *John M. Repine*, Exchange Act Release No. 54937, 2006 SEC LEXIS 2916, at *26 (Dec. 14, 2006). Causing a firm to enter false information in its books and records violates FINRA Rules 4511 and 2010. *Dep't of Market Reg. v. Burch*, Complaint No. 2005000324301, 2011 FINRA Discip. LEXIS 16, *38 (FINRA NAC July 28, 2011). Similarly, a violation of the Exchange Act or any rule thereunder is a violation of FINRA Rule 2010. *Id.* at *39.

Zipper and Lefkowitz admit that they intentionally misidentified the representative of record on hundreds of trades entered between February 22, 2016, and November 16, 2016, thereby causing Dakota to maintain inaccurate books and records. Each registered person at Dakota had a representative code that was included on the order memorandum and trade confirmation for each transaction entered into Dakota's trading system. DS02 was Zipper's representative code; DS01 was the representative code for CM, a former Dakota registered person who was discharged from the firm on February 19, 2016; and DS03 was a joint representative code Zipper shared with CM.

Zipper admits that, after CM left the firm, he continued using CM's representative code (DS01) and the joint representative code he shared with CM (DS03) when entering transactions for customers who lived in New Jersey. Zipper testified that he was not registered in New Jersey but CM was, and he used CM's codes because he did not want to pay the fee to register himself in New Jersey. From February 22, 2016, through November 16, 2016, excluding the Suspension Period, Zipper entered 451 trades under either CM's representative code or the joint-representative code he shared with CM.

During the Suspension period, Lefkowitz continued Zipper's practice of misidentifying the representative of record when entering transactions into Dakota's trading system. Lefkowitz was responsible for servicing the accounts of Zipper's customers during the Suspension Period, including entering their orders. Rather than use his own representative code for these transactions, however, Lefkowitz entered these transactions under either Zipper's representative code (DS02), CM's representative code (DS01), or the joint representative code Zipper shared with CM (DS03). During the Suspension Period, Lefkowitz entered 29 trades using Zipper's representative code, 93 trades using CM's representative code, and 109 trades using Zipper's and CM's joint-representative code.

Zipper and Dakota argue that their customers knew about their practice of misidentifying the representative of record in the firm's books and records and approved it, and that no customer was harmed. This is no defense. The SEC has emphasized that the recordkeeping

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[15] FINRA Rule 4511 also applies to associated persons such as Zipper. *See* FINRA Rule 0140.

provisions of the securities laws are "important both to monitor the financial status of broker-dealers and to protect public investors." *First Colo. Fin. Servs. Co., Inc.*, 53 S.E.C. 843, 847 (Sept. 14, 1998). Violations of these provisions "are serious, and adversely impact the monitoring function exercised by regulatory authorities." *Id.* Dakota's customers' purported approval of the firm's inaccurate books and records has no bearing on Zipper's and Dakota's liability, nor does the alleged absence of customer harm. *See Kirlin Sec., Inc.*, Exchange Act Release No. 61135, 2009 SEC LEXIS 4168, at *68 n. 93 (Dec. 10, 2009) ("[W]e have held that FINRA's authority to enforce its rules is independent of a customer's decision not to complain.").

We find that Zipper caused Dakota to maintain inaccurate books and records, thereby violating FINRA Rules 4511 and 2010, and that Dakota maintained inaccurate books and records, thereby violating Exchange Act Section 17(a), Rule 17a-3 thereunder, and FINRA Rule 2010. We further find that Dakota's violation of Rule 17a-3 was willful. In this context, "willful" does not mean that Dakota intended to violate the Exchange Act or any Exchange Act rule. *Dep't of Enforcement v. The Dratel Group*, Complaint No. 2008012925001, 2014 FINRA Discip. LEXIS 6, at *77 (FINRA NAC May 2, 2014), *aff'd*, Exchange Act Release No. 77396, 2016 SEC LEXIS 1035 (Mar. 17, 2017). Rather, "[a] willful violation under the federal securities laws simply means that the person charged with the duty knows what he is doing." *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *41 (Nov. 9, 2012) (citing *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000)). At the time of their respective misconduct, Zipper and Lefkowitz were serving as Dakota's president and CEO and had control over the firm. Zipper and Lefkowitz each admit that they acted intentionally, and therefore willfully, in misidentifying the representative of record on Dakota's books and records. We attribute Zipper's and Lefkowitz's willfulness to Dakota, and find that Dakota acted willfully. *The Dratel Group*, 2014 FINRA Discip. LEXIS 6, at *78 ("Based on [registered person's] conduct, sole ownership of [the firm], control over the firm, and position as the only registered person conducting a securities business at [the firm], we attribute [the registered person's] willfulness to [the firm] and find that the firm also acted willfully."). Because Dakota's violation of the Exchange Act was willful, the firm is statutorily disqualified. *See id.* at *126 n.90

C. Dakota Violated FINRA Rules 3110 and 2010 by Failing to Establish, Maintain, and Enforce a System of Written Procedures to Supervise Its Business and Associated Persons

The Hearing Panel found that Dakota violated FINRA Rules 3110 and 2010 by failing to maintain a supervisory system adequate to ensure that Zipper did not associate with the firm during the Suspension Period and failing to adequately supervise the creation of the firm's books and records. Dakota admits these supervisory violations. For the reasons set forth below, we affirm the Hearing Panel's findings of violations.

FINRA Rule 3110(a) requires that each FINRA member establish and maintain a supervisory system to supervise the activities of each associated person that is reasonably designed to achieve compliance with the federal securities laws and FINRA rules. "The duty of supervision includes the responsibility to investigate 'red flags' that suggest that misconduct may

be occurring and to act upon the results of such investigation." *Michael T. Studer*, 57 S.E.C. 1011, 1023-24 (2004). Final responsibility for proper supervision of a firm's business rests with the firm. *Dep't of Enforcement* v. *Brookstone Sec., Inc.*, Complaint No. 2007011413501, 2015 FINRA Discip. LEXIS 3, at *104 (FINRA NAC Apr. 16, 2015). A violation of FINRA Rule 3110 is a violation of FINRA Rule 2010. *Ortiz*, 2008 SEC LEXIS 2401, at *23.

Dakota had WSPs relating to suspended and disqualified persons, but the firm failed to enforce them during the Suspension Period. Dakota's WSPs provided that Zipper, as a suspended and statutorily disqualified person, was not to "[h]ave direct or indirect contact with customers" or "give investment advice or counsel." The WSPs further provided that, during the Suspension Period, Zipper "will not be involved in the company's business." Yet Dakota did virtually nothing to keep Zipper from interceding in its business while he was suspended and statutorily disqualified. The firm continued to operate from its principal place of business in Zipper's home and left Zipper's Dakota computer, which could access the firm's trading system, in Zipper's home office. The firm made no effort whatsoever to restrict Zipper's access to its trading or email systems. Lefkowitz was responsible for reviewing the firm's emails during the Suspension Period, but he did not review Zipper's emails to ensure that Zipper was not using the firm's email system. Lefkowitz received copies of emails showing that Zipper was conducting Dakota's securities business, but Lefkowitz failed to investigate or follow-up on these red flags.

Dakota also failed to supervise the creation of its books and records between February 22, and November 16, 2016. Zipper and Lefkowitz each admit that, during that period, they intentionally misidentified the representative of record when entering hundreds of transactions in Dakota's trading system, which caused Dakota's books and records to be inaccurate with respect to those transactions. Zipper and Lefkowitz were serving as Dakota's president, CEO, and CCO at the time each falsified the firm's books and records.

We find that Dakota failed to maintain a supervisory system adequate to ensure that Zipper did not associate with the firm during the Suspension Period and failed to adequately supervise the creation of the firm's books and records, thereby violating FINRA Rules 3110 and 2010.

IV. Sanctions

The Hearing Panel barred Zipper and expelled Dakota for their misconduct. After reviewing the record and applying FINRA's Sanction Guidelines (the "Guidelines"),[16] and for the reasons set forth below, we affirm the sanctions imposed by the Hearing Panel.

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[16] *FINRA Sanction Guidelines* 2017, http://www.finra.org/sites/default/files/2017_ Sanction Guidelines.pdf [hereinafter "*Guidelines*"].

A. Zipper and Dakota Have Disciplinary Histories and Remain Intertwined

Zipper and Dakota have disciplinary histories, which is an aggravating factor for all violations.[17] *See Castle Sec. Corp.*, 58 S.E.C. 826, 836-37 (2005) (explaining that disciplinary history is a significant aggravating factor and an important consideration in weighing sanctions). Most recently, in April 2016, FINRA sanctioned Zipper and Dakota for failing to supervise the firm's email communications and ensure those communications were preserved. Zipper was suspended in a principal capacity for one month and fined $10,000. Dakota was censured and fined $10,000. In March 2010, Dakota was censured and fined $5,000 for failing to retain and review email communications. In November 2009, the Florida Office of Financial Regulation sanctioned Zipper and Dakota for failing to conduct independent testing of Dakota's anti-money laundering compliance program. Zipper and Dakota were fined $5,000, jointly and severally. In 1995, the Florida Department of Banking and Finance fined Zipper $1,000 for failing to timely notify the department about an NASD action. The year before, NASD censured Zipper, fined him $5,000, and suspended him five days for failing to comply with an arbitration award. And in 1989, NASD censured Zipper and fined him $1,000 for effecting transactions in non-exempt securities while failing to maintain sufficient net capital.

Zipper and Dakota remain, essentially, one and the same, and we take that into consideration when determining the appropriate sanctions for Dakota. On appeal, Dakota argues that it should not be sanctioned for violations that occurred on Zipper's watch because the firm is under "new management" and purportedly has implemented "significant enhancements" to its compliance procedures. The record shows, however, that Dakota remains in the hands of Zipper's family, as Zipper's wife now owns 90% of Dakota's stock. The record further shows that, even with Dakota's new management, Zipper remains involved in the firm's business. Cuccia, Dakota's CFO and CCO at the time of the hearing, testified that he had shared Dakota's most recent financial results with Zipper, even though Zipper no longer owned an interest in the firm. Cuccia admitted he did not share those results with Zipper's wife. Cuccia further testified that Zipper had visited Dakota's office just a few weeks before the hearing to discuss the firm's audit. Accordingly, in determining the appropriate sanctions for Dakota, we take into consideration Zipper's continuing involvement with the firm.

B. Zipper Is Barred and Dakota Is Expelled for Violating FINRA's Membership and Registration Rules

The Hearing Panel barred Zipper for associating with Dakota and engaging in activities requiring registration while suspended and statutorily disqualified (causes one and two). The Hearing Panel expelled Dakota for allowing Zipper to engage in this misconduct (cause three). We affirm these sanctions.

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[17] *See also Guidelines*, at 2 (General Principles Applicable to All Sanction Determinations, No. 2) ("Disciplinary sanctions should be more severe for recidivists."), 7 (Principal Considerations in Determining Sanctions, No. 1) (adjudicators should consider "[t]he respondent's relevant disciplinary history").

For associating with a FINRA member firm while statutorily disqualified, or allowing a statutorily disqualified person to do so, the Guidelines recommend a fine of $5,000 to $73,000 each for the individual and the firm and, in egregious cases, a bar for the individual and a suspension of up to two years for the firm. The principal considerations are the nature and extent of the disqualified person's activities and responsibilities, whether a Form MC-400 application was pending, and whether disqualification resulted from financial and/or securities misconduct.[18] There are no specific guidelines for associating with a FINRA member firm while suspended, or allowing a suspended person to do so.

We find that Zipper's and Dakota's violations of FINRA's membership and registration rules were egregious. "When [FINRA] takes the extraordinary step of suspending a firm or a registered person, it is entitled to require complete and precise compliance with its directive." *Id.* Neither Zipper nor Dakota came anywhere near complete and precise compliance. Zipper's association with Dakota during the Suspension Period was not an isolated incident—it was persistent and continuous. Moreover, Zipper's activities during the Suspension Period were not limited to technical or administrative matters; he repeatedly discussed particular securities with his customers, and even recommended particular securities transactions to them. Zipper's and Dakota's conduct reflect an intentional flouting and disregard of their obligations under FINRA's rules.

We also find aggravating Zipper's and Dakota's refusal to acknowledge their wrongdoing or accept responsibility for it. *See Dep't of Enforcement v. Eplboim*, Complaint No. 2011025674101, 2014 FINRA Discip. LEXIS 8, at *45 (FINRA NAC May 14, 2014) (respondent's continued denial of responsibility and attempts to blame others including FINRA staff was "troubling and serves to aggravate his misconduct"). Both Zipper and Dakota try to shift blame for their misconduct to FINRA staff by insisting that the staff granted permission for Zipper to associate with Dakota while suspended in all capacities and statutorily disqualified. But there is no credible evidence in the record to support this assertion, and it is troubling that Zipper and Dakota continue to advance this false narrative rather than accept responsibility for their actions.

Zipper's and Dakota's post-suspension misconduct also is aggravating. Because of Zipper's failure to disclose material information on his Form U4, he remained statutorily disqualified even after the Suspension Period. In July 2016, Dakota submitted a Membership Continuance application (the "MC-400") on Zipper's behalf seeking FINRA's approval for Zipper to associate with the firm after his suspension ended. Under FINRA's rules and policies, when Zipper's suspension ended on August 31, 2016, he was permitted to associate with Dakota only until FINRA made its decision on Dakota's MC-400.

FINRA denied the MC-400 on October 2, 2017, and Zipper was prohibited from associating with Dakota after that date. In its decision denying Dakota's application, FINRA wrote, in part, that it denied the application because it found that "Zipper engaged in serious misconduct . . . by associating with [Dakota] while suspended[.]" FINRA emailed a copy of the decision and a cover letter to Zipper and Dakota and also sent copies to each via certified mail.

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[18] *Guidelines*, at 43.

FINRA's cover letter stated that, "unless the [Securities and Exchange] Commission stays the effect of the enclosed notice . . . the enclosed notice is effective immediately, and Bruce Zipper shall terminate his association with Dakota Securities International, Inc."

Zipper and Dakota admit that Zipper continued to associate with the firm, and the firm allowed him to do so, after FINRA denied the MC-400. Zipper claims he did not know about FINRA's denial of the MC-400 until November 6, 2017, but he filed an appeal of the denial with the SEC on October 18, 2017. In other words, *after* Zipper and Dakota learned that FINRA had denied the MC-400 precisely *because* Zipper had violated the terms of his suspension by associating with Dakota while suspended and statutorily disqualified, Zipper *continued* to associate with Dakota while he was statutorily disqualified.

Neither Zipper nor Dakota identifies any mitigating factors, and we do not find any. Zipper claims he "has not one complaint filed against [him] by a client that [he] was the broker of record on," but the absence of customer complaints is not mitigating. *Kevin M. Glodek*, Exchange Act Release No. 60937, 2009 SEC LEXIS 3936, at *27 (Nov. 9, 2009) ("The fact that many of the customers did not lose money and did not complain about the violations does not further mitigate [respondent's] misconduct."). Dakota argues that Zipper believed he could communicate with customers while he was suspended because he was prohibited from associating with any FINRA member, and customers are not FINRA members. We do not give any weight to Dakota's argument. Zipper's OTR testimony shows that Zipper understood the terms of his suspension, and specifically understood that he could not communicate with customers during the Suspension Period.

We agree with the Hearing Panel that imposing a suspension on Zipper or Dakota would be futile because, given their behavior during Zipper's prior suspension and ongoing statutory disqualification, there is no reason to believe that Zipper or Dakota would comply with the terms of any suspension. We therefore bar Zipper for the violations alleged under causes one and two and expel Dakota for the violations alleged against the firm under cause three.[19]

C. Zipper Is Barred and Dakota Is Expelled for Creating and Maintaining False Books and Records

The Hearing Panel barred Zipper for falsifying Dakota's books and records and expelled Dakota for failing to create and maintain accurate books and records (cause five). We affirm these sanctions.

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[19] We impose a unitary sanction on Zipper for causes one and two because the violations under both are attributable to Zipper's violation of the AWC. *See Dep't of Enforcement v. Riemer*, Complaint No. 2013038986001, 2017 FINRA Discip. LEXIS 38, at *21 n.6 (FINRA NAC Oct. 5, 2017), *aff'd*, Exchange Act Release No. 84513, 2018 SEC LEXIS 3022 (Oct. 31, 2018) ("We agree with the [h]earing [p]anel's imposition of a unitary sanction for [respondent's] violations given that they are based on related misconduct.").

For violations of FINRA Rule 4511 and Exchange Act Rule 17a-3, the Guidelines recommend a fine of $1,000 to $15,000, and where aggravating factors predominate, a fine of $10,000 to $146,000 or higher if significant aggravating factors predominate.[20] For individuals, the Guidelines recommend a suspension in any or all capacities of 10 business days to three months, and where aggravating factors predominate, a suspension of up to two years or a bar.[21] For firms, where aggravating factors predominate, the Guidelines recommend a suspension of ten business days up to two years or expulsion.[22] The principal considerations include (1) the nature and materiality of the inaccurate or missing information; (2) the nature, proportion, and size of the firm records at issue; (3) whether inaccurate or missing information was omitted intentionally, recklessly, or as the result of negligence; (4) whether the violations occurred over an extended period of time or involved a pattern of misconduct; and (5) whether the violations allowed other misconduct to occur or escape detection.[23]

We find that Zipper's and Dakota's violations were egregious. Zipper was serving as Dakota's president, CEO, and CCO at the time he intentionally misidentified the representative of record on trades he entered for customers. Lefkowitz continued this practice when he took over as president, CEO, and CCO of the firm during the Suspension Period. Both Zipper and Lefkowitz admit they falsified Dakota's books and records to avoid the state of New Jersey's registration requirements. As a result of Zipper's and Lefkowitz's misconduct, Dakota's books and records were inaccurate with respect to hundreds of trades entered between February and November 2016.

Also aggravating is Zipper's and Dakota's failure to recognize the significance of their wrongdoing and accept responsibility for it. Zipper claims that "any other person getting a high school education" would see that he was not falsifying Dakota's books and records because he told his customers and allegedly "got [their] blessing as well to do it!!!"[24] Zipper claims the books and records charge is "a total lie," and disputes the Hearing Panel's finding that he falsified Dakota's books and records as "FINRA's most egregious statement yet in this matter."

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20 *Guidelines*, at 29.

21 *Id.*

22 *Id.*

23 *Id.*

24 Zipper objects to the use of the word "falsify" to describe his misconduct because, he contends, "falsify" means "to alter so as to mislead," and his customers were not misled. The record shows, however, that Zipper intended to mislead regulators in order to avoid New Jersey's registration requirements. Zipper therefore falsified Dakota's books and records by intentionally misidentifying the representative of record on certain transactions. *See, e.g.*, *United States v. Rowland*, 826 F.3d 100, 108 (2d Cir. 2016) ("Dictionary definitions thus confirm that, in common usage, it is acceptable to say that someone 'falsifies' a document when he creates a document that misrepresents the truth.").

According to Zipper, what he did was "[n]o different than a traffic citation. . . . I changed lanes without signaling." Dakota makes similar arguments minimalizing the significance of these violations.

We find that Zipper's and Dakota's misconduct in falsifying the firm's books and records was intentional, pervasive, and carried out with the specific intent to mislead regulators. We therefore bar Zipper and expel Dakota for the violations alleged under cause five.

D. Dakota Is Expelled for Failing to Supervise

The Hearing Panel expelled Dakota for failing to establish and maintain a supervisory system reasonably designed to achieve compliance with applicable securities laws and regulations and FINRA rules (cause four). We affirm this sanction.

Because Dakota's supervisory failures were significant, occurred over an extended period of time, and involved the firm's failure to implement or use supervisory procedures that existed, we apply the Guidelines for systemic supervisory failures.[25] The Guidelines recommend a fine of $10,000 to $292,000 and, where aggravating factors predominate, a suspension of up to two years or expulsion.[26] The principal considerations are (1) whether the deficiencies allowed violative conduct to occur or escape detection; (2) whether the firm failed to timely correct or address deficiencies once identified, failed to respond to prior warnings from FINRA or another regulator, or failed to respond reasonably to other "red flag" warnings; (3) whether the firm appropriately allocated its resources to prevent and detect the supervisory failure; (4) the number and type of customers, investors, or market participants affected by the deficiencies; (5) the number and dollar value of the transactions not adequately supervised; (6) the nature, extent, size, character, and complexity of the activities or functions not adequately supervised; (7) the extent to which the deficiencies affected market integrity, market transparency, the accuracy of regulatory reports, or the dissemination of trade or other regulatory information; and (8) the quality of controls or procedures available to the supervisors and the degree to which the supervisors implemented them.[27]

We find that Dakota's violations were egregious. The firm's supervisory violations enabled Zipper to continue associating with it, and engage in activities requiring registration, throughout his three-month suspension. Dakota missed numerous red flags that should have alerted the firm to Zipper's misconduct. For example, Dakota failed to supervise and adequately review email communications during the Suspension Period, even though FINRA previously had sanctioned the firm for failing to do just that. And after Dakota received FINRA's denial of its MC-400, which expressly stated that Zipper could no longer associate with the firm, Dakota continued to allow Zipper to do so. Dakota's extensive supervisory failures permitted violative conduct to occur or escape detection.

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25 *Guidelines*, at 106-07.

26 *Id.*

27 *Id.*

Dakota's supervisory violations also enabled Zipper and Lefkowitz to falsify the firm's books and records for almost an entire year. Zipper and Lefkowitz misidentified the representative of record on hundreds of transactions entered between February and November 2016. Dakota's failure to adapt and implement procedures to ensure the accuracy of its books and records reflect a failure to allocate resources to prevent or detect supervisory failures.

Given Zipper's continued involvement in Dakota, we share the Hearing Panel's lack of confidence in Dakota's ability to adequately supervise its business in the future. Considering Dakota's disciplinary history as a supervisory violation recidivist, its egregious misconduct here, and the absence of any mitigating factors, we find that expulsion is the only appropriate sanction. We therefore expel Dakota for the violations alleged under cause four.

E. There Is No Evidence of Bias

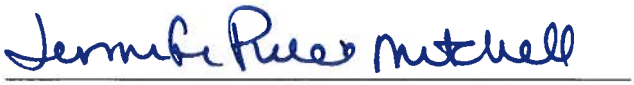
Dakota argues that the imposition of sanctions on both Zipper and Dakota for these violations is evidence of FINRA's bias against Zipper and the firm. Dakota notes that, when FINRA examiners initially discovered that Zipper had failed to disclose material information on his Form U4, they recommended that no formal disciplinary action be taken against the firm. Enforcement did, of course, take formal action against Zipper, which led to the AWC and the suspension that Zipper subsequently violated. Dakota contends that, because Enforcement did not charge the firm in connection with Zipper's Form U4 violations, it should not have sought sanctions on the firm for the violations arising from Zipper's failure to abide by the terms of his suspension, and the imposition of sanctions on the firm shows that FINRA is biased against Zipper and Dakota. Dakota's claim of bias is without merit. Enforcement's decision *not* to charge Dakota for Zipper's earlier Form U4 violations is not evidence that FINRA is biased against Dakota or Zipper in this or any other matter. "It is well established that Enforcement has broad prosecutorial discretion when deciding who and what violation to charge." *Dep't of Enforcement v. Wedbush Sec., Inc.*, Complaint No. 20070094044, 2014 FINRA Discip. LEXIS 40, at *80-81 (NAC Dec. 11, 2014), *aff'd*, Exchange Act Release No. 78568, 2016 SEC LEXIS 2794 (Aug. 12, 2016), *aff'd*, 719 F. App'x 724 (9th Cir. 2018). Dakota has not identified any evidence, and we see none, that Enforcement's decision to charge Zipper and Dakota and seek sanctions against both was anything other than a proper exercise of FINRA's prosecutorial discretion.

V. Conclusion

We find that (1) Zipper breached the terms of the AWC, and therefore violated FINRA Rule 2010, by associating with Dakota during the Suspension Period; (2) Zipper violated NASD Rule 1031, Article III, Section 3(b) of FINRA's By-Laws, and FINRA Rule 2010 by engaging in activities requiring registration during the Suspension Period; (3) Dakota violated NASD Rule 1031, Article III, Section 3(b) of FINRA's By-Laws, and FINRA Rules 8311 and 2010 by allowing Zipper to associate with the firm and engage in activities requiring registration during the Suspension Period; (4) Dakota and Zipper violated FINRA Rules 4511 and 2010, and Dakota willfully violated Section 17(a) of the Exchange Act and Rule 17a-3 thereunder, by misidentifying in Dakota's books and records the representative of record for certain trades

entered before, during, and after the Suspension Period; and (5) Dakota violated FINRA Rules 3110 and 2010 by failing to establish and maintain a supervisory system reasonably designed to achieve compliance with applicable securities laws and regulations and FINRA rules. Accordingly, we bar Zipper in all capacities for his violations under causes one and two (unitary sanction), and cause five, and we expel Dakota from FINRA membership for its violations under cause three, cause four, and cause five. Zipper and Dakota are ordered to pay, jointly and severally, hearing costs in the amount of $6,077.55, plus appeal costs of $1,545.67. Zipper's bar and Dakota's expulsion are effective immediately on service of this decision.[28]

On behalf of the National Adjudicatory Council,



Jennifer Piorko Mitchell,
Vice President and Deputy Corporate Secretary

[28] We also have considered and reject without discussion all other arguments advanced by Respondents.