BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Robert R. Tweed San Marino, CA, Respondent.	Decision Complaint No. 2015046631101r Dated: March 11, 2025

On remand from the Securities and Exchange Commission for redetermination of sanctions. Held, sanctions modified.

Appearances

For the Complainant: Loyd Gatis, Esq., Jennifer Crawford, Esq., FINRA Department of Enforcement

For the Respondent: Robert I. Rabinowitz, Esq., Catelyn Stark, Esq.

Decision

This matter is before the National Adjudicatory Council ("NAC") on remand from the Securities and Exchange Commission for a redetermination of sanctions. The NAC previously found that Tweed violated Sections 17(a)(2) and (3) of the Securities Act of 1933 (the "Securities Act"), and independently violated FINRA Rule 2010, by negligently making material misstatements of fact and failing to disclose material facts in connection with the sale of interests in the Athenian Fund, L.P. (the "Fund"), a private investment fund he controlled, and by engaging in a course of conduct that operated as a fraud or deceit on the fund's investors.[1] For

[1] *See Dep't of Enf't v. Tweed*, Complaint No. 2015046631101, 2019 FINRA Discip. LEXIS 53 (FINRA NAC Dec. 11, 2019).

this misconduct, the NAC barred Tweed from associating in any capacity with any FINRA member.

On appeal, the Commission sustained in part and set aside in part these findings of violation.[2] The Commission largely sustained the NAC's findings that Tweed violated the Securities Act in connection with the sale of interests in the Fund, except the Commission reversed the NAC's finding of violation as to one omission regarding the fees Fund investors would pay. The Commission also set aside the NAC's finding that Tweed's negligent misstatements and omissions constituted an independent violation of FINRA Rule 2010. The Commission vacated the bar and remanded the proceeding to the NAC to redetermine sanctions for the findings of violation that were sustained.

On remand, the NAC considered the sanctions anew based on the full record, the Commission's decision, and the parties' briefs. Although we find that a two-year suspension from associating with any FINRA member in any capacity would be appropriately remedial for Tweed's conduct, for the reasons stated below, we do not impose a suspension due to the unusual circumstances of this case.

I. Factual Background

The following facts are pertinent to the Commission's finding that Tweed violated Sections 17(a)(2) and (3) of the Securities Act and, as a result, violated FINRA Rule 2010. We review these facts in connection with our consideration of the appropriate sanctions for these violations.

A. Tweed Organizes the Fund

Tweed was registered with CapWest Securities, Inc., as a general securities principal and a general securities representative when the violations occurred.[3] Tweed also owned and controlled an investment adviser, Tweed Financial Services, Inc.

Tweed organized the Fund in 2008 and made Tweed Financial Services its investment adviser. Prior to 2008, Tweed's business had focused mainly on real estate investments.

B. Tweed Decides to Invest the Fund's Assets in Quant Pool

Tweed decided to invest all the Fund's assets in PMI Quant Pool I, LLC ("Quant Pool"), a "master" fund that would be managed by Portfolio Management International, Inc. ("PMI"). PMI was an investment adviser that had developed a proprietary, algorithmic trading system (the "PMI System") that PMI claimed produced "superior returns" with "substantially reduced risk." Quant Pool's offering documents disclosed that its investors, including the Fund, would pay PMI

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2 *See Robert R. Tweed*, Exchange Act Release No. 99201, 2023 SEC LEXIS 3579 (Dec. 18, 2023).

3 Tweed's FINRA registration terminated in 2019.

a monthly management fee at an annualized rate of five percent of the value of their investments in the fund (the "Quant Pool Fee").

C. The Fund's Private Placement Memorandum Touts the Quant Pool and its Manager

Tweed retained an attorney to draft the Fund's partnership agreement and private placement memorandum (the "PPM"). The PPM, which was completed in November 2009, stated that the Fund was formed for the purpose of investing all its assets in Quant Pool, and that Quant Pool was run by PMI's manager Brian Hunter. According to the PPM, Quant Pool's "competitive advantage" was based on its "use of a quantitative trading platform that acts to actively manage the long and short side price cycles in each of the approximately 150 highly liquid securities which collectively make up [the Quant Pool's] investment portfolio." The PPM touted Hunter's experience as an "entrepreneur . . . at the forefront of technology for the past 25 years," and described him as "uniquely qualified to operate a quantitative trading system." Although not included in the PPM, Tweed told at least one investor that, by using the PMI System that Hunter developed, the Fund would generate annual gains in excess of 80 percent. The PPM further stated that Tweed "has the authority to invest outside of [Quant Pool], although [he] does not expect to do so," and that Tweed retained "the complete discretion to select investments for the [Fund] as investment opportunities arise."

In addressing the management fees investors would pay, the PPM stated that such fees would be paid at an annualized rate of three-and-a-half percent of the value of their investments. Investors also would be assessed a quarterly performance allocation fee based on the profitability of their investments compared to a common stock market index. The PPM stated that Tweed Financial Services and PMI would share the management fee and performance allocation. The PPM did not disclose the Quant Pool Fee.

Tweed began soliciting investors for the Fund in late 2009 and provided a PPM to each investor prior to purchase.[4]

D. Tweed Fails to Disclose the Change in the Master Fund and Related Fees and His Consulting Agreement with the Master Fund's Manager

On January 29, 2010, Hunter informed Tweed that PMI was dissolving the Quant Pool. By this point, Tweed had raised $968,500 from investors, including himself and his stepson.

PMI informed Tweed that a replacement master fund was being established—the Quantitative Analytics Master Fund, LLC ("QAMF"). Although PMI would not manage QAMF's assets directly, PMI would, Tweed was told, be given "third party trading authorization to trade the fund" using the PMI System. Instead of Hunter and PMI, QAMF would be managed

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[4] CapWest approved the Fund's offering materials and processed all Fund sales transactions.

by an investment adviser controlled by Eric Richardson. Tweed had concerns about Richardson's involvement in QAMF because Richardson had an associate, Chris Hales, whom Tweed testified he "didn't really like."

Tweed explored alternative means of having PMI manage the Fund's assets directly, but those efforts were unsuccessful. In February 2010, Tweed overcame his concerns about Richardson and agreed to place the Fund's assets with QAMF, with PMI having third-party trading authorization to trade the Fund using the PMI System.[5]

As part of Tweed's arrangement with Richardson, Tweed executed a Consulting, Side and Advisory Agreement (the "Consulting Agreement"). The Consulting Agreement provided that, in exchange for investing the Fund's assets in QAMF, Tweed Financial Services would receive, in addition to its other fees, compensation equal to 45 percent of the net proceeds that Richardson's advisory firm received as a result of the Fund's investment in QAMF.

QAMF's offering documents, which were provided to Tweed, stated that it was "highly likely and anticipated that most of [QAMF's] capital will be dedicated to the [PMI System] operated by [PMI]." As for fees, QAMF's offering documents stated that investors would be charged a monthly management fee at an annualized rate of three-and-a-half percent of the value of their investments in QAMF and a quarterly performance allocation based on the profitability of their investments compared with a common stock market index (the "QAMF Fee"). Tweed did not send existing or new investors the QAMF offering documents.

Despite the shift from Quant Pool to QAMF, and the differences between the two master funds' offering materials, Tweed continued to offer new investors interests in the Fund based on the unrevised and now inaccurate PPM, which did not disclose the change in master funds from Quant Pool to QAMF, the QAMF Fee, or the Consulting Agreement.

Ten additional investors invested a total of $732,000 in the Fund following the dissolution of the Quant Pool. By March 2010, investors had invested a total of $1,750,000 in the Fund, including Tweed and his stepson. Tweed placed all this money with QAMF. Between March and June 2010, Tweed Financial Services charged Fund investors approximately $11,891 in management fees.

E. QAMF's Manager Tells Tweed He Placed $650,000 of the Fund's Money in a Purported Credit Facility; Tweed Redeems His Entire Investment in the Fund

In early May 2010, Tweed learned that PMI had stopped trading with the funds invested in QAMF because the PMI System "needed to be recalibrated to trade [in] a more volatile and unpredictable market." As a result, all the securities QAMF had held were liquidated. Within a few weeks, Richardson told Tweed that he had placed some of QAMF's cash in a Wells Fargo "credit facility" so it could earn interest while Richardson and Tweed waited for PMI to resume

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[5] When Tweed was asked at the hearing about what, if anything, he did to address his concerns about Richardson and Hales, Tweed said that he could not remember.

trading in QAMF's account. Although Tweed testified that he assumed the credit facility was a liquid investment vehicle offered through a bank, Tweed did nothing to verify that assumption.

In July 2010, Tweed redeemed in full his investment in the Fund and those of two other investors.

F. Tweed Selectively Redeems Investments and Buys a Promissory Note from Teamwork Retail

In September 2010, PMI still had not resumed trading with the funds invested in QAMF. Tweed decided it would be in the investors' best interest to withdraw the Fund's investment in QAMF and distribute it to the investors. But, according to Tweed, when he asked Richardson to return the Fund's money, Richardson told him that he had placed $650,000 of the Fund's money in the purported credit facility, and this money would be "locked up" until June 2011. Richardson agreed to return the Fund's "current liquid assets" at that time, and the remainder of the Fund's investment in QAMF when the credit facility expired in June 2011.

In September and October 2010, QAMF returned about $760,000 to the Fund.[6] Tweed used a portion of the cash to redeem certain investors in the Fund, including a partial redemption for his stepson. Tweed also used $200,000 of the money to buy a six-month promissory note issued by Teamwork Retail, LLC, an early-stage software company in which Tweed had invested and for which he had engaged in "capital-raising" efforts.

In June 2011, despite his earlier agreement, Richardson refused to return the remaining funds that he owed the Fund, claiming that the borrower had exercised its option to extend the credit facility for an additional year.

By September 2011, Teamwork Retail had defaulted on its promissory note without making any payments.[7]

G. Tweed Learns QAMF's Manager Actually Invested in a Gold Dust Mining Operation; Tweed Continues to Redeem Investments for Some Investors

By November 2011, Tweed knew that Richardson had lied to him about the credit facility, and that Richardson actually had used the money that he had not returned to the Fund to

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6 Richardson told Tweed that the remaining funds the Fund had invested in QAMF totaled $650,000. Tweed did not question this figure even though it failed to account for about $126,000 the Fund had invested with QAMF. When asked about it at the hearing, Tweed responded that he previously had not been aware of the discrepancy.

7 Teamwork Retail eventually declared bankruptcy. As of the hearing, the Fund had recovered just $2,000 from the company.

finance a gold dust mining operation in Ghana. Tweed also knew that Richardson was having trouble getting the money back.[8]

Despite the uncertainty over recovering the Fund's remaining capital, Tweed continued making redemptions for investors who requested them. In December 2011 alone, Tweed returned approximately $105,000 to investors. By January 2012, the Fund's cash had dwindled to the point that Tweed could no longer redeem every investor who asked. As a result, Tweed became selective, redeeming some investors, such as his stepson (who eventually got back from Tweed all he had invested), but refusing to redeem others, including an investor who had invested $100,000 but got nothing back despite requesting a redemption before the Fund's assets had been fully depleted. In July 2012, Richardson abruptly resigned as manager of QAMF and informed Tweed that he had been convicted of unrelated federal bank fraud charges.[9]

H. Tweed Provides Misleading Information to Investors

From 2010 to 2013, Tweed misled investors. Tweed provided investors with unaudited financial statements that purported to show the value of their Fund investments, but that actually represented the value of each investor's capital account as equal to amounts originally invested. Tweed did not disclose, in the financial statements or otherwise, the failed investments in the gold dust mining operation or Teamwork Retail. Nor did he disclose that some Fund investors, including him and his stepson, had earlier redeemed their investments. Tweed later admitted that most of the investors had other investments with him, and he feared he would lose their business if they learned the truth.

I. Tweed's Misconduct Is Detected

In 2014, after Tweed left CapWest and became associated with Concorde Investment Services, LLC, SEC staff conducted an examination of Concorde. As a result of the examination, Concorde learned that the Fund had lost assets, that Tweed had been providing redemptions to certain (but not all) Fund investors that had requested them, and that he was withholding from investors information about the Fund's financial difficulties. Around this time, Concorde notified FINRA of its concerns about the Fund, and FINRA opened an investigation.

As of the hearing in this matter, the Fund had losses totaling more than $1 million. Because of Tweed's selective distribution of the Fund's assets, however, these losses were not shared by all its investors. Six investors, including Tweed and his stepson, received full redemptions totaling $328,254. Six investors received partial redemptions totaling $346,675 (resulting in losses of $136,825). The remaining twelve investors received nothing, resulting in losses of $889,000.

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8 Richardson and Tweed ultimately were unsuccessful in getting any money back from the claimed gold dust mining venture.

9 *See United States v. Richardson*, No. 2:12-cr-00354 (D. Ut.).

J. FINRA Initiates a Disciplinary Proceeding and the NAC Bars Tweed

On April 27, 2017, while Tweed was registered with FINRA, FINRA's Department of Enforcement ("Enforcement") filed a single-cause complaint alleging that Tweed had violated Securities Act Sections 17(a)(2) and (3) and that he also had violated FINRA Rule 2010 independently and by virtue of violating the Securities Act. Section 17(a)(2) prohibits, through means of interstate commerce and in the offer or sale of securities, obtaining money or property by means of an untrue statement of material fact or omission of material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading. Section 17(a)(3) prohibits engaging "in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser." FINRA Rule 2010 requires that associated persons, in the conduct of their business, uphold high standards of commercial honor and just and equitable principles of trade. Enforcement alleged that Tweed violated Sections 17(a)(2) and (3) and FINRA Rule 2010 by negligently making material misstatements of fact and failing to disclose material facts in connection with the sale of interests in the Fund, and by engaging in a course of conduct that operated as a fraud or deceit on the fund's investors.

An Extended Hearing Panel (the "Hearing Panel") held a hearing in December 2017 and issued a decision in July 2018 finding Tweed liable for the violations alleged. The Hearing Panel barred Tweed from associating in any capacity with any FINRA member and fined him $50,000. Tweed appealed to the NAC.

In December 2019, the NAC issued a decision in which it affirmed the Hearing Panel's findings of violation. Specifically, the NAC found that Tweed negligently misrepresented or failed to disclose: (1) the Quant Pool Fee, (2) the QAMF Fee, (3) the change in master funds from Quant Pool to QAMF, and (4) the Consulting Agreement. The NAC found that, by doing so, Tweed violated Sections 17(a)(2) and (3) of the Securities Act and as a result violated FINRA Rule 2010, and that he also independently violated FINRA Rule 2010. The NAC barred Tweed for these violations. Tweed filed an application for review with the Commission in January 2020.

K. Tweed Settles the Commission's Civil Lawsuit and Follow-On Proceeding

Later in 2020, while Tweed's application for review was pending, Tweed settled a civil lawsuit and a "follow-on" administrative proceeding brought by the Commission based on the underlying conduct at issue here.[10]

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[10] Enforcement disputes that the Commission's civil lawsuit and follow-on administrative proceeding were based on the same conduct as this disciplinary proceeding because the civil lawsuit concerned misrepresentations and omissions in the financial statements Tweed provided to investors rather than those in the PPM. While the specific violations alleged in the civil lawsuit differ from the specific violations found here, we agree with the Commission's statement in its decision that the civil lawsuit and the follow-on proceeding were "based on the same underlying conduct at issue here[.]"

In April 2020, Tweed consented to entry of a final judgment against him in the Commission's civil lawsuit. The Commission alleged that Tweed provided Fund investors with materially false and misleading information in their account statements and through other communications about the actual uses and liquidity of their investment monies, and the performance of their accounts, in violation of Section 206(4) of the Investment Advisers Act of 1940 (the "Advisers Act") and Rules 206(4)-8(a)(1) and (2) thereunder. The judgment ordered Tweed to pay a $100,000 civil penalty and permanently enjoined him from violating Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder. *See SEC v. Tweed Fin. Servs., Inc.*, No. 2:17-cv-07251 (C.D. Cal. Apr. 27, 2020) (final judgment).

In July 2020, Tweed settled the Commission's follow-on administrative proceeding. The Commission instituted the proceeding pursuant to Section 15(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Section 203(f) of the Adviser's Act, based on the injunction entered in the civil lawsuit. *See Robert Russell Tweed*, Exchange Act Release No. 89332, 2020 SEC LEXIS 2665 (July 16, 2020). At the same time the Commission instituted the proceeding, it accepted Tweed's Offer of Settlement, in which Tweed agreed to a bar from associating with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization with the right to apply for reentry after five years to the appropriate self-regulatory organization, or if there is none, to the Commission. *Id.* at *2-4.[11]

L. The Commission Sets Aside Part of the NAC's Findings of Violation and Remands for a Redetermination of Sanctions

In December 2023, the Commission issued a decision sustaining in part and setting aside in part the NAC's findings of violation. The Commission sustained the NAC's findings that Tweed violated Securities Act Sections 17(a)(2) and (a)(3), and as a result also violated FINRA Rule 2010, by negligently making material misstatements of fact and failing to disclose: (1) the QAMF Fee; (2) the change in master funds from Quant Pool to QAMF; and (3) the Consulting Agreement.[12] The Commission set aside the NAC's finding of violation based on Tweed's failure to disclose the Quant Pool Fee. The Commission found that Tweed did not act negligently when he failed to disclose the Quant Pool Fee because he reasonably relied on counsel to conclude that the PPM adequately disclosed the fees investors would be charged based on the Fund's original arrangement with the Quant Pool. The Commission also set aside the NAC's finding that Tweed's negligent misrepresentations and omissions constituted an

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[11] Tweed also agreed to a bar "from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock with the right to apply for reentry after five years to the appropriate self-regulatory organization, or if there is none, to the Commission."

[12] A violation of the Securities Act constitutes a violation of FINRA Rule 2010. *See KCD Fin. Inc.*, Exchange Act Release No. 80340, 2017 SEC LEXIS 986, at *13 (Mar. 29, 2017).

independent violation of FINRA Rule 2010. The Commission remanded the proceeding to the NAC to redetermine sanctions for the findings of violation that it sustained.

II. Argument

On remand, Tweed contends that FINRA cannot sanction him for his misconduct because it no longer has jurisdiction to do so and the Commission already has imposed a qualified bar on him in the follow-on administrative proceeding. Neither argument has merit.

A. FINRA Retains Jurisdiction to Sanction Tweed

Tweed argues that FINRA lacks jurisdiction to sanction him because more than two years have passed since the NAC issued its initial decision in December 2019. Tweed points to Article V, Section 4(b) of FINRA's By-Laws, which provides that a person whose association with a member has been terminated "shall continue to be subject to a proceeding to suspend . . . based on [his or her] failure to comply with an arbitration award," or an agreement to settle an arbitration, "provided that such proceeding is instituted within two years after the date of entry of such award or settlement." Tweed notes that the NAC issued its initial decision in December 2019, that he appealed the decision to the Commission in January 2020, and that the Commission issued its remand order in December 2023. Tweed asserts that, under Article V, Section 4(b), "FINRA no longer retains jurisdiction authority over this matter as the herein proceeding is occurring more than two years after both the [Hearing Panel's decision] and the NAC's affirmation [of that decision]." Tweed is incorrect.

FINRA's jurisdiction over Tweed for purposes of this proceeding was established conclusively on the day Enforcement filed the complaint—April 27, 2017. FINRA indisputably had jurisdiction over Tweed on that day because he was registered with FINRA at the time. *See, e.g., Howard Brett Berger*, Exchange Act Release No. 55706, 2007 SEC LEXIS 895, at *16 (May 4, 2007) (finding that the respondent became subject to FINRA's jurisdiction when he signed and submitted to FINRA a Uniform Application for Securities Industry Registration or Transfer (Form U4)); *see also* FINRA By-Laws Art. I (defining "associated person" as a "natural person who is registered" under FINRA rules) and Art. XII, Sec. 1 (authorizing FINRA's Board of Governors to establish procedures relating to disciplinary proceedings involving "associated persons"); FINRA Rule 9211(stating that Enforcement may seek authorization to file a complaint against any associated person who has violated any FINRA rule or statutory provision). Because FINRA initiated this disciplinary proceeding while it had jurisdiction over Tweed, he remains subject to FINRA's jurisdiction, for purposes of this proceeding, until the proceeding is completed and a final decision no longer subject to appeal has been issued. *See David Kristian Evansen*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080, *16 n.36 (July 27, 2015) (holding in relevant part that "FINRA may retain jurisdiction [over a person who is no longer registered] for longer than two years if there are pending disciplinary complaints").

Tweed's reliance on Article V, Section 4(b) of FINRA's By-Laws is misplaced. That provision authorizes FINRA to initiate a proceeding for failure to pay an arbitration award or settlement against a person whose association with a member has been terminated, provided that FINRA does so within two years after the date of entry of the award or settlement. This disciplinary proceeding was not brought to enforce an arbitration award or settlement, and therefore Article V, Section 4(b) is inapposite.

B. The Qualified Bar Imposed in the Follow-On Administrative Proceeding Does Not Preclude FINRA from Sanctioning Tweed

Tweed contends that FINRA cannot sanction him for his conduct related to the Fund because the Commission "has already made a final determination that the appropriate sanction for Tweed's conduct is a bar with the right to reapply after five years," and the Commission's follow-on administrative proceeding is preclusive under the doctrine of res judicata.[13] Tweed's preclusion argument is groundless.

Tweed cites no authority to support his assertion that FINRA cannot sanction him for the conduct underlying the Commission's follow-on administrative proceeding. Indeed, the Commission has rejected similar arguments in the past because the Exchange Act, which authorizes FINRA to enact its own rules and enforce compliance with them, "contemplates multi-level enforcement proceedings that permit Commission administrative and injunctive actions, as well as self-regulatory organization disciplinary proceedings and criminal actions." *William F. Lincoln*, 53 S.E.C. 452, 463 n.36 (1998) (rejecting the applicant's argument that any sanction imposed in the Commission's administrative action would be duplicative of FINRA's disciplinary action). In *Kirk A. Knapp*, 51 S.E.C. 115 (1992), for example, the Commission found that its earlier civil lawsuit against the respondent did not preclude FINRA's disciplinary proceeding against him based on the same conduct. *See id.* at 130-31. The Commission held that the "Exchange Act provides several parallel and compatible procedures for the achievement of its objectives," and FINRA "has an independent statutory mandate" to enforce the securities laws and FINRA rules. *Id.* at 131.[14] Similarly, in *SEC v. Jones*, 115 F.3d 1173 (4th Cir. 1997), the court rejected the plaintiff's assertion that the Commission's administrative enforcement action was precluded, under res judicata principles, by FINRA's earlier disciplinary proceeding "arising out of the same conduct." *Id.* at 1174. The court held that res judicata did not apply because "[FINRA's] enforcement action is not the same cause of action as the SEC's own later

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13 Tweed also asserts that FINRA's disciplinary proceeding "should have been stayed in its entirety in deference to the SEC Proceeding investigating the same conduct," but he cites no evidence that he made such a request before now, nor does he cite any authority requiring FINRA to do so.

14 Tweed cites the Commission's language in its decision stating that it was remanding the matter to FINRA "to determine what sanctions, if any, are appropriate for the violations we have sustained." Tweed contends the phrase "if any" in this sentence "clearly signals that further sanctions are unnecessary and highly punitive in light of the Commission's previous sanctions." Tweed overstates the significance of this text. In the next sentence, the Commission states that it "do[es] not suggest any view as to the outcome on remand."

enforcement action." *Id.* at 1178.[15] Although both proceedings were based on the same conduct, the court found there was "no statutory, regulatory, or historical reference to support [the plaintiff's] argument that [FINRA's] discipline of its members was intended to preclude this disciplinary action by the SEC itself against a securities professional." *Id.* at 1179. According to the court, "Congress' decision to give both [FINRA] and the SEC overlapping disciplinary authority reflects a considered decision to bring two separate vantage points to enforcement efforts—one from the industry itself and the other from the regulator." *Id.* at 1180. The court also found that the elements of res judicata were not satisfied because FINRA and the Commission were not in privity. *Id.* at 1181. Accordingly, Tweed's preclusion argument fails.[16]

III. <u>Sanctions</u>

In determining sanctions, we considered FINRA's Sanction Guidelines ("Guidelines"), including the General Principles Applicable to All Sanction Determinations (the "General Principles") and the Principal Considerations in Determining Sanctions (the "Principal Considerations").[17] The Guidelines state that sanctions "should be designed to protect the investing public by deterring misconduct and upholding high standards of business conduct."[18] To achieve this goal, the Guidelines direct adjudicators to "design sanctions that are meaningful and significant enough to prevent and discourage future misconduct by a respondent and deter others from engaging in similar misconduct."[19] For negligent misrepresentations and omissions, the Guidelines recommend a suspension in any or all capacities of up to two years and a fine of $2,500 to $77,000.[20]

For the reasons stated below, we find that a two-year suspension would be appropriately remedial for Tweed's misconduct, but we do not impose any suspension due to the unusual circumstances of this case.

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15 To establish a res judicata defense, Tweed must show "(1) a final judgment on the merits in a prior suit, (2) an identity of the cause of action in both the earlier and the later suit, and (3) an identity of parties or their privies in the two suits." *Jones*, 115 F.3d at 1178.

16 To the extent Tweed relies on the civil lawsuit rather than the follow-on administrative proceeding to support his res judicata defense, his argument fails for the same reasons.

17 *See FINRA Sanction Guidelines* (Mar. 2019), www.finra.org/sites/default/files/2020-10/2019_Sanctions_Guidelines.pdf. We apply the Guidelines in effect at the time of the NAC's initial decision.

18 *Id.* at 2 (General Principles, No. 1).

19 *Id.*

20 *Id.* at 89 (Fraud, Misrepresentations or Material Omissions of Fact).

Several aggravating factors weigh in favor of a sanction at the high end of the range recommended in the Guidelines.

First, Tweed concealed the truth from Fund investors for his own benefit.[21] For about three years, Tweed provided investors with misleading, unaudited account statements that gave investors the false impression that their investments in the Fund had maintained their value, even as the Fund's assets became impaired. Tweed did not disclose to investors, in these statements or otherwise, the Fund's deviations from the PPM. Specifically, Tweed did not disclose Richardson's involvement in managing the Fund's assets, or the Fund's investments in the purported credit facility, the gold-dust mining operation, and Teamwork Retail. Tweed also failed to disclose that some investors, including Tweed, had redeemed their investments in the Fund. Tweed admits he did not tell investors these things because they had other investments with him, and he feared he would lose their business if they learned the truth.

Second, Tweed distributed the Fund's assets inequitably so that some investors bore all of the Fund's losses while other investors, including Tweed, lost nothing. In September 2010, Tweed decided it would be in the investors' best interests to wind down the Fund and return their money to them. Around that time, QAMF returned to the Fund about $760,000. Rather than using that money to make a partial redemption for each investor, Tweed selectively made redemptions for investors who requested them, including full redemptions for several investors. Tweed also used $200,000 of the money to buy a promissory note from Teamwork Retail. Tweed continued to make redemptions for certain investors after QAMF was unable to return the rest of the Fund's money in June 2011, after Teamwork Retail defaulted on its promissory note in September 2011, and after Tweed learned that Richardson actually had invested $650,000 of the Fund's money in the gold dust mining operation. Indeed, as late as February 2012, Tweed made a redemption of nearly $100,000 for one investor, while twelve other investors, who had invested almost $900,000 in the Fund, had yet to receive any of their money back—and never would. Through these selective redemptions, Tweed effectively overpaid some investors (including himself) at the expense of others.

Third, Tweed invested $200,000 of the Fund's money in a promissory note issued by Teamwork Retail. This investment presented a clear conflict of interest for Tweed because he already had invested his own money in Teamwork Retail and he also had a business relationship with the company. Moreover, Tweed's purchase of the note was inconsistent with the investment strategy set forth in the PPM, which stated that the purpose of the Fund was to allocate 100 percent of the Fund's assets to the Quant Pool, whose portfolio would comprise "approximately 150 highly liquid securities[.]"

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21 *See id.* at 7 (Principal Considerations, No. 10) (directing adjudicators to consider "[w]hether the respondent attempted to conceal his or her misconduct or to lull into inactivity, mislead, deceive or intimidate a customer, regulatory authorities or . . . the member firm with which he or she is/was associated").

Fourth, Tweed's misconduct continued over an extended time period.[22] Tweed waited four years before making any disclosures to correct his misrepresentations and omissions. He did so only after his actions were discovered during an SEC examination and his employer required that he tell investors the truth.

And lastly, Tweed's misconduct involved a significant amount of money.[23] Tweed persuaded his customers (other than himself and his stepson) to invest almost $1.6 million in the Fund, even though he had little experience managing a fund and trading securities.

Along with these aggravating factors, however, we acknowledge that Tweed was barred from associating with any FINRA member in any capacity for four years while his application for review by the Commission was pending. The NAC issued its initial decision barring Tweed on December 11, 2019. The bar became effective on that date, and it remained effective until the Commission set it aside on December 18, 2023. *See* FINRA Rule 9370(a) (stating that the filing of an application for review by the Commission shall stay the effectiveness of any sanction other than a bar or an expulsion).[24] When the Commission issued its decision vacating the bar, Tweed already had been barred for over four years—more than twice the length of the suspension we would impose here.

We conclude that, under these unusual circumstances—in which the NAC has barred the respondent, the bar became effective immediately and remained in place for more than four years until the Commission vacated it, and the NAC has decided on remand that a sanction less than a bar is appropriate for the respondent's misconduct—it is reasonable to give the respondent credit for the time during which the now-vacated bar was effective and the respondent was expressly precluded pursuant to a sanction imposed by FINRA from associating with a member firm.[25] Accordingly, although under normal circumstances it would be appropriately remedial to

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[22] *Id.* at 7 (Principal Considerations, Nos. 8 and 9).

[23] *Id.* at 8 (Principal Considerations, No. 17).

[24] The bar imposed by the Hearing Panel never became effective because Tweed appealed the Hearing Panel's decision to the NAC. *See* FINRA Rule 9311(b) (stating that an appeal to the NAC from a decision issued by a hearing panel shall operate as a stay of the hearing panel's decision until the NAC issues its decision).

[25] Our finding is limited to these particular circumstances and does not alter the NAC's longstanding view that collateral consequences arising from a respondent's misconduct generally are not mitigating. *See, e.g.*, *Kent M. Houston*, Exchange Act Release No. 71589, 2014 SEC LEXIS 614, at *35 (Feb. 20, 2014) ("But any collateral consequence that Houston may have suffered as a result of his misconduct or from the disciplinary proceeding that followed, such as the impact on his reputation, career, or finances, is not a mitigating factor.").

suspend Tweed from associating with any FINRA member in any capacity for two years, we do not impose a suspension here.[26]

IV. Conclusion

For violating Sections 17(a)(2) and (3) of the Securities Act, and as a result violating FINRA Rule 2010, we assess on Tweed a two-year suspension from associating with any FINRA member in any capacity. We do not impose this suspension. We affirm the Hearing Panel's order that Tweed pay $5,195.72 in hearing costs.[27]

On behalf of the National Adjudicatory Council,

Jennifer Piorko Mitchell

Jennifer Piorko Mitchell,
Vice President and Deputy Corporate Secretary

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[26] We further find that fining Tweed would not serve a remedial purpose in light of the unusual circumstances of this case, and therefore decline to impose a fine for Tweed's misconduct.

[27] Under FINRA Rule 8320, after seven days' notice in writing, FINRA may summarily revoke the registration of a person associated with a member if such person fails to pay promptly a fine or other monetary sanction imposed pursuant to Rule 8310 or a cost imposed pursuant to Rule 8330 when such fine, monetary sanction, or cost becomes finally due and payable.