BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Thomas Edmund Connors Seaside Park, New Jersey, Respondent.	DECISION Complaint No. 2012033362101 Dated: January 10, 2017

Registered principal failed to provide his member firm with prior written notice of outside business activities. Held, findings and sanctions affirmed.

Appearances

For the Complainant: Leo F. Orenstein, Esq., Michael J. Newman, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Mark Robert Vespole, Esq., Matthew Richard Major, Esq.

Decision

Between May 2011 and June 2012, Thomas Edmund Connors failed to provide prior written notice to his member firm, Prime Capital Services, Inc. ("PCS"), of three types of outside business activities. First, Connors charged a $399 "one-time set up fee" to 47 customers who were opening advisory accounts at a PCS investment adviser affiliate, and he received payment directly from those customers. Second, Connors charged tax preparation fees to 32 customers to whom he provided tax preparation services, and he received payment directly from those customers. Third, Connors sold customers insurance policies and received payment directly from outside insurance carriers. Connors never provided prior written notice of these activities to PCS. Although PCS permitted Connors to conduct financial planning, tax preparation, and insurance sales through, and for, PCS's affiliates without providing prior written notice on an outside business activity form, Connors did not conduct these three activities through PCS's affiliates; rather, he conducted them on the side, and in contravention of his employment agreements with those affiliates.

The Hearing Panel found that Connors failed to provide his member firm with prior written notice of his outside business activities, in violation of FINRA Rules 3270 and 2010.

The Hearing Panel suspended Connors from associating with any member firm in any capacity for 14 months, fined him $40,000, and ordered that he pay $6,093 in hearing costs. As explained below, we affirm the Hearing Panel's findings and sanctions.

I. Connors

Connors entered the industry in 1982. From 1993 to July 2012, Connors was registered with PCS as a general securities representative, a general securities principal (starting in 1999), and an operations professional (starting in 2011). Connors was the manager of PCS's branch office in Toms River, New Jersey, which was an Office of Supervisory Jurisdiction, and he was one of PCS's top producers. During the relevant period, Connors also was an employee of PCS's parent company, Gilman + Ciocia, Inc. ("Gilman Ciocia"), and an independent contractor with two other companies that Gilman Ciocia owned, Asset & Financial Planning, Ltd. ("Asset & Financial Planning"), an investment adviser affiliate, and Prime Financial Services, Inc., an insurance affiliate. Between February 2011 and July 2012, he was registered with Asset & Financial Planning as an investment adviser in New Jersey. Connors' industry certifications included certified financial planner and certified senior advisor. Since September 2012, Connors has been registered with other member firms.

II. Factual Background

A. Connors' Employment with Gilman Ciocia

On April 10, 2000, Connors sold a financial services business he owned to, and entered in an employment agreement ("April 2000 Employment Agreement") with, Gilman Ciocia, a company based in Poughkeepsie, New York. Gilman Ciocia engaged in tax return preparation services and financial planning services.[1] From at least January 2007 to January 2012, Connors also annually entered into a Tax Preparer and Accountant Employment Agreement ("Tax Preparer Employment Agreement") with Gilman Ciocia and three companies that Gilman Ciocia wholly owned: PCS, Prime Financial Services, and Asset & Financial Planning. Gilman Ciocia employed Connors to prepare tax returns for individuals, among other services. PCS retained Connors to sell securities and serve as a branch manager. Prime Financial Services retained Connors to sell insurance policies. Asset & Financial Planning retained Connors to provide investment advisory services and prepare financial plans.

B. PCS's Outside Business Activities Procedures

PCS's written supervisory procedures required representatives to disclose outside business activities to PCS in writing and obtain approval prior to engaging in the activities. To request approval of an outside business activity, an employee was required to "complete the Outside Business Activity Request form and submit it to Compliance prior to engaging in the

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[1] Connors sold the operating assets and business of his financial services firm in exchange for cash and shares of Gilman Ciocia common stock.

activity." Compliance would "approve or disapprove the outside business activity in writing and notify the employee and the employee's supervisor." Branch principals, like Connors, had some responsibilities for a branch office's compliance with FINRA Rule 3270.[2] The procedures also explained that outside business activities "may include a wide range of activities," including, but not limited to, "[a]cting as an independent contractor to an outside party," "[r]eceiving compensation or having the reasonable expectation of compensation from any other person as a result of a business activity outside the scope of employment or other relationship with PCS," and other activities.

PCS and Asset & Financial Planning's "Annual RR/IAR Certification," which Connors signed annually, also contained several provisions related to outside business activities. By signing that form, Connors agreed, among other things, that: (1) "I will fully comply with the disclosure requirements of [FINRA Rule 3270]"; and (2) "I am aware that I may not engage in any [outside business activities] without first securing written permission from PCS to do so. I acknowledge that if PCS does not approve an activity, that I may not engage in it. I will not engage in any [outside business activity] absent such written approval." Connors also acknowledged in that certification that he would not accept checks made out to him personally for securities transactions or "financial services."

Notwithstanding its outside business activity procedures, PCS did not require PCS representatives to disclose on the Outside Business Activity Request form any outside activities that were within the scope of a representative's relationship with Gilman Ciocia, Asset & Financial Planning, or Prime Financial Services. MB, the chief compliance officer of PCS and Asset & Financial Planning from April 2012 to November 2013, testified that PCS was aware of Connors' employment agreements and associations with PCS's affiliates.

C. Connors' Outside Business Activities

1. Connors Charged a "One-Time Set Up Fee" to Persons Opening Asset & Financial Planning Advisory Accounts

Connors testified that, in 2011, he developed a "top down" financial model for the "growth" part of a client's portfolio. His model "look[ed] at where the economy is . . . in one of the four phases of an expansion, contraction, et cetera," and generated a "risk-adjusted . . . ranking" of dozens of Fidelity Select funds that would keep his clients' assets invested "in the best industry during the best time of that economic cycle" or in cash. Connors "personally finance[d] the development of the model," including purchasing computer software to develop it. The "platform" for using Connors' model was an Asset & Financial Planning advisory account.

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[2] PCS's written supervisory procedures stated that supervisors of employees were required to question potential unapproved outside business activities referenced in correspondence or other indicators of outside business activity and to refer requests to Compliance.

Connors first presented his model to prospective users at a seminar held sometime in 2011. Some of the persons whom Connors invited were PCS clients. Connors provided correspondence and materials to prospective users, including forms that customers were to sign, that explained there was a $399 fee, which was described as a "one-time set up fee" or as a "one-time set up fee . . . separate and distinct from the [Asset & Financial Planning] platform."[3] The correspondence asked customers to return the signed "paperwork to open new managed accounts" and a "check made payable to Thomas E. Connors in the amount of $399 for the one-time set up fee."

At the hearing, Connors testified that the term "one-time set up fee" was the "wrong terminology," and he gave several explanations of what the fee was for. He testified it was a fee for services "within the scope of opening up the managed account"; a fee for services in the managed advisory accounts; a "financial planning investment model fee"; the "usual[ ] . . . cost to do . . . financial planning"; a "financial planning fee for the work I've done before I had everything working and . . . for the service model"; and a fee for "talking [with clients] about financial planning and tax planning and how this model . . . would fit into their growth portfolio." Connors provided additional explanations of the fee during PCS's and FINRA's examinations of his conduct, including that it was a fee "associated with [his] role as a certified financial planner"; for services rendered to "increas[e] the worth of my customers' portfolios and achiev[e] their goals"; and "compensation for the additional time, education and fiscal expense I incurred in creating the model."

Between October 2011 and May 2012, 47 persons opened a managed account at Asset & Financial Planning and paid Connors—not Asset & Financial Planning—the $399 fee. The 47 customers were Connors' first advisory account customers. Each customer signed the form that disclosed the $399 fee and the account management fees, signed Asset & Financial Planning account opening documents (which did not disclose the $399 fee), and had a PCS brokerage account.

As explained more below, there is conflicting evidence about whether Asset & Financial Planning would have permitted Connors to charge the $399 fee. Had Connors directed his customers to pay the $399 fee to Asset & Financial Planning, Connors either would have earned a share of the fee that was less than 100% (if Asset & Financial Planning allowed the fee and retained its share of the revenues) or he would have earned $0 (if Asset & Financial Planning prohibited the fee).

Connors admitted that he never submitted to PCS a written request to directly charge customers the $399 fee.

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[3] The signature forms also described Asset & Financial Planning's account management fees, which ranged between 1.125 percent and 2 percent of the assets under management.

2. Tax Preparation Fees

Gilman Ciocia had commercial tax preparation software called TaxWise, which Connors used to prepare tax returns for clients. Connors printed customer invoices from TaxWise that listed the specific tax returns Connors prepared, Gilman Ciocia's name and address, and the fees due, which sometimes reflected a discount. Connors was permitted to discount tax preparation fees, including for immediate family members, broker-dealer or investment advisory clients with large accounts, financial planning clients, or persons providing referrals.

Beginning in 2007 or 2008, and during the relevant period of January 2012 to June 2012, Connors handwrote on some customer invoices that checks for tax preparation fees should be made payable to him and then went "back into . . . TaxWise . . . and enter[ed] a full credit for the customer." As a result, if a Gilman Ciocia supervisor reviewed these customers' accounts in TaxWise, it would have appeared that Connors had fully discounted the fees and that no fees were due to Gilman Ciocia. Similarly, Connors had an invoice template for tax preparation services that he did outside of TaxWise that instructed the customer to "please make check payable to Tom Connors."

Each year between 2007 or 2008 and 2012, Connors collected tax preparation fees directly from approximately 20 to 30 customers, some or many of whom were PCS customers. Between January and June 2012 (the period at issue in the complaint), Connors collected at least $10,035 directly from 32 tax preparation customers.[4] On one occasion, a customer sent to Connors a $252 check made payable to Gilman Ciocia instead of to Connors, and Connors' name was handwritten over the payee "Gilman Ciocia." Had Connors instead directed these clients to pay their fees to Gilman Ciocia, Connors' share, under the terms of the Tax Preparer Employment Agreement, would have been only 30 percent.[5]

Connors admitted that he never submitted a written request to PCS for permission to receive direct payments from his tax clients. He also admitted that he never informed Gilman Ciocia he was directly collecting tax preparation fees from customer accounts that he had fully discounted in TaxWise.

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[4] MB, the chief compliance officer of PCS and Asset & Financial Planning, investigated Connors' outside tax preparation activities. MB testified that after he found these 32 tax preparation customers—who had generated more than $10,000 of fees for Connors—he stopped looking for additional customers who had paid Connors directly.

[5] As an employee, Connors' payout rates—such as his 30% share of tax preparation revenues—were lower than Gilman Ciocia "independent representatives'" payout rates because Gilman Ciocia paid all the expenses of his office. Among employees, however, Connors' payout rate was "on the high end" based on his production and his tenure.

3. Outside Sales of Insurance Policies

Persons associated with Prime Financial Services, like Connors, were permitted to sell insurance products of carriers that Prime Financial Services approved. Prime Financial Services had appointments with 15 to 20 insurance carriers, including "every major carrier."

In August 2012, Connors conceded that "for the last 10 years," he sold customers insurance products of unapproved carriers. During the relevant period charged in the complaint, May 2011 to May 2012, Connors received in his bank account $17,696 in commissions and trailing fees directly from several unapproved insurance companies, including from sales made in 2010. Had Connors directed this insurance business through Prime Financial Services, his share of these revenues, under the terms of the April 2000 Employment Agreement, would have been only 47 percent.

Connors admitted that he never submitted to PCS a written request for approval to sell unapproved insurance products. MD, who was a supervisory principal for PCS's northeast offices and Connors' immediate supervisor, testified that Connors never talked to him about selling unapproved insurance products and never asked permission to do so. Likewise, AN, the president of Asset & Financial Planning, Prime Financial Services, and PCS during the relevant period, testified that Connors never sought permission to sell unapproved insurance products.

III. Procedural History

FINRA initiated the investigation that led to this proceeding after PCS reported its termination of Connors on a July 19, 2012 Uniform Termination Notice for Securities Industry Registration ("Form U5"). In that Form U5, PCS explained that it terminated Connors as the result of an internal review finding that Connors had acted contrary to industry rules, standards of conduct, and PCS's written supervisory procedures.

On December 11, 2014, FINRA's Department of Enforcement ("Enforcement") filed a three-cause complaint against Connors alleging that Connors failed to provide prior notice of outside business activities to PCS, in violation of FINRA Rules 3270 and 2010. Cause one alleged that Connors failed to provide notice to PCS that, from October 2011 through May 2012, he charged 47 PCS clients a $399 fee to open advisory accounts with PCS's affiliated investment adviser and did not obtain PCS's approval of such activity. Cause two alleged that Connors failed to provide notice to PCS (or PCS's parent company) that, from January 2012 through June 2012, he charged 32 tax preparation clients fees for tax services and did not obtain PCS's approval of such activity. Cause three alleged that, from May 2011 to May 2012, Connors failed to provide notice to PCS of his sales of unapproved insurance products and did not obtain PCS's approval of such activity. Connors filed an answer denying all violations.

After presiding over a three-day hearing, a FINRA Hearing Panel issued its decision on January 15, 2016. The Hearing Panel found that Connors engaged in undisclosed outside business activities as alleged. It suspended Connors from associating with any member firm in any capacity for 14 months, fined him $40,000, and assessed $6,093.04 in hearing costs. Connors then filed this appeal.

IV. Discussion

The Hearing Panel found that Connors failed to provide PCS with prior written notice of his outside business activities, in violation of FINRA Rules 3270 and 2010.[6] We affirm.

FINRA Rule 3270 provides, in relevant part, that "[n]o registered person may be . . . compensated . . . from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member." Associated persons "are required . . . to report any kind of business activity engaged in away from their firms." *NASD Notice to Members 01-79*, 2001 NASD LEXIS 85, at *7 (Dec. 2001). The rule "requires disclosure of all business activity, not just those that are securities-related." *Dist. Bus. Conduct Comm. v. Cruz*, Complaint No. C8A930048, 1997 NASD LEXIS 123, at *101 (NASD NBCC Oct. 31, 1997).

As explained below, Connors: (1) was compensated as a result of business activities; (2) that were outside the scope of his relationship with PCS; and (3) failed to provide PCS with prior written notice of these activities in the form specified by PCS, in violation of FINRA Rules 3270 and 2010.

A. Connors Was Compensated as a Result of Business Activity

There is no dispute that Connors was compensated for business activities, within the meaning of FINRA Rule 3270, in connection with the opening of investment advisory accounts, preparing tax returns, and selling insurance policies. Connors received directly from customers $18,753 in "one time set up fees" charged in connection with opening Asset & Financial Planning accounts and at least $10,035 for preparing tax returns. He also received directly from unapproved insurance carriers at least $17,696 for insurance product sales.

B. Connors Engaged in Business Activity that Was Outside the Scope of His Relationship with PCS

The $399 one-time set up fees, the fees for tax preparation services, and the insurance sales at issue were "outside the scope" of Connors' "relationship with [his] member firm," within the meaning of FINRA Rule 3270. PCS was a broker-dealer and retained Connors to sell

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[6] A violation of another Commission or FINRA rule or regulation constitutes a violation of FINRA Rule 2010, which provides that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." *Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at *2 (Sept. 24, 2015). Pursuant to FINRA Rule 0140, FINRA rules apply to all members and persons associated with a member, and persons associated with a member shall have the same duties and obligations as a member under the rules.

securities. PCS did not retain Connors to charge advisory account opening fees, provide financial planning services, prepare tax returns, or sell insurance products.

C. Connors Did Not Provide Prior Written Notice to PCS of His Outside Business Activities in the Form Specified by PCS

1. Connors Did Not Disclose His Outside Business Activities on PCS Forms or PCS Questionnaires

PCS's supervisory procedures required that representatives provide notice of their outside business activities on an "Outside Business Activity Request form and submit it to Compliance prior to engaging in the activity" and provided that the compliance department would "approve or disapprove the outside business activity in writing and notify the employee and the employee's supervisor." There is no dispute that Connors did not provide PCS with prior written notice of his outside financial planning, account opening, tax, or insurance activities on an Outside Business Activity Request form or receive written approval from PCS of these activities. Although Connors submitted an Outside Business Activity Request form in March 2011, he disclosed only his service as mayor of Seaside Park, New Jersey.[7] *Cf. Dep't of Enforcement v. Moore*, Complaint No. 2008015105601, 2012 FINRA Discip. LEXIS 45, at *24 (FINRA NAC July 26, 2012) (rejecting respondent's argument that he provided written notice of outside business activities where he submitted disclosure forms that did not disclose his outside business activities).

Connors also failed to fully disclose his outside financial planning, account opening, tax, and insurance activities on PCS and Asset & Financial Planning branch examination questionnaires that asked about his outside business activities. Connors' November 2011 questionnaire responses disclosed that his outside business activities included mayor, brokering insurance for "Prime," and "prepar[ing] taxes for a fee"; represented that he was not involved in any outside business activities that were "disclosed and not approved"; and represented that he had disclosed all his outside business activities to "compliance" and on his Form U4. Neither Connors' questionnaire responses nor Connors' Form U4, however, disclosed that he was directly receiving payment from clients and unapproved insurance carriers for account opening, financial planning, tax preparation, or insurance services.[8] *Cf. Dep't of Enforcement v.*

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[7] On that Outside Business Activity Request form, Connors checked "Other financial services" as applicable to his mayoral activities and specified "tax preparation through GC." Connors did not disclose on the form, however, that he was getting paid directly by some tax preparation clients, did not check boxes on the form besides "Insurance Broker," "Outside RIA Activities," or "P&C Insurance Sales," and did not disclose that he was directly getting paid account-opening fees and insurance commissions.

[8] Connors' Form U4 disclosed that Connors was a tax preparer for Gilman Ciocia and a financial advisor with Asset & Financial Planning, but did not disclose his affiliation with Prime Financial Services. More significantly, his Form U4 did not disclose that he was receiving direct

[Footnote continued on next page]

Akindemowo, Complaint No. 2011029619301, 2015 FINRA Discip. LEXIS 58, at *44 (FINRA NAC Dec. 29, 2015) (noting that respondent failed to provide prior written notice of outside business activities, where he failed to disclose the activities through a designated firm database and incorrectly attested on firm forms that he disclosed all outside activities on Form U4), *aff'd*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769 (Sept. 30, 2016); *Kent M. Houston*, Exchange Act Release No. 71589, 2014 SEC LEXIS 614, at *6 (Feb. 20, 2014) (finding that respondent's outside business activities rule violation involved contravening member firm's periodic requests that respondent disclose any outside business activities).[9]

2. Connors' Activities Were Not Within the Scope of His Relationships with Gilman Ciocia, Asset & Financial Planning, or Prime Financial Services

Although Connors did not provide PCS with prior written notice of his outside business activities on an Outside Business Activity Request form, PCS did not require its representatives to do so for outside activities that were within the scope of their relationships with Gilman Ciocia, Asset & Financial Planning, or Prime Financial Services. As explained below, however, the outside activities at issue were *not* within the scope of Connors' relationships with PCS's affiliates, as demonstrated by his employment agreements and certifications, Connors' admissions, the testimony of Enforcement's witnesses, and evidence that Connors acted contrary to specific instructions he received from Asset & Financial Planning regarding the $399 fee.

i. Employment Agreements and Annual Certifications

Connors' employment agreements made it clear that Gilman Ciocia and its affiliates did not permit Connors to engage in the kinds of tax, insurance, and financial planning activities on the side that Gilman Ciocia and its affiliates hired him to do. Connors' April 2000 Employment Agreement with Gilman Ciocia: (1) required that Connors "serve [Gilman Ciocia] loyally, faithfully and to the best of his abilities," "devote his full working time and efforts to the performance of the duties" in the agreement, and "not engage in any business similar to [Gilman

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payments from customers or insurance carriers for financial planning, account opening, tax, or insurance activities.

[9] Connors responded to the same questionnaire in August 2012 during a surprise examination that PCS and Asset & Financial Planning conducted. On that questionnaire, Connors responded that he was engaged in no outside business activities, did not broker insurance, prepared taxes for a fee, was not involved in any outside business activities that were disclosed and not approved, and had disclosed all his outside business activities to "compliance" and on his Form U4. As with his prior questionnaire, Connors did not disclose that he was receiving payment directly for account opening, financial planning, tax preparation, or insurance services. Nor did he disclose that, as further explained below, he was charging the $399 fee directly to customers despite being instructed in December 2011 that he could not do so.

Ciocia's] business apart from his employment hereunder"; (2) gave Connors "authority to collect, receive, and issue receipts for all checks . . . made payable to [Gilman Ciocia] or appropriate custodian banks from Clients," but required that he "promptly remit all such checks . . . to [Gilman Ciocia]," and specified that he did "not have the authority to collect cash from Clients"; (3) prohibited Connors from selling insurance products outside of Gilman Ciocia or of carriers that Gilman Ciocia had not approved or been licensed with; and (4) stated that "[n]o 'Other Services' performed hereunder by Employee may be provided, and no billing may be made for 'Other Services,' without the prior written approval of [Gilman Ciocia]."

Similarly, Connors, Gilman Ciocia, PCS, Asset & Financial Planning, and Prime Financial Services annually signed Tax Preparer Employment Agreements that required Connors to work exclusively for Gilman Ciocia and its affiliates. These agreements provided, in pertinent part, that Connors shall "serve [Gilman Ciocia] exclusively, loyally, faithfully and to the best of his . . . abilities," "devote his . . . full working time and efforts to the performance of his . . . duties hereunder," "follow [Gilman Ciocia's] schedule of charges for the services provided as closely as practical," and "turn over all business receipts and accompanying records on a daily basis." They also included provisions that precluded Connors from competing with Gilman Ciocia and its affiliates or circumventing their client relationships.

Thus, Connors' receipt of payments directly from customers and unapproved insurance carriers for financial planning, account opening, tax preparation, and insurance activities was inconsistent with his employment agreements with Gilman Ciocia and its affiliates. Connors' outside business activities also were inconsistent with the Annual RR/IAR certifications that Asset & Financial Planning required Connors to sign, as Connors admitted. By signing that form, Connors acknowledged, in pertinent part, that "I may not accept . . . any check made out to me personally . . . in payment for securities transactions or financial services," which Connors acknowledged included "modeling fees" and "financial planning fees." And in the investment adviser section of the certification, Connors acknowledged that "I will limit the services I provide to those approved by [Asset & Financial Planning] and described in Form ADV," which did not include an account opening fee.

Indeed, Connors essentially admitted that he engaged in activities outside the scope of his relationships with PCS's affiliates. He admitted that he did not comply with relevant provisions in his April 2000 Employment Agreement, including the insurance sales restrictions, or his annual RR/IAR certifications. And he admitted that he was not permitted under any agreement that he had with Gilman Ciocia to accept a personal check from a customer made payable to him.

ii. Testimony of Enforcement's Witnesses

That Connors acted outside the scope of his relationships with Gilman Ciocia and its affiliates is further supported by the testimony of AN and MB. They testified, among other things, that: (1) unlike PCS "independent" representatives, who could engage in business activities outside of the Gilman Ciocia entities with pre-approval, PCS "employee" representatives like Connors were required to do all their tax, insurance, and financial planning business through Gilman Ciocia's entities; (2) there were no lines of business in the Gilman Ciocia umbrella under which a representative could accept a check made payable to the

representative; and (3) Asset & Financial Planning representatives needed approval to prepare financial plans for a fee but Connors never sought permission to do so.

iii. Asset & Financial Planning Instructed Connors that He Could Not Receive the $399 Fee Directly From Customers

Further demonstrating that Connors' activities were not within the scope of his relationships with PCS's affiliates, Connors directly charged the $399 "one-time set up fee" in contradiction of instructions he received from Asset & Financial Planning. In December 2011, Asset & Financial Planning's home office received a package that included applications to establish an Asset & Financial Planning account and a letter sent by Connors instructing a customer to return a $399 check made payable to Connors for a "one-time set up fee of the new managed accounts." GM, Asset & Financial Planning's and PCS's director of supervision and chief compliance officer at the time, called Connors to discuss the $399 fee. According to GM's December 23, 2011 notes of that conversation, Connors informed GM that the fee "was for all the planning work he did for the client to this point" and that he had "just started asking for the fee to be paid to him." GM advised Connors that "the start up fee, while not specifically identified in our [Form] ADV, would be allowable since he disclosed it the client" but that the "check . . . must be made payable to [Asset & Financial Planning]." Ignoring those instructions, Connors continued to instruct customers to pay the $399 fee directly to him.[10]

There is no evidence that Asset & Financial Planning approved Connors to directly charge the $399 fee at any other time. Connors testified that in spring 2011, he sent Power Point materials to a "compliance department" that he wanted to use at a seminar with prospective clients; that those materials discussed his model, his use of software, and the $399 that he sought to charge clients; and that the "compliance department" approved his seminar. Connors similarly claims that he sent to Gilman Ciocia copies of the correspondence he sent to customers requesting the $399 fee. Regardless of whether Connors' assertions are credible—and there are

[10] In contrast to GM's notes, MB testified that Asset & Planning representatives were not permitted to charge advisory account opening fees, and MB asserted, in both a May 28, 2013 letter to a FINRA examiner and his hearing testimony, that GM's December 2011 instructions to Connors were "much more severe" than what GM set forth in his notes. We find, however, that MB's hearsay assertions about what GM said to Connors—which were somewhat inconsistent, provided years after the December 2011 conversation, and relied only on GM's "small . . . note" and MB's "half a dozen discussions" with GM—are not reliable.

Connors also offered a version of his conversation with GM that differed from GM's notes. Connors testified that he told GM he "respectfully disagreed," and chose not to comply, with GM's instructions to have customers direct their $399 payments to Asset & Financial Planning. Connors' version seems questionable, however, because there is no apparent reason why GM would have omitted from his notes something as substantial as Connors' express refusal to comply. Regardless, Connors never testified that GM changed his mind or permitted Connors to directly charge customers the $399 fee.

reasons to doubt them[11]—Connors did not testify that the "compliance department" ever approved his receiving the $399 fee directly from customers, and there is no evidence the compliance department ever approved the activity.

Connors also testified that: (1) in early summer 2011, he discussed his model with, and showed some of the seminar materials to, MD, Connors' immediate supervisor; and (2) in May or June 2012, he discussed his "financial model" with MB, who had questioned why several of Connors' investment advisory clients were invested only in cash. But Connors conceded that he did not inform MD that he was charging a $399 fee, and there is no evidence that Connors discussed the fee with MB.

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Although PCS did not require that Connors provide prior written notice of his tax, insurance, and financial planning activities for PCS's affiliates, Connors' activities were outside the scope of his relationship with those affiliates. As a result, Connors was required to provide PCS with prior written notice of his outside activities on an Outside Business Activity Request form, but he did not do so.

D. Connors' Arguments

Connors makes various arguments why his activities did not violate FINRA Rule 3270, but they all lack merit.

Connors suggested that he provided PCS with notice of the $399 "one-time set up fee" in other ways besides an Outside Business Activity Request form. In this regard, he claimed that he sent to PCS's compliance department "[a]ll the correspondence concerning a customer's choice to use my model," including "the signed forms"; that he "sen[t] documents to PCS . . . [and] was up front with my fee arrangement"; and that he kept copies of the signed forms in each customer's file and was subject to regular inspections and branch audits. As explained above, however, there are reasons to question Connors' assertions that he provided materials discussing the $399 fee to PCS or its affiliates. But even if he did, FINRA Rule 3270 requires that a representative provide written notice of outside business activities in the form required by the firm, and Connors has never claimed that he provided written notice of the $399 fee in the form that PCS required. Indeed, Connors admitted that maintaining evidence of his outside activities

[11] Connors did not enter any Power Point into evidence, and his statements during his firms' and FINRA's examinations in summer 2012 did not reference a Power Point. Connors' claim that he regularly provided correspondence referencing the $399 fee to his employer is disputed by MB, who informed FINRA that Connors provided the "account opening fee form" to the home office only twice by mistake. Moreover, when Asset & Financial Planning discovered in June 2012 that Connors had been charging the $399 fee, it immediately scheduled an unannounced examination of Connors' office, a response that suggests it had no prior awareness of the fee.

in client folders did not constitute written notice to his firm. *Cf. Houston*, 2014 SEC LEXIS 614, at *28-29 (finding that even if respondent's file or customer account statements reflected respondent's outside business activity, that did not provide written notice "in the form required by the firm"); *Wanda P. Sears*, Exchange Act Release No. 58075, 2008 SEC LEXIS 1521, at *15 (July 1, 2008) (finding that respondent's keeping copies of tax returns in client files and preparing the tax returns on firm's computers did not constitute the requisite written notice). Moreover, PCS also required that its representatives obtain approval of their outside activities before engaging in them, and Connors never received written approval to charge and directly receive the $399 fee.

Connors also argues that FINRA Rule 3270 requires a registered person to give prior written notice of the "true nature" of an outside business activity "generally" and "in a manner that is valid and straightforward." Connors argues in his briefs that the way he provided PCS with prior notice of his outside activities was by entering into the April 2000 Employment Agreement and the annual Tax Preparer Employment Agreements. He contends that these employment agreements (and the Power Point that he purportedly provided to his compliance department) disclosed that he was engaged in tax preparation services, insurance sales, and financial planning services and "accomplish[ed] the rule's purpose." He also argues that whether he received compensation directly from Gilman Ciocia and its affiliates or instead from customers or unapproved insurance carriers "has no effect on the true nature of his business activities." Connors' arguments are misguided.

FINRA Rule 3270 provides that the notice required under the rule must be in the manner required by the firm but does not otherwise address the level of specificity that a representative's notice must contain. However, the general purposes of FINRA Rule 3270, and the obligations required of broker-dealers under that rule, inform how specific the representative's notice should be. FINRA Rule 3270 ensures that member firms "receive prompt notification of all outside business activities of their associated persons so that the member's objections, if any, to such activities could be raised at a meaningful time and so that appropriate supervision could be exercised as necessary under applicable law." *Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Outside Business Activities of Associated Persons* ("*Proposed Rule Change by NASD*"), Exchange Act Release No. 26063, 1988 SEC LEXIS 1841, at *3 (Sept. 6, 1988); *see also NASD Notice to Members 88-86*, 1988 NASD LEXIS 207, at *1 (Nov. 1988) (explaining that the rule is "intended to improve the supervision of registered personnel by providing information to member firms concerning outside business activities of their representatives"). The rule addresses the securities industry's concern about preventing harm to the investing public or a firm's entanglement in legal difficulties based on an associated person's unmonitored outside business activities. *Proposed Rule Change by NASD*, *supra*, at *3. It is a "prophylactic rule designed to assure that an employee engages in conduct consistent with his duties to his employer and its clients." *Sears*, 2008 SEC LEXIS 1521, at *26. Failing to disclose outside business activities deprives customers of the oversight and supervision provided by an employer member firm. *Id.*

In addition, member firms use the information contained in a notice provided pursuant to FINRA Rule 3270 to fulfill their regulatory obligations under Supplementary Material .01, which are to consider whether a proposed outside business activity will "interfere with or otherwise

compromise the registered person's responsibilities to the member and/or the member's customers" or "be viewed by customers or the public as part of the member's business" and then "evaluate the advisability of imposing specific conditions or limitations on a registered person's outside business activity."[12] *Cf. Akindemowo*, 2015 FINRA Discip. LEXIS 58, at *44 (holding that FINRA Rule 3270 requires "fulsome . . . disclosure" in writing); *Dep't of Enforcement v. Rooney*, Complaint No. 2009019042402, 2015 FINRA Discip. LEXIS 19, at *68-69 (FINRA NAC July 23, 2015) (holding that a firm's general approval of representative's outside sales of "fixed insurance" would not have relieved the representative of his obligation to provide written notice of outside business activities involving specific products). In addition, an implicit and important requirement of FINRA Rule 3270 is that a representative's notice of outside business activities must be *accurate*.

Applying those principles here, Connors' entering into the employment agreements did not fulfill his requirements under FINRA Rule 3270. Because of the exclusive nature of those agreements, they informed PCS where Connors would conduct tax, insurance, and financial planning activities (through PCS's affiliates) and where he would *not* (outside PCS's affiliates). Thus, when Connors chose to participate in tax, insurance, and financial planning services in direct contradiction of his exclusive contractual obligations, his employment agreements no longer provided PCS with an accurate description of his outside activities. By not giving PCS an updated description on an Outside Business Activity Request form as PCS required, Connors prevented PCS from accurately assessing the full extent of the risks to PCS's customers and investors and of PCS's potential legal exposure, and also prevented PCS from making an informed assessment of whether any restrictions or prohibitions on his "on the side" activities were warranted.[13] In short, Connors' conduct was inconsistent with the purposes of FINRA Rule 3270.

In another argument, Connors claims that he only violated his firms' internal policies and that such conduct "does not equate to a violation of FINRA Rule 3270." But as explained above, Connors' failure to abide by the terms of his employment agreements and his certifications is a primary reason why Connors' activities gave rise to the notice obligations under FINRA Rule 3270.

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[12] *See* FINRA Rule 3270, Supplementary Material .01; *Order Granting Accelerated Approval of a Proposed Rule Change*, Exchange Act Release No. 62762, 2010 SEC LEXIS 2768, at *26 (Aug. 23, 2010) (explaining that FINRA Rule 3270 requires firms "to implement a system to assess the risk that . . . outside business activities may cause potential harm to investors and to manage these risks by taking appropriate actions").

[13] Connors' failure to provide PCS with an accurate description of his outside financial planning services (i.e., the $399 fee) was especially at odds with the purposes of FINRA Rule 3270, given the chance that those services could "be viewed by customers or the public as part of the member's business." That characteristic is one that broker-dealers are expressly required to assess under Supplementary Material .01.

We also reject Connors' attempted analogy to *Dep't of Enforcement v. Somerindyke*, Complaint No. 2009020081301, 2012 FINRA Discip. LEXIS 69 (FINRA Hearing Panel Dec. 17, 2012). In *Somerindyke*, two respondents provided their broker-dealer firm with written notice of outside business activities involving a marketing business. After their broker-dealer firm informed them they could maintain only "passive" involvement with the outside marketing business, the respondents remain actively involved with the marketing business. Despite violating their firm's instructions, the Hearing Panel found that the respondents did not violate NASD Rule 3030, the predecessor rule to FINRA Rule 3270. The Hearing Panel found that the respondents "submitted their outside business activities forms with detailed disclosure of the [outside] work they were doing," and that although they "may well have violated [their firm's] internal policy," "[s]uch a violation of firm policy does not constitute a violation of the express terms of [NASD] Rule 3030." *Id*. at *16. Unlike the respondent in *Somerindyke*, Connors never provided his broker-dealer firm with prior, accurate, written notice of his outside business activities.[14]

Connors also contends that he did not violate FINRA Rule 3270 because his employment agreements, by their terms, could not "be construed to prevent [him] from rendering services in compliance with his independent professional responsibilities." Along these lines, Connors claims that he sold unapproved insurance policies because the approved insurance products were "limited," "subpar," and "inferior," and because Prime Financial Services' insurance group "wasn't up to [his] standards." If Connors was dissatisfied with the approved insurance products, he could have tried to convince Prime Financial Services to add additional carriers or chosen not to sell the approved policies.[15] Connors was not, however, permitted to ignore his regulatory obligations under FINRA Rule 3270. *Cf. Dep't of Enforcement v. Schneider*, Complaint No. C10030088, 2005 NASD Discip. LEXIS 6, at *19 (NASD NAC Dec. 7, 2005) (rejecting respondent's argument that outside activities were "to provide services to customers that [member firm] did not offer," where member firm stood ready to consider expanding its services but respondent gave his firm "no opportunity to service these potential customers").

In another unpersuasive argument, Connors asserts that the reason his firms generally prohibited outside business activities was to make a profit, not to prevent harm to the investing public. Connors' obligation to provide prior written notice of his outside business activities was

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[14] Another difference is that *Somerindyke* involved NASD Rule 3030, whereas this case involves FINRA Rule 3270. Unlike NASD Rule 3030, FINRA Rule 3270 includes Supplementary Material .01 that specifically requires a member firm, after receiving notice of an outside business activity, to evaluate the advisability of imposing specific conditions or limitations on a registered person's outside business activity. Thus, unlike the respondents in *Somerindyke*, Connors prevented his firm from conducting its regulatory evaluation obligations.

[15] Connors testified that he complained "many times" about the insurance department but conceded that he never shared his opinions about the approved insurance products with his supervisors or the president of PCS and Prime Financial Services.

not contingent on his employers' motives, but on whether his activities were outside the scope of his relationship with his broker-dealer.

* * * * *

In sum, Connors failed to provide prior written notice to PCS of his outside business activities in the form that PCS required, depriving PCS of the ability to assess the risks involved from those activities and whether or how to oversee them. Connors violated FINRA Rules 3270 and 2010.

V. Sanctions

For outside business activities violations, FINRA's Sanction Guidelines recommend a fine of $2,500 to $73,000 and disgorgement.[16] The Guidelines also recommend a suspension up to 30 business days when the outside business activities do not involve aggravating conduct, a longer suspension of up to one year when they do, and a longer suspension or a bar in egregious cases, including those involving a substantial volume of activity or significant injury to customers of the firm.[17] As explained below, we affirm the Hearing Panel's sanctions, which are appropriate to remedy Connors' violation.

A. Aggravating Factors

There are numerous aggravating factors. The duration of Connors' outside activity, the number of customers involved, and the dollar volume of his sales all aggravate his conduct.[18] Between October 2011 and May 2012, Connors charged 47 customers the $399 one-time set up fees and earned $18,753. Between January 2012 and June 2012, Connors provided outside tax preparation services to 32 customers and earned $10,035. Between May 2011 and May 2012, Connors earned $17,696 in commissions from selling unapproved insurance products. This by itself was significant, but the duration of the activity, the customers involved, and the revenues generated from Connors' outside tax and insurance activities were even more extensive than what the complaint alleged.[19] Connors' engaging in three different kinds of outside activities

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16 *FINRA Sanction Guidelines*, 13 (2015) [hereinafter *Guidelines*].

17 *Id*.

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

19 With regard to his outside tax activities, Connors admitted that he started those activities in 2007 or 2008 and also that he been doing them for "10 years"; that he annually prepared the outside tax returns for approximately 20 to 30 persons; and that he earned more than the $10,000 of tax preparation income charged in the complaint. Regarding his outside insurance sales, Connors admitted that he engaged in the outside insurance sales before the relevant period and for up to four years, and his personal tax returns reflected that he made $34,380 and $89,018, respectively, in insurance commissions in 2011 and 2010. Evidence of misconduct that is not

[Footnote continued on next page]

over many years amounted to a pattern of misconduct over an extended period of time, which is aggravating.[20]

It is also aggravating that Connors' outside activity involved PCS's customers.[21] All 47 advisory clients who paid the $399 one-time set up fee, and some or many of the tax customers whom Connors directly charged tax preparation fees, were PCS customers. *Cf. Dep't of Enforcement v. McGuire*, Complaint No. 20110273503, 2015 FINRA Discip. LEXIS 53, at *57 (FINRA NAC Dec. 17, 2015) (finding that it was aggravating that respondent's outside business activities involved a customer of his member firm); *Dep't of Enforcement v. Xagoraris*, Complaint No. 20080127674, 2014 FINRA Discip. LEXIS 34, at *34 (FINRA NAC Aug. 1, 2014) (holding that it was aggravating that respondent's outside business activity involved a customer of member firm and that respondent failed to disclose that he received a check from a customer payable to himself).

Another aggravating factor is that Connors' marketing and sale of his outside activities could have created the false impression that his member firm or its affiliates had approved the activities.[22] Connors' letter that asked for the $399 fee was written on Gilman Ciocia letterhead and identified PCS as a FINRA member firm through which securities were offered. Likewise, Connors' altered tax preparation invoices listed "Gilman Ciocia" at the top. *See Moore*, 2012 FINRA Discip. LEXIS 45, at *35 (noting that respondent's outside business activities could have created the impression that member firm had approved the activities, where the recipients of respondent's services were customers of respondent's employer and the outside services included, among other things, financial services).

Furthermore, Connors attempted to conceal the outside activities from PCS and its affiliates on multiple occasions.[23] On two branch examination questionnaires that asked about his outside business activities, Connors failed to disclose that he was engaging in financial planning, account opening, tax preparation work, or insurance sales on the side. Likewise—and belying his claim on appeal that he "cooperated" with his firms' surprise June 2012 examination—Connors misrepresented in a June 2012 statement to his firms that "[i]f I had known that all 'fees' go thru [Asset & Financial Planning], I would have simply had the check

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[cont'd]

alleged in a complaint, but similar to the misconduct that is charged, is admissible to determine sanctions. *Sears*, 2008 SEC LEXIS 1521, at *22 n.33.

[20] *Guidelines*, at 6 (Principal Considerations in Determining Sanctions, Nos. 8, 9).

[21] *Id*. at 13 (Principal Considerations in Determining Sanctions, No. 1).

[22] *Cf. Guidelines*, at 13 (Principal Considerations in Determining Sanctions, No. 4); *id*. at 6 (Principal Considerations in Determining Sanctions, No. 10).

[23] *Guidelines*, at 13 (Principal Considerations in Determining Sanctions, No. 5).

payable to [Asset & Financial Planning]." As Connors admitted at the hearing, GM instructed Connors in December 2011 that the $399 fee needed to be processed through Asset & Financial Planning. In another act of concealment, Connors "zeroed out" certain customer accounts in TaxWise to make it falsely appear to Gilman Ciocia that his customers had not been charged any tax preparation fees. *Cf. Dep't of Enforcement v. Giblen*, Complaint No. 2011025957702, 2014 FINRA Discip. LEXIS 39, at *29 (FINRA NAC Dec. 10, 2014) (holding that respondent's failure to disclose his outside business activities on firm's compliance forms was "tantamount to concealment of the activities from the firm"); *Xagoraris*, 2014 FINRA Discip. LEXIS 34, at *34 (finding it aggravating that respondent made false representations to his firm's compliance examiner about his conduct); *Houston*, 2014 SEC LEXIS 614, at *26 (finding that respondent repeatedly mislead his firm, on firm's forms, about his outside activities).[24]

Likewise, Connors attempted to mislead FINRA.[25] In a written response to FINRA staff's FINRA Rule 8210 request for information, Connors claimed that "I never created tax preparation invoices and deposited payments into my personal bank account," but "[r]ather, . . . I have prepared tax returns for my family, close friends and select clients, who paid me directly for the service." This was false. Connors prepared tax invoices in TaxWise and added instructions to customers to pay him directly. *Dep't of Enforcement v. Ballard*, Complaint No. 2010025181001, 2015 FINRA Discip. LEXIS 52, at *36 (FINRA NAC Dec. 17, 2015) (holding that respondent's attempt to mislead FINRA and his firm about his outside employment was a significant aggravating act).

We also find that Connors' failure to provide prior written notice of his outside business activities was intentional.[26] Connors understood his regulatory obligations under FINRA Rule 3270. He was an industry veteran and a branch manager with responsibilities for ensuring his branch's compliance with FINRA Rule 3270; he acknowledged in the annual RR/IAR certifications that he had to comply with FINRA's outside business activities rule and PCS's outside business activities procedures; and he filed an Outside Business Activity Request form in March 2011 when he sought to work as a mayor. Connors engaged in all the outside business activities at issue despite being informed not to do so. In this regard, he was told in December 2011 that the $399 fees he was charging had to be sent to Asset & Financial Planning, he

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[24] Arguing that he did not attempt to conceal his misconduct, Connors asserts that he provided materials and correspondence to his firms about his financial model and that he maintained evidence of his outside business activities at his office. As explained above, however, Connors' claims about the materials he provided to his firms are disputed and uncorroborated. Moreover, Connors' maintenance of his outside business activity work at his branch office was not designed to ensure that his firm had notice of his outside activities. Regardless, even if Connors' claims were believable, they do not negate the numerous affirmative steps he took to conceal his misconduct.

[25] *Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 10).

[26] *Id*. at 7 (Principal Considerations in Determining Sanctions, No. 13).

admitted being previously told that he could not engage in outside insurance sales, and he admitted that his charging fees to outside tax clients directly ignored instructions that Gilman Ciocia gave him years earlier. Connors' repeated and numerous failures to disclose his outside business activities despite his understanding of his regulatory obligations and in direct contravention of his firms' instructions "evidence a deliberate disregard of FINRA's rules." *McGuire*, 2015 FINRA Discip. LEXIS 53, at *58; *Giblen*, 2014 FINRA Discip. LEXIS 39, at *28-29 (finding that respondent's failure to disclose outside business activities was intentional given his industry experience, his awareness of his firm's policies, and his prior submission of a request to engage in other outside business activities); s*ee also Moore*, 2012 FINRA Discip. LEXIS 45, at *37 (finding it "particularly troubl[ing]" that respondent's outside sale of an equity-indexed annuity was in direct contravention of firm's complete ban on equity-indexed annuity sales).

Connors' intent is further shown by the substantial evidence that Connors was acting for his own monetary gain and out of an inappropriate sense of entitlement to the additional revenues. *See Giblen*, 2014 FINRA Discip. LEXIS 39, at *28 (citing as an aggravating factor that respondent intentionally engaged in outside business activities for "his own monetary gain"). AN testified that Connors told her he felt entitled to the outside business revenues because the value of the Gilman Ciocia stock he received for selling his business had declined. MB testified that Connors said he was charging some clients directly for tax preparation services because he "felt . . . entitled to receive fees from a specific subset of customers directly" who "were his customers prior to coming into Gilman Ciocia."[27] Connors testified that he believed he had the right to receive direct payments from tax preparation customers because of "additional hours of work [Connors] was doing for the firm" and from advisory account customers because of the "additional time, money, and effort that [I] put into the model," his "certified financial planner" designation, and a purported "right under my contract" to "charge this fee separately." Connors even admitted that one reason he did not seek to sell the unapproved insurance products through Prime Financial Services was that it would have resulted in less money for him. That Connors acted intentionally for his own financial benefit is aggravating.[28]

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[27] The record does not reflect the extent to which Connors directly charged tax preparation fees to customers who were his prior to joining Gilman Ciocia. Regardless, when Connors sold his financial services firm to Gilman Ciocia in April 2000, the Asset Purchase Agreement included "all assets," including the "customer list."

[28] In his response to FINRA's Rule 8210 request, Connors claimed that he did not understand he was required to disclose his outside activities. He wrote, "[s]ince selling insurance is within the scope of the activities in which I am permitted to engage under various licenses, and is within the scope of my relationship with PCS, I did not think that this was an outside business activity that required a disclosure." He also wrote, "I was under the impression for 10 years that charging my customers directly for tax preparation work was permitted by PCS." Given the substantial evidence that shows Connors acted intentionally, Connors' claimed lack of understanding is not credible.

B. Mitigation Arguments

There are no mitigating factors. Connors argues that he has never been the subject of a FINRA disciplinary action. A lack of disciplinary history, however, "is not mitigating for purposes of sanctions because an associated person should not be rewarded for acting in accordance with his duties as a securities professional." *Philippe N. Keyes*, Exchange Act Release No. 54723, 2006 SEC LEXIS 2631, at *23 (Nov. 8, 2006).

Connors also asserts that his conduct did not result in any injury and that Connors was performing the business activities "with his customers' best interests in mind." There is no evidence whether Connors' outside activity resulted directly or indirectly in injury to customers of the firm. But "[t]he absence of . . . customer harm is not mitigating, as our public interest analysis focus[es] . . . on the welfare of investors generally." *Edward S. Brokaw*, Exchange Act Release No. 70883, 2013 SEC LEXIS 3583, at *68 (Nov. 15, 2013) (internal quotation omitted). Even if no customers were harmed, Connors knowingly deprived his firms of revenues they should have received. *Cf. Schneider*, 2005 NASD Discip. LEXIS 6, at *20 n.13 (noting that although there was no evidence of investor harm from outside business activities, respondent's misconduct harmed the member firm).

Connors contends that his outside tax preparation activities are a small fraction of the tax preparation services he provided in 2011 and 2012 and likewise claims that he engaged in the three outside business activities "for a fraction of the time" he had been with Gilman Ciocia and its affiliates. Compliance with the law in some instances, however, does not excuse other violations. *Donner Corp. Int'l*, Exchange Act Release No. 55313, 2007 SEC LEXIS 334, at *40 (Feb. 20, 2007). And to the extent Connors is arguing that his misconduct was aberrant, that is not supported by the evidence, which shows that Connors engaged in several types of undisclosed outside business activities for years.[29]

Connors presses that he repaid all the money he earned as a result of his outside business activities. While a respondent's voluntary and reasonable attempt prior to detection and intervention to pay restitution or otherwise remedy the misconduct can be mitigating,[30] Connors did not do so here until after his misconduct was detected by his firm.

Connors claims he "admitted he was wrong." But Connors has admitted only that he breached his employment contracts and that it was unethical to withhold fees from his firms, not that he violated FINRA Rule 3270. In fact, Connors testified that he was *not* acknowledging that he violated FINRA Rule 3270. In any event, an admission of wrongdoing is mitigating only if it occurs prior to regulatory detection and intervention by a firm or regulator.[31]

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29 *See Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 16).

30 *See id.* at 6 (Principal Considerations in Determining Sanctions, No. 4).

31 *See id*. at 6 (Principal Considerations in Determining Sanctions, No. 2).

PCS terminated Connors before FINRA detected his misconduct, a fact that can be mitigating if the termination was related to the misconduct at issue.[32] But Connors repeatedly used dishonest means to conceal his outside business activities and then, not long after being terminated, chose *again* to act dishonestly when he provided false information to FINRA staff who were examining his conduct. Thus, "his termination was insufficient to dissuade him from further misconduct" and is not mitigating. *Saad*, 2015 SEC LEXIS 4176, at *20. Even if Connors' termination was mitigating, it would not overcome the threat he would pose to investors and other securities industry participants without a substantial sanction. *Cf. McGuire*, 2015 FINRA Discip. LEXIS 53, at *58 n.47 (holding that termination did not outweigh the numerous aggravating factors).

* * * * *

Considering the numerous aggravating factors and the lack of mitigating factors, we find that Connors' failure to provide prior written notice to PCS of his outside business activities was egregious. A substantial sanction is warranted to remedy Connors' misconduct and deter him, and others, from engaging in similar violations. Accordingly, we suspend Connors from associating with any member firm in any capacity for 14 months and fine him $40,000.[33]

VI. Conclusion

Accordingly, we affirm the Hearing Panel's finding that Connors engaged in outside business activities without providing his firm with prior written notice, in violation of FINRA Rules 3270 and 2010, and the Hearing Panel's sanctions. We suspend Connors from associating with any member firm in any capacity for 14 months and fine him $40,000. We also affirm the

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[32] *Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 14); *see John M.E. Saad*, Exchange Act Release No. 76118, 2015 SEC LEXIS 4176, at *18-19 (Oct. 8, 2015), *appeal docketed*, No. 15-1430 (D.C. Cir. Nov. 20, 2015).

[33] We agree with the Hearing Panel that disgorgement is not appropriate because Connors has already disgorged to Gilman Ciocia and its affiliates his ill-gotten gains.

$6,093.04 in hearing costs imposed by the Hearing Panel, and we impose $1,523.95 of costs on appeal.[34]

On behalf of the National Adjudicatory Council,

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Marcia E. Asquith
Senior Vice President and Corporate Secretary

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