

BEFORE THE NATIONAL ADJUDICATORY COUNCIL  
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of

Department of Enforcement,

Complainant,

vs.

Dirk Allen Taylor  
San Antonio, TX,

Respondent.

DECISION

Complaint No. 20070094468

Dated: August 5, 2011

**Respondent Dirk Allen Taylor: (1) misrepresented information to his employer regarding the delivery of preliminary prospectuses to nine of his customers who were expected to purchase shares of an initial public offering, in violation of NASD Rule 2110; (2) failed to deliver preliminary prospectuses to these customers, in violation of Exchange Act Rule 15c2-8 and NASD Rule 2110; and (3) caused his firm's books and records to be inaccurate by submitting a false document to the firm about delivery of the preliminary prospectuses, in violation of NASD Rules 3110 and 2110. The Hearing Panel imposed a unitary sanction for all three violations, consisting of a \$5,000 fine and a 60-day suspension. Held, findings and sanctions modified.**

**Appearances**

For the Complainant: Joseph P. Darcy, Esq., and Leo F. Orenstein, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Eric A. Pullen, Esq.

## Decision

Pursuant to FINRA Procedural Rule 9311, Dirk Allen Taylor (“Taylor”) appeals a May 21, 2010 Amended Hearing Panel decision. In that decision, the Hearing Panel found that Taylor violated: (1) the Securities Exchange Act of 1934 (“Exchange Act”) Rule 15c2-8 and NASD Rule 2110 by failing to deliver preliminary prospectuses to several customers who had indicated that they were expecting to purchase shares of an initial public offering of a closed-end mutual fund; (2) NASD Rule 2110 by making misrepresentations to his member firm about the delivery of preliminary prospectuses to customers; and (3) NASD Rules 3110 and 2110 by causing his member firm to maintain inaccurate books and records. For these violations, the Hearing Panel fined Taylor \$5,000 and suspended him in all capacities for 60 days.

After reviewing the record, we modify the Hearing Panel’s findings and the sanctions imposed. Specifically, we dismiss the Hearing Panel’s finding that Taylor failed to deliver preliminary prospectuses, in violation of Exchange Act Rule 15c2-8 and NASD Rule 2110, and we eliminate the 60-day suspension imposed by the Hearing Panel. We, however, affirm the Hearing Panel’s findings that Taylor made misrepresentations to his member firm in violation of NASD Rule 2110 and that he caused his member firm to maintain inaccurate books and records. In addition, we impose a single, unitary fine of \$5,000 for Taylor’s violations.

### I. Background

Taylor entered the securities industry in 1981, and became a general securities representative in 1982. From September 2005 to March 2007, Taylor was employed by UBS Financial Services, Inc. (“UBS Financial” or the “Firm”), in the Firm’s San Antonio, Texas office. Taylor is currently associated with another FINRA member.

### II. Procedural History

On March 27, 2009, FINRA’s Department of Enforcement (“Enforcement”) filed a three-cause complaint against Taylor. On April 23, 2009, Taylor filed an answer to the complaint and requested a hearing. In a decision issued on May 21, 2010, the Hearing Panel found Taylor liable for all of the violations alleged in the complaint. The Hearing Panel imposed the sanctions listed above for the Taylor’s misconduct. On June 15, 2010, Taylor appealed the Hearing Panel’s decision.

### III. Facts

In February 2007, Taylor discussed an initial public offering of the Eaton Vance Tax Managed Global Income Diversified Fund (“EXG”) with several of his UBS Financial customers. Early on the afternoon of Thursday, February 22, 2007, Taylor was in the process of completing order tickets for these customers’ purchases of EXG. That day was also the EXG pricing date, and therefore the last day on which Taylor’s customers purchasing EXG shares

could have received the EXG preliminary prospectus in compliance with Exchange Act Rule 15c2-8.<sup>1</sup>

Taylor prepared and handed order tickets to LeeAnn Douglas (“Douglas”), his sales assistant, for nine customers who requested shares in the EXG offering. Douglas entered the tickets into the Firm’s computer system. Douglas, however, told Taylor that he needed to complete a “Syndicate Worksheet” in order for the Firm to process the tickets.<sup>2</sup>

UBS Financial required its registered representatives to complete a Syndicate Worksheet to document their compliance with the Firm’s procedures relating to initial public offerings. The Syndicate Worksheet included columns for recording, among other things, the date of the customer’s indication of interest, and the date and method of preliminary prospectus delivery to the customer. Taylor was not aware that he was responsible for delivering the preliminary prospectuses to his customers because he thought the Firm would send the prospectuses to the customers.

Douglas told Taylor that he should talk to Jimmy Augustine (“Augustine”), the Firm’s Syndicate Coordinator, to seek clarification about how Taylor should proceed. Augustine told Taylor that all he needed to do was submit or “drop the tickets,” and that the Firm would send out the preliminary prospectuses. Taylor had participated in one prior syndicate offering at the Firm, and Augustine’s instructions were consistent with Taylor’s prior experience with such offerings. Taylor, however, subsequently discussed the issue with Brad Bishop (“Bishop”), the branch office manager, and Bishop told Taylor that Taylor was the person responsible for delivery of preliminary prospectuses to his customers—not the Firm. Bishop testified that he informed Taylor that Taylor could fulfill his responsibility through fax or e-mail, but that Taylor replied that fax and e-mail were not possible because the customers had not signed authorizations that allowed for delivery of the preliminary prospectuses through either of these methods.

According to Bishop, he then told Taylor: “Well, you better go hand deliver them.” The testimony on this point was in direct conflict. Taylor testified that: Bishop did not tell him to hand deliver the prospectuses. Instead, Bishop told him only to *indicate* “hand delivery” on the Syndicate Worksheet as the method of delivery to the customers. Taylor understood this direction to mean that the worksheet should falsely indicate that such delivery had occurred. At the time, he believed that hand delivery was not a possible option because he understood, incorrectly, that such delivery had to be completed three days before pricing. In any event, Taylor was planning to leave the office early that afternoon to accompany his wife to an important medical appointment.

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<sup>1</sup> Exchange Act Rule 15c2-8(b) requires a broker or dealer participating in a distribution of securities to “deliver a copy of the preliminary prospectus to any person who is expected to receive a confirmation of sale at least 48 hours prior to the sending of such confirmation.” 17 C.F.R. § 240.15c2-8(a), (b) (2003).

<sup>2</sup> Douglas testified that she asked Taylor about the Syndicate Worksheet after she entered the order tickets.

Taylor then prepared, signed and initialed a Syndicate Worksheet covering all of the EXG purchases, as well as information regarding the delivery of the preliminary prospectuses. The worksheet falsely certified that the preliminary prospectuses had been hand delivered to all of his nine customers. On the Syndicate Worksheet, Taylor reported the date of delivery as the same day on which he initially spoke to his customers about the EXG offering.<sup>3</sup> Taylor testified that after he completed his Syndicate Worksheet, he left the EXG order tickets for Bishop to decide whether the tickets could be processed. Taylor left the office, accompanied his wife to her appointment, and did not deliver any preliminary prospectuses to customers. Later, when Taylor phoned his office at the end of the day, he was surprised to hear from Douglas that the Firm had processed the tickets.<sup>4</sup>

Bishop admits that during his conversation with Taylor on February 22, he was aware that Taylor had not yet delivered the preliminary prospectuses to all of the nine customers who placed orders with Taylor for shares in the EXG initial public offering. Bishop claims that he expected Taylor to follow his instructions by hand delivering to those customers who had not received the preliminary prospectuses, and Bishop testified that Taylor later “leaned into my office window and showed me a stack of prospectuses as he was walking out the door”—an apparent indication that Taylor planned to hand deliver the prospectuses that evening.<sup>5</sup> However, Bishop also testified that after seeing Taylor leave the office with the prospectuses, a “red flag” arose in the afternoon when he was reviewing Taylor’s order tickets. Bishop testified that he was “concerned” because the order tickets indicated that some of the customers resided in London, Colorado, and Atlanta, and Bishop therefore concluded that it would be “impossible” for Taylor to hand deliver prospectuses to these customers, since they did not live in San Antonio. Bishop, however, did not confront Taylor about his concerns.<sup>6</sup>

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<sup>3</sup> According to Taylor, he had first filled out the Syndicate Worksheet with February 22 as the date of delivery, but then Bishop informed him that the date of delivery should be the same as the client “indication of interest” date. Bishop, however, testified that he did not see Taylor’s Syndicate Worksheet until the following morning (Friday, February 23).

<sup>4</sup> Taylor testified that “he left the office not expecting that the tickets would be dropped.”

<sup>5</sup> Douglas also testified that Taylor had asked her for prospectuses after their conversation about the Syndicate Worksheet, and that she saw him at some point with “prospectuses in his hand.”

<sup>6</sup> Bishop also testified that if he was supervising a registered representative and he was aware that the representative had made an incorrect trade, he would have stopped the trade. As noted above, he was aware that Taylor could not deliver several of the preliminary prospectuses, but he did not stop or cancel the trades that Taylor had submitted. Bishop further testified that he did not need anyone’s permission to cancel a trade, but he “didn’t know” why he (or the Firm) did not cancel Taylor’s EXG trades.

Instead, Bishop testified that he alerted his control officer, Anne Owens (“Owens”), to the situation in the late afternoon of February 22, and that they tried, unsuccessfully, to involve the division counsel, who was not available until the following morning.<sup>7</sup> Yet Bishop approved and allowed the order tickets to be processed anyway—and he did not inform Abraham Valdes (“Valdes”), the Firm’s office administrative manager, that the preliminary prospectuses had not been delivered to all of Taylor’s customers.<sup>8</sup> Relying on Taylor’s Syndicate Worksheet, Valdes subsequently prepared a record for the Firm referred to as a “Supervisory Checklist,” a form that the Firm used to record, among other things, whether registered representatives had delivered preliminary prospectuses to their customers. Valdes signed and dated the Supervisory Checklist on February 22.<sup>9</sup> Valdes’ Supervisory Checklist also indicated that a review had been conducted; and falsely certified that delivery of preliminary prospectuses had occurred in connection with the EXG offering. Bishop testified that UBS Financial always had the option to “bust a trade,” and that he didn’t know why the Firm failed to cancel the EXG trades or if there was even an active decision by anyone at UBS Financial to let Taylor’s EXG trades stand.<sup>10</sup>

On March 8, 2007, Bishop called Taylor into his office and terminated Taylor’s employment with UBS Financial for submitting false documents to the Firm. According to Bishop, it was ultimately his decision to terminate Taylor. Valdes was also present at the meeting. According to Valdes, after that meeting and before Taylor was escorted out of the building, he told Valdes that by submitting the false Syndicate Worksheet, he thought that he had done what Bishop had wanted him to do. On March 17, 2007, the Firm sent a letter to Taylor’s

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<sup>7</sup> According to Bishop, he and Owens met with division counsel in the morning on February 23. On instructions from counsel, Bishop then called the customers who had placed EXG orders with Taylor. According to Bishop, he reached three of Taylor’s customers—two who did not recall receiving preliminary prospectuses—and one who said that he did receive the prospectus. Bishop could not recall whether he provided Taylor with this information, but admitted that he did not have any follow up discussion with Taylor about the fact that at least two of his customers had not received a prospectus.

<sup>8</sup> Under UBS’s procedures, the Syndicate Coordinator (Augustine) was responsible for approving order tickets. Braden Blackwelder, a control officer at the Firm during the relevant period, testified that order tickets could also be approved by a branch manager and that a Syndicate Worksheet could be turned in the day after pricing. Here, Augustine did not approve the EXG order tickets. Instead, the Firm’s branch manager (Bishop) approved these tickets.

<sup>9</sup> Valdes testified that he could not have signed the Supervisory Checklist on February 22 unless he had reviewed all of the Syndicate Worksheets associated with the EXG offering. This contradicts Bishop’s testimony that Taylor did not complete a Syndicate Worksheet until February 23.

<sup>10</sup> The gross commission for Taylor’s EXG trades was \$29,662.00. Taylor’s commission for these trades was \$7,500.48.

customers who had not received prospectuses, offering them an opportunity to rescind the EXG trades. None of these customers accepted this offer.<sup>11</sup>

#### IV. Discussion

##### A. Taylor Violated NASD Rules 3110 and 2110 by Causing UBS Financial's Books and Records to Be Inaccurate

NASD Rule 3110(a) requires, in pertinent part, that members “make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations and statements of policy promulgated [by FINRA].”<sup>12</sup> “The entry of accurate information in firm records is a foundation for FINRA’s regulatory oversight of its members, and ‘[i]t is critical that associated persons, as well as firms, comply with this basic requirement.’”<sup>13</sup> “The Commission has sustained [FINRA] findings that an applicant ‘caused’ violations . . . [where such findings] were based on affirmative acts or omissions by the applicant.” *Rooney A. Sahai*, Exchange Act Rel. No. 51549, 2005 SEC LEXIS 864, at \*22-23 (Apr. 15, 2005) (citations omitted); *see also Michael B. Jawitz*, 55 S.E.C. 188, 188-89 (2001) (upholding FINRA’s finding that applicant’s entry of fictitious limit orders caused firm to report non *bona fide* transactions to the market); *Kautz*, 52 S.E.C. at 732-33 (applicant caused false information to be recorded on the firm’s records when he suggested and endorsed the practice of salespersons under his supervision taking credit for annuity sales made by applicant).

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<sup>11</sup> Bishop testified that the value of the EXG securities were “up” at the time the Firm made the offer of rescission.

<sup>12</sup> As an associated person of UBS Financial, Taylor was also subject to NASD Rule 3110’s requirements and was prohibited from submitting false information that would make the Firm’s books and records inaccurate. *See Kirlin Sec., Inc.*, Exchange Act Rel. No. 61135, 2009 SEC LEXIS 4168, at \*3 (Dec. 10, 2009) (stating that “NASD General Rule [0]115 (now FINRA Rule [0]140) provides that persons associated with a member have the same duties and obligations as a member”). A violation of NASD Rule 3110 constitutes a separate violation of NASD Rule 2110. *See Stephen J. Gluckman*, 54 S.E.C.175, 185 (1999)(discussing “long-standing and judicially-recognized policy that a violation of another Commission or [FINRA] rule or regulation . . . constitutes a violation of Conduct Rule 2110”); *see also Geoffrey Ortiz*, Exchange Act Rel. No. 58416, 2008 SEC LEXIS 2401, at \*22-23 (Aug. 22, 2008) (finding that petitioner violated NASD Rule 2110 by submitting false information to his member firm because such conduct reflected negatively on his ability to comply with regulatory requirements fundamental to the securities industry).

<sup>13</sup> *John M. E. Saad*, Exchange Act Rel. No. 62178, 2010 SEC LEXIS 1761, at \*14 (May 26, 2010) (quoting *Charles E. Kautz*, 52 S.E.C. 730, 734 (1996)), *appeal docketed*, No. 10-1195 (D.C. Cir. July 22, 2010).



Here, it is undisputed that Taylor submitted a Syndicate Worksheet to UBS Financial that falsely represented that he had delivered preliminary prospectuses to all nine of his customers. Valdes credibly testified that in preparing and signing the Syndicate Checklist for the Firm, he had relied on the syndicate worksheets prepared and submitted by the registered representatives, and that he would not have signed the Syndicate Checklist for the EXG initial public offering if any of the syndicate worksheets had been incomplete. Valdes' reliance on Taylor's false submissions therefore caused the Firm's records to be inaccurate.

B. Taylor's Actions Did Not Constitute a Violation of Exchange Act Rule 15c2-8 and NASD Rule 2110

Exchange Act Rule 15c2-8, on its face, applies to broker-dealers, not to persons associated with broker-dealers.<sup>14</sup> Nevertheless, persons like Taylor who are associated with broker-dealers can be held liable under NASD Rule 2110 for *causing* a broker-dealer to violate an SEC rule.<sup>15</sup> We do not, however, find that Enforcement proved that Taylor caused UBS Financial to violate Exchange Act Rule 15c2-8.

The Commission has held that a finding that a respondent "caused" a firm to violate a rule should be "based on affirmative acts or omissions by the [respondent]." *Sahai*, 2005 SEC LEXIS 864, at \*22-23; *cf. Rita J. McConville*, Exchange Act Rel. No. 51590, 2005 SEC LEXIS 1538, at \*42-43 (June 30, 2005) (holding that respondent could be found to have caused broker dealer's violations of Section 13(b)(2) if "she was responsible for an act or omission that she knew or should have known would contribute to the violation"), *petition for review denied*, 465 F.3d 780 (7th Cir. 2006). Although Taylor engaged in an affirmative act (filling out an inaccurate Syndicate Worksheet) that misled Valdes and caused him to complete an inaccurate Syndicate Checklist on February 22, the Firm did not stop a violation that it knew was taking place. Bishop and other officials at UBS Financial knew that on that day—the final day available to deliver the EXG preliminary prospectuses—some of Taylor's customers *had not* received and *could not* receive the prospectuses by the end of the day. Bishop nonetheless approved the order tickets that same day and at no point thereafter did Bishop or anyone at the

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<sup>14</sup> *Cf. Davrey Fin. Servs., Inc.*, Exchange Act Rel. No. 51780, 2005 SEC LEXIS 1288, at \*12 n.13 (June 2, 2005) (holding that, while member firm violated, among other rules, Exchange Act Rule 17a-3, the firm's principal who caused the firm to commit the violation did not himself violate this rule since the rule only applies to broker-dealers).

<sup>15</sup> *See James S. Pritula*, 53 S.E.C. 968, 976-77 (1998) (financial and operations principal's failure to maintain accurate trial balances and firm books and records caused firm's net capital and recordkeeping violations in violation of NASD Rule 2110); *Franklin N. Wolf*, 52 S.E.C. 517, 524 n.33 (1995) (applicant caused firm's violation of the Commission's Penny Stock Rule by determining to make a market in a stock subject to the rule without compliance with that rule in violation of NASD Rule 2110).

Firm attempt to cancel Taylor's trades despite the red flags that warned them that Taylor had not delivered the prospectuses to his customers.

Taylor credibly testified that he was unfamiliar with the Firm's procedures regarding prospectus delivery, and that prior to leaving the office early to attend the medical appointment with his wife; he sought guidance from both Bishop and Augustine as to how to resolve the prospectus delivery problems. Taylor, however, received conflicting advice from Bishop and Augustine regarding who was responsible for prospectus delivery, and denied that he left the office planning to hand deliver the prospectuses to his customers.

Several of the Firm's employees, including Bishop, testified that Taylor left the office with the prospectuses in his possession. This testimony attempts to establish that Taylor led the Firm's employees to believe that he *would* hand deliver the prospectuses to the EXG customers and thus caused the Firm to process the EXG order tickets on February 22, in violation of Exchange Act Rule 15c2-8(b). However, with the exception of Valdes (who did not offer testimony on this issue), the Hearing Panel did not find the Firm's employees to be credible witnesses in key areas of the dispute. The substantial evidence necessary to reverse the Hearing Panel's findings of credibility is absent; we thus agree with the Hearing Panel's determination. *See Dane S. Faber*, Exchange Act Rel. No. 49216, 2004 SEC LEXIS 277, at \*17-18 (Feb. 10, 2004) (stating that "[c]redibility determinations of an initial fact-finder, which are based on hearing the witnesses' testimony and observing their demeanor, are entitled to considerable weight and deference").

Moreover, the fact that Taylor left the office that afternoon to attend a medical appointment with his wife supports his testimony that he had not planned or attempted to deliver the prospectuses. Finally, even if Taylor had left the office with prospectuses in his possession, Bishop's testimony reflects his own conclusion that hand delivery on February 22 would have been "impossible" for Taylor's customers who lived outside of San Antonio. Bishop, however, approved Taylor's EXG trade tickets notwithstanding Bishop's knowledge that some of the customers could not have received the prospectuses. Thus, there is no credible evidence in the record to suggest that Bishop should have approved these trades and allowed them to stand based on any assurances by Taylor that he would deliver the prospectuses. To the contrary, the weight of evidence in the record indicates that the Firm was fully aware that some of the prospectuses had not been delivered. Bishop admitted that he recognized that Taylor's customers who lived outside of San Antonio were a red flag. Bishop was aware of problems with Taylor's pending transactions when he spoke with Owens and attempted to discuss the problems with division counsel. But Bishop did not reverse his decision to approve the trades. Moreover, once Bishop called three customers on February 23 and determined that two had not received preliminary prospectuses, the Firm still did not cancel any of the trades.

Based on the specific facts outlined above, we do not find that Enforcement proved by a preponderance of the evidence that Taylor caused the Firm to violate Exchange Act Rule 15c2-8(b), and we therefore reverse the Hearing Panel's finding that Taylor violated NASD Rule 2110.



C. Taylor Violated NASD Rule 2110 by Falsely Representing on the Syndicate Worksheet that He Had Hand Delivered Preliminary Prospectuses to the EXG Customers

“Misrepresentations and omissions are inconsistent with just and equitable principles of trade and therefore violate NASD Conduct Rule 2110.” *Alvin W. Gebhart, Jr.*, Exchange Act Rel. No. 58951, 2008 SEC LEXIS 3142, at \*39 n.39 (Nov. 14, 2008) (citing *Robert Tretiak*, 56 S.E.C. 209 (2003)), *cert. denied*, 2010 U.S. LEXIS 5162 (June 21, 2010); *see also Faber*, 2004 SEC LEXIS 277, at \*14 (same). Here, Taylor admits that he misrepresented to UBS Financial on his Syndicate Worksheet that he had hand delivered preliminary prospectuses to all nine customers when he knew that he had not. Moreover, Taylor’s Syndicate Worksheet indicated that delivery occurred on the day that he initially met with the customers to discuss the EXG offering—something Taylor also knew was untrue when he completed the Syndicate Worksheet. Consequently, we find that Taylor violated NASD Rule 2110.

V. Sanctions

The Hearing Panel aggregated the sanction for all three violations, fining Taylor \$5,000 and imposing a 60-day suspension in all capacities after finding that Taylor violated: (1) Exchange Act Rule 15c2-8 and NASD Rule 2110 by failing to deliver preliminary prospectuses to customers who were expecting to purchase EXG shares; (2) NASD Rule 2110 by providing false information to the Firm; and (3) NASD Rules 3110 and 2110 by causing the Firm to maintain inaccurate books and records. We, however, find that Taylor did not violate Exchange Act Rule 15c2-8 and NASD 2110 by failing to deliver preliminary prospectuses, and we reverse the Hearing Panel’s finding on this point. We therefore modify the sanctions the Hearing Panel imposed on Taylor for his violations.

A. Recordkeeping Violations

We have considered the FINRA Sanction Guidelines (“Guidelines”) in determining appropriate sanctions.<sup>16</sup> For recordkeeping violations, the Guidelines recommend a fine ranging from \$1,000 to \$10,000, and in egregious cases, from \$10,000 to \$100,000.<sup>17</sup> The Guidelines also recommend a suspension of the firm and the responsible principal for up to 30 business days, or in egregious cases, a suspension of up to two years or expulsion of the firm and a suspension of the responsible individual for up to two years or a bar.<sup>18</sup> In addition, we consider the Principal Considerations in Determining Sanctions.<sup>19</sup> We find that Taylor’s recordkeeping

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<sup>16</sup> *FINRA Sanction Guidelines* (2010), <http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf> [hereinafter “*Guidelines*”].

<sup>17</sup> *Id.* at 29.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 6-7.

violation was serious, but not egregious. We consider it aggravating that Taylor intentionally filed the false Syndicate Worksheet, even if he did so because he thought he was following his manager's instructions.<sup>20</sup> We also find it aggravating that because Taylor filed the false Syndicate Worksheet, Valdes was able to complete the Syndicate Checklist, and Taylor eventually received commissions of \$7,500.48 as a result of the EXG transactions.<sup>21</sup> Taylor's misconduct, however, involved a single act and did not occur over an extended period of time.<sup>22</sup> Under these facts and circumstances, we find that a sanction on the lower end is appropriate, and we impose a \$5,000 fine for Taylor's recordkeeping violation.

#### B. Material Misrepresentations and Omissions

The Guidelines for misrepresentations or material omissions of fact recommend, in cases involving negligent misconduct, a fine ranging from \$2,500 to \$50,000.<sup>23</sup> For negligent misconduct, the Guidelines further recommend suspending the responsible individual or firm for up to 30 business days.<sup>24</sup> In cases involving intentional or reckless misconduct, the Guidelines recommend a fine ranging from \$10,000 to \$100,000.<sup>25</sup> For intentional or reckless misconduct, the Guidelines further recommend suspending the responsible individual or the firm with respect to any or all activities or functions for a period of 10 business days to two years.<sup>26</sup> In egregious cases, the Guidelines recommend barring the individual and/or expelling the firm.<sup>27</sup> In addition, we consider the Principal Considerations in Determining Sanctions.<sup>28</sup>

As with Taylor's recordkeeping violation, we find his misconduct serious, but not egregious. We find it aggravating that Taylor earned commissions from his misconduct.<sup>29</sup> We

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<sup>20</sup> *Id.* at 7 (Principal Considerations in Determining Sanctions, No. 13).

<sup>21</sup> *Id.* (Principal Considerations in Determining Sanctions, No. 17).

<sup>22</sup> *Id.* at 6 (Principal Considerations in Determining Sanctions, Nos. 8 and 9).

<sup>23</sup> *Id.* at 90.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 6-7.

<sup>29</sup> *Id.* at 7 (Principal Considerations in Determining Sanctions, No. 17).

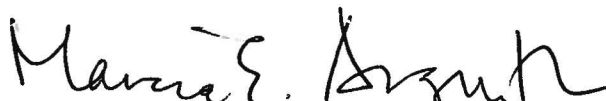
note, however, that Taylor went out of his way to make Bishop fully aware of the fact that he had not delivered the prospectuses to all of his customers. Thus, Taylor was not deliberately trying to mislead Bishop about the status of the prospectus deliveries. Instead, Taylor was trying to work with Bishop to find a way to process the EXG orders and believed that Bishop consented to Taylor's inaccurate entries on the Syndicate Worksheet. Nevertheless, Taylor did misrepresent the status of the prospectus deliveries on the Syndicate Worksheet, which then caused Valdes, an employee who was not aware of Taylor's misrepresentation, to create false and misleading firm records. Accordingly, we find that a \$5,000 fine is an appropriate sanction for Taylor's misrepresentations.

"SEC case law and [FINRA] practice strongly suggest that sanctions be assessed per cause." *Dep't of Enforcement v. Fox & Co. Invs., Inc.*, Complaint No. C3A030017, 2005 NASD Discip. LEXIS 5, at \*37 (NASD NAC Feb. 24, 2005) (citing *Inv. Mgmt. Corp.*, 2003 NASD Discip. LEXIS 47, at \*27-28)), *aff'd*, 2995 SEC LEXIS 2822 (Oct. 28, 2005). However, "where multiple, related violations arise as a result of a single underlying problem, a single set of sanctions may be more appropriate to achieve [FINRA's] remedial goals." *Id.* Here we find that Taylor's recordkeeping violations and his misrepresentations are the result of a single problem, namely Taylor's filing of the false Syndicate Worksheet. Consequently, we find it appropriate to impose a single, unitary sanction of a \$5,000 fine that covers both of Taylor's violations.<sup>30</sup>

## VI. Conclusion

For violating NASD Rule 2110 by providing false information to UBS Financial, and violating NASD Rules 3110 and 2110 by causing the Firm to maintain inaccurate books and records, we fine Taylor \$5,000.<sup>31</sup>

On Behalf of the National Adjudicatory Council,



Marcia E. Asquith, Senior Vice President and  
Corporate Secretary

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<sup>30</sup> We have also considered and reject without discussion all other arguments advanced by the parties.

<sup>31</sup> Pursuant to NASD 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.