

BEFORE THE NATIONAL ADJUDICATORY COUNCIL  
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of

Department of Enforcement,

Complainant,

vs.

Dakota Securities International, Inc.

and

Bruce Martin Zipper

Miami, FL,

Respondents.

Decision

Complaint No. 2016047565702

Dated: March 16, 2022

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

**Appearances**

For the Complainant: Megan P. Davis, Esq., Department of Enforcement, Financial Industry  
Regulatory Authority

For the Respondents: Bruce Martin Zipper, pro se; Ann Zipper, Dakota Securities International,  
Inc.

**Decision**

This matter is before us on remand from the Securities and Exchange Commission for redetermination of sanctions. In a National Adjudicatory Council (“NAC”) decision dated March 18, 2019, we found that Bruce Zipper and Dakota Securities International, Inc. (“Dakota” or the “Firm”) violated FINRA’s By-Laws and rules because Zipper associated with Dakota while he was suspended and statutorily disqualified from associating with a FINRA member

firm.<sup>1</sup> We barred Zipper and expelled Dakota for these violations. We also found that Zipper and Dakota violated FINRA rules, and that Dakota violated the Securities Exchange Act of 1934 (the “Exchange Act”) and rules thereunder, by creating and maintaining inaccurate books and records. We barred Zipper and expelled Dakota for these violations, as well. We further found that Dakota engaged in related supervisory violations and expelled the Firm for that misconduct. Zipper and Dakota appealed our decision to the Commission. The Commission sustained in part and set aside in part our findings of violation and remanded the matter to us to redetermine sanctions for all violations.<sup>2</sup>

I. Factual Background

A. Zipper and Dakota

Zipper entered the securities industry in 1981 and founded Dakota in 2004.<sup>3</sup> Dakota was a broker-dealer that serviced retail customers.<sup>4</sup> Except for the period of his suspension, Zipper was Dakota’s president, chief executive officer (“CEO”), financial and operations principal, and chief compliance officer (“CCO”). He also was Dakota’s majority owner until 2018, when he sold his shares to his wife.

B. Zipper Agrees to a Three-Month Suspension and Statutory Disqualification

In 2016, Zipper and FINRA’s Department of Enforcement (“Enforcement”) executed a Letter of Acceptance, Waiver and Consent (the “AWC”) relating to Zipper’s alleged failure to disclose certain material facts on his Uniform Application for Securities Registration and Transfer (“Form U4”). In the AWC, Zipper consented to findings of willful violations that subjected him to statutory disqualification. Zipper also consented to a three-month suspension from associating with a FINRA member firm in any capacity, including clerical or ministerial functions. Zipper’s suspension ran from May 31, 2016, through August 30, 2016 (the “Suspension Period”). Before the Suspension Period began, in response to Zipper’s inquiries, FINRA staff repeatedly told Zipper that he could not associate with the Firm or intervene in its business in any way during his suspension.

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<sup>1</sup> See *Dep’t of Enf’t v. Dakota Secs. Int’l*, Complaint No. 2016047565702, 2019 FINRA Discip. LEXIS 11 (FINRA NAC Mar. 18, 2019).

<sup>2</sup> See *Bruce Zipper*, Exchange Act Release No. 90737, 2020 SEC LEXIS 5226 (Dec. 21, 2020).

<sup>3</sup> We summarize the relevant facts in this decision. For a more detailed discussion of the facts, see the Commission’s December 21, 2020 decision.

<sup>4</sup> Dakota filed a Form BDW (Uniform Request for Broker-Dealer Withdrawal) while this proceeding was pending.

C. Zipper Associates with Dakota While Suspended and Statutorily Disqualified

Dakota remained in business during the Suspension Period. Zipper's close friend, Robert Lefkowitz, took over for Zipper as Dakota's president, CEO, and CCO, and generally acted for Zipper. Lefkowitz was responsible for responding to incoming telephone calls and emails, opening new accounts, answering client inquiries, handling Dakota's finances, and entering trades for Zipper's customers.

During the Suspension Period, Dakota continued operating from its principal place of business in Zipper's home. Lefkowitz visited Zipper's home periodically to take care of administrative duties. Dakota received mail at Zipper's home, stored files there, and kept a computer with access to the Firm's systems there. The computer was not password protected, and Lefkowitz did not restrict Zipper's access to the computer or the Firm's trading or email systems. While he was suspended, Zipper reviewed reports of Dakota's trading activity, as well as customer account holdings and statements.

Zipper routinely accessed his Dakota email and emailed customers repeatedly during the Suspension Period. Many of Zipper's emails during this period included a signature block identifying him as Dakota's "President." In several emails, he recommended specific securities transactions to customers.

Lefkowitz was responsible for supervising the Firm's electronic correspondence during the Suspension Period and was notified when Zipper received an email. He did not, however, review Zipper's emails and did not learn that Zipper was using his Dakota email address to conduct Firm business while suspended.

Zipper also conducted Dakota's securities business during the Suspension Period by handling financial and operations matters for the Firm. For example, Zipper communicated with a vendor regarding invoices due and made payment, repeatedly communicated with Dakota's clearing firm regarding Dakota's securities business, and negotiated a settlement in a customer's arbitration claim. Zipper used his Dakota email for some of these communications.<sup>5</sup>

D. Zipper Continues Associating with Dakota Despite His Statutory Disqualification

When Zipper's suspension ended on August 30, 2016, he remained statutorily disqualified due to his willful failure to disclose material information on his Form U4. Dakota filed an MC-400 Membership Continuance Application requesting permission for Zipper to continue associating with the Firm despite his disqualification. Under FINRA's rules and policies, Dakota could associate with Zipper until the NAC acted on the Firm's MC-400.

The NAC denied Dakota's MC-400 on October 2, 2017, because we found that Zipper had improperly associated with the Firm during the Suspension Period and that the Firm and Zipper's proposed supervisors were unable to stringently supervise Zipper as a disqualified

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<sup>5</sup> Zipper also sent several business-related emails from a personal email address.

individual.<sup>6</sup> Zipper was no longer permitted to associate with Dakota after that date. We notified Zipper that he must immediately terminate his association with Dakota unless the Commission stayed the effect of our order denying the MC-400. The Commission did not stay the effect of our order.<sup>7</sup> Nevertheless, Zipper continued to associate with Dakota through November 2017.

E. Zipper and Dakota Misidentify the Representative of Record on Hundreds of Transactions on Dakota's Books and Records

Before, during, and after the Suspension Period, Zipper and Lefkowitz often intentionally misidentified the representative of record when entering trades in Dakota's trading system. Each registered person at Dakota had a representative code that was included on the order memorandum and trade confirmation for each transaction entered into the trading system. Three of these codes are relevant here: DS01, which belonged to CM, a person formerly registered at Dakota; DS02, which belonged to Zipper; and DS03, which CM and Zipper shared.

After CM left Dakota, Zipper continued using CM's code and their shared code (DS01 and DS03, respectively) for hundreds of transactions he entered for customers. Lefkowitz also used all three codes for hundreds of orders during the Suspension Period to falsely reflect that Zipper or CM had entered or accepted the order. Zipper testified that they did this because they "didn't want to double pay" to register in a state in which a Dakota registered representative already was registered. As a result, Dakota's books and records were inaccurate with respect to hundreds of orders entered between February and November 2016.

II. Procedural History

On March 18, 2019, we issued a decision in which we found Zipper and Dakota liable for several violations. With respect to Zipper's association with Dakota during the Suspension Period, under cause one, we found that Zipper breached the terms of his AWC by associating with Dakota while suspended, in violation of FINRA Rule 2010. Under cause two, we found that Zipper violated Article III, Section 3(b) of FINRA's By-Laws by associating with Dakota while he was statutorily disqualified,<sup>8</sup> and that he violated NASD Rule 1031 and FINRA Rule

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<sup>6</sup> The Commission affirmed our denial of Dakota's MC-400 in October 2018. *Bruce Zipper*, Exchange Act Release No. 84334, 2018 SEC LEXIS 2709 (Oct. 1, 2018).

<sup>7</sup> See *Bruce Zipper*, Exchange Act Release No. 82158, 2017 SEC LEXIS 3706 (Nov. 17, 2017) (denying Zipper's first request for a stay); *Bruce Zipper*, Exchange Act Release No. 82633, 2018 SEC LEXIS 377 (Feb. 5, 2018) (denying Zipper's second request for a stay).

<sup>8</sup> Article III, Section 3(b) of FINRA's By-Laws provides that "[n]o person shall become associated with a member, [or] continue to be associated with a member . . . if such person is or becomes subject to a disqualification . . . and no member shall be continued in membership, if any person associated with it is ineligible . . . under this subsection."

2010 by engaging in activities requiring registration during the Suspension Period.<sup>9</sup> Under cause three, we found that Dakota violated Article III, Section 3(b) of FINRA's By-Laws by allowing Zipper to associate with the Firm while statutorily disqualified, that Dakota violated FINRA Rules 8311 and 2010 by allowing Zipper to associate with the Firm during the Suspension Period,<sup>10</sup> and that Dakota violated NASD Rule 1031 by allowing Zipper to engage in activities requiring registration during the Suspension Period. For these violations, we barred Zipper and expelled Dakota.

With respect to Dakota's books and records, under cause five, we found that Zipper and Dakota violated FINRA Rules 4511 and 2010 by intentionally misidentifying the representative of record for hundreds of transactions. We further found that Dakota willfully violated Section 17(a) of the Exchange Act and Exchange Act Rule 17a-3. We determined that, because Dakota willfully violated the Exchange Act, the Firm was statutorily disqualified. For these violations, we barred Zipper and expelled Dakota.

With respect to Dakota's supervision, under cause four, we found that Dakota violated FINRA Rules 3110 and 2010 by failing to establish, maintain, and enforce a system of written procedures to supervise its business and associated persons. We found that Dakota's supervisory failures allowed the other misconduct to occur. For this violation, we expelled Dakota.

On December 21, 2020, the Commission issued a decision sustaining in part and setting aside in part our findings of violation and remanding the matter to us for redetermination of sanctions. The Commission affirmed all our findings of violation except that it dismissed our finding under cause one that Zipper and Dakota violated NASD Rule 1031. The Commission further found that we failed to adequately explain the basis for our decision to bar Zipper and expel Dakota for their books and records violations. Last, because we found that Dakota's supervisory violations allowed Zipper's and Dakota's other violations to occur, including their violations of NASD Rule 1031, the Commission directed us to clarify the basis of our decision to expel Dakota for its supervisory violations considering the Commission's finding that Zipper and Dakota did not violate NASD Rule 1031. The Commission remanded the matter and directed us to redetermine sanctions for all violations.

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<sup>9</sup> NASD Rule 1031 provides that "[a]ll persons engaged or to be engaged in the . . . securities business of a member who are to function as representatives shall be registered as such with NASD in the category of registration appropriate to the function to be performed as specified in Rule 1032."

<sup>10</sup> FINRA Rule 8311 provides that, "[i]f a person is subject to a suspension . . . or other disqualification, a member shall not allow such person to be associated with it in any capacity that is inconsistent with the sanction imposed or disqualified status, including a clerical or ministerial capacity."

### III. Sanctions

In redetermining sanctions, we have reconsidered the full record in this case, including the Commission's findings and the parties' briefs.<sup>11</sup> As explained below, notwithstanding the Commission's dismissal of part of our findings of violation relating to Zipper's association with Dakota while suspended and statutorily disqualified, we find that the remaining violations arising from this misconduct warrant barring Zipper and expelling Dakota. For the books and records violations, we assess but do not impose on Zipper a \$100,000 fine and a two-year suspension, and on Dakota, we assess but do not impose a \$100,000 fine and a one-year suspension. For Dakota's supervisory violations, we expel the Firm.

#### A. Zipper's and Dakota's Disciplinary Histories Are Aggravating Factors for Each of Their Respective Violations

We consider Zipper's and Dakota's disciplinary histories an aggravating factor for each of their respective violations. An important objective of the disciplinary process is to deter and prevent future misconduct by imposing progressively escalating sanctions on recidivists beyond those outlined in the Guidelines, up to and including barring associated persons and expelling firms.<sup>12</sup> "Sanctions imposed on recidivists should be more severe because a recidivist, by definition, already has demonstrated a failure to comply with FINRA's rules or the securities laws."<sup>13</sup> Accordingly, we consider a respondent's relevant disciplinary history in determining sanctions, and the Guidelines suggest imposing progressively escalating sanctions on recidivists.<sup>14</sup> "This escalation is consistent with the concept that repeated misconduct calls for increasingly severe sanctions."<sup>15</sup>

Zipper and Dakota each have been sanctioned several times for misconduct. In 1989, NASD censured Zipper and fined him \$1,000 for effecting transactions in non-exempt securities while failing to maintain sufficient net capital. In 1994, NASD censured Zipper, fined him \$5,000, and suspended him five days for failing to comply with an arbitration award. In 1995, the Florida Department of Banking and Finance fined Zipper \$1,000 for failing to timely notify the department about an NASD action. In 2009, the Florida Office of Financial Regulation sanctioned Zipper and Dakota for failing to conduct independent testing of Dakota's anti-money laundering compliance program. Zipper and Dakota were fined \$5,000, jointly and severally. In 2010, Dakota was censured and fined \$5,000 for failing to retain and review email

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<sup>11</sup> In redetermining sanctions, we rely on the FINRA Sanction Guidelines in effect at the time of the Hearing Panel's decision.

<sup>12</sup> *FINRA Sanction Guidelines* (Apr. 2017), at 2 (General Principles Applicable to All Sanction Determinations, No. 2), [https://www.finra.org/sites/default/files/2017\\_April\\_Sanction\\_Guidelines.pdf](https://www.finra.org/sites/default/files/2017_April_Sanction_Guidelines.pdf) [hereinafter "*Guidelines*"].

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

communications. In 2016, FINRA sanctioned Zipper and Dakota for failing to supervise the Firm's email communications and ensure those communications were preserved. Zipper was suspended in a principal capacity for one month and fined \$10,000. Dakota was censured and fined \$10,000. Zipper's and Dakota's recidivism is an aggravating factor for each of their respective violations.

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

The Commission affirmed our findings that Zipper and Dakota violated Article III, Section 3(b) of FINRA's By-Laws and FINRA Rule 2010, and that Dakota violated FINRA Rule 8311, as a result of Zipper's association with Dakota while suspended and statutorily disqualified. The Commission, however, set aside our finding that Zipper and Dakota violated NASD Rule 1031. The Commission directed us to determine the appropriate sanctions for Zipper's improper association with Dakota while suspended and statutorily disqualified in light of its determination to set aside the finding of a violation of NASD Rule 1031. For the reasons discussed below, we find that the remaining violations warrant barring Zipper and expelling Dakota.<sup>16</sup>

The Guidelines do not specifically address the appropriate sanction for a person who associates with a firm while suspended and statutorily disqualified, or for a firm that allows this misconduct to occur. We therefore consider the somewhat analogous guideline for a disqualified person associating with a firm.<sup>17</sup> For associating with a firm while statutorily disqualified, or allowing a statutorily disqualified person to do so, the Guidelines recommend a fine of \$5,000 to \$73,000 each for the individual and the firm and, in egregious cases, a bar for the individual and a suspension of up to two years for the firm.<sup>18</sup> Although Zipper's and Dakota's violations are somewhat similar to a disqualified person associating with a firm, the misconduct here is a more serious violation of FINRA's rules because Zipper also was suspended when he associated with Dakota. *See Dep't of Enf't v. Usher*, Complaint No. C3A980069, 2000 NASD Discip. LEXIS 5, at \*13 (NASD NAC Apr. 18, 2000) (stating that the respondent's violation of an NASD suspension order was "a more serious violation" than a firm's allowing a statutorily disqualified person to associate with it); *Dep't of Enf't v. Perpetual Secs. Inc.*, Complaint No. C9B040059, 2006 NASD Discip. LEXIS 18, at \*72 n.34 (NASD NAC Aug. 16, 2006), *aff'd*, Exchange Act Release No. 56613, 2007 SEC LEXIS 2353 (Oct. 4, 2007) (stating that a firm's "conducting [of a securities] business while suspended, although a similar violation to allowing a statutorily disqualified person to associate with a firm, is a more serious violation of NASD rules").

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<sup>16</sup> We impose a unitary sanction on Zipper for these violations, which were found under causes one and two, because they arise from the same misconduct. *See Dep't of Enf't v. Riemer*, Complaint No. 2013038986001, 2017 FINRA Discip. LEXIS 38, at \*21 n.6 (FINRA NAC Oct. 5, 2017), *aff'd*, Exchange Act Release No. 84513, 2018 SEC LEXIS 3022 (Oct. 31, 2018).

<sup>17</sup> *See* Guidelines, at 1 ("For violations that are not addressed specifically, Adjudicators are encouraged to look to the guidelines for analogous violations.").

<sup>18</sup> *See id.* at 43.

Additionally, we are not strictly bound by the Guidelines, and may impose a more severe sanction if doing so is necessary to reflect the seriousness of the misconduct. *See Peter W. Schellenbach*, 50 S.E.C. 798, 803 (1991) (explaining that there are “instances where the particular case facts and circumstances justify sanctions other than those suggested” in the Guidelines), *aff’d*, 989 F.2d 907 (7th Cir. 1993).<sup>19</sup>

Zipper’s and Dakota’s violations were egregious. “When [FINRA] takes the extraordinary step of suspending a firm or a registered person, it is entitled to require complete and precise compliance with its directive.” *Perpetual Secs., Inc.*, 2006 NASD Discip. LEXIS 18, at \*76. Neither Zipper nor Dakota came close to complete and precise compliance. Zipper’s association with Dakota during the Suspension Period was not an isolated incident—it was persistent and continuous throughout the Suspension Period.<sup>20</sup> Moreover, Zipper’s activities during the Suspension Period were not limited to technical or administrative matters. Rather, Zipper repeatedly discussed particular securities with his customers, including recommending securities transactions to them, and otherwise conducted the Firm’s securities business, even though FINRA staff had told him before the Suspension Period began that he could not do so while he was suspended.<sup>21</sup> Because Zipper knew he could not associate with Dakota during the Suspension Period, we find that he intentionally violated the terms of the AWC and FINRA’s membership rules.<sup>22</sup> Dakota allowed this misconduct to occur.

There are several additional aggravating factors. We find highly aggravating Zipper’s post-suspension misconduct. Zipper remained disqualified after his suspension ended on August 31, 2016. Under FINRA’s rules and policies, once the suspension ended, Zipper was permitted to associate with Dakota until FINRA made its decision on Dakota’s MC-400. FINRA denied Dakota’s MC-400 on October 2, 2017, and Zipper was prohibited from associating with Dakota after that date. In its decision denying Dakota’s MC-400, the NAC wrote, in part, that it denied the MC-400 because it found that “Zipper engaged in serious misconduct . . . by associating with [Dakota] while suspended[.]” Zipper and Dakota admit that Zipper continued to associate with the firm, and the firm allowed him to do so, after FINRA denied the MC-400. In other words,

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<sup>19</sup> *See id.* at 2 (General Principles Applicable to All Sanctions Determinations, No. 1) (stating that “certain cases may necessitate the imposition of sanctions in excess of the upper sanction guideline”).

<sup>20</sup> *See id.* at 7 (Principal Considerations in Determining Sanctions Nos. 8 and 9) (directing adjudicators to consider whether the respondent engaged in numerous acts and/or a pattern of misconduct and whether the respondent engaged in the misconduct over an extended period of time).

<sup>21</sup> *See id.* at 8 (Principal Considerations in Determining Sanctions, No. 14) (directing adjudicators to consider whether the respondent engaged in the misconduct at issue notwithstanding prior warnings from FINRA that the conduct violated FINRA rules).

<sup>22</sup> *See also id.* (Principal Considerations in Determining Sanctions, No. 13) (directing adjudicators to consider whether the respondent’s misconduct was the result of an intentional act, recklessness, or negligence).



after Zipper and Dakota learned that FINRA had denied the MC-400 precisely because Zipper had violated the terms of his suspension by associating with Dakota while suspended and statutorily disqualified, Zipper continued to associate with Dakota while he was statutorily disqualified.

We also find it aggravating that both Zipper and Dakota refused to acknowledge their wrongdoing or accept responsibility for it; instead, Zipper and Dakota tried to shift blame for their misconduct to FINRA staff by claiming that the staff told Zipper he could associate with Dakota during the Suspension Period under some circumstances. *See Dep't of Enf't v. Eplboim*, Complaint No. 2011025674101, 2014 FINRA Discip. LEXIS 8, at \*45 (FINRA NAC May 14, 2014) (finding that respondent's continued denial of responsibility and attempts to blame others, including FINRA staff, was "troubling and serves to aggravate his misconduct"). As the Commission found, there is no credible evidence in the record to support these claims. Indeed, the record shows that FINRA staff made clear to Zipper that he could not involve himself in Dakota's securities business in any way while he was suspended.

There are no mitigating factors. While Zipper claims that FINRA gave him permission to involve himself in Dakota's securities business if an issue arose that only he could handle, as explained above, there is no evidence of this in the record.

Under these circumstances, we find it necessary for the protection of investors to bar Zipper and expel Dakota for their violations. We agree with the Commission that Zipper's and Dakota's violations constitute very serious misconduct that present a risk to investors. *See Zipper*, 2020 SEC LEXIS 5226, at \*29. Zipper's violation of the AWC and FINRA's membership rules demonstrates his disregard for FINRA's regulatory authority. *See David C. Ho*, Exchange Act Release No. 54481, 2006 SEC LEXIS 2100, at \*22 (Sept. 22, 2006), *aff'd* 2007 U.S. App. LEXIS 9882 (7th Cir. 2006). Given that Zipper acted intentionally, we find it highly likely that, unless we bar Zipper, he will engage in this misconduct in the future, once again putting investors at risk. *See Aaron v. SEC*, 446 U.S. 680, 701 (1980) (stating that "an important factor" in assessing the likelihood that future violations will occur "is the degree of intentional wrongdoing evident in a defendant's past conduct."). Indeed, suspending Zipper for these violations would invite a calculated disregard for our sanction because, in light of Zipper's behavior during his prior suspension and statutory disqualification, it is very likely that he would fail to comply with the terms of any suspension we imposed. *See Perpetual Secs.*, 2007 SEC LEXIS 2353, at \*44-45 ("By operating after receiving notice of the suspension of its membership, the Firm demonstrated that its disregard for NASD's regulatory authority is sufficiently great that only a bar will deter further misconduct and provide the requisite investor protection."). Because Zipper and Dakota are, essentially, one and the same, barring Zipper without also expelling Dakota would be wholly ineffective, as well. Although Zipper no longer owns Dakota, the Firm remains in the hands of Zipper's family, as Zipper's wife now owns 90 percent of Dakota's stock. There is a substantial likelihood that, if we bar Zipper but allow Dakota to continue operating its securities business, Zipper will once again put investors at risk by involving himself in the Firm's day-to-day operations, including recommending securities to customers and managing the Firm's affairs. *See id.* at \*44 ("Applicants' misconduct in operating a securities business while the Firm's membership was suspended demonstrates a risk too great to the self-regulatory system—and the markets and investors it protects—to allow Applicants to remain in the securities industry."). Given the likelihood that Zipper and Dakota will engage in

similar misconduct in the future, thereby putting investors at risk, we find it necessary for the protection of investors to bar Zipper and expel Dakota. *See John M.E. Saad*, Exchange Act Release No. 86751, 2019 SEC LEXIS 2216, at \*46 (Aug. 23, 2019) (stating that a bar “seek[s] not to punish past transgressions, but to prevent such misconduct from occurring in the future.”). We therefore bar Zipper and expel Dakota for these violations.

C. Zipper Is Fined \$100,000 and Suspended for Two Years and Dakota is Fined \$100,000 and Suspended for One Year for the Books and Records Violations

The Commission affirmed our findings that Zipper and Dakota violated FINRA Rules 4511 and 2010, and that Dakota willfully violated Exchange Act Section 17(a) and Exchange Act Rule 17a-3, by misidentifying the representative of record for hundreds of transactions in the firm’s books and records. The Commission, however, directed us to explain the basis for our determination to bar Zipper and expel Dakota for these violations. Upon further consideration, we find that lesser sanctions are appropriate. For the reasons discussed below, we assess on each Zipper and Dakota a \$100,000 fine. We also assess a two-year suspension on Zipper and a one-year suspension on Dakota.

For these violations, the Guidelines recommend a fine of \$1,000 to \$15,000, and when aggravating factors predominate, a fine of \$10,000 to \$146,000 for the responsible individual and the firm.<sup>23</sup> For the responsible individual, the Guidelines recommend a suspension for a period of 10 business days to three months, and when aggravating factors predominate, a suspension of up to two years or a bar.<sup>24</sup> For the firm, when aggravating factors predominate, the Guidelines recommend a suspension for a period of 10 business days to two years or expulsion.<sup>25</sup>

Aggravating factors predominate here. We find it highly aggravating that Zipper and Dakota, through Zipper and Lefkowitz, intentionally misidentified the representative of record on hundreds of trades and did so with the specific purpose of evading state registration requirements.<sup>26</sup> This was not a technical error or mistake. As the Commission held, “[t]he record amply supports the NAC’s finding that Zipper and Dakota acted with intent to mislead state securities regulators ‘in order to avoid New Jersey’s registration requirements.’” Specifically, the Commission held that Zipper used CM’s representative codes “to save costs,” as Zipper “didn’t want to double pay” to register in New Jersey.

In making this finding, the Commission rejected Zipper’s and Dakota’s argument that Zipper could not have been trying to avoid registering in New Jersey because, as Zipper claimed, he and Dakota were exempt from registration under the state’s “de minimis” exemption.<sup>27</sup> The

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<sup>23</sup> *Guidelines*, at 29.

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

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

<sup>26</sup> *See id.* at 29 (Principal Considerations in Determining Sanctions, No. 3).

<sup>27</sup> *See* N.J. Stat. Ann. § 49:3-56(b) (2021).

Commission found that, “In light of Zipper’s testimony that the reason he and former registered representatives used each other’s codes was to save money on registration fees, we agree with the NAC that the record establishes that Zipper and Dakota intentionally falsified their records to mislead regulators.” In response to Zipper’s and Dakota’s claims about the exemption, the Commission noted that “while Zipper told the Hearing Panel he would look for a copy of a waiver he said he received from New Jersey regulators allowing him to effect trades under this exemption, neither he nor Dakota produced any such records.”

On remand, Zipper and Dakota continue to argue that they were exempt from registering in New Jersey, and therefore could not have been trying to avoid registering there. Attached to their brief, Zipper and Dakota submitted a copy of an email dated March 24, 2021, that Zipper purportedly received from an investigator with the New Jersey Bureau of Securities.<sup>28</sup> In the email, the investigator writes that Dakota’s “broker-dealer registration was withdrawn in the State of New Jersey on December 21, 2015[.]” The investigator further writes that “as long as the firm has 5 or less NJ accounts (note not clients) within any 12 consecutive month period OR the total number of NJ transactions don’t [sic] 15 within any 12 consecutive month period, the de minimis exception would apply.”

Zipper and Dakota assert that the email “clears both Zipper and Dakota from doing ANYTHING wrong.” Zipper and Dakota contend that the email proves Zipper knew that Dakota was not registered in New Jersey in 2016 and that Zipper knew neither the Firm nor he was required to register there, and that Zipper and Lefkowitz therefore could not have been trying to avoid the state’s registration requirements when they made the false entries in the Firm’s books and records. They argue that the email proves that, at the time the books and records were falsified, Zipper and Dakota were relying on the exemption from registration provided under state law. Zipper and Dakota maintain that the email “makes [Enforcement’s] allegations that Zipper and Dakota Securities falsified their books a complete lie.”

We disagree with Zipper and Dakota about the significance of the email. Neither we nor the Commission found Zipper and Dakota liable for violating New Jersey’s registration statute. Rather, Zipper and Dakota were found liable for intentionally falsifying Dakota’s books and

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<sup>28</sup> Enforcement moved to strike the email because Zipper and Dakota failed to comply with the requirements of FINRA Rule 9346(b), which governs the admission of additional evidence in NAC proceedings. Under FINRA Rule 9346(b), within 30 days after the Office of Hearing Officers transmits to the NAC the record in a disciplinary proceeding, a party may seek leave to introduce additional evidence. The party seeking to introduce the additional evidence must demonstrate that (1) there was good cause for failing to introduce the evidence during the disciplinary hearing and (2) the evidence is material to the proceeding. FINRA Rule 9346(b). Enforcement argues that the email should be stricken because (1) Zipper and Dakota did not submit the evidence until after the 30-day deadline for doing so had passed, (2) Zipper and Dakota failed to demonstrate good cause for not submitting the evidence during the hearing, and (3) the email is not material evidence. Enforcement’s objections are well grounded. Nevertheless, where necessary to give full consideration to Zipper’s and Dakota’s arguments, we have considered the substance of the email and find that it is irrelevant to liability and sanctions in this matter. We therefore deny Enforcement’s motion to strike as moot.

records by using CM's representative codes for trades entered by Zipper and Lefkowitz. Whether Zipper and Dakota were eligible for the "de minimis" exception from registration in New Jersey is not material to the finding of liability regarding the falsification of Dakota's books and records. Additionally, neither Zipper nor Dakota has identified any evidence that either was, in fact, exempt from registering in New Jersey. The email does not establish the exemption. In the email, the investigator merely states that Dakota's registration in New Jersey terminated in 2015 and describes the requirements for the exemption under New Jersey law. The investigator does not state that either Zipper or Dakota qualified for the exemption in 2016.

Even if Zipper or Dakota were exempt from registering in New Jersey, it would not be mitigating for sanctions purposes because the record shows that, at the time of the violations, Zipper and Lefkowitz were, in fact, attempting to avoid registering in the state by falsifying Dakota's books and records. Had Zipper believed that he and Dakota were exempt from registering in New Jersey, there would have been no need for him or Lefkowitz to use CM's representative codes when entering trades for customers in that state. And Zipper's own testimony makes clear that (a) Zipper erroneously believed that Dakota and CM were registered in New Jersey throughout 2016, when Zipper and Lefkowitz were using CM's representative codes; (b) Zipper and Lefkowitz thought they could avoid registering in the state by using CM's codes; and (c) Zipper believed that there was nothing wrong with doing so.<sup>29</sup> Indeed, at the hearing, when Enforcement's attorney told Zipper that neither Dakota nor CM actually were registered in New Jersey at any time in 2016, Zipper disputed that fact. Only after Enforcement's attorney confronted Zipper with undisputable evidence that, in fact, neither Dakota nor CM was registered in New Jersey at any time in 2016 did Zipper claim that he and Dakota were relying on the exemption from registration provided under New Jersey law.<sup>30</sup> Zipper's testimony establishes that he and Lefkowitz intentionally falsified Dakota's books and records specifically to avoid registering in New Jersey, and nothing in the email controverts this finding.

We also find it highly aggravating that, at the time of the violations, Zipper was responsible for ensuring Dakota's compliance with federal securities laws and FINRA rules. *See Dep't of Enf't v. Cooper*, Complaint No. C04050014, 2007 NASD Discip. LEXIS 15, at \*16 (NASD NAC May 7, 2007) (finding that respondent's status as a principal was aggravating). When Zipper falsified Dakota's books and records, he was serving as Dakota's president, CEO,

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<sup>29</sup> For example, during the hearing, Zipper stated that he "felt if we paid all the fees legitimately and were registered there, the firm in the state and the broker [CM] in New Jersey, could I speak to that client and do an order? We felt we could." And when Zipper was asked whether he used CM's representative codes "to save money on registration fees," Zipper responded, "Totally."

<sup>30</sup> Zipper and Dakota argue that Enforcement concealed from the NAC and the Commission the December 2015 termination of Dakota's registration in New Jersey. They contend that Enforcement did so because this information "show[s] that Zipper and Dakota were telling the truth and that would make [Enforcement] out to be liars." The record does not support these assertions. To the contrary, the record shows that, during the hearing, Enforcement introduced evidence of the December 2015 termination of Dakota's registration in New Jersey.

and CCO. When Lefkowitz assumed these roles during the Suspension Period, he continued Zipper's practice of misidentifying the representative of record on trades he entered. As a result of Zipper's and Lefkowitz's misconduct, Dakota's books and records were inaccurate with respect to hundreds of trades entered between February and November 2016.

Also aggravating is Zipper's and Dakota's refusal to recognize the seriousness of their misconduct or accept responsibility for it. *See Michael Earle McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at \*31 (Mar. 15, 2016) ("We . . . are troubled by [applicant's] continued attempts to minimize the importance of his disclosure obligations and the seriousness of his violations."), *aff'd*, 672 F. App'x 865 (10<sup>th</sup> Cir. 2016).<sup>31</sup> At the hearing, for example, Zipper stated that his falsification of Dakota's books and records was "[n]o different than a traffic citation. . . . I changed lanes without signaling. You want to give me a ticket, give me a ticket. No one got hurt. We did it for the reason I said and shoot me [sic]." Dakota made similar arguments minimizing the seriousness of these violations.

There are no mitigating factors. Zipper and Dakota contend that no customer complained about or lost money because of their falsification of Dakota's books and records, but the absence of complaints or monetary losses is not mitigating. *See Kevin M. Glodek*, Exchange Act Release No. 60937, 2009 SEC LEXIS 3936, at \*27 (Nov. 4, 2009) ("The fact that many of the customers did not lose money and did not complain about the violations does not further mitigate [respondent's] misconduct."), *aff'd*, 416 F. App'x 95 (2d Cir. 2011). Zipper and Dakota also claim that their customers consented to the falsification of Dakota's books and records. That is not mitigating, either, because a customer cannot grant permission to violate FINRA rules or federal securities laws.

Given the predominance of these aggravating factors, we find that sanctions at the higher end of the ranges specified in the Guidelines are necessary. Recordkeeping requirements are integral to investor protection because a firm's books and records are the primary means of monitoring its compliance with applicable securities laws.<sup>32</sup> In this case, Zipper and Dakota intentionally falsified the Firm's books and records with the specific intent of concealing their non-compliance with New Jersey's securities laws. This type of deceptive conduct presents a grave risk to investors because it hinders regulators' ability to detect other violations. A significant sanction is needed to deter respondents' and others from engaging in similar misconduct in the future.<sup>33</sup> For Zipper, who initiated the practice of misidentifying the representative of record on the Firm's books and records, we find that a fine of \$100,000 and

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<sup>31</sup> *See also Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 2).

<sup>32</sup> *Elec. Storage of Broker-Dealer Records*, Exchange Act Rel. No. 47806, 68 Fed. Reg. 25281, 25282 (May 12, 2003).

<sup>33</sup> *See Guidelines*, at 2 (General Principles Applicable to All Sanctions Determinations, No. 1) (stating that sanctions should be "meaningful and significant enough to prevent and discourage future misconduct by a respondent and deter others from engaging in similar misconduct").

two-year suspension is appropriately remedial. For Dakota, we find that a fine of \$100,000 and a one-year suspension is appropriately remedial. In light of the bar and expulsions imposed for Zipper's and Dakota's other violations, we assess but do not impose these fines and suspensions.

D. Dakota Is Expelled for Its Supervisory Violations

The Commission affirmed our finding that Dakota violated FINRA Rules 3110 and 2010 by failing to maintain and enforce an adequate supervisory system. In imposing sanctions on Dakota for these violations, we found that these violations enabled Zipper's and Dakota's other violations, including their violations of NASD Rule 1031, and considered that an aggravating factor. The Commission reversed our finding of liability under NASD Rule 1031. The Commission therefore directed us to determine the appropriate sanction for the supervisory misconduct without considering any violation of NASD Rule 1031 or separate misconduct related to the registration rules.

For systemic supervisory violations, the Guidelines recommend a fine of \$10,000 to \$292,000 and, when aggravating factors predominate, a suspension of up to two years or expulsion.<sup>34</sup> Dakota's supervisory failures here were systemic because they were significant, occurred over an extended period of time, and involved the Firm's failure to implement or use supervisory procedures that existed.<sup>35</sup> Zipper was able to associate with Dakota and communicate with the Firm's customers throughout the entire Suspension Period, even though Dakota's written supervisory procedures ("WSPs") explicitly prohibited such conduct. The WSP's stated that, during a suspension, an employee may not have "direct or indirect contact with customers" or "give investment advice or counsel." Additionally, shortly before Zipper's suspension began, Zipper personally updated the WSPs to read: "Starting on June 1, 2016 [sic] and ending on August 31 2016 Bruce Zipper . . . will be on a 90 day suspension and will not be involved in the company's business for that time period."

Aggravating factors predominate here. Dakota's supervisory violations were central to its other violations.<sup>36</sup> Dakota's supervisory failures enabled Zipper to continue associating with the Firm while he was suspended and statutorily disqualified and caused the Firm to miss numerous red flags that would have alerted it to Zipper's misconduct.<sup>37</sup> Dakota failed to supervise and adequately review email communications during the Suspension Period, even though FINRA previously had sanctioned the Firm for similar misconduct. And after Dakota received our denial of its MC-400, instructing the Firm that it could no longer allow Zipper to associate with it, the Firm continued to allow Zipper's association.<sup>38</sup> Dakota's supervisory violations also enabled Zipper and Lefkowitz to falsify the Firm's books and records for almost

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<sup>34</sup> *Guidelines*, at 105.

<sup>35</sup> *See id.*

<sup>36</sup> *Id.* (Principal Considerations No. 1).

<sup>37</sup> *Id.* (Principal Considerations No. 2).

<sup>38</sup> *Id.*

an entire year. As a result of Dakota's supervisory failures, Zipper and Lefkowitz were able to misidentify the representative of record on hundreds of transactions entered between February and November 2016.<sup>39</sup> Dakota's failure to adapt and implement procedures to ensure the accuracy of its books and records reflects a failure to allocate resources to prevent or detect supervisory failures.<sup>40</sup>

We find it necessary for the protection of investors to expel Dakota for its supervisory failures. Under Zipper's leadership, Dakota has exhibited a troubling pattern of non-compliance with its supervisory obligations. Although Zipper no longer owns a majority interest in the Firm, his wife holds 90 percent of Dakota's stock. We find that there is a substantial likelihood that, unless Dakota is expelled, Zipper will involve himself in the Firm's management in the future, including its supervisory practices, and that Dakota's culture of non-compliance will continue, putting investors and the market at risk. We therefore expel Dakota for its supervisory violations.

#### IV. Conclusion

For their misconduct relating to Zipper's association with the Firm during the Suspension Period, Zipper is barred for violating Article III, Section 3(b) of FINRA's By-Laws and FINRA Rule 2010 (causes one and two), and Dakota is expelled for violating Article III, Section 3(b) of FINRA's By-Laws, FINRA Rule 8311, and FINRA Rule 2010 (cause three). For their misconduct relating to Dakota's books and records (cause five), we assess on Zipper a fine of \$100,000 and a suspension in all capacities for two years for violating FINRA Rules 4511 and 2010, and we assess on Dakota a fine of \$100,000 and a one-year suspension for violating FINRA Rules 4511 and 2010 and Exchange Act Section 17(a) and Exchange Act Rule 17a-3. Additionally, Dakota is subject to statutory disqualification for its willful violation of Exchange Act Section 17(a) and Exchange Act Rule 17a-3. In light of the bar and expulsions imposed for Zipper's and Dakota's other violations, we do not impose the fines and suspensions for the books and records violations. For its supervisory misconduct (cause four), Dakota is expelled for violating FINRA Rules 3110 and 2010. Zipper's bar and Dakota's expulsions are effective immediately upon service of this decision.<sup>41</sup> Zipper and Dakota are ordered to pay, jointly and severally, hearing costs in the amount of \$6,077.55.

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<sup>39</sup> *Id.* (Principal Considerations No. 5).

<sup>40</sup> *Id.* (Principal Considerations No. 3).

<sup>41</sup> While this matter was on remand from the Commission, Zipper filed several motions with the NAC in which he asked us to issue our decision immediately. We deny those motions as moot.

On Behalf of the National Adjudicatory Council,

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Jennifer Piorko Mitchell,  
Vice President and Deputy Corporate Secretary