BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Jack Brian Weinstock Torrance, CA, Respondent.	DECISION Complaint No. 2010022601501 Dated: July 21, 2016

Respondent engaged in outside business activities without providing written notice to his firm. Held, findings and sanctions affirmed.

Appearances

For the Complainant: Andrew T. Beirne, Esq., Michael Wajda, Esq., Lara Thyagarajan, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Jack Brian Weinstock, Pro Se

Decision

Pursuant to FINRA Rule 9311, Jack Brian Weinstock appeals the Hearing Panel's decision in this matter. The Hearing Panel found that Weinstock engaged in outside business activities without the requisite written notice to his firm. The Hearing Panel suspended Weinstock for six months, fined him $5,000, and ordered him to disgorge the $15,500 that he had obtained through his misconduct. After a complete review of the record, we affirm the Hearing Panel's findings of violation and the sanctions that it imposed.

I. Background

Weinstock entered the securities industry in 2000 as an investment company products and variable contracts limited representative with Northwestern Mutual Investment Services, LLC ("NMIS"). Weinstock was also an insurance agent with Northwestern Mutual Insurance Company ("Northwestern Mutual") beginning in January 2000 until Northwestern Mutual

terminated his contract in September 2010. On September 30, 2010, NMIS filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") also terminating Weinstock.[1] Since that time, Weinstock has not been registered with any FINRA member firm.

II. Facts

A. Weinstock's Involvement in an Insurance Premium Financing Strategy

Weinstock's core business was the sale of insurance products. His contract with Northwestern Mutual allowed him to sell life and disability insurance offered by Northwestern Mutual, and under certain circumstances, insurance products offered by other insurance companies. At the center of this case is Weinstock's focus on using alternative financing methods in order to sell high-premium insurance policies. Because of the high premiums, the insured often financed the premium payments through bank loans. If bank loans were used to finance the premiums, Northwestern Mutual required disclosure of the loans with the policy applications.

In or around February 2008, Weinstock met with Steve Corzan ("Corzan"), a friend and insurance agent with Massachusetts Mutual Life, to discuss an alternative means of financing purchases of high-premium insurance policies that would not require disclosure like financing through a bank loan.[2] Weinstock and Corzan discussed a private placement of notes from Diversified Lending Group ("DLG") that Corzan was promoting as a non-traditional method of premium financing. An investor could purchase a DLG note, and DLG would submit the investor's interest earned on the note directly to the insurance company to pay the premiums. Corzan told Weinstock that the DLG notes paid a guaranteed rate of return of nine or 12 percent, depending on the type of note purchased.

Weinstock had an extensive list of contacts, which Corzan wanted to access in order to promote the premium financing strategy using the DLG notes. Weinstock described some of these contacts as "centers of influence," who were attorneys, certified public accountants, real estate agents, and investment advisers, among others, "whose . . . expertise brings them into contact with [others] who might have insurance needs." Weinstock explained that he saw a "huge opportunity" to begin selling larger insurance policies using premium financing to the wealthy clients of his centers of influence. Weinstock considered these wealthy clients the target audience for the use of premium financing and referred to them as "white elephants."

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[1] FINRA began investigating this matter upon receiving Weinstock's Form U5 filing by NMIS that disclosed that the firm discharged him "while under internal review investigating his apparent involvement in private securities transactions, his insurance application-taking practices, his involvement with OBAs [outside business activities], and his work with outside representatives."

[2] Corzan was not associated with NMIS or Northwestern Mutual.

Weinstock agreed to introduce his business contacts to Corzan, concentrating on his centers of influence. Thereafter, Corzan sought Weinstock's feedback when developing promotional materials for the premium financing strategy using the DLG notes. Between March and May 2008, Weinstock attempted to reach 128 of his business contacts in an effort to gauge their interest in the alternative premium financing that Corzan was offering through DLG. To those who expressed interest, Weinstock described premium financing in general and summarized Corzan's strategy of using the DLG notes. Weinstock sought Corzan's input on what to tell his contacts about the DLG notes and consulted with Corzan on how to respond to his contacts' questions. Weinstock also offered to schedule an introductory meeting with Corzan, if the contact was interested in learning more. Thirty of Weinstock's contacts expressed interest in meeting with Corzan. Of these 30, Weinstock introduced 22 to Corzan. Weinstock arranged and attended the meetings with Corzan and the contact. Twenty of these meetings occurred in person, one by telephone conference call, and another by email.

Weinstock was spending less time on his core business of selling insurance because of his activities with Corzan, and he wanted Corzan to compensate him for his efforts. Weinstock had several conversations with Corzan discussing compensation. Weinstock viewed this compensation as an advance on future insurance commissions that he hoped to receive if the introductions to Corzan resulted in Weinstock selling high-premium insurance policies. Weinstock stated that Corzan needed to "make it worth my while. Advance me [the] commission that you're promising me to get, and I'm going to make introductions and see if I can sell insurance and you're going to get a piece of the insurance action." Weinstock stated that he had no intention of repaying this "advance" to Corzan if Weinstock sold no policies after these introductions. Weinstock explained, "[I]f your word isn't good and we don't sell this insurance, I don't want to pay you back because you wasted my time. That's not acceptable to me." Because Weinstock considered it would take approximately six months to sell an insurance policy after a contact was introduced to Corzan, Weinstock proposed that Corzan pay him in the interim an amount based on the commissions he earned during a six-month period in 2008. Corzan rejected this proposal, but ultimately agreed to pay Weinstock an initial payment of $15,264 at the end of three months and to make a second payment three months later. This amount represented Weinstock's average compensation over certain quarters during a two-year period. There was no contract or other document memorializing the payment arrangement. Corzan paid Weinstock $15,500 on June 2, 2008.[3] Weinstock reported the payment as income described as "non-employee compensation" on his 2008 tax return after receiving a Form 1099 from Corzan Capital Management, LLC.

In the end, Weinstock's introductions of his business contacts to Corzan bore no fruit for Weinstock. Weinstock sold no insurance policies as a result of any of the meetings he arranged and attended with Corzan. And none of Weinstock's 22 centers of influence, or their "white elephant" clients, purchased DLG notes from Corzan. Weinstock also did not receive any further payment from Corzan. In approximately June 2008, DLG suspended business, and it was later shuttered. Weinstock ceased scheduling introductions for Corzan after he learned that DLG was a Ponzi scheme.

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[3] It is unclear why Corzan deviated from the agreed upon amount.

B. NMIS's Outside Business Activities Procedures

NMIS's procedures required its registered representatives to obtain prior written approval from the firm before participating in any business activity outside the scope of the representatives' activities at NMIS or contract with Northwestern Mutual. NMIS's outside business activity policy expressly did not permit a representative to accept a referral, consulting, advisory, or finder's fee without obtaining prior written approval. The representative had to disclose the activity and obtain prior permission in order for NMIS to determine whether a payment was a referral or other prohibited fee. NMIS's managing partner in charge of the Woodland Hills, California, office, Mitchell Beer, explained that the firm's procedures permitted representatives to sell NMIS and Northwestern Mutual products exclusively. Any other business activity was considered an outside business activity that required written approval from the firm.

With prior written approval, an NMIS representative was permitted to engage in insurance sales of non-Northwestern Mutual products, if doing so was in the interest of a customer. Beer explained that ordinarily, if approved, the representative would become licensed with another insurance company and would receive compensation directly through that company. Under those circumstances, NMIS allowed a representative to split commissions with representatives of other insurance companies, as long as such payments were made through the commission structure of the other insurance company. An NMIS representative was prohibited from accepting fees from anyone other than an insurance carrier. Weinstock's supervisor at NMIS, Collette Chrisman, testified that NMIS's outside business activity policy had remained unchanged for many years. Weinstock nonetheless did not provide prior written notice to NMIS of his activities with Corzan.

C. NMIS Learns of Weinstock's Outside Business Activities with Corzan

In April 2010, nearly two years after Weinstock received the $15,500 payment from Corzan, NMIS first learned that Weinstock had been introducing his business contacts to Corzan, and that Corzan was marketing the DLG notes to those contacts during meetings with Weinstock. In addition to his 22 centers of influence, Weinstock introduced three other people to Corzan, at least one of whom he knew through a business networking group. Two of these people invested in DLG through Corzan. One of these investors, CN, filed an arbitration claim against NMIS complaining about Weinstock and his connection to CN's investment in DLG.[4] While CN was not an NMIS or Northwestern Mutual customer, Weinstock described him as "a prospect."

NMIS began an internal investigation of Weinstock after receiving CN's arbitration claim. NMIS's Compliance and Best Practices Department sent an extensive questionnaire to Beer and Chrisman to use when interviewing Weinstock as part of the firm's investigation. Beer and Chrisman took contemporaneous notes of Weinstock's responses during the interview.

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[4] According to Northwestern Mutual's investigative notes, the claim alleged that Weinstock and Corzan defrauded CN by selling an unregistered security (the DLG notes) to CN.

Chrisman summarized their notes and provided the summary for Weinstock's review. After Weinstock revised the summary, he initialed each page, signed the document, and returned it to Chrisman. Chrisman recalled that Weinstock "said I did a really good job of capturing everything in the meeting."

In the interview with Beer and Chrisman, Weinstock explained that he merely introduced business contacts to Corzan and that he attended the meetings with Corzan and the contacts in hopes of selling high-premium insurance policies. Weinstock told Beer and Chrisman that he "did not receive any compensation in any investments that may have been sold" and "would only have earned commission off of the life insurance i[f] a sale was made."

After interviewing Weinstock about his activities with Corzan, NMIS terminated him. Weinstock subsequently filed a lawsuit against Beer. It was only through filings related to Weinstock's lawsuit against Beer that NMIS learned that Corzan had compensated Weinstock $15,500. Weinstock explained in his testimony before the Hearing Panel that he did not disclose the payment from Corzan to NMIS because he was not asked about it. He elaborated that he viewed the payment as a form of commission, and he had never been required to disclose a commission.

III. Procedural History

Enforcement filed its initial complaint against Weinstock on September 28, 2012.[5] Enforcement amended its complaint on November 29, 2012. Enforcement alleged that

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[5] Weinstock challenges FINRA's jurisdiction over him. He argues that because Northwestern Mutual terminated his contract on September 1, 2010, his termination predated FINRA's complaint by more than two years. Weinstock misunderstands the parameters of FINRA's jurisdiction. Article V, Section 4(a)(i) of FINRA's By-Laws provides that FINRA retains jurisdiction to file a complaint against a person whose association with a member has been terminated for "two years after the effective date of termination of registration." The termination upon which FINRA's continuing jurisdiction is predicated therefore "is not termination of employment or association, but termination of registration." *Donald M. Bickerstaff*, 52 S.E.C. 232, 234 (1995). "A person who becomes registered remains registered until FINRA (not the registered person) ends the registration, based, among other things, on the Forms U5 it receives." *David Kristian Evansen*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080, at *22 (July 27, 2015); *see also Dep't of Enforcement v. Imbruce*, Complaint No. 2008012137601, 2012 FINRA Discip. LEXIS 41, at *31 (FINRA NAC Mar. 7, 2012) (explaining that termination of registration is effective upon the date that FINRA receives a Form U5 from the individual's member firm). "Moreover, the registered person receives a copy of the form filed with FINRA, with express reminders that he or she will 'continue to be subject to the jurisdiction of regulators for at least two years after [his or her] registration is terminated' and that FINRA 'determines the effective date of termination of registration.'" *Evansen*, 2015 SEC LEXIS 3080, at *22-23 (quoting the Form U5).

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Weinstock engaged in outside business activities without providing written notice to NMIS, in violation of NASD Rules 3030 and 2110.[6] After a three-day hearing, which included Weinstock's extensive testimony and the testimony of Weinstock's supervisors from NMIS and Northwestern Mutual, the Hearing Panel found Weinstock liable for the violations as alleged in the complaint. The Hearing Panel suspended Weinstock for 6 months, fined him $5,000, and ordered him to disgorge the $15,500 that he had earned through his misconduct. This appeal followed.

IV. Discussion

We affirm the Hearing Panel's findings that Weinstock violated FINRA rules when he engaged in outside business activities without the necessary written notice to NMIS. We also determine that the procedural arguments raised by Weinstock are without merit.

A. Weinstock Engaged in Outside Business Activities Without Written Notice

NASD Rule 3030 prohibits associated persons from engaging in any business activity outside the scope of their relationship with their employer firm, unless they have provided prompt written notice to the member. The member firm determines the form of the requisite written notice. Rule 3030 extends to all outside business activities, not just securities-related activities. *See Dep't of Enforcement v. Schneider*, Complaint No. C10030088, 2005 NASD Discip. LEXIS 6, at *12-13 (NASD NAC Dec. 7, 2005); *see also NASD Notice to Members 01-79*, 2001 NASD LEXIS 85 (Dec. 2001) (emphasizing that, under NASD Rule 3030, associated persons are required "to report any kind of business activity engaged in away from their firms"). To comply with the prompt notification requirement, the associated person must "disclose outside business activities at the time when steps are taken to commence a business activity unrelated to his relationship with his firm." *Schneider*, 2005 NASD Discip. LEXIS 6, at *13-14; *see also Micah C. Douglas*, 52 S.E.C. 1055, 1058-59 (1996); *Dep't of Enforcement v. Abbondante*, Complaint No. C10020090, 2005 NASD Discip. LEXIS 43, at *31 (NASD NAC Apr. 5, 2005) (rejecting argument that representative was not required to disclose outside

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In this case, NMIS filed a Form U5 indicating that the firm had terminated Weinstock's association with the firm in all capacities on September 30, 2010. Enforcement's complaint, which was filed within two years of this date, was therefore filed timely. Weinstock remains subject to FINRA's jurisdiction for purposes of this proceeding because the complaint was filed within two years after the termination of his registration with a member firm, and it charges him with misconduct that commenced prior to the termination of his registration. *See* FINRA By-Laws, Article V, Section 4.

[6] The conduct rules that apply in this case are those that existed at the time of the conduct at issue.

business activity when outside business was formed to conduct future business), *aff'd*, 58 S.E.C. 1082 (2006), *aff'd*, 209 F. App'x 6 (2d Cir. 2006).

1. Weinstock's Activities Were Outside the Scope of His Employment

Through his business relationship with Corzan, including the introductions of his business contacts to Corzan, Weinstock was engaged in a business activity outside the scope of his employment with NMIS. As Beer, one of Weinstock's supervisors, explained, the firm's procedures permitted representatives to sell NMIS and Northwestern Mutual products exclusively. Any other business activity was considered an outside business activity that required written approval from the firm. Beer explained that NMIS did not consider a meeting "to prospect" for insurance business to be an outside activity that required disclosure. NMIS policy, however, according to Beer, required Weinstock to obtain prior written approval from NMIS as soon as he attended more than "one meeting" or "a couple meetings" with Corzan and unquestionably before accepting compensation. Weinstock crossed the line when he collaborated with Corzan—a person who was not affiliated with NMIS or Northwestern Mutual—to stimulate interest in a non-NMIS product without advance written notice to NMIS. Weinstock argues that his activities with Corzan were within the province of his insurance business and "amounted to nothing more" than routine insurance marketing by "providing introductions" to Corzan. The Hearing Panel rejected this argument and so do we. The evidence shows that Weinstock had taken steps to engage in activities with Corzan unrelated to NMIS, which required advance written notice to the firm.

The record includes e-mails reflecting Weinstock and Corzan's symbiotic relationship. In March 2008, Weinstock e-mailed Corzan to notify him that he had "added another appt for Thursday. That's 7 in one day. I hope you can do your pitch that quick." Weinstock, in reference to an upcoming networking event, added that he was "going to introduce [Corzan] as someone I'm teaming up with and invite people to call me to set up a time for the two of us to get together with them." Later that month, Corzan sent for Weinstock's review marketing materials for Corzan Capital Management that discussed a premium financing strategy that "may utilize a highly conservative secured investment note backed by a private commercial real estate investment pool."

While Weinstock contends that he only told his contacts "the most basic points" about premium financing in order to explain why he was contacting them, the evidence shows otherwise. Weinstock admitted that he also sought Corzan's input on communications that Weinstock made to his centers of influence in connection with arranging the introductions to Corzan. In May 2008, Weinstock sent Corzan an e-mail asking for Corzan's input on a draft response to a contact's inquiry about premium financing. Weinstock collected the information that he had obtained from Corzan and wrote a draft response, which he then e-mailed to Corzan for his review. In this e-mail to Corzan, Weinstock asked, "[h]ow do you feel about the following response to that guy[']s inquiry? This could be used as a first response . . . ."

In another example, Weinstock engaged in an e-mail conversation with BK, a contact with "very influential clients" and someone Weinstock "wanted to get in front of." BK initiated contact with Weinstock in May 2008, asking to be removed from the mailing list for Weinstock's

monthly newsletter. Weinstock used BK's e-mail as an opportunity to "make him aware of some things" that Weinstock was doing at the time related to premium financing. Weinstock wrote:

> I've found that a lot of high net worth clients like the thought of giving their long-term care risks to the insurance company and I also have found a method to set up a guaranteed arbitrage method to pay for insurance as well as reduce mortgage expenses. This technique shouldn't be confused with traditional premium financing techniques.

BK responded the next day, asking Weinstock to "please communicate your strategy to me . . . in the most concise written form you can." Approximately an hour later, Weinstock sent an e-mail to Corzan, which included BK's request for the strategy. Weinstock asked Corzan how he would like Weinstock "to move forward." Weinstock suggested an "appointment since they both [did not] like to give out info with out [sic] meeting people." Two days later, on May 14, 2008, Corzan provided Weinstock with a detailed written description to use in his reply to BK. Weinstock responded to BK later that day using the text verbatim from Corzan's description. Using Corzan's text, Weinstock explained that that he had been "introduced to the Premium Finance strategy through an insurance broker that is working closely with a company that owns and manages a privately held investment that guarantees a return of 12% on your money." Weinstock copied Corzan's representations that the company had a 24-year history of providing investors with a 23 percent rate of return and provided BK with two examples from Corzan of how to finance different policy types using this strategy. Weinstock also listed eight "benefits" of the strategy, as provided by Corzan. In his own words, Weinstock added, "[t]he funding mechanism isn't something I'm able to solicit and/or sell, so I'd like to make the introduction, provided I'm used for the purchasing of the insurance product. I'm also interested in helping other insurance professionals with this technique." Weinstock closed this e-mail to BK by stating, "please let me know if you'd like to set up a time to meet with me and my contact." BK declined to meet with Corzan.

In addition to these e-mail colloquies, Weinstock scheduled 22 introductions of his business contacts to Corzan in order for Corzan to pitch the DLG notes as a vehicle to facilitate premium financing. Weinstock attended all of the 20 in-person meetings with his business contacts and Corzan and provided his Northwestern Mutual business card to the contacts at these meetings. Weinstock also facilitated the conference call with one of his contacts and Corzan. Weinstock accepted $15,500 which stemmed directly from that business activity with Corzan and never disclosed the payment to NMIS. We determine that Weinstock's activities with Corzan were sufficient to trigger the notice requirement under NASD Rule 3030.

In Weinstock's opinion, this payment was a permissible advance on potential insurance commissions and within the scope of his approved business activities as an insurance agent pursuant to Northwestern Mutual's policy.[7] Therefore, according to Weinstock, the payment

[7] As Weinstock described it during the hearing, in his view, "[b]y doing insurance business outside of [Northwestern Mutual] an advance on commissions is not outside the scope of my

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required no disclosure and FINRA has no authority to discipline him with respect to receipt of an insurance commission. To that end, Weinstock argues that he is an independent contractor and that California insurance law governs his conduct as an insurance agent. Weinstock is mistaken on all fronts. "[S]tate laws governing insurance business practices and independent contractors are irrelevant in this case because FINRA brought this disciplinary action against [Weinstock] for violating FINRA rules." *Keilen Dimone Wiley*, Exchange Act Release No. 76558, 2015 SEC LEXIS 4952, at *12 (Dec. 4, 2015), *appeal docketed*, No. 16-60056 (5th Cir. Jan. 25, 2016). When Weinstock engaged in his activities with Corzan and accepted compensation from Corzan, Weinstock was registered with FINRA through his association with NMIS. As a registered person of a FINRA member firm, Weinstock was subject to FINRA rules related to disclosure of his outside business activities. *See id.* Indeed, Weinstock's NMIS registered representative agreement that he signed when he associated with NMIS in 2006 expressly stated that he agreed to follow the rules and regulations of the SEC, NASD, and MSRB among other securities regulators. Accordingly, Weinstock's "status as an independent contractor does not shield him from complying with FINRA rules." *See id.* at *13.

In addition, the evidence does not support Weinstock's view of the payment from Corzan or his interpretation of the firm's policy. NMIS's policy permitted an NMIS representative to engage in insurance sales of non-Northwestern Mutual products with prior approval and receive compensation only through that insurance company's commission structure. In other words, the agent was paid directly by the insurance company. Chrisman explained the process as follows: the representative was appointed to the outside insurance company and was listed on the insurance application, the application was submitted to the insurance company and the policy was underwritten, and the insurance company paid the representative directly. Beer's testimony was unequivocal on this point: accepting payment from anyone other than an insurance carrier was impermissible. Weinstock had acted consistently with this policy in the past. In 2006, Weinstock had requested and received approval from NMIS to sell another company's insurance products.[8] Although Corzan was an individual licensed to sell insurance in California, neither he nor Corzan Capital Management was an insurance carrier or issuer.[9] The $15,500 payment to

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Northwestern Mutual contract therefore [Rule 3030] does not apply." Throughout these proceedings, Weinstock has also referred to this advance on commissions as a "draw against future commissions," or an "advance loan" from Corzan. The evidence does not support Weinstock's characterization of the payment as a loan. For example, Weinstock received a Form 1099 from Corzan's company and reported the $15,500 as income to the IRS.

[8] The NMIS form that Weinstock completed in 2006 to receive NMIS's approval to sell other insurance companies' products is titled, "Outside Insurance Sales/Servicing Disclosure Form."

[9] Weinstock contends for the first time on appeal that "[t]o Weinstock's knowledge," Corzan Capital Management, the company that issued the check to Weinstock, was "a company selling and servicing insurance products." To the extent that Weinstock contends that this

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Weinstock therefore is not an insurance commission paid by an insurance company within the bounds of NMIS's policy. Notably, Beer and Chrisman testified uniformly that they would not have approved of Weinstock's receipt of compensation from Corzan had he sought prior written approval. Moreover, Weinstock sold no insurance as a result of the meetings of his contacts with Corzan. There is also no evidence that Weinstock remitted these funds to Corzan when he sold no insurance policies and received no resultant commissions. Indeed, Weinstock testified that he had no intention of returning money to Corzan if he sold no insurance policies.

2. Weinstock Gave No Written Notice to NMIS of His Activities with Corzan

The evidence also shows that Weinstock did not provide written notice to NMIS of his activities with Corzan as required by FINRA rules. Moreover, Weinstock failed to obtain NMIS's written approval of these activities as required by the firm. NMIS required its representatives to provide prior written notice of their intention to participate in any outside business activity, to disclose whether they expected to be compensated in connection with the activity, and to obtain written approval before engaging in any such activity. Weinstock did none of these things.

Weinstock argues that NMIS was aware of his activities with Corzan from phone calls, oral statements, and other communications that he had with NMIS. The testimony of both of Weinstock's supervisors undercuts this claim. Beer and Chrisman denied that Weinstock had disclosed his activities with Corzan prior to receiving CN's arbitration claim in April 2010. Chrisman testified that while she knew *generally* that Weinstock was interested in premium financing as a way to sell Northwestern Mutual products and had discussed premium financing with the firm's Advanced Planning Department, she denied that she knew anything about Corzan or Weinstock's activities with him until NMIS received a copy of CN's claim. During the hearing, Weinstock admitted as much. Weinstock conceded that in his conversations with Chrisman that he never used the name "Steve Corzan," he never mentioned DLG or Diversified Lending Group, and he never told her that Corzan might pay him.[10] Weinstock also admitted that Chrisman "did not know the name Corzan until 2010 when she saw the [CN] arbitration against Northwestern." In addition, Weinstock never disclosed to NMIS the $15,500 that he earned through the activities with Corzan until two years after NMIS terminated him and, only then, through Weinstock's filings in his lawsuit against Beer. Moreover, even if Weinstock had discussed his Corzan-related activities with NMIS, such oral disclosure is insufficient under

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payment was from an insurance carrier or issuer, there is no evidence to support Weinstock's self-serving statement. Rather, the evidence from the hearing directly contradicts that Corzan was an insurance carrier or issuer.

[10] Weinstock also admitted that he never spoke with anyone at Northwestern Mutual's "home office" compliance department about his activities with Corzan or the related payment.

NASD Rule 3030, which requires fulsome and prompt disclosure in writing to the firm in the form determined by the firm. *See Dep't of Enforcement v. Giblen*, Complaint No. 2011025957702, 2014 FINRA Discip. LEXIS 39, at *11-12, 17 (FINRA NAC Dec. 10, 2014) ("NASD Rule 3030 requires actual, written notice of an associated person's outside business activities . . . .").[11]

Furthermore, NMIS denied Weinstock approval to receive outside compensation in a scenario similar to his arrangement with Corzan. On May 7, 2008, less than a month before Corzan paid Weinstock, Weinstock made a written request to NMIS through Chrisman for approval of outside compensation. In this request, Weinstock described being paid for insurance-related activity, which does not result in the sale of policies. Weinstock expressly asked whether he could "charge a non-NML agent a fee for helping them with insurances cases . . . that he can't close." Weinstock explained that he would "still like to be compensated." Chrisman denied Weinstock's request after conferring with NMIS's compliance department. The firm's compliance department determined such a payment would constitute a prohibited fee.[12] Weinstock accepted Corzan's payment irrespective of NMIS's denial of his May 2008 request for payment from an outside source.

In addition, Weinstock failed to disclose his activities with Corzan on NMIS's annual compliance forms. After he received the $15,500 payment from Corzan in 2008, Weinstock certified on the firm's compliance form that he had previously reported all outside business activities and denied receipt of any referral or finder's fees from a source outside of NMIS.[13]

The purpose of the outside business activities rule "is to ensure that 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

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[11] Weinstock's contention that that NMIS should have been aware of his activities with Corzan from his use of NMIS's and Northwestern Mutual's e-mail and client contact software system is likewise insufficient notice of outside business activities under NASD Rule 3030. *See Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at *44 & n.30 (Sept. 24, 2015) (holding constructive notice does not satisfy Rule 3030's requirement of written notice), *appeal dismissed*, No. 15-15199-EE (11th Cir. May 19, 2016); *Wanda P. Sears*, Exchange Act Release No. 58075, 2008 SEC LEXIS 1521, at *15 & n.24 (July 1, 2008) (keeping records of outside tax preparation business in firm files subject to supervisory review and using firm computers for preparing client tax returns did not constitute requisite written notice under NASD Rule 3030).

[12] In another instance, in 2003, Weinstock asked Chrisman if he could receive a referral fee for placing loans with other loan brokers. After conferring with NMIS's compliance department, Chrisman denied Weinstock's request.

[13] Weinstock completed this certification in August 2008. In 2009, Weinstock also certified to reporting all outside business activities and denied receipt of referral and finder's fees.

supervision could be exercised as necessary under applicable law." *Giblen*, 2014 FINRA Discip. LEXIS 39, at *12 (internal quotation marks omitted). The outside business activities rule is intended not only to prevent harm to the investing public, but also to protect FINRA member firms by allowing these firms to monitor in a timely manner their registered representatives' outside business activities. *See Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Outside Business Activities of Associated Persons*, Exchange Act Release No. 26063, 1988 SEC LEXIS 1841, at *2-3 (Sept. 6, 1988) (explaining that proper disclosure of an associated person's outside business activities may prevent a member firm's entanglement in legal difficulties). "When adhered to, [the outside business activity rule] is prophylactic and allows FINRA [member] firms to oversee their employees' outside business activities, or to prohibit the activities altogether." *Giblen*, 2014 FINRA Discip. LEXIS 39, at *26-27. Weinstock's actions superseded these regulatory purposes.

We determine that Weinstock was engaged in outside business activities without providing the requisite written notice to NMIS, in violation of NASD Rules 3030 and 2110.[14]

B. Procedural Issues Raised by Weinstock

Weinstock raises myriad objections related to the fairness of these proceedings. These objections fall within three categories: the availability of the hearing transcript, the alleged bias of the Hearing Officer and Hearing Panel, and the overall fairness of the hearing. We address each of these categories in turn.

1. Availability of the Hearing Transcript

During the course of these proceedings, Weinstock made several motions requesting that FINRA provide him with a free copy of the hearing transcript. Weinstock first sought to obtain a copy of the transcript while the case was pending before the Hearing Panel. FINRA Rule 9265(b) provides for the availability of the hearing transcript. The rule provides in relevant part that "a transcript of a hearing shall be available to a Party for purchase from the court reporter at prescribed rates." Weinstock contended during a post-hearing conference with the Hearing Officer and Enforcement that he could not afford to pay the court reporting service for the transcript and required that FINRA provide him with a copy. In response to Weinstock's motions, Enforcement stated that FINRA does not provide complementary copies of the hearing transcript, which represented its understanding of FINRA Rule 9265(b) and FINRA's contract with the court reporting service. Enforcement offered instead to make the transcript available for Weinstock's review at FINRA's office in Los Angeles.[15] Weinstock renewed his request for the transcript in two additional motions before the Hearing Officer. The Hearing Officer, relying on

[14] A violation of NASD Rule 3030 constitutes conduct inconsistent with just and equitable principles of trade. *See Sears*, 2008 SEC LEXIS 1521, at *19 n.28.

[15] FINRA's Los Angeles office is where the hearing and appellate argument in this matter took place. It is also Weinstock's local district office.

FINRA Rule 9265, the Hearing Officer's understanding of FINRA's contract with the court reporting service, and Enforcement's representations, denied Weinstock's requests for a complimentary copy of the hearing transcript, and directed Weinstock to review the transcript at FINRA's office in Los Angeles as offered by Enforcement.

After receiving Enforcement's brief on appeal,[16] Weinstock renewed his request for a copy of the hearing transcript in a motion to the National Adjudicatory Council ("NAC") and sought an extension of time to submit his reply brief. Weinstock's motion prompted Enforcement to obtain a copy of FINRA's contract with the court reporting service. Enforcement subsequently determined that FINRA may provide a respondent with a copy of the transcript if a respondent is able to show undue hardship. Upon learning of this exception, Enforcement promptly provided Weinstock with a copy of the transcript without requiring him to make such a showing. After receipt of the transcript, Weinstock was granted an extension of time to file his reply brief with an allowance to file a brief up to 37 pages (the sum of the page limit for opening and reply briefs under FINRA Rule 9347(a)).

Weinstock now contends that, irrespective of these allowances, his "late" receipt of the transcript has "negatively affected . . . his ability to appeal his case in the time frames granted." We disagree. To accommodate review of the transcript and in response to his arguments made in his request for an extension, Weinstock was allowed an additional 51 days to file his reply brief and was given latitude to file a reply brief that was 25 pages in excess of the page limit set forth in FINRA's rules. *See* FINRA Rule 9347. Moreover, prior to receiving a copy of transcript, Weinstock never attempted to review the copy stored at FINRA's Los Angeles office. When questioned about this during his oral argument before the NAC subcommittee ("Subcommittee") empaneled to consider this appeal, Weinstock explained that he "did not find the time," he "couldn't make the time," and he "needed to have access to it to work when it was convenient for" him. We determine that Weinstock has failed to demonstrate unfair process on appeal.

2. Bias

Weinstock claims for the first time on appeal that the Hearing Officer and the Hearing Panel were biased against him. Weinstock, however, has waived any argument that he may have concerning the Hearing Officer's or Hearing Panel's bias. Weinstock was afforded the opportunity to file a motion to disqualify the Hearing Officer and object to the Hearing Panelists' participation in the hearing, but he failed to do so. FINRA rules provide that a party, having a "reasonable, good faith belief" that bias exists, may file a motion to disqualify a Hearing Officer or Hearing Panelist no later than 15 days after learning of the facts on which the claim is based. FINRA Rules 9233(b), 9234(b). Weinstock claims that the Hearing Officer's bias was evident during the hearing. It was therefore incumbent on him to raise the issue of bias then. *See Dep't of Enforcement v. Bullock*, Complaint No. 2005003437102, 2011 FINRA Discip. LEXIS 14, at *50 (FINRA NAC May 6, 2011); *see, e.g.*, *Davis v. Cities Service Oil Co.*, 420 F.2d 1278, 1282

[16] Enforcement's brief argued that Weinstock's failure to cite to the record in his opening brief was "tantamount to a failure to submit a brief and warrants dismissal of his appeal." We decline to dismiss Weinstock's appeal.

(10th Cir. 1970) ("Promptness in asserting disqualification is required to prevent a party from awaiting the outcome before taking action."). Weinstock, however, affirmatively chose to proceed with the hearing before the Hearing Panel without making any such motions and belatedly raised his objection in this appeal. Weinstock has waived his right to object to the Hearing Officer's or Hearing Panel's participation in the proceedings below. *See* FINRA Rules 9233(b), 9234(b); *see also Giblen*, 2014 FINRA Discip. LEXIS 39, at *20 (failing to make timely motion to disqualify Hearing Panelist waives objection on appeal); *Bullock*, 2011 FINRA Discip. LEXIS 14, at *51 (stating same with respect to a Hearing Officer).

Moreover, assertions of bias that are wholly unsubstantiated—which a review of the record demonstrates these are—"are an insufficient basis to invalidate" FINRA's proceedings. *See Dist. Bus. Conduct Comm. v. Guevara*, Complaint No. C9A970018, 1999 NASD Discip. LEXIS 1, at *39 n.16 (NASD NAC Jan. 28, 1999), *aff'd*, 54 S.E.C. 655 (2000), *aff'd*, 47 F. App'x 198 (3d Cir. 2000). Weinstock appears to be basing his claims of bias on the Hearing Officer's adverse rulings, but adverse rulings, without more, do not evidence bias. *See Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *62 (Jan. 30, 2009), *aff'd*, 416 F. App'x 142 (3d Cir. 2010); *Dep't of Enforcement v. Kirlin*, Complaint No. EAF0400300001, 2009 FINRA Discip. LEXIS 2, at *76-77 (FINRA NAC Feb. 25, 2009), *aff'd in relevant part*, Exchange Act Release No. 61135, 2009 SEC LEXIS 4168 (Dec. 10, 2009). "[B]ias by a hearing officer is disqualifying only when it stems from an extrajudicial source and results in a decision on the merits based on matters other than those gleaned from participation in a case." *See Epstein*, 2009 SEC LEXIS 217, at *62. To the contrary, the evidence demonstrates that the Hearing Panel formulated its opinion based on the record before it, and that the Hearing Panel imposed liability against Weinstock based on the evidence. The record in this case provides no support for Weinstock's argument that the Hearing Officer or the Hearing Panel was biased against him. Finally, the NAC's de novo review of this case ensures that the overall disciplinary proceeding conducted against Weinstock was fair and without bias if any had existed. *See Bullock*, 2011 FINRA Discip. LEXIS 14, at *52 (confirming that the NAC's de novo review cures any alleged Hearing Panel bias).

3. Fairness

Weinstock also objects to the manner in which the proceedings below were conducted. Weinstock asserts that the Hearing Officer made adverse rulings and conducted this proceeding in a manner that compromised his right to a fair hearing. Weinstock argues that the Hearing Officer curtailed his examination of witnesses during the hearing, limited his time to prepare his closing statement, and excluded evidence that he proposed to introduce. Weinstock, for instance, complains about the exclusion of one of his proposed exhibits from an employee of the California Insurance Commissioner in response to Weinstock's inquiry about commission advances that he made after the commencement of these proceedings against him. Weinstock identified the document, RX-40, on his prehearing exhibit list "[t]o establish [that] the California Department of Insurance has no rule limiting the splitting of commissions between licensed life insurance agents." Enforcement objected that the document was irrelevant because it only "evaluat[ed] Weinstock's conduct under the California insurance code." The Hearing Officer sustained the objection on relevance grounds. Weinstock nevertheless offered RX-40 at the hearing to show that "there are no California state insurance rules prohibiting the sharing of

commissions between two licensed insurance agents in the state of California." Enforcement objected again that the offered exhibit was irrelevant and the Hearing Officer sustained the objection. FINRA Rule 9263 grants Hearing Officers broad discretion to accept or reject evidence, thus, the NAC reviews the exclusion of evidence only for an abuse of discretion. *See Robert J. Prager*, 58 S.E.C. 634, 664 (2005). "Because this discretion is broad, the party arguing abuse of discretion assumes a heavy burden that can be overcome only upon showing that the Hearing Officer's reasons to admit or exclude the evidence were so insubstantial as to render . . . [the admission or exclusion] an abuse of discretion." *Dep't of Enforcement v. Strong*, Complaint No. E8A2003091501, 2008 FINRA Discip. LEXIS 19, at *17-18 (FINRA NAC Aug. 13, 2008) (internal quotation marks omitted). As we explained previously, California law governing insurance practices is not relevant to actions alleging violations of FINRA rules. *See Wiley*, 2015 SEC LEXIS 4952, at *12. The Hearing Officer did not abuse his discretion when excluding evidence.

Weinstock also argues that the Hearing Officer unfairly limited the witnesses that he was allowed to call to testify. Before the hearing, Weinstock proposed to call 115 named witnesses. In addition to a wide variety of representatives, agents, and customers, those 115 named witnesses included two court reporters, in-house counsel for NMIS, and Enforcement's counsel of record in this matter, as well as unnamed individuals from three groups or departments of NMIS or Northwestern Mutual. When Weinstock moved to further amend his witness list, he still included over 20 individuals. The Hearing Officer excluded nearly all of those witnesses. A review of the record illustrates that Weinstock was allowed latitude to present witness testimony that was tangentially relevant and material to the issue of whether Weinstock engaged in undisclosed outside business activities in violation of FINRA rules. Indeed, Weinstock in his appellate brief states that one of his witness's testimony "was helpful to Weinstock's defense." The Hearing Officer also allowed Weinstock the opportunity to call other of the proposed witnesses, but he declined.

Weinstock argues now that the Hearing Officer should have allowed Weinstock to call witnesses whom he identified to contradict portions of Beer's and Chrisman's testimony. The descriptions in his brief of this proposed testimony, however, do not demonstrate the necessary relevance or materiality or otherwise show that the Hearing Officer abused his broad discretion. These witnesses would have testified to peripheral issues in the case such as whether NMIS's outside business activities policies required the disclosure and approval of networking events or whether insurance representatives could share in insurance commissions. Moreover, the Hearing Officer explained to Weinstock that he would reconsider this proffered testimony, which was based on several levels of hearsay, if Weinstock could provide the panel with a basis for its relevance after Weinstock testified. Weinstock, however, did not demonstrate the necessary relevance.[17] The Hearing Officer's adverse evidentiary rulings did not impinge on Weinstock's right to a fair hearing. *See Epstein*, 2009 SEC LEXIS 217, at *62.

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[17] Weinstock also claims that he "knows" that Beer and Chrisman were "lying" at the hearing and proposes that the NAC order them to submit to polygraph tests. FINRA rules provide no basis for the use of polygraph tests. The fact that Weinstock does not agree with the testimony does not render it false or unreliable. It was up to the Hearing Panel, and now the

[Footnote continued on next page]

Having reviewed the record as a whole, we find that the Hearing Officer acted properly within his discretion to limit Weinstock's presentation of evidence on points irrelevant to the main issues in the case. Thus, the Hearing Officer's attempt to limit the hearing to issues relevant to the case was not unfair. *See Dist. Bus. Conduct Comm. v. Bruff*, Complaint No. C01960005, 1997 NASD Discip. LEXIS 41, at *18 (NASD NBCC Aug. 11, 1997) (finding that the hearing panel "acted properly within its discretion to limit [the respondent's] presentation of evidence on points irrelevant to the main issues in [the] case"), *aff'd*, 53 S.E.C. 880 (1998), *aff'd*, 198 F.3d 253 (9th Cir. 1999). Indeed, a Hearing Officer is expressly charged with "regulating the course of the hearing." FINRA Rule 9235(a)(2).

Weinstock received the "fair procedure" that the Securities Exchange Act of 1934 ("Exchange Act") requires here, including notice of the specific charges against him and multiple opportunities to be heard. *See* 15 U.S.C. § 78o-3(b)(8), (h)(1) (requiring that self-regulatory organizations provide fair procedures); *Sundra Escott-Russell*, 54 S.E.C. 867, 873-74 (2000) (finding requirements of the Exchange Act met when FINRA brought specific charges, the respondent had notice of such charges, the respondent had an opportunity to defend against such charges, and FINRA kept a record of the proceedings). Weinstock was permitted to include exhibits in the record and the Hearing Officer gave Weinstock great latitude in his questioning of witnesses and in his own testimony. Weinstock was also accorded the right to present evidence and examine witnesses at the hearing. Weinstock suggests that he was improperly denied opportunities to present evidence, but the Hearing Officer had "broad discretion" to exclude evidence that is "irrelevant, immaterial, unduly repetitious, or unduly prejudicial." *Cody v. SEC*, 693 F.3d 251, 258 (1st Cir. 2012) (citing Rule 9263(a), which governs a Hearing Officer's authority to exclude evidence).

Finally, as we noted above, our de novo review of the record assures that Weinstock is given a fair proceeding.[18] *See Morton Bruce Erenstein*, Exchange Act Release No. 56768, 2007 SEC LEXIS 2596, at *27-29 (Nov. 8, 2007) (holding that the NAC's de novo review "mitigate[s] any harm that may have resulted" from any Hearing Panel errors), *aff'd*, 316 F. App'x 865 (11th Cir. 2008); *Bullock*, 2011 FINRA Discip. LEXIS 14, at *52-53. The record indicates that the

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[cont'd]

NAC, to determine what weight to accord the testimony. Beer and Chrisman testified at the hearing in person, under oath, and were subject to Weinstock's examination and the Hearing Panel's questioning. The record shows that Weinstock extensively questioned both of these witnesses. We find no basis for disregarding Beer's or Chrisman's testimony.

[18] To the extent that Weinstock is asserting a constitutional challenge, multiple federal courts have held that constitutional protections are inapplicable to FINRA proceedings. *See, e.g.*, *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 936-37 (1982) (noting that the Fifth and Fourteenth Amendments to the United States Constitution protect individuals only against violation of constitutional rights by the government, not private actors); *Desiderio v. NASD*, 191 F.3d 198, 206 (2d Cir. 1999) (finding that NASD is not a state actor, and constitutional requirements generally do not apply to it).

Hearing Panel was fair and, in many instances, gave Weinstock extra leeway.[19] *See Rafael Pinchas*, 54 S.E.C. 331, 347 (1999) (rejecting respondent's claims of bias on the part of the Hearing Panel and NASD staff, noting that the Hearing Panel repeatedly gave the respondent "wide latitude" in questioning witnesses during the hearing). The record demonstrates that the Hearing Officer conducted the proceeding in a competent and impartial manner. Both before the Hearing Panel and on appeal, Weinstock has been given multiple opportunities to present his case.

In sum, we find that, throughout these proceedings, Weinstock has been given multiple opportunities to present all facts and arguments relevant to the issues of liability and sanctions. The proceedings have been conducted fairly and in accordance with FINRA rules, without bias or prejudice.

V. Sanctions

The Hearing Panel suspended Weinstock for six months, fined him $5,000, and ordered him to disgorge the $15,500 that he earned through his misconduct. For the reasons set forth below, we affirm these sanctions.

A. Suspension and Fine

We have considered the FINRA Sanction Guidelines ("Guidelines") in determining the appropriate sanctions for Weinstock's outside business activities. The Guidelines for outside business activities recommend a fine of $2,500 to $73,000 and a suspension of up to 30 business days.[20] Where there is aggravating conduct, however, the Guidelines suggest a suspension of up to one year, and in egregious cases, a longer suspension, or a bar.[21] Enforcement argued, and the Hearing Panel agreed, that this was a case with aggravating factors, but those factors did not elevate the case to an egregious one. We concur.

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[19] For example, Weinstock complains that the Hearing Officer improperly limited Weinstock's examination of Chrisman. A review of the record shows that the Hearing Officer initially imposed a time limit on Weinstock's continued examination of Chrisman whom Weinstock had already cross-examined during Enforcement's case-in-chief. In an effort to focus the examination, the Hearing Officer explained his concern that Weinstock was "going over the same ground repeatedly on a lot of points." Weinstock objected, and the Hearing Officer allowed Weinstock to continue his examination without a time limit. In granting Weinstock additional latitude to examine Chrisman, the Hearing Officer stressed, "I don't want you to feel that you are being rendered incapable of getting at those—those facts or getting at the testimony of the witness that you think is relevant and important to the defense."

[20] *FINRA Sanction Guidelines* 13 (2015), *available at* http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf [hereinafter *Guidelines*].

[21] *Id.*

In assessing sanctions for cases involving undisclosed outside business activities, and as relevant to the facts of this case, the Guidelines advise adjudicators to consider: (1) the duration of the outside activity; (2) whether the respondent's marketing and sale of the product or service could have created the impression that the firm had approved the product or service; and (3) whether the respondent misled the firm about the existence of the outside activity or otherwise concealed the activity from the firm.[22] We find that these factors serve to aggravate Weinstock's misconduct.

We agree with the Hearing Panel's characterization that this was "a sustained course of conduct, not a product of impulse." Weinstock's entanglement with Corzan related to the premium financing using DLG notes occurred over more than three months and involved Weinstock contacting 128 of his business contacts in an effort to persuade them to meet with Corzan.

In addition, while Weinstock did not sell any of the DLG notes, Weinstock's participation in arranging and attending the meetings with Corzan could reasonably have led his contacts to infer that NMIS approved of the DLG notes. Weinstock introduced 22 of his interested business contacts to Corzan and attended all of the 20 in-person meetings. Weinstock attended these meetings in his capacity as an NMIS and Northwestern Mutual representative. Weinstock claims that he disclosed to his contacts that he could not sell the notes as an NMIS representative, and the evidence supports Weinstock's disclosure to at least one person. Weinstock's scheduling of and attendance at these meetings with Corzan are sufficient nonetheless to support an inference that NMIS approved of the product. Beer testified to this precise point:

> Beer: "I think the greatest problem for me is the absolute client confusion. Because I feel like the client in a way thinks Northwestern Mutual thinks it's okay just by Jack's presence."
>
> Enforcement: "And that's true even though Mr. Weinstock said he was just at the meetings to sell insurance?"
>
> Beer: "That's absolutely true. And I go back to it's complete client confusion, and I don't know how a client can really differentiate."

Beer viewed Weinstock's attendance as "legitimiz[ing] the meeting" by presenting himself with Corzan "in a unified manner."

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[22] *Id.* Because the record does not disclose which, if any, of Weinstock's contacts he introduced to Corzan were NMIS customers, we do not consider the Guideline-specific considerations relevant to customers of the firm (i.e., whether the outside activity involved customers of the firm; the number of customers and dollar volume of sales to customers; and whether the outside activity resulted directly or indirectly in injury to customers of the firm).

Weinstock also concealed from the firm his outside business activities with Corzan. Weinstock, however, denies any concealment. Weinstock contends that his activities with Corzan were disclosed to Chrisman in oral conversations and otherwise in full view of the firm because he used the firm's contact management software to schedule meetings and to note his progress in making introductions to Corzan and the firm's email system to communicate with Corzan. As we discussed with respect to liability in this case, the weight of the evidence does not support Weinstock's view of fulsome disclosure to Chrisman. Moreover, Weinstock's use of the firm's electronic systems to conduct his outside business activities does not negate his obligation to provide his firm with written notice of these activities, and in this case, receive written approval from his firm before engaging in them. *See Sears*, 2008 SEC LEXIS 1521, at *25 ("Notwithstanding Sears's retention of the tax returns in her client files, Sears failed to disclose her activities on AMEX's outside business activities form. In our view, Sears has not refuted the facts establishing aggravating conduct.")

Weinstock never disclosed that he received compensation when Beer and Chrisman questioned him extensively about his relationship and activities with Corzan during his investigative interview with them in April 2010. Weinstock instead blames Beer and Chrisman for not asking about compensation and otherwise contends that the payment was a form of commission that did not require disclosure. Weinstock similarly concealed his activities with Corzan and the resultant payment when he completed the firm's annual compliance form in 2008 after he received the check from Corzan Capital Management. *See id*. at *27 (failing to disclose outside business activities on firm's outside business activity form is aggravating factor for purposes of sanctions). Weinstock's opacity serves to aggravate his misconduct. Weinstock was responsible for complying with the notice requirements of FINRA's outside business activities rule and disclosing such activities completely and accurately in writing, and he failed to do so. *See Thomas E. Warren, III*, 51 S.E.C. 1015, 1019 (1994) (rejecting applicant's attempts to shift blame to others for misconduct), *aff'd*, 69 F.3d 549 (10th Cir. 1995).

When we consult the Guidelines' Principal Considerations in Determining Sanctions, we find that several of these considerations are relevant to Weinstock's misconduct and serve to aggravate sanctions.[23] Weinstock acted intentionally.[24] He deliberately contacted more than 100 people over three months to entice them to meet with Corzan in hopes that Weinstock would sell more insurance as a result. Notably, Weinstock previously had complied with seeking approval from NMIS for outside business activities, but in this case, he ignored the process. Weinstock's outside business activities with Corzan also resulted in Weinstock's monetary gain in the form of the $15,500 payment from Corzan Capital Management.[25] As Weinstock testified, he was spending less time on his core business of selling insurance because of his activities with Corzan, and he wanted Corzan to compensate him for his efforts even if he sold no insurance.

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[23] *See Guidelines*, at 6-7 (Principal Considerations in Determining Sanctions).

[24] *See id.* at 7 (Principal Considerations in Determining Sanctions, No. 13).

[25] *See id.* (Principal Considerations in Determining Sanctions, No. 17).

In addition, Weinstock has not accepted responsibility for his misconduct.[26] *See N. Woodward Fin. Corp.*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867, at *44 (May 8, 2015) (explaining that respondent is "entitled to present a vigorous defense" but the denial that conduct was wrongful demonstrated either a misunderstanding or a lack of recognition of his duties as a professional and of his regulatory obligations), *aff'd, Troszak v. SEC*, No. 15-3729 (6th Cir. June 29, 2016). He consistently claimed that he had no obligation to disclose his activities with and the compensation from Corzan. At the close of the hearing before the Hearing Panel, Weinstock stated, "I don't think I did anything wrong. . . . I believe that based on everything that's put on the table I didn't break any rules, and not only did I not break rules, but the rules that are in here aren't enforced properly." When asked by a member of Subcommittee during the appellate oral argument whether he would do anything differently, knowing what he knows now about the rules and the interpretation of those rules, Weinstock responded, "[a]bsolutely not. I would do absolutely nothing different."

We acknowledge that, prior to regulatory detection, NMIS terminated Weinstock for the misconduct that is at issue in this case.[27] We find, however, that the mitigating effect from Weinstock's termination does not overcome the aggravating factors in this case and "is no guarantee of changed behavior." *See Denise M. Olson*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629, at *18 (Sept. 3, 2015). The disclosure of outside business activities not only protects investors, but also protects securities firms from potential litigation as a result of the unrevealed, extramural activities of their associated persons. This prophylactic purpose is spotlighted in this case when NMIS was sued in arbitration by CN for Weinstock's involvement with Corzan and the DLG notes. Thus, Weinstock's termination "is not enough to overcome our concern that [he] poses a continuing danger to investors and other securities industry participants." *See id.*

Taking these factors into account, we conclude that Weinstock's misconduct was serious and warrants the six-month suspension and $5,000 fine ordered below.

B. Disgorgement

We also determine that disgorgement is appropriate in this case. The Guidelines recommend that adjudicators consider a respondent's ill-gotten gain when determining an appropriate remedy.[28] Disgorgement may be appropriate where "the record demonstrates that the respondent obtained a financial benefit from his or her misconduct."[29] Disgorgement seeks to prevent a respondent's unjust enrichment, and it is an appropriate remedy where, as here, a

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

[27] *See Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 14).

[28] *Guidelines*, at 4-5, 13 n.1.

[29] *Id.* at 4-5 (General Principles Applicable to All Sanction Determinations, No. 6).

respondent has profited from his undisclosed outside business activities. *See Dep't of Mkt. Regulation v. Shaughnessy*, Complaint No. CMS950087, 1997 NASD Discip. LEXIS 39, at *28 (NASD NBCC May 27, 1997) (ordering disgorgement to NASD of undisclosed compensation earned from outside business activity). Weinstock received $15,500 as a result of his outside business activities with Corzan, and he should not be permitted to retain these ill-gotten gains. *See The Dratel Group*, Exchange Act Release No. 77396, 2016 SEC LEXIS 1035, at *73 (Mar. 17, 2016) ("We have held that FINRA, in cases involving misconduct, may require respondents to disgorge their entire financial benefit."). Accordingly, we order Weinstock to pay $15,500 plus prejudgment interest to FINRA as disgorgement. *See id.* at 74-75 & n.109.

VI. Conclusion

We affirm the Hearing Panel's findings that Weinstock engaged in undisclosed outside business activities, in violation of NASD Rules 3030 and 2110. We suspend Weinstock for six months in all capacities and fine him $5,000 for his misconduct. In addition, Weinstock is ordered to disgorge to FINRA $15,500, plus prejudgment interest.[30] We affirm the order that Weinstock pay $750 in hearing costs and order him to pay $1,000 in appeal costs.[31]

On Behalf of the National Adjudicatory Council,

Marcia E. Asquith
Senior Vice President and Corporate Secretary

[30] Prejudgment interest shall be paid at the rate established for the underpayment of income taxes in Section 6621(a) of the Internal Revenue Code, 26 U.S.C. § 6621(a). Prejudgment interest will begin to accrue as of June 3, 2008, until the disgorgement amount is paid in full.

[31] The Hearing Panel also ordered Weinstock to pay $7,550.44 for the cost of the hearing transcript. We determine that it is appropriate in this case to reverse the order that Weinstock pay for the cost of the hearing transcript. We also decline to order that Weinstock pay any of the appellate transcript costs, a transcript which FINRA also provided to him.