SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 58075 / July 1, 2008

Admin. Proc. File No. 3-12881

In the Matter of the Application of

WANDA P. SEARS
c/o Anthony Paduano, Esq.
Willard Knox, Esq.
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For Review of Disciplinary Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF DISCIPLINARY PROCEEDING

Unauthorized Transactions

Failure to Provide Written Notice of Outside Business Activity

General securities representative of member firm of registered securities association executed unauthorized transactions and conducted undisclosed outside business activities. Held, association's findings of violation sustained in part and set aside in part and sanctions imposed sustained in part and vacated and remanded in part.

APPEARANCES:

Anthony Paduano and Willard Knox, of Paduano & Weintraub LLP, for Wanda P. Sears.

Marc Menchel, Alan Lawhead, and Jante Santos, for FINRA.

Appeal filed: October 24, 2007
Last brief received: January 31, 2008

I.

Wanda P. Sears, a former general securities representative of American Express Financial Advisors, Inc. ("AMEX"), an NASD member firm, appeals from FINRA disciplinary action. 1/ FINRA found that Sears violated NASD Conduct Rule 2110 by making unauthorized trades in customer accounts and Rules 3030 and 2110 by preparing clients' tax returns for compensation without providing AMEX prompt written notice of this activity. 2/ FINRA suspended Sears for two years for the unauthorized trading and suspended Sears for six months for the undisclosed outside business activity. 3/ We base our findings on an independent review of the record.

II.

Unauthorized Transactions

A. 1. Debra McClure became Sears's client in 1999. McClure was a second grade teacher who took over her husband's business after he died in 2001. In February 2002, McClure received a confirmation for a purchase of 450 shares of AOL Time Warner stock for $13,225.50. McClure testified, however, that she was "surprised" when she received the confirmation because she had "absolutely not" asked Sears to purchase the AOL Time Warner stock for her account. McClure testified that she never bought individual stocks, that she had not agreed to purchase the shares of AOL Time Warner stock, and that she had not had any discussions with Sears or anyone else at AMEX about buying this stock. In April 2002, McClure wrote a letter to AMEX complaining that "Sears never informed [her] of this transaction," that McClure "never purchased individual stocks," and that she "was unaware that [Sears] had the authority to make such

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1/ Sears's Central Registration Depository ("CRD") report indicates that AMEX terminated Sears's association on April 5, 2002, for violating several company policies.

2/ NASD Rule 3030 provides that no associated person shall be employed by, or accept compensation from, any other person as a result of any business activity, other than a passive investment, outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member. NASD Rule 2110 provides that a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade. General Rule 115 extends the applicability of NASD rules governing members to their associated persons.

3/ FINRA's Department of Enforcement did not seek fines or costs in this case because Sears had sought bankruptcy protection.

purchases on [McClure's] behalf." 4/ AMEX subsequently reimbursed McClure for her losses associated with the AOL Time Warner transaction.

Sears testified that McClure authorized the AOL Time Warner trade after McClure complained that her mutual funds were "going nowhere" and Sears told McClure how Sears had made enough money trading individual stocks for Sears's daughter to make a down payment on a new house. Sears disputed McClure's claim that the AOL Time Warner trade was unauthorized, asserting that McClure was just "mistaken" and "confused." 5/

2. Walter Gwaltney became Sears's client in 1998. In 2002, Gwaltney discovered a purchase of 3,675 shares of XO Communications ("XO") stock in his retirement account in January of that year for $549.08. Gwaltney testified, however, that he did not authorize Sears to purchase this stock. Mary Gwaltney, Walter Gwaltney's wife, testified that she also did not authorize Sears to make this purchase. 6/ In June 2002, Walter and Mary Gwaltney wrote a letter to AMEX complaining that Sears "purchased XO Communications stock in January 2002 without our knowledge." 7/

Although Sears states in her reply brief that Mary Gwaltney "was not a joint account holder," Sears testified that she discussed XO stock with Mary Gwaltney who authorized the trade. According to Sears, she told Mary Gwaltney that XO was "way, way down" but new management was hoping to revive it. Sears said that Mary Gwaltney agreed to invest $549 as a "gamble" to get "something significant to put towards" a new boat her husband hoped to buy. 8/

B. NASD Rule 2110 requires that persons associated with member firms "observe high standards of commercial honor and just and equitable principles of trade." An associated person is "responsible for obtaining his [or her] customer's consent prior to purchasing a security for the

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4/ In October 2003, in connection with FINRA's investigation, McClure signed a declaration stating that she "did not authorize" the purchase of the AOL Time Warner stock, that she "did not discuss this trade with Sears," and that she had "never given Sears permission to buy or sell individual stocks in [her] accounts without [her] prior consent."

5/ The record indicates that Sears did not earn a commission on this trade.

6/ In October 2003, in connection with FINRA's investigation, the Gwaltneys signed a declaration stating that Sears "did not request or receive permission from either of us to buy" XO stock and that they "did not even discuss this stock with Sears."

7/ The record does not indicate whether AMEX reimbursed the Gwaltneys for this trade.

8/ The record does not indicate whether Sears earned a commission on this trade.

customer's account." 9/ As we have held, "[u]nauthorized trades are a serious breach of the duty to observe high standards of commercial honor and just and equitable principles of trade." 10/ Such misconduct goes "to the heart of the trustworthiness of a securities professional," 11/ and "is a fundamental betrayal of the duty owed by a sales[person] to his [or her] customers." 12/

Both Debra McClure and Walter Gwaltney testified that Sears purchased a security for their respective accounts without obtaining their authorization. Although Sears contends that McClure's and Gwaltney's testimony "was outweighed by substantial evidence that such customers authorized such trades," Sears's only evidence on this point was her own testimony, and the Hearing Panel did not credit that testimony. The Hearing Panel stated that the "customers who testified were adamant that they did not give Sears permission to purchase the stocks in question for their accounts." It concluded that, "having heard all of the witnesses testify and having observed their demeanor, [it] did not find Sears' testimony to be credible."

It is well established that "the credibility determination of the initial decisionmaker is entitled to considerable weight and deference, since it is based on hearing the witnesses' testimony and observing their demeanor." 13/ We have also held that, "without substantial evidence in the record to the contrary, we cannot depart from the fact finder's determination of credibility." 14/ We find no basis to disturb the Hearing Panel's credibility finding here. As the Hearing Panel noted, McClure and Gwaltney testified adamantly that they did not authorize the transactions. Neither was discredited in any way nor was their testimony called into question as a result of cross-examination during the hearing. Their testimony was also consistent with other documentary evidence in the record. Accordingly, we find that Sears made unauthorized trades in the accounts of McClure and Gwaltney and, therefore, violated Rule 2110 as alleged. 15/

9/ Cartlon Wade Fleming, Jr., 52 S.E.C. 409, 412 (1995).

10/ Bradley Kanode, 49 S.E.C. 1155, 1156 (1989).

11/ Adam Stuart Levine, 51 S.E.C. 395, 397 (1993).

12/ Keith L. DeSanto, 52 S.E.C. 316, 323 (1995), aff'd, 101 F.3d 108 (2d Cir. 1996) (Table); accord Michael G. Keselica, 52 S.E.C. 33, 37 (1994).

13/ Jon R. Butzen, 52 S.E.C. 512, 514 n.7 (1995).

14/ Fu-Sung Peter Wu, 55 S.E.C. 737, 746-47 n.22 (2002).

15/ Robert E. Gibbs, 51 S.E.C. 482, 483-84 (1993) (finding unauthorized transaction where no basis existed for disagreeing with credibility of customer's testimony that trade was unauthorized where such testimony "was comprehensive and was not discredited or called into question as the result of extensive cross-examination during the hearing" and "was consistent on the relevant facts with an affidavit that [customer] and his wife had previously submitted to the NASD"), aff'd, 25 F.3d 1056 (10th Cir. 1994) (Table).

III.

FINRA also made findings that Sears executed an additional eighteen unauthorized trades in the accounts of four other clients. As discussed below, we have determined to set aside these additional findings of violation.

In addition to McClure and Gwaltney, the two customers who testified at the hearing, FINRA's Department of Enforcement ("Enforcement") included in its exhibits declarations (the "Declarations") from four of Sears's other clients in which those clients stated that Sears made unauthorized trades in their accounts. A FINRA examiner prepared the Declarations, and Sears's clients signed them. In the Declarations, Laura Rossie stated that Sears made twelve unauthorized trades in her account, Charles Hoskins stated that Sears made four unauthorized trades in his account, and Paul DiMarco and Diane Rinehard each stated that Sears made one unauthorized trade in their accounts. None of these additional four customers testified, and Enforcement did not introduce any documentation underlying these trades. Its counsel stated in closing argument merely that the Declarations "corroborated" the assertions of the testifying customers. Sears testified that she never made any unauthorized trades in any of the accounts identified in the Declarations.

Sears argues that it was unfair for FINRA to find unauthorized trades based on the declarations because the "unauthorized trades referenced in the Declarations were neither identified nor the subject of any cause of action in the Complaint." 16/ The complaint alleged unauthorized trades only in the accounts of McClure, Gwaltney, and a third customer, Jean Thomas. 17/ The complaint did not mention customers Rossie, Hoskins, DiMarco, or Rinehard.

We have held that a complaint need not specify all details regarding a case against a respondent. 18/ Rather, we have found it "sufficient if the respondent 'understood the issue' and

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16/ Sears also contends that the Declarations "constituted impermissible hearsay." However, "it is well established that hearsay evidence is admissible in administrative proceedings, if it is deemed relevant and material." Otto v. SEC, 253 F.3d 960, 966 (7th Cir. 2001). The Declarations were relevant and material, and FINRA therefore admitted them properly.

17/ Although Enforcement initially planned to call Thomas, it never did so, and the Hearing Panel made no findings with respect to her account. Enforcement stated that it ultimately chose not to call Thomas because her testimony would be "cumulative and redundant." Thomas was 85 years old at the time of the hearing and had been hospitalized recently.

18/ See, e.g., Fox & Co. Inv., Securities Exchange Act Rel. No. 52697 (Oct. 28, 2005), 86 SEC Docket 1895, 1908 n.34 (sustaining NASD's finding of recordkeeping violations even though "NASD's complaint did not specifically allege Applicants' failure to book the arbitration award as a liability in FOX's January 31, 2002 books and records as one of the inaccuracies supporting the alleged recordkeeping violations").

'was afforded full opportunity' to justify its conduct during the course of the litigation." 19/ Thus, in considering this kind of procedural question, we have focused less on "the adequacy of the . . . pleading" and more on "the fairness of the whole procedure." 20/

Here, the record does not indicate that Sears had adequate notice that the claims made by the four other customers in the Declarations were intended to provide a basis for additional findings of violation. There is no reference to any of these four additional customers in the complaint. Enforcement's pre-hearing brief discussed only the trades that the complaint alleged were unauthorized. Although Enforcement introduced the Declarations at the hearing, it adduced no underlying documentation related to the trades, and it did not indicate that it sought to hold Sears liable for those trades. In closing arguments, Enforcement counsel asserted only that the evidence of unauthorized trading in the accounts of McClure and Gwaltney was "corroborated by the other [D]eclarations." Enforcement's proposed findings of fact did not seek a finding that Sears engaged in unauthorized trading in the accounts of Rossie, Hoskins, DiMarco, or Rinehard, and its post-hearing brief urged only that the Hearing Panel find that "Sears violated NASD Conduct Rule 2110 by effecting [the] unauthorized transactions as alleged in the Complaint."

FINRA, however, found that Sears violated Rule 2110 by executing unauthorized trades in the accounts of not only McClure and Gwaltney but also in the accounts of Rossie, Hoskins, DiMarco, and Rinehard. Under the circumstances, we conclude that it is not appropriate to hold Sears liable for additional Rule 2110 violations based on the Declarations because it appears Sears lacked adequate notice that the Declarations were an additional basis for FINRA's allegations. 21/ We therefore set aside the additional findings of unauthorized trading based on the Declarations. 22/

19/ Aloha Airlines, Inc. v. CAB, 598 F.2d 250, 262 (D.C. Cir. 1979) (quoting NLRB v. McKay Radio & Tel. Co., 304 U.S. 333, 350 (1938)).

20/ Id. (quoting 2 K. Davis, Administrative Law Treatise, § 8.04 at 525 (1958)).

21/ See 15 U.S.C. § 78*o*-3(b)(8) (requiring that FINRA "provide a fair procedure for the disciplining of members and persons associated with members").

22/ See James L. Owsley, 51 S.E.C. 524, 528 (1993) (setting aside findings of antifraud violations based on misrepresentations not alleged in NASD's complaint where the record did not indicate that the respondent "understood the issue and was afforded a sufficient opportunity to justify his conduct with respect thereto"); Paulson Inv. Co., 47 S.E.C. 886, 890 (1983) (setting aside violations not charged in NASD's complaint where the record indicated that Applicants were not "given adequate notice of these additional allegations, or a proper opportunity to defend themselves against them").

IV.

Outside Business Activities

A. Sears admitted that, at her office, she helped her clients prepare tax returns. She testified that, while associated with AMEX, she "worked with approximately forty people on their tax returns each year." Sears also testified that she never disclosed to AMEX that she provided these tax preparation services. The record contains "Outside Activities Disclosure Forms" that Sears submitted to AMEX for the years 1998-2002 that corroborate Sears's admission. Sears did not disclose her tax preparation activities on any of the forms. Sears also admitted that, between 1998-2002, she received total compensation for these services of approximately $3,515. 23/

B. NASD Rule 3030 provides that no "person associated with a member in any registered capacity shall be employed by, or accept compensation from, any other person as a result of any business activity, other than a passive investment, outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member." The record establishes, and Sears does not dispute, that Sears prepared tax returns for her clients for compensation. Although Sears does not deny that she never gave express written notice of her tax preparation services to AMEX, she argues that AMEX had constructive notice of her activities. Sears contends that she "disclosed her assistance" to AMEX and that AMEX "was on notice of such assistance" because she kept copies of the tax returns in her client files which her supervisors reviewed and because she prepared the returns on AMEX computers. Neither action, however, constitutes the requisite written notice Rule 3030 demands. 24/

Although Sears does not deny providing the tax services as FINRA found, she argues that those services cannot form the basis for findings of violation because, she asserts, no precedent "constru[es] the preparation of customer tax returns as an outside business activity." We do not consider this argument to be a valid defense because no precedent suggests that tax preparation

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23/ As part of FINRA's investigation, Sears sent FINRA a letter recounting her non-securities income received from 1998-2002. In this letter, Sears acknowledged preparing tax returns for her clients. She attached spreadsheets detailing each client's name, the type of tax return prepared, and the compensation received.

24/ See Herbert J. Burns, 52 S.E.C. 823, 825 (1996) (finding that applicant violated NYSE rule prohibiting engaging in outside business activities without making a written request and receiving the prior written consent of member firm where applicant claimed that firm approved his activities in minutes of board meetings that applicant wrote on a yellow legal pad because "the informal jottings of an interested person cannot constitute the requisite written permission to engage in outside business activities").

services do not constitute an outside business activity, 25/ and because NASD has stressed in its publications that associated persons are required "to report any kind of business activity engaged in away from their firm." 26/ AMEX's own outside activities disclosure form, moreover, required that associated persons disclose any "source of compensation outside the company."

Sears also challenges FINRA's finding that she engaged in undisclosed outside business activities on the ground that, according to Sears, FINRA relied improperly on the testimony of Richard Zue, Sears's former supervisor. According to Sears, Zue's testimony "was inherently biased and unreliable" because Zue, in addition to supervising Sears, "was a rival financial advisor." FINRA, however, "credit[ed]" Zue's testimony that "he had no knowledge that Sears prepared tax returns for customers," and Sears presented no evidence that contradicted Zue on this point. 27/ Although Sears argues further that the Commission should give no weight to Zue's testimony because she "presented substantial evidence that [AMEX] knew of her assistance to some of her customers with the preparation of their tax returns," the sole basis of that assertion of knowledge is that she kept the returns in her files and prepared the returns on AMEX computers -- a proposition we already rejected as sufficient notification. She did not establish that AMEX or Zue, in fact, knew about her outside business activities.

Although FINRA credited Zue's testimony, his testimony was not the basis for FINRA's findings. Its opinion stated that it found the Rule 3030 violation "based on Sears's own admissions." As noted, Sears admitted she prepared tax returns for clients for compensation and did not provide AMEX written notice of these activities. We agree with FINRA that Sears's own

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25/ It is obvious that a violation can be found even though the rule or concept at issue has never been litigated. See, e.g., Inv. Planning, Inc., 51 S.E.C. 592, 598 (1993) (finding that applicants charged unfair prices by charging at least 4% markups despite applicants' claim "that disciplinary action for charging a 5% markup [was] unprecedented").

26/ NASD Notice to Members 01-79 (emphasis in original), available at www.finra.org.

27/ After Enforcement introduced a memorandum Zue wrote describing conversations with some of Sears's clients which led Zue to conclude that Sears had made unauthorized trades in the accounts of at least three other clients, Sears introduced affidavits signed by those three clients disclaiming that Sears made unauthorized trades in their accounts. FINRA, therefore, did "not rely on the Zue memorandum" because the "affidavits [came] directly from Sears's customers, and [were] not a secondhand account of conversations with customers." Nonetheless, although FINRA did not rely on the Zue memorandum to support the allegations of unauthorized trading, it found Zue's testimony with respect to his lack of knowledge of Sears's outside business activities to be credible. We also do not rely on the Zue memorandum to sustain findings of unauthorized trading. As noted, Sears introduced no evidence to refute Zue's testimony with respect to her tax services.

admissions establish that she violated Rules 3030 and 2110, and we see no basis to set aside this finding. 28/

V.

Section 19(e)(2) of the Securities Exchange Act of 1934 requires that we sustain FINRA's sanctions unless we find, having due regard for the public interest and the protection of investors, that the sanctions are excessive or oppressive or impose an unnecessary or inappropriate burden on competition. 29/ We begin our analysis with a consideration of whether the imposed sanctions are allowable under FINRA's Sanction Guidelines. Although we are not bound by the guidelines, we use them as a benchmark in conducting our review under Section 19(e)(2).

A. We turn first to the two-year suspension FINRA imposed for Sears's unauthorized trading. FINRA's Sanction Guidelines recommend a suspension of ten business days to one year or, in egregious cases, a suspension of up to two years or a bar. 30/ The guidelines identify three categories of egregious unauthorized trading: (1) "quantitatively" egregious unauthorized trading, i.e., unauthorized trading that is egregious because of the sheer number of unauthorized trades executed; (2) unauthorized trading accompanied by aggravating factors, such as efforts to conceal the unauthorized trading, attempts to evade regulatory investigative efforts, customer loss, or a history of similar misconduct; and (3) "qualitatively" egregious trading measured by the strength of the evidence and the respondent's motives in effecting the trades. 31/ Although FINRA found that Sears's unauthorized trades were not qualitatively egregious and did not involve aggravating conduct, it nonetheless found those trades quantitatively egregious.

We emphasize that, as we have noted previously, "[u]nauthorized trading is very serious misconduct." 32/ Here, however, we have set aside findings of violation with respect to eighteen of the twenty trades FINRA deemed unauthorized. Under the circumstances, it is appropriate to

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28/ FINRA's finding that Sears also violated Rule 2110 is in accord with "the judicially-recognized policy that a violation of another NASD rule constitutes a violation of just and equitable principles of trade." Anthony H. Barkate, 57 S.E.C. 488, 489 n.1 (2004) (citing Sirianni v. SEC, 677 F.2d 1284, 1288 (9th Cir. 1982)), petition denied, 125 Fed. Appx. 892 (9th Cir. 2005) (unpublished).

29/ 15 U.S.C. § 78s(e)(2). Applicant does not claim, and the record does not show, that FINRA's sanctions impose an unnecessary or inappropriate burden on competition.

30/ FINRA Sanction Guidelines 103 (2006 ed.). The guidelines also recommend a fine, but FINRA did not impose a fine because Sears had filed for bankruptcy. See supra note 3.

31/ Id. at 103 n.2.

32/ Howard Alweil, 51 S.E.C. 14, 18 (1992).

remand the proceeding to FINRA so that it may have the opportunity to assess appropriate sanctions on the basis of the unauthorized trading violations that we have sustained. 33/

B. We now turn to the six-month suspension that FINRA imposed for the undisclosed outside business activities. 34/ FINRA's Sanction Guidelines recommend a suspension of up to thirty days when the outside business activities do not involve aggravating conduct. When the outside business activities do involve aggravating conduct, the Guidelines recommend a suspension of up to one year or, in egregious cases, a longer suspension or bar. 35/

FINRA found that Sears's outside business activities involved aggravating conduct "because Sears's tax preparation services involved American Express customers, Sears gave the impression that the services were approved by American Express, and Sears attempted to conceal her activities from American Express by annually certifying that she had no undisclosed outside business activities." Despite these aggravating factors, however, FINRA imposed only a six-month suspension in light of the minimal compensation Sears received for the tax services. 36/

33/ Although we have set aside the findings of unauthorized trading violations based on the Declarations and thus find only two unauthorized trades for purposes of evaluating the egregiousness of Sears's misconduct, FINRA admitted the Declarations properly, see supra note 16, and they may be considered in gauging aggravating factors when assessing appropriate sanctions for the two unauthorized trading violations that we have sustained. Cf. Gateway Int'l Holdings, Inc., Exchange Act Rel. No. 53907 (May 31, 2006), 88 SEC Docket 430, 440 n.30 (noting that "[a]lthough we are not finding violations based on [other] failures [to file timely reports], we may consider them, and other matters that fall outside the [Order Instituting Proceedings], in assessing appropriate sanctions"); Peter J. Kisch, 47 S.E.C. 802, 810 n.23 (1982) (setting aside finding of antifraud violation because "deception practiced on regulatory authorities does not in itself constitute a violation of antifraud provisions" but noting that "it is clearly an aggravating factor to be considered in assessing appropriate sanctions").

34/ FINRA ordered that this six-month suspension was to be served concurrently with the two-year suspension for unauthorized trading.

35/ FINRA Sanction Guidelines at 14.

36/ See id. (stating that the principal considerations in determination sanctions for violations of Rule 3030 include: (1) whether the outside activity involved customers of the firm, (2) whether the outside activity resulted directly or indirectly in injury to customers of the firm and, if so, the nature and extent of the injury, (3) the duration of the outside activity and the number of customers involved, (4) whether the respondent created the impression that the employer (member firm) had approved the activity, and (5) whether the respondent misled his or her employer member firm about the existence of the outside activity or otherwise concealed the activity from the firm).

Sears argues that the record does not support a finding of aggravating conduct. Although she does not dispute that her tax preparation services involved AMEX customers, she contends that her failure to advertise her tax services to her clients and her receipt of only minimal compensation "flatly contradicts" the finding that she gave the impression that her tax preparation services were approved by AMEX. We disagree. Clients whom Sears assisted with their tax returns in Sears's office could have easily received the impression that AMEX approved her activities regardless of whether Sears advertised those services or charged minimal fees. Sears also argues, as she argued with respect to the underlying violation, that, rather than concealing her activities from AMEX, AMEX was "well aware" of her assistance to her clients because she maintained copies of the tax returns in her files. 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.

We also find that the six-month suspension is not excessive or oppressive. Rule 3030 ensures that member firms "receive prompt notification of all outside business activities of their associated persons so that the member's objections, if any, to such activities could be raised at a meaningful time and so that appropriate supervision could be exercised as necessary under applicable law." 37/ As we stated in an analogous context, it is a "prophylactic rule designed to assure that an employee engages in conduct consistent with his duties to his employer and its clients." 38/ Sears's misconduct, however, deprived customers of the oversight and supervision provided by Sears's employer firm. 39/ The nature of a Rule 3030 violation indicates, as reflected in the sanction guidelines, that a suspension provides an appropriate remedy for such misconduct. Such suspensions are appropriate to "secure compliance with the rules, regulations, and policies of both [FINRA] and [the Commission]." 40/ A suspension in this case will impress upon Sears the importance of complying with this requirement in the future.

The individual facts of this case suggest that a suspension of six months is appropriately remedial and not punitive. The aggravating conduct noted above -- the involvement of Sears's clients in her outside business activities, the impression Sears gave that her member firm approved her activities, and the repeated failure by Sears to disclose her activities on AMEX's outside activities disclosure form -- warrants a suspension over thirty days and up to one year. As FINRA noted, the minimal compensation Sears received -- approximately $3,000 -- indicates

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37/ Proposed Rule Change by NASD Relating to Outside Business Activities of Associated Persons, Exchange Act Rel. No. 26063 (Sept. 6, 1988), 41 SEC Docket 1254, 1254.

38/ Burns, 52 S.E.C. at 829 (discussing equivalent NYSE rule).

39/ Micah C. Douglas, 52 S.E.C. 1055, 1060 (1996) (finding that applicant's failure to inform his employer firm of his outside business activities "deprived potential customers of the oversight and supervision provided by [applicant's] employer firm").

40/ See Boruksi v. SEC, 289 F.2d 738, 740 (2d Cir. 1961).

that a suspension of less than a year is appropriate. Sears raises no other facts, however, that mitigate her misconduct. 41/ We conclude, based on all the facts, that a six-month suspension is neither excessive or oppressive and therefore satisfies the standard set forth in the Exchange Act.

An appropriate order will issue. 42/

By the Commission (Chairman COX and Commissioners ATKINS and CASEY).

Florence E. Harmon
Acting Secretary

41/ Although Sears argues that lesser sanctions are warranted due to FINRA's reliance on Zue's testimony, we noted above that FINRA based its findings on Sears's own testimony.

42/ We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
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For Review of Disciplinary Action Taken by

FINRA

ORDER MODIFYING DISCIPLINARY ACTION TAKEN BY REGISTERED SECURITIES ASSOCIATION

On the basis of the Commission's opinion issued this day, it is

ORDERED that the sanction imposed by FINRA on Wanda P. Sears for engaging in unauthorized transactions in violation of FINRA Rule 2110 be, and it hereby is, vacated and remanded to FINRA for further proceedings in accordance with this opinion; and it is further

ORDERED that the sanction imposed on Sears for failing to disclose an outside business activity in violation of FINRA Rules 3030 and 2110 be, and it hereby is, sustained.

By the Commission.

Florence E. Harmon
Acting Secretary