

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 64481 / May 12, 2011

Admin. Proc. File No. 3-14093

In the Matter of the Application of

GREMO INVESTMENTS, INC.
c/o Edward Joseph Gremo, Jr.
2724 Plante Road
North Aurora, Illinois 60542

For Review of Disciplinary Action Taken by
Financial Industry Regulatory Authority, Inc.

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION - REVIEW OF DISCIPLINARY
PROCEEDING

Failure to Comply with Reporting Requirements

Conduct Inconsistent with Just and Equitable Principles of Trade

Member of registered securities association filed an annual report that failed to comply with reporting requirements. *Held*, association's findings of violations and sanctions imposed are *sustained*.

APPEARANCES:

Edward Joseph Gremo, Jr., for Gremo Investments, Inc.

Marc Menchel, Alan Lawhead, and Colleen E. Durbin, for the Financial Industry
Regulatory Authority, Inc.

Appeal filed: October 18, 2010
Last brief received: January 10, 2011

I.

Gremo Investments, Inc. ("Gremo Investments" or the "Firm"), a Financial Industry Regulatory Authority, Inc. ("FINRA") member firm, seeks review of disciplinary action taken by FINRA. FINRA found that the Firm violated Section 17(e) of the Securities Exchange Act of 1934 and Rule 17a-5 thereunder, and FINRA Rule 2010, by filing an annual report that was audited by an accounting firm that was not registered with the Public Company Accounting Oversight Board ("PCAOB").¹ FINRA suspended the Firm until it files a compliant annual report and imposed a \$1,000 fine. We base our findings on an independent review of the record.

II.**A. Background**

The facts are largely undisputed. Gremo Investments has been a FINRA member since October 1, 2004. The Firm is a registered broker-dealer with a net capital requirement of \$5,000 and sells mutual funds and variable life insurance. Edward Gremo is the firm's chief executive officer, financial and operations principal, and chief compliance officer.

B. The Firm Files an Annual Report.

In a series of orders that were issued beginning in 2003, the Commission exempted non-public broker-dealers, such as the Firm, from the requirement that their annual financial statements be audited by a PCAOB-registered accounting firm.² Following the expiration of the Commission's exemptive orders in December 2008, FINRA sent two Information Notices to members in January and December 2009 notifying non-public broker-dealers that "[t]heir fiscal year 2009 and subsequent audits must . . . be conducted by a PCAOB-registered accounting firm."³

The Firm's annual report for the year ended September 30, 2009 ("2009 Annual Report") was due on November 30, 2009. The Firm retained Apple Accounting Services ("Apple

¹ 15 U.S.C. § 78q; 17 C.F.R. § 240.17a-5. Rule 2010 requires members to observe "high standards of commercial honor and just and equitable principles of trade." As part of the effort to consolidate and reorganize NASD's and NYSE's rules into one FINRA rulebook, NASD Rule 2110 (which was otherwise unchanged) was codified as FINRA Rule 2010, effective December 15, 2008.

² See *Extension of Order Regarding Broker-Dealer Financial Statement Requirements Under Section 17 of the Exchange Act*, Securities Exchange Act Rel. No. 54920 (Dec. 12, 2006), 89 SEC Docket 1672.

³ FINRA Information Notices, Dec. 9, 2009 and Jan. 8, 2009.

Accounting") to audit the financial statements in the 2009 Annual Report. On November 27, 2009, Gremo requested a thirty-day extension to file the 2009 Annual Report and explained to FINRA that Apple Accounting's PCAOB registration application was pending.⁴ In a letter dated December 3, 2009, FINRA granted the extension and informed Gremo that failure to timely file the report could result in the assessment of a fine of \$100 per day for up to ten days and could result in other regulatory or disciplinary action. On December 31, 2009, the Firm filed the 2009 Annual Report. Apple Accounting audited the report but was not registered with the PCAOB.⁵

C. FINRA Initiates a Disciplinary Proceeding.

On May 3, 2010, FINRA notified Gremo and the Firm by letter that the 2009 Annual Report was incomplete because it was audited by an accounting firm that was not PCAOB registered. FINRA stated that it deemed the report not filed and that it would suspend the Firm's membership as of May 25, 2010 unless the Firm filed a compliant annual report. Among other things, FINRA advised the Firm of its right to a hearing pursuant to FINRA Rules 9552 and 9559.

On May 20, 2010, the Firm timely requested a hearing to challenge the findings of violation and the sanctions imposed. FINRA granted the request and on July 1, 2010, a FINRA Hearing Panel conducted an Expedited Proceeding telephonically. Gremo testified that he knew that the Firm was required to file an annual report that was audited by a PCAOB-registered accounting firm and that Apple Accounting was not registered with the PCAOB. In a September 17, 2010 decision, the Hearing Panel found that the Firm submitted an annual report that was audited by an accounting firm that was not PCAOB registered, that such report was incomplete, that the incomplete report was deemed not filed pursuant to FINRA's By-Laws, and that the Firm violated Exchange Act Section 17(e) and Exchange Act Rule 17a-5, and FINRA Rule 2010. The Hearing Panel upheld the suspension, fined the Firm \$1,000, and imposed costs of \$1,605. This appeal followed.

⁴ The PCAOB received Apple Accounting's application for registration on November 30, 2009.

⁵ On July 13, 2010, the PCAOB issued a public notice disapproving Apple Accounting's application for registration. *Public Notice of Disapproval of Registration Application*, PCAOB Rel. No. 102-2010-005 (Jul. 13, 2010), available at <http://pcaobus.org/registration/firms/disapproval%20notices/apple.pdf>.

III.**A. The Firm Violated Exchange Act Section 17(e)(1)(A) and Rule 17a-5(d) thereunder, and FINRA Rule 2010.**

FINRA found that the Firm violated the Exchange Act, an Exchange Act rule, and a FINRA rule and imposed a final disciplinary sanction. Accordingly, Exchange Act Section 19(e) governs our review of this proceeding.⁶ Pursuant to Exchange Act Section 19(e)(1), we will sustain FINRA's disciplinary action if the record shows by a preponderance of the evidence that the Firm engaged in the violative conduct that FINRA found and that FINRA applied its rules in a manner consistent with the purposes of the Exchange Act.⁷

Exchange Act Section 17(e)(1)(A) and Rule 17a-5(d) thereunder require registered broker-dealers to file timely annual reports that contain financial statements audited by a PCAOB-registered accounting firm.⁸ Gremo admits that he knew that the Firm was required to file an annual report that was audited by a PCAOB-registered accounting firm. He concedes that Apple Accounting audited the financial statements in the 2009 Annual Report and that Apple Accounting was not PCAOB registered. We conclude that the Firm violated Exchange Act Section 17(e)(1)(A) and Rule 17a-5(d) thereunder and FINRA Rule 2010.⁹

⁶ 15 U.S.C. § 78s(e)(1); *see, e.g., Sky Capital LLC*, Exchange Act Rel. No. 55828 (May 30, 2007), 90 SEC Docket 2201, 2206; *Morgan Stanley & Co., Inc.*, 53 S.E.C. 379, 382 (1997).

⁷ 15 U.S.C. § 78s(e)(1).

⁸ 15 U.S.C. § 78q(e)(1)(A), as amended by the Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, § 205(c)(2), 116 Stat. 745 (2002) ("Sarbanes-Oxley Act"); 17 C.F.R. § 240.17a-5(d); *see Stephen J. Horning*, Securities Exchange Act Rel. No. 56886 (Dec. 3, 2007), 92 SEC Docket 207, 223-24 (finding that respondent caused a broker-dealer's violation of Exchange Act Section 17(e) and Exchange Act Rule 17a-5(d) by filing an annual report that contained falsified financial statements), *aff'd*, 570 F.3d 337 (D.C. Cir. 2009).

⁹ *See Kirlin Sec., Inc.*, Exchange Act Rel. No. 61135 (Dec. 10, 2009), 97 SEC Docket 23299, 23324 ("It is well established that a violation of . . . securities laws or regulations also constitutes a violation of Rule [2010]." (citation omitted)); *Joseph Ricupero*, Exchange Act Rel. No. 62891 (Sept. 10, 2010), 99 SEC Docket 32270, 32275 n.12 ("A violation of Exchange Act and [FINRA] Rules constitutes conduct inconsistent with just and equitable principles of trade and therefore also establishes a violation of [FINRA] Rule [2010]."), *appeal docketed*, No. 10-4566 (2d Cir. Nov. 8, 2010).

B. The Firm's Arguments

Gremo asserts that "the PCAOB board was ruled by the Supreme Court to be unconstitutional." The Supreme Court, however, held only that the provisions regarding removal of PCAOB members were unconstitutional.¹⁰ All other aspects of the Sarbanes-Oxley Act remain in effect, including the PCAOB and the requirement that financial statements of broker-dealers be audited by a PCAOB-member firm.¹¹

Gremo requests that the Commission "review[] the process on how new accountants become members with the PCAOB," and that "Apple [A]ccounting be approved by PCAOB, retroactively." An accounting firm that is denied registration has a right to file an appeal; however, Apple Accounting, declined to do so.¹² Apple Accounting is not a party to this proceeding, and the PCAOB's registration process with respect to Apple Accounting is not at issue here.¹³ Our review is limited to FINRA's findings that Gremo Investments violated the Exchange Act and related rules and FINRA's imposition of sanctions.

Gremo claims that the PCAOB has forced him to hire a PCAOB-registered accounting firm that "charge[s] 10 times more than [the Firm's] accountant," and that "[t]his is a clear violation of the Sherman Antitrust [Act] limiting the ability of competition in the market place." Gremo fails to provide any factual support for his assertions about the increased cost of retaining a PCAOB-registered firm. Moreover, Congress, through the Sarbanes-Oxley Act amendments to the Exchange Act, mandated that financial statements of broker-dealers be audited by PCAOB-registered accountants.¹⁴ Any financial burden the Firm bears as a result of complying with this statutory requirement is based on a Congressional determination that PCAOB registration would

¹⁰ *Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 130 S. Ct. 3138, 3151 (2010).

¹¹ *See id.* at 130 S. Ct. at 3161-62 (holding that "[t]he Sarbanes-Oxley Act [which establishes the PCAOB and outlines its powers and responsibilities] remains 'fully operative as a law' with these tenure restrictions excised" (citations omitted)); *Mission Sec. Corp.*, Exchange Act Rel. No. 63453 (Dec. 7, 2010), 99 SEC Docket 35510A1, 35510A16 & n.28.

¹² 15 U.S.C. §§ 7215(d)(1)(C), 7217(c)(2). According to the PCAOB, Apple Accounting failed to file an appeal. *Public Notice of Disapproval of Registration Application*, PCAOB Rel. No. 102-2010-005 (Jul. 13, 2010).

¹³ 15 U.S.C. § 78s(d). Apple Accounting is not a party or an "aggrieved person" within the meaning of Exchange Act Section 19(d)(2) for purposes of appealing the FINRA action against the Firm. *See* 15 U.S.C. § 78s(d)(2).

¹⁴ 15 U.S.C. § 78q(e)(1)(A), as amended by the Sarbanes-Oxley Act; 17 C.F.R. § 240.17a-5(d); *see Horning*, 92 SEC Docket at 223.

protect the public interest by ensuring more rigorous audits.¹⁵ In any event, the antitrust laws are impliedly repealed to the extent necessary for the Exchange Act to function in the manner Congress intended.¹⁶ We therefore reject Gremo's claim.

Gremo seeks to have the 2009 Annual Report "stand as accepted," in part because "FINRA had a 4 day audit of [the Firm's] books and records" just one month before the 2009 Annual Report was due, and "everything was ok." The Sarbanes-Oxley Act requires the Firm to have a PCAOB-registered accounting firm audit the financial statements in the 2009 Annual Report. A FINRA examination may serve different purposes and have different goals than an audit of a Firm's financial statements by a PCAOB-registered accounting firm. FINRA routinely conducts several different types of exams designed to determine whether a member is complying with a variety of federal securities laws, rules, and regulations and FINRA rules, while an audit by a PCAOB-registered firm is meant to ensure the reliability and accuracy of the member's financial statements.¹⁷ FINRA's inspection therefore does not provide a substitute for an audit conducted by a PCAOB-registered accounting firm or obviate the need to comply with this Congressional mandate. Moreover, whether or not FINRA detected any problems is irrelevant to our review of the violation at issue.

IV.

Pursuant to Exchange Act Section 19(e)(2), we will sustain FINRA's sanction unless we find, having due regard for the public interest and the protection of investors, that the sanction is excessive or oppressive or imposes an unnecessary or inappropriate burden on competition.¹⁸ FINRA Rule 9552(a) provides that a member who fails to file an annual report will be suspended if such member fails to take corrective action.¹⁹ Section 4(g) of Schedule A to FINRA's By-Laws

¹⁵ Sarbanes-Oxley Act, Pub. L. No. 107-204, preamble.

¹⁶ See *Credit Suisse Sec. (USA) LLC v. Billing*, 551 U.S. 264 (2007); *Gordon v. N.Y. Stock Exch.*, 422 U.S. 659, 688-91 (1975) (stating that the "[i]mplied repeal of the antitrust laws is, in fact, necessary to make the Exchange Act work as it was intended"); *Timothy H. Emerson*, Exchange Act Rel. No. 60328 (Jul. 17, 2009), 96 SEC Docket 18882, 18894 & n.37.

¹⁷ See "Preparing for a FINRA Cycle Examination," available at <http://www.finra.org/web/groups/industry/@ip/@edu/documents/education/p038336.pdf>.

¹⁸ 15 U.S.C. § 78s(e)(2). The Firm does not claim, and the record does not show, that FINRA's action imposes an unnecessary or inappropriate burden on competition.

¹⁹ FINRA Manual, available at http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4003. FINRA

instructs FINRA to impose on a member a late fee of \$100 for each day that an annual report is delinquent for up to a maximum of ten days.²⁰ FINRA suspended the Firm until it files a compliant annual report and imposed a \$1,000 fine. Gremo argues that the suspension and fine are unnecessary.

The reporting provisions are important to monitor the financial status of broker-dealers and to protect investors.²¹ Reporting violations are therefore serious.²² The Commission has emphasized that the reporting rules "are not technical but involve fundamental safeguards imposed for the protection of the investing public on those who wish to engage in the securities business."²³ Congress passed the Sarbanes-Oxley Act to enhance these safeguards and "to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws."²⁴ The Sarbanes-Oxley Act established the PCAOB to oversee audits "in order to protect investors and the public interest by promoting informative, accurate, and independent audit reports."²⁵ We find that the sanctions are remedial because they will impress upon the Firm and others the importance of filing annual reports that are audited by PCAOB-registered firms in compliance with the federal securities laws and protect the investing public by reducing the likelihood of any recurrence of a violation.²⁶

¹⁹ (...continued)

deemed the 2009 Annual Report to be incomplete and therefore not filed pursuant to Section 4(g) of Schedule A to FINRA's By-Laws.

²⁰ FINRA Manual at http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=4698.

²¹ See *Palm State Equities, Inc.*, 52 S.E.C. 333, 338 (1995) (finding that applicant violated Exchange Act Rule 17a-5, among other things, and stating that the reporting and recordkeeping provisions are important both to monitor the financial status of broker-dealers and to protect public investors).

²² See *Troy A. Wetter*, 51 S.E.C. 763, 768 (1993) (finding applicant's failure to timely file an annual report to be a serious reporting violation).

²³ *Fox & Co. Inv., Inc.*, 58 S.E.C. 873, 897 & n.50 (2005) (citing *Lowell H. Listrom*, 50 S.E.C. 883, 888 (1992)).

²⁴ Sarbanes-Oxley Act, Pub. L. No. 107-204, preamble.

²⁵ <http://pcaobus.org/ABOUT/Pages/default.aspx>.

²⁶ See *Horning*, 92 SEC Docket at 223, 229 (finding that respondent caused firm's reporting, among other, violations, and that a suspension would reduce the likelihood of any recurrence).

Greco argues that he should not have to pay costs of \$1,605 because "it was never disclosed" to him when the Firm appealed to FINRA. FINRA's May 3, 2010 letter advised the Firm of its right to a hearing and instructed the Firm to refer to FINRA Rules 9552 and 9559 for further information regarding relevant procedures. Rule 9559(n) provides that FINRA may impose costs in an expedited proceeding, such as the one held here. We therefore reject Greco's argument.²⁷ In any event, an associated person is assumed to have read and to have knowledge of FINRA's rules.²⁸ We conclude that the sanctions are neither excessive nor oppressive.

An appropriate order will issue.²⁹

By the Commission (Commissioners CASEY, WALTER, AGUILAR, and PAREDES);
Chairman SCHAPIRO not participating.

Elizabeth M. Murphy
Secretary

²⁷ See *E. Magnus Oppenheim*, 58 S.E.C. 231, 243 & n.26 (2005) (rejecting applicant's claim that it should not bear costs); *John M. W. Crute*, 53 S.E.C. 1112, 1116 (1998) (recognizing NASD's broad discretion to impose costs and upholding imposition of costs), *aff'd*, 208 F.3d 1006 (5th Cir. 2000).

²⁸ *Carter v. SEC*, 726 F.2d 472, 474 (9th Cir. 1983) (stating that registered representatives "are assumed as a matter of law to have read and have knowledge of these [*i.e.*, FINRA's] rules and requirements"); *Ryan R. Henry*, Exchange Act Rel. No. 53957 (Jun. 8, 2006), 88 SEC Docket 587, 592 n.13.

²⁹ 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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GREMO INVESTMENTS, INC.
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For Review of Disciplinary Action Taken by
Financial Industry Regulatory Authority, Inc.

ORDER SUSTAINING DISCIPLINARY ACTION

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

ORDERED that the disciplinary action taken by the Financial Industry Regulatory Authority, Inc. against Gremo Investments, Inc., and its imposition of costs, be, and they hereby are, sustained.

By the Commission.

Elizabeth M. Murphy
Secretary