SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 57656 / April 11, 2008

Admin. Proc. File No. 3-11852

In the Matter of the Application of

PAZ SECURITIES, INC.
and
JOSEPH MIZRACHI

For Review of Disciplinary Action Taken by

NASD

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION -- REVIEW OF DISCIPLINARY PROCEEDING

Reconsideration of Sanctions Pursuant to Remand

Court of Appeals remanded Commission determination sustaining NASD sanctions for Commission to consider whether certain facts mitigated Applicants' misconduct and whether sanctions served a remedial purpose. Held, sanctions NASD imposed sustained.

APPEARANCES:

David Clarke, Jr., of DLA Piper US LLP, for PAZ Securities, Inc. and Joseph Mizrachi.

Marc Menchel, Carla Carloni, James S. Wrona, and Jennifer C. Brooks, for NASD.

Case remanded: July 20, 2007
Last brief received: December 19, 2007

I.

This proceeding is here on remand from the United States Court of Appeals for the District of Columbia Circuit. On October 28, 2005, we issued an opinion sustaining NASD's 1/ findings that PAZ Securities, Inc. ("PAZ"), formerly an NASD member firm, and Joseph Mizrachi ("Mizrachi"), PAZ's president and part owner, violated NASD Procedural Rule 8210 and NASD Conduct Rule 2110. 2/ We found the sanctions imposed by NASD -- expelling PAZ from membership and barring Mizrachi from associating with any NASD member firm in any capacity -- neither excessive nor oppressive. The Court of Appeals remanded the proceeding for the Commission to consider whether certain facts mitigated Applicants' violations and justified lesser sanctions and to consider whether the sanctions served a remedial purpose. 3/

II.

Neither the factual findings that establish the violations nor the findings of violation themselves are at issue on remand; we summarize those factual findings here merely to provide the necessary background for our discussion of sanctions. The violations, which serve as the basis for sanctions, stemmed from Applicants' failure to respond to NASD information requests.

A. On May 6, 2003, in connection with its routine examination of PAZ, NASD staff sent a request for information by overnight courier to Mizrachi at PAZ's address in NASD's Central Registration Depository ("CRD"). 4/ NASD sought information concerning whether PAZ had

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1/ On July 26, 2007, the Commission approved a proposed rule change NASD filed to amend its Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of its member firm regulatory functions with NYSE Regulation, Inc. See Securities Exchange Act Rel. No. 56148 (July 26, 2007), 91 SEC Docket 522. Because the disciplinary action here was taken before that date, we continue to use the designation NASD.

2/ PAZ Secs., Inc., Exchange Act Rel. No. 52693 (Oct. 28, 2005), 86 SEC Docket 1880. NASD Procedural Rule 8210 requires members and associated persons to provide information requested by NASD as part of an investigation, complaint, examination, or proceeding. NASD Conduct Rule 2110 requires members to adhere to "high standards of commercial honor and just and equitable principles of trade." A violation of NASD Rule 8210 is also a violation of NASD Rule 2110. Perpetual Secs., Inc., Exchange Act Rel. No. 56613 (Oct. 4, 2007), 91 SEC Docket 2489, 2504 n.50.

3/ PAZ Secs., Inc. v. SEC, 494 F.3d 1059 (D.C. Cir. 2007).

4/ NASD Procedural Rule 8210(d) provides that a notice under Rule 8210 shall be deemed received by the member or person to whom it is directed by mailing or otherwise

(continued...)

implemented a continuing education program; what investment banking or securities business the firm had engaged in since February 2001; what specific duties PAZ had assigned to, and what compensation PAZ had paid to, certain individuals during the period 2000-2002; whether PAZ had revised its written supervisory procedures as requested by NASD; and whether PAZ had a written expense sharing agreement with a company operated by Mizrachi's brother, Simon Mizrachi, that shared office space with PAZ. After Applicants did not respond to the request for information, NASD staff spoke with Simon Mizrachi, who was also a Vice President of PAZ Securities, on May 14, 2003. Simon Mizrachi acknowledged that the firm received the request for information, indicated that they would respond, and advised NASD staff that he would inform Applicant Mizrachi of the information request. Applicants did not provide the information or otherwise respond to NASD.

NASD sent a second letter requesting the information to Mizrachi at PAZ's CRD address on May 20, 2003. The letter stated that failing to provide the requested information "may result in disciplinary action." After Applicants did not respond, NASD sent a third letter to Mizrachi at PAZ's CRD address, as well as to Mizrachi at his residential address in CRD, on July 23, 2003. This letter stated that, if Mizrachi failed to provide the requested information, NASD staff would "recommend that NASD file a formal disciplinary complaint naming both the firm and [Mizrachi] and charging both the firm and [Mizrachi] with failure to provide information in violation of NASD Procedural Rule 8210 and Conduct Rule 2110."

After NASD received no response, it filed a complaint alleging that Applicants had failed to respond to a request for information in violation of NASD Procedural Rule 8210 and Conduct Rule 2110. NASD sent a copy of the complaint to both PAZ and Mizrachi at their CRD addresses on August 14, 2003; NASD sent a second copy of the complaint to both Applicants on September 12, 2003. Although Applicants retained counsel in late September 2003, and counsel sought and received an extension of time to respond, Applicants did not answer the complaint.

NASD filed a motion for default on November 18, 2003, and sent a copy of the motion to both PAZ and Mizrachi at their CRD addresses. On December 15, 2003, counsel for NASD spoke with Simon Mizrachi regarding the motion. Simon Mizrachi asked how the firm could get out of "this mess," and NASD counsel said that NASD had filed a motion for default against the firm and Joseph Mizrachi and that they could respond to that motion. NASD counsel informed Simon Mizrachi that the NASD Hearing Officer could issue a default decision against the firm and Joseph Mizrachi if they did not respond. Applicants did not respond to the motion.

On December 31, 2003, the NASD Hearing Officer issued a decision finding that Applicants defaulted by failing to answer the complaint. The decision expelled PAZ from membership and barred Mizrachi from association with any member firm in any capacity.

4/ (...continued)
transmitting the notice to the last known business address of the member or last known residential address of the person as reflected in the CRD.

B. On January 23, 2004, Applicants responded to NASD's information requests. Applicants requested simultaneously that the Hearing Officer vacate the default decision, but the Hearing Officer denied Applicants' motion on February 18, 2004. On February 10, 2005, after Applicants appealed to NASD's National Adjudicatory Council ("NAC"), the NAC sustained the default and affirmed the sanctions imposed by the Hearing Officer.

Applicants appealed to the Commission. On October 28, 2005, we issued a decision sustaining NASD's findings of violations and the sanctions imposed. Applicants appealed to the Court of Appeals, and the Court of Appeals remanded the matter to the Commission.

The Court of Appeals remanded "for the Commission to consider anew whether the sanctions are excessive or oppressive in light of the factors raised in mitigation and to consider for the first time whether the sanctions serve a remedial purpose." According to the Court, the Commission failed to address Applicants' arguments to the Commission that they deserved less severe sanctions because their "failure to respond to the NASD (1) was of no potential monetary benefit to them and (2) did not result in any injury to the investing public, and that (3) the information requested did not relate to injurious conduct or conduct of potential monetary benefit to them." The Court of Appeals also held that the Commission "did not adequately explain why the sanctions the NASD imposed upon the petitioners were not punitive rather than remedial."

III.

As the Court of Appeals recognized, Exchange Act Section 19(e)(2) requires us to review a disciplinary sanction imposed by the NASD upon a member firm or associated person "to determine whether the sanction 'imposes any burden on competition not necessary or appropriate' to further the purposes of the Act, or is 'excessive or oppressive.'" Applicants do not claim, and the record does not show, that NASD's action imposed an unnecessary or inappropriate burden on competition. For the reasons discussed below, we find that the expulsion of PAZ and bar of Mizrachi are neither excessive nor oppressive on the facts of this case.

A. We begin our analysis with a consideration of NASD's Sanction Guidelines. Although the Commission is not bound by the guidelines, we use them as a benchmark in conducting our review under Exchange Act Section 19(e)(2). 5/ NASD Sanction Guidelines with respect to NASD Rule 8210 provide that, absent mitigating circumstances, a bar should be the standard sanction when an individual fails to respond in any manner, and that expulsion of a firm likewise is warranted for a complete failure to respond in the absence of mitigating factors (an "egregious case"). Out of approximately eighty sanction guidelines, the guideline for violations of Rule 8210 is one of only three that propose a bar as the standard sanction in the absence of

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5/ Perpetual Secs., 91 SEC Docket at 2506 n.56. NASD promulgated the Sanction Guidelines in an effort to achieve greater consistency, uniformity, and fairness in sanctions. Id. (citing NASD Sanction Guidelines 1 (2006 ed.)).

mitigation. 6/ The imposition of a bar as the standard sanction for a complete failure to respond to NASD information requests "reflects the judgment that, in the absence of mitigating factors, a complete failure to cooperate with NASD requests for information or testimony is so fundamentally incompatible with NASD's self-regulatory function that the risk to the markets and investors posed by such misconduct is properly remedied by a bar." 7/ We agree with that judgment for the following reasons.

A complete failure to respond to a request for information issued pursuant to Rule 8210 renders the violator presumptively unfit for employment in the securities industry because the self-regulatory system of securities regulation cannot function without compliance with Rule 8210 requests. "Because of limited Commission resources, Congress has given NASD and other securities industry self-regulatory organizations significant front-line responsibility in ensuring that broker-dealers and their associated persons are complying with applicable statutes, rules, regulations, and ethical obligations." 8/ Exchange Act Section 15A requires that a registered securities association such as NASD enforce compliance by its members and persons associated with its members with the Exchange Act, the rules thereunder, and the rules of the registered securities association. 9/ Each of the rules of the registered securities association, here NASD, must meet certain statutory purposes. The main ones are that an SRO rule be designed for the

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6/ Charles C. Fawcett, IV, Exchange Act Rel. No. 56770 (Nov. 8, 2007), 91 SEC Docket 3147, 3157 n.27. The other two are the sanction guidelines applicable to the conversion of customer funds and to cheating during broker-dealer qualification examinations. Id. A bar may be imposed for many other violations, such as intentional or reckless misrepresentations or omissions of material fact, where NASD deems the particular misconduct at issue to be egregious. See, e.g., NASD Sanction Guidelines at 93.

7/ Fawcett, 91 SEC Docket at 3157.

8/ Id.

9/ 15 U.S.C. 78*o*-3; see also Report of Investigation Pursuant to Section 21(A), Exchange Act Rel. No. 51163 (Feb. 9, 2005), 84 SEC Docket 3129, 3130 ("As a registered association, the NASD has a statutory obligation to comply with the Exchange Act, and to enforce compliance by its members with the Exchange Act and its own rules."). Exchange Act Section 19(h)(1) authorizes the Commission to suspend or revoke the registration of a self-regulatory organization if the Commission finds that such self-regulatory organization has failed to enforce compliance with the provisions of the Exchange Act, the rules thereunder, or the rules of the self-regulatory organization. 15 U.S.C. § 78s(h)(1).

protection of investors. 10/ Thus, each NASD rule governing a broker-dealer has as a principal objective the protection of investors, and a violation of an NASD rule threatens investor harm.

NASD, however, lacks subpoena power; it must therefore "rely upon Procedural Rule 8210 in connection with its obligation to police the activities of its members and associated persons." 11/ Rule 8210 "provides a means, in the absence of subpoena power, for the NASD to obtain from its members information necessary to conduct investigations." 12/ NASD's lack of subpoena power thus renders compliance with Rule 8210 essential to enable NASD to execute its self-regulatory functions. 13/

In responding to Rule 8210 requests, therefore, "[d]elay and neglect on the part of members and their associated persons undermine the ability of the NASD to conduct investigations and thereby protect the public interest." 14/ The failure to respond to NASD information requests frustrates NASD's ability to detect misconduct, and such inability in turn threatens investors and markets. To ensure the continued strength of the self-regulatory system, members and their associated persons who fail to respond in any manner to Rule 8210 requests should be barred (or expelled) unless there are mitigating factors sufficient to rebut the presumption that such violators present too great a risk to the markets and investors to be permitted to remain in the securities industry. 15/ Because we conclude that removing those who present such a risk is necessary to further '"the Exchange Act's basic purpose of protecting public

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10/ 15 U.S.C. § 78*o*-3(b)(6) (stating that an association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that its rules are designed to, among other things, protect investors and the public interest).

11/ Joseph Patrick Hannan, 53 S.E.C. 854, 858-59 (1998).

12/ Richard J. Rouse, 51 S.E.C. 581, 584 (1993).

13/ Elliot M. Hershberg, Exchange Act Rel. No. 53145 (Jan. 19, 2006), 87 SEC Docket 494, 498, aff'd, 210 Fed. Appx. 125 (2d Cir. 2006).

14/ Barry C. Wilson, 52 S.E.C. 1070, 1075 (1996).

15/ See Fawcett, 91 SEC Docket at 3156-58; see also McCarthy v. SEC, 406 F.3d 179, 188 (2d Cir. 2005) ("Our foremost consideration must therefore be whether [the] sanction protects the trading public from further harm.").

investors,'" 16/ a bar (or expulsion) in such circumstances -- a complete failure to respond and no mitigation -- has a remedial, and not a punitive, purpose.

In addition to protecting investors by barring individuals and firms who have already demonstrated a refusal to be investigated, failures to cooperate should be prevented, as NASD notes in its brief, "by the very real threat of a bar and expulsion." The possibility of receiving a bar for a failure to cooperate may have a very specific deterrent effect on all current and future SRO members and associated persons. NASD members and associated persons who know of wrongdoing and are approached by NASD with requests for information as part of an investigation should be deprived of any incentive to fail to cooperate. The sanction for any misconduct an NASD investigation uncovers could be less than a bar, and wrongdoers should know that cooperation is their best chance of avoiding the bar that they will almost certainly receive for non-cooperation (in the absence of mitigating factors). The general deterrence effects of a bar and the threat of a bar are substantial.

B. On remand, Applicants argue that the sanctions imposed by NASD in this case are punitive and excessive because Applicants did not fail completely to respond to NASD's information requests and because certain allegedly mitigating factors warrant lesser sanctions. For the reasons discussed below, we reject both arguments.

1. There is no merit to Applicants' contention that, instead of failing completely to respond to the Rule 8210 requests at issue, they were simply "slow to respond to a request for information." NASD sent Applicants three separate requests for information which Applicants did not answer with any reasonable promptness. NASD staff spoke twice with Simon Mizrachi, Applicant Mizrachi's brother and a Vice President of PAZ Securities, regarding the requests for information; Applicants did not provide the requested information in response to either conversation. Applicants also did not provide the information in response to NASD's two notices of complaint, nor did they provide the information in response to NASD's motion for default. Applicants answered only after NASD expelled PAZ from membership and barred Mizrachi from association with a member eight-and-a-half months after the original request. The failure to respond until after NASD barred Applicants is not merely a "slow" response; such a failure is tantamount to a complete failure to respond. "NASD should not have to bring disciplinary proceedings, as it was required to do here, in order to obtain compliance with its rules governing its investigations." 17/

16/ Dennis A. Pearson, Jr., Exchange Act Rel. No. 54913 (Dec. 11, 2006), 89 SEC Docket 1627, 1640 (quoting Gershon Tannenbaum, 50 S.E.C. 1138, 1141 (1992)); see also Jay Alan Ochanpaugh, Exchange Act Rel. No. 54363 (Aug. 25, 2006), 89 SEC Docket 2653, 2661 ("Rule 8210 is an essential cornerstone of NASD's ability to police the securities markets and should be rigorously enforced.").

17/ Toni Valentino, Exchange Act Rel. No. 49255 (Feb. 13, 2004), 82 SEC Docket 711, 719.

2. The Court of Appeals remanded for the Commission to address whether Applicants' misconduct was mitigated based on Applicants' arguments that (1) their misconduct was of no potential monetary benefit to them; (2) their misconduct did not result in any injury to the investing public; and (3) the information requested did not relate to injurious conduct or conduct of potential monetary benefit to them. We find that neither these factors nor the additional factors Applicants urge as mitigation demonstrate that the sanctions imposed by NASD are excessive on the facts of this case.

Applicants' failures to respond to NASD's information requests are not mitigated because those failures did not, in themselves, produce a monetary benefit to Applicants or result in injury to the investing public. As NASD notes, a violation of Rule 8210 will almost never result in direct financial gain to the violator. Similarly, a Rule 8210 violation will rarely, in itself, result in direct harm to a customer. Rather, failing to respond undermines NASD's ability to detect misconduct that may have occurred and that may have resulted in harm to investors or financial gain to respondents. Thus, even if the failure to respond does not result in direct improper financial benefit to respondents or harm to investors, it is serious because it impedes detection of such violative conduct. 18/

Applicants' contention that the information requested here did not relate to injurious conduct or conduct of potential monetary benefit to themselves is mistaken. NASD issued the requests for information to investigate whether Applicants had violated NASD rules -- with the potential for consequent harm to customers or monetary benefit to the violators -- such as unreported securities business and improper expense sharing. 19/

The failure to report transactions shields trades from regulatory oversight. This oversight is critical to regulators' ability to uncover potentially harmful, and unjustly enriching, conduct such as abusive sales practices, insider trading, and trading ahead. Because the firm had not reported any trading activity for a considerable period prior to the requests, NASD asked

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18/ Cf. Ronald H.V. Justiss, 52 S.E.C. 746, 750 (1996) (sustaining bar imposed by NASD for possessing unauthorized materials during a qualification examination where although "the misconduct did not involve direct harm to customers, it flouts the ethical standards to which members of this [the securities] industry must adhere").

19/ Applicants highlight NASD's failure to bring any enforcement proceeding based on misconduct uncovered from their eventual responses, arguing that this failure establishes the inconsequentiality of the information requested. Applicants read too much into NASD's inaction. As noted in the text, it is the possibility that a request for information may ascertain whether misconduct has occurred that makes the request important. Moreover, the record gives no indication whether Applicants' responses did not, in fact, produce evidence of misconduct. By the time Applicants submitted their responses, they had already been barred and expelled, rendering moot the necessity of any further enforcement that may have been warranted by the information in Applicants' responses.

Applicants for information concerning, among other topics, "the investment banking and/or securities business the firm ha[d] engaged in since February 2001" to determine whether PAZ had engaged in unreported securities business. NASD could not identify whether such misconduct occurred, however, because Applicants did not respond to its inquiries.

The inquiries about improper expense sharing are significant because, where it occurs,

> the books and records of the broker/dealer may not accurately reflect its operating performance and financial condition and may appear to artificially inflate its profitability and, ultimately, cause it to appear to be in capital compliance when it is not. Further, such firms may continue to conduct a securities business when not in capital compliance, which is a violation of the SEC's Net Capital Rule, as well as a violation of NASD Rule 2110. In addition, as the party paying the expenses of the broker/dealer is usually not a member of an SRO, obtaining books and records related to the broker/dealer's operations can be problematic. 20/

Ensuring compliance with the net capital rule is important to protect investors from the possible financial collapse of a firm. 21/ In asking about unreported securities business and improper expense sharing, therefore, NASD's inquiries concerned potentially injurious conduct or conduct of potential monetary benefit to Applicants. NASD was prevented from determining whether Applicants engaged in such potentially harmful conduct, however, because Applicants did not answer its information requests.

We emphasize that the importance of the information requested must be viewed from NASD's perspective at the time it seeks the information. NASD notes in its brief that its investigations often "commence before investigatory staff has a clear picture of the nature and breadth of the misconduct." In this case, Applicants prevented NASD from gaining a clear picture of the nature and breadth of any misconduct by failing to respond to its information requests. NASD's requests concerned potentially serious violations. As NASD also notes in its brief, "[m]itigation cannot be based on a respondent's second guessing the importance of the investigation because, in cases such as this, it is the respondent who has *prevented* [NASD] from

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20/ NASD Notice to Members 03-63, available at http://www.finra.org.

21/ See Blaise D'Antonai & Assocs. v. SEC, 289 F.2d 276, 277 (5th Cir. 1961) ("The net capital rule is one of the most important weapons in the Commission's arsenal to protect investors. By limiting the ratio of a broker's indebtedness to his capital, the rule operates to assure confidence and safety to the investing public.").

completing the investigation and assessing any misconduct and its gravity (emphasis in original)." 22/

Applicants state that "in every case [they] have been able to locate where the NASD has imposed a lifetime bar for failing to respond to a request for information, the NASD had issued the request for information as part of an investigation into possible securities violations or other serious misconduct involving harm to a customer." Applicants fail to recognize that a request for information is no less serious because NASD issues the request in an effort to prevent or uncover misconduct rather than to unearth the details of misconduct of which it is already aware.

Applicants contend that, in other cases, "the primary reason given for the imposition of a lifetime bar was the fact that respondent's failure to respond undermined the NASD's 'efforts to investigate possible *fraudulent* activity,'" 23/ and that, here, the information NASD requested of them was "mundane," "issued in connection with a 'routine examination' that had nothing to do with any customer or even any securities transaction." These contentions misperceive the purpose of NASD investigations. As we have explained, the information NASD requested concerned potentially serious rule violations with potentially harmful consequences. We also wish to emphasize that NASD information requests that do not concern potentially injurious conduct or conduct of potential monetary benefit to respondents are nonetheless important. In this case, NASD requested, in addition to information regarding unreported securities business and improper expense sharing, information concerning PAZ's continuing education program and PAZ's written supervisory procedures. NASD adopted its continuing education program "to help ensure that registered persons stay current on products, markets, and rules to the ultimate benefit

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22/ See also Morton Bruce Erenstein, Exchange Act Rel. No. 56768 (Nov. 8. 2007), 91 SEC Docket 3114, 3120 (stating that a "member or associated person may not 'second guess[]' an NASD information request or 'set conditions on their compliance" and that a "belief that NASD does not need the requested information 'provides no excuse for a failure to provide it'") (alteration in original) (citations omitted).

23/ Applicants cite Dep't of Enforcement v. Valentino, 2003 NASD Discip. LEXIS 15 (emphasis added), for this proposition. That NASD barred Valentino for impeding its efforts to investigative possible fraud does not prevent NASD from also barring respondents who impede its investigations into other potentially serious misconduct. Applicants "receive[] only limited benefit from comparison to sanctions imposed in other cases due to the highly fact-dependent nature of the propriety of sanctions." McCarthy, 406 F.3d at 188; see also Hiller v. SEC, 429 F.2d 856, 858 (2d Cir. 1970) ("Hiller argues that the imposition of a bar in his case is inconsistent with the lesser penalties ordered by the Commission in other cases involving what Hiller considers to be more serious violations of the securities laws. Comparison of sanctions in other cases is foreclosed, however . . . . [W]e cannot disturb the sanctions ordered in one case because they were different from those imposed in an entirely different proceeding.").

of the investing public." 24/ NASD mandates that firms have written supervisory procedures "to allow . . . personnel at the firm, as well as regulators, to easily determine who is responsible for supervising a particular area." 25/ NASD enacted these requirements to prevent harm to investors by ensuring compliance with its rules. Monitoring compliance with these requirements is equally a part of NASD's enforcement program as is prosecuting violations. Applicants' failure to respond to requests for information about their compliance with these requirements impeded NASD's ability to protect investors. NASD's information requests therefore concerned information essential to NASD's investor protection efforts, and, contrary to Applicants' argument, the nature of the requested information does not mitigate the violations.

Applicants also argue that NASD urges the Commission "to disregard as irrelevant the very mitigating factors that the Court of Appeals has instructed the Commission to consider." The Court of Appeals, however, did not find that certain factors established mitigation but rather instructed the Commission to consider whether factors that it identified constituted mitigation in this case. For the reasons discussed above, those factors do not mitigate Applicants' violations.

Applicants contend that, in addition to the factors the Court of Appeals remanded for the Commission to address, mitigation exists because they have a "clean disciplinary record" and because they did not "mislead anyone or conceal their present misconduct." The Court of Appeals stated, however, that "[i]nsofar as the petitioners claim the Commission should have considered their previously clean disciplinary record and that they did not attempt either to mislead anyone or to conceal their present misconduct, their arguments are forfeit because the petitioners did not raise them before the Commission." Similarly, "[i]t is elementary that where an argument could have been raised on an initial appeal, it is inappropriate to consider that argument on a second appeal following remand." 26/

In any case, we disagree with Applicants that these factors mitigate their violations. "Lack of a disciplinary history is not a mitigating factor. . . . Refraining from giving false responses is not mitigating behavior." 27/ As we have noted previously, "lack of disciplinary

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24/ NASD Notice to Members 95-13, available at http://www.finra.org.

25/ NASD Notice to Members 99-45, available at http://www.finra.org.

26/ Nw. Indiana Tel. Co. v. FCC, 872 F.2d 465, 470 (D.C. Cir. 1989); see also Nicholas T. Avello, Exchange Act Rel. No. 51633 (Apr. 29, 2005), 85 SEC Docket 1299, 1302 (stating that applicant "waived his right to raise any new issues not raised in the initial appeal"), petition denied, 454 F.3d 619, 627 (7th Cir. 2006).

27/ Rooms v. SEC, 444 F.3d 1208, 1214-15 (10th Cir. 2006). Although Applicants note that NASD Sanction Guidelines require adjudicators to consider disciplinary history,

(continued...)

history is not mitigating for the purposes of sanctions because an associated person should not be rewarded for acting in accordance with his duties as a securities professional." 28/ Applicants also should not be rewarded for refraining from obfuscating their misconduct. 29/

Applicants' justification for failing to respond to the information requests further evidences the risk that they will engage in future misconduct. Mizrachi claims that he did not respond to NASD's information requests because he "never received the 8210 request or ensuing Complaint because he was not in the United States when NASD attempted to serve him with the requests." Although Applicants acknowledge that associated persons must maintain a current address in CRD, they contend that they "were not obligated to change the address listed on CRD" because they "had not moved from their CRD addresses, but were only temporarily out of the country." Mizrachi, however, did not arrange to receive NASD correspondences sent to PAZ's CRD address while out of the country temporarily.

Applicants' cavalier disregard of the need to ensure that PAZ and Mizrachi respond to requests for information in a timely fashion even while Mizrachi is out of the country poses a clear risk of future misconduct. Mizrachi states in an affidavit accompanying Applicants' reply brief in support of their motion to vacate the default decision that "much of [his] business requires that [he] travel throughout the world." A high likelihood therefore exists that Mizrachi would be out of the country if NASD sent PAZ a request for information in the future. As we noted in our earlier opinion, if Mizrachi is unavailable to respond to a request for information, he has "an obligation to delegate PAZ's operations, including its compliance with the NASD's request for information, to another PAZ employee and to monitor that employee's performance." Here, however, Mizrachi was out of the country when NASD sent its requests for information in this case, and Mizrachi "did not keep the CRD apprised of a forwarding address, delegate anyone to assume compliance with NASD's requests, or remain apprised of the status of the proceeding." Because Mizrachi thus has demonstrated a disregard for his duty to ensure that he or PAZ respond to requests sent to their CRD addresses while he is out of the country, NASD faces a great risk of being unable to obtain from Applicants information necessary for the protection of investors. The sanctions imposed by NASD appropriately remedy that risk.

27/ (...continued)
Applicants fail to recognize that the Sanction Guidelines consider disciplinary history relevant for imposing sanctions "beyond those outlined in these guidelines." In this case, the Sanction Guidelines recommend a bar as the standard sanction, and a clean disciplinary record does not justify a departure from that recommended sanction.

28/ Philippe N. Keyes, Exchange Act Rel. No. 54723 (Nov. 8, 2006), 89 SEC Docket 792, 801.

29/ John F. Noonan, 52 S.E.C. 262, 265 (1995) (finding no mitigation in Applicant's contention that he "did not take affirmative steps to conceal his misconduct").

Finally, we reject Applicants' contention that the "imposition of a lifetime bar in this case is a punitive sanction" because, in McCarthy v. SEC, 30/ "McCarthy was suspended for two years -- and persuaded the Second Circuit to overturn even that as punitive rather than remedial -- while PAZ and Mr. Mizrachi have been barred for life!" Applicants' characterization of McCarthy is incorrect. The Second Circuit "expressed no opinion on whether [certain] circumstances in fact render[ed] the suspension irretrievably excessive and punitive, and . . . thus decline[d] McCarthy's invitation to reverse the penalty outright." Instead, the Second Circuit remanded for the Commission to "provide a more detailed explanation linking the sanction imposed to those circumstances if it wishe[d] to uphold the sanction." We remanded the case to the NYSE, which had imposed the suspension initially, so that it had "an opportunity to explain further the findings and conclusions that support its chosen sanction." 31/ On remand, McCarthy consented to a censure and $75,000 fine. McCarthy v. SEC, moreover, involved different misconduct and different claims of mitigating circumstances than those at issue in this case. Furthermore, as we have noted previously, the appropriate sanction depends on the facts and circumstances of each particular case and cannot be precisely determined by comparison with the action taken in other proceedings. 32/

Accordingly, we find that the expulsion of PAZ and bar of Mizrachi are neither excessive nor oppressive because, as set forth above, Applicants do not identify any factors that mitigate their severe violations and the sanctions serve a remedial rather than punitive purpose. An appropriate order will issue. 33/

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

Nancy M. Morris
Secretary

30/ 406 F.3d 179 (2d Cir. 2005).

31/ Edward John McCarthy, Exchange Act Rel. No. 53138 (Jan. 18, 2006), 87 SEC Docket 478.

32/ Supra note 23; see also Butz v. Glover Livestock Comm'n Co., 411 U.S. 182, 186-87 (1973); Geiger v. SEC, 363 F.3d 481, 488 (D.C. Cir. 2004).

33/ 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

NASD

ORDER SUSTAINING SANCTIONS IMPOSED BY REGISTERED SECURITIES ASSOCIATION

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

ORDERED that the sanctions imposed by NASD against PAZ Securities, Inc. and Joseph Mizrachi be, and they hereby are, sustained.

By the Commission.

Nancy M. Morris
Secretary