

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES AND EXCHANGE ACT OF 1934
Rel. No. 59137 / December 22, 2008

Admin. Proc. File No. 3-12952

In the Matter of the Application of

JASON A. CRAIG
57401 Robert Street
Washington Township, MI 48094

For Review of Disciplinary Action Taken by
NASD

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION – REVIEW OF DISCIPLINARY
PROCEEDINGS

Violations of Rules of Fair Practice

Misstatements on Form U4

Registered representative of member firm of registered securities association submitted a Form U4 that failed to disclose prior felony charges and a misdemeanor conviction. Held, association's findings of violation and sanction imposed are sustained.

APPEARANCES:

Jason A. Craig, pro se.

Marc Menchel, Alan Lawhead, and Jennifer C. Brooks for Financial Industry Regulatory Authority, Inc.

Appeal filed: February 6, 2008
Last brief received: June 19, 2008

I.

Jason A. Craig ("Craig"), a former registered representative of NASD member firm Hantz Financial Services, Inc. ("Hantz"), seeks review of NASD disciplinary action. 1/ NASD found that Craig willfully failed to disclose four felony charges and one misdemeanor conviction on his Uniform Application for Securities Industry Registration ("Form U4") in violation of NASD Membership Rule IM-1000-1 and Conduct Rule 2110. NASD barred Craig in all capacities. 2/ We base our findings on an independent review of the record.

II.

Craig's Criminal History

It is undisputed that, at the time Craig sought to associate with Hantz, he had five felony charges and one misdemeanor conviction on his criminal record, all of which occurred in Michigan. On August 30, 2002, Craig was charged with possession of a controlled substance, a felony offense. 3/ On May 27, 2003, Craig was charged with the felony of uttering and publishing. 4/ Craig altered credit-union checks originally payable to creditors to make them payable to himself. The charge was reduced to misdemeanor larceny, and Craig pled guilty to that offense on July 24, 2003. 5/ On September 20, 2003, Craig was again charged with possession of a controlled substance, a felony. 6/ On July 19, 2004, Craig was charged with two

1/ On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc. ("FINRA"), in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Rel. No. 56146 (July 26, 2007), 91 SEC Docket 517. Because the disciplinary action here was instituted before that date, we continue to use the designation NASD.

2/ NASD also assessed costs in the amount of \$2,050.72.

3/ This charge was reduced to a misdemeanor to which Craig pled guilty in January 2003. After Craig completed probation in June 2005, the court set aside the guilty plea and dismissed the case.

4/ Uttering and publishing involves forging, altering, or counterfeiting a record or document with the intent to injure or defraud. See Mich. Comp. Laws § 750.249.

5/ The court later set aside this conviction on March 22, 2006.

6/ The disposition of this charge is not apparent from the record.

additional offenses: a felony "no-account check violation" charge for writing checks drawn on a financial institution at which he had no account and a felony charge for forging a driver's license. In January 2007, the court allowed Craig to plead guilty to misdemeanor disorderly conduct for these offenses.

Craig Interviews with Hantz and Completes Form U4

Craig first registered as a general securities representative in 2000. In August 2004, Craig applied for a registered-representative position with Hantz. On August 4, 2004, Craig interviewed with Hantz's director of recruiting, Linda Horney ("Horney"). Craig also met with other Hantz employees on August 10, 2004 as part of a half-day interview session. During these interviews, Craig did not mention his criminal history.

On August 18, 2004, Craig had a final interview with Senior Vice President Linda McClain ("McClain"). In this meeting, McClain offered Craig a position and asked him if anything in his background would prevent Hantz from hiring him. In response to this question, Craig answered "no." On August 24, 2004, Craig again met with Horney to complete his Form U4 and other required paperwork. Craig then told Horney that he had been charged with one felony. Horney directed Craig to disclose that information on his Form U4 and to provide a description of the charge on the attached Disclosure Reporting Page. Question 14A(1)(b) asked Craig, "Have you ever been charged with a felony?" Craig answered "yes" and explained on the Disclosure Reporting Page that he had been charged with possession of marijuana and cocaine on August 8, 2002 and that the charge was still pending. At the hearing, Craig testified that he was referring to the August 30, 2002 felony charge for possession of a controlled substance, but had provided the wrong date.

Craig did not disclose or provide details about any of the other four felony charges. Craig also failed to disclose his misdemeanor conviction on his Form U4. Question 14B(1)(a) asked Craig, "Have you ever been convicted of or pled guilty . . . to a misdemeanor involving . . . wrongful taking of property?" Craig answered "no" to this question, despite having been convicted of misdemeanor larceny on July 24, 2003. Craig also answered "no" to Question 14B(1)(b), which asked, "Have you ever been charged with a misdemeanor specified in 14B(1)(a)?"

Hantz Terminates Craig for Failure to Disclose Criminal History

Craig began working for Hantz on September 20, 2004. As part of his orientation, Hantz fingerprinted Craig and mailed the prints to NASD for a routine background check. Soon thereafter, NASD notified Hantz about a May 2003 felony arrest that did not appear on Craig's

Form U4. ^{7/} When Horney questioned Craig about the charge, Craig told Horney that he must have provided the wrong date on his Form U4. Horney also asked Craig for documentation about the charge, which Craig never provided.

On October 7, 2004, NASD notified Hantz of two additional, undisclosed charges that appeared in Craig's background check. ^{8/} Horney testified that when she asked Craig about these charges, Craig became "very nervous" and "confused" and could not explain why he failed to disclose them. Horney then referred the matter to McClain, who met with Craig on the same day. Craig told McClain that his attorney had advised him that the charges were expunged and that he did not need to disclose them. However, Craig was unable to provide McClain with any details of the charges. McClain terminated Craig's employment in that meeting. A few days later, Craig's attorney called McClain and told her that the charges had never been expunged.

NASD Proceedings

On November 8, 2004, NASD staff sent Craig a request for information and documentation regarding the disclosures he made on his Form U4. Craig responded in writing, stating that he was unaware that he needed to disclose his criminal record and that he had misread the questions. Craig did not provide any documentation with respect to his criminal record in his response. On August 30, 2005, NASD filed a complaint against Craig alleging failure to disclose on his Form U4 four felony charges and one misdemeanor conviction. Craig admitted to this criminal background in his answer, but argued that his conduct did not violate NASD rules.

On August 28, 2006, the Hearing Panel found that Craig had willfully violated NASD Membership Rule IM-1000-1 and Conduct Rule 2110. The Hearing Panel also found not credible Craig's testimony that he did not disclose all of the felony charges and the conviction on Form U4 because he believed they either were, or shortly would be, expunged. The Hearing Panel found that Craig's conduct was egregious and barred him in all capacities. Craig then appealed to the National Adjudicatory Council ("NAC"), which on December 27, 2007, affirmed the Hearing Panel's findings of violation and sanctions imposed. This appeal followed.

^{7/} This arrest led to the September 2003 charge for possession of a controlled substance. See supra text accompanying note 6.

^{8/} NASD notified Hantz of the August 2002 offense for felony possession of a controlled substance and the May 2003 offense for felony uttering and publishing.

III.

Membership Rule IM-1000-1 prohibits the filing, in connection with membership or registration as a registered representative, of information so incomplete or inaccurate as to be misleading. 9/ This rule applies to Form U4, which is used by NASD and other self-regulatory organizations to determine the fitness of applicants for registration as securities professionals. 10/ The candor and forthrightness of applicants is critical to the effectiveness of this screening process. 11/ Every person submitting Form U4 has the obligation to ensure that the information provided on the form is true and accurate. 12/ Filing a misleading Form U4, in addition to violating Membership Rule IM-1000-1, violates the standard of just and equitable principles of trade to which every person associated with a NASD member is held. 13/

It is undisputed that, on August 24, 2004, Craig signed and submitted a Form U4 in connection with his registration with Hantz that failed to disclose four of the five felonies with which he was charged and to disclose that Craig had been convicted of misdemeanor larceny. In so doing, he violated Membership Rule IM-1000-1.

Craig provided shifting and evolving explanations for his failure to disclose the criminal charges against him. The first time Horney asked Craig about the undisclosed August 2002 charge, Craig explained that he had provided the wrong date on his Form U4. When Horney confronted Craig about the two additional charges that NASD found, Craig became "nervous" and could not explain why he had not disclosed them. That same day, Craig admitted to McClain that he had been charged with various crimes but explained that his attorney told him not to disclose them because they had been expunged. At the hearing, Craig testified that he did not disclose all of the felony charges and the conviction on Form U4 because he believed they were, or shortly would be, expunged.

9/ NASD Manual at 3111.

10/ Daniel Richard Howard, 55 S.E.C. 1096, 1101 (2002), aff'd 77 Fed. Appx. 2 (1st Cir. 2003) (unpublished); Rosario R. Ruggiero, 52 S.E.C. 725, 728 (1996); Thomas R. Alton, 52 S.E.C. 380, 382 (1995), aff'd 105 F.3d 664 (9th Cir. 1996); see also Guang Lu, Exchange Act Rel. No. 51047 (Jan. 14, 2005), 84 SEC Docket 2639, aff'd 179 Fed. Appx. 702 (D.C. Cir. 2006).

11/ Alton, 52 S.E.C. at 382.

12/ Guang Lu, Exchange Act Rel. No. 51047 (Jan. 14, 2005), 84 SEC Docket at 2639, 2648 (citing Robert E. Kauffman, 51 S.E.C. 838, 840 (1993), aff'd 40 F.3d 1240 (3d Cir. 1994)).

13/ Alton, 52 S.E.C. at 382 (citing Kauffman, 51 S.E.C. at 840; Roy Ray Seaton, 47 S.E.C. 131, 133-34 (1979)); NASD Manual (2001 ed.) at 4111.

The Hearing Panel found Craig's testimony not credible. "Credibility determinations of an initial fact finder are entitled to considerable weight because they are based on hearing the witnesses' testimony and observing their demeanor." 14/ Such determinations "can be overcome only where the record contains substantial evidence for doing so." 15/

Horney's and McClain's consistent testimony further supports the Hearing Panel's credibility finding. Both witnesses testified that Craig was evasive and could not explain his failure to disclose his criminal record on multiple occasions. 16/ We have considered the totality of the record and find no reason to overturn the Hearing Panel's credibility determination.

Craig claimed at various points that he thought the criminal charges had been or shortly would be expunged, a claim the Hearing Panel also found to be not credible. However, even absent such a credibility finding, Craig's claims regarding expungement are unavailing. Subsequent expungement after the filing of the Form U4 is inconsequential because "[t]he question presented is the status of his conviction on the date he made the representations on the Form U-4." 17/ Moreover, even if Craig's convictions had been expunged at the time he filed his Form U4, NASD required Craig to provide proof of the expungement so that NASD could determine whether Craig should report the charges. 18/

14/ Joseph Abbondante, Exchange Act Rel. No. 53066 (Jan. 6, 2006), 87 SEC Docket 203, 209 n.21 petition denied, 209 Fed. Appx. 6 (2d Cir. 2006) (unpublished); see also Laurie Jones Canady, 54 S.E.C. 65, 78 n.23 (1999).

15/ Canady, 54 S.E.C. at 78 (citing Anthony Tricarico, 51 S.E.C. 457, 460 (1993); Universal Camera v. NLRB, 340 U.S. 474 (1950)).

16/ See Canady, 54 S.E.C. at 79 n.25 (citing Frank J. Custable, Jr., 51 S.E.C. 643, 648 (1993)).

17/ Alton, 52 S.E.C. at 383 n.8 (holding that vacation of conviction three weeks after filing of Form U4 was irrelevant).

18/ See NASD, Form U4 and U5 Interpretive Questions, [http://www.NASD.org/Regulatory Systems/CRD/FilingGuidance/p005243](http://www.NASD.org/RegulatorySystems/CRD/FilingGuidance/p005243); see also Alton v. SEC, 105 F.3d at 664 n.1 (noting that, because Form U4 asks whether an applicant has been convicted, any subsequent expungement may be irrelevant).

NASD found that Craig's conduct was willful. ^{19/} A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." ^{20/} The laws do not require that the actor "also be aware that he is violating one of the Rules or Acts." ^{21/} We thus need to find only that Craig voluntarily committed the acts that constituted the violation, not that Craig was aware of the rule he violated or that he acted with a culpable state of mind. The evidence shows that Craig provided voluntarily false answers on his Form U4 and thus willfully violated Membership Rule IM-1000-1 and Conduct Rule 2110.

Craig claims that he was unaware of his larceny conviction because he did not have an attorney present when the judge actually entered the conviction. The record in this case shows that Craig had an attorney present when he pled guilty to misdemeanor larceny on July 24, 2003. At that hearing, the judge told Craig that if he completed community service, the judge would strike the conviction from Craig's record. Craig failed to complete the community service, and the judge imposed the conviction on July 7, 2004. Craig did not have an attorney present at the July 7, 2004 hearing. However, Craig testified that he was aware of what he had to do to be relieved of his plea and of the status of his community service. If Craig had any doubt about the disposition of his conviction, it was his duty to determine whether the information he was providing on Form U4 was complete and accurate. ^{22/}

Equally unpersuasive is Craig's argument that he believed he needed to disclose only his first felony charge because Hantz's background check would uncover the rest of his criminal history. Form U4 clearly requires the applicant to list all felony charges and misdemeanor charges and convictions relating to the wrongful taking of property. The effectiveness of the form depends on applicants' candid disclosures. ^{23/} Moreover, Craig cannot shift his responsibility to comply with NASD rules to his firm. ^{24/}

^{19/} Craig argues that he had no motive to file an incomplete Form U4 because he would not have risked his ability to work in the securities industry in order to obtain a position with Hantz. Motive, however, is not necessary to find that misconduct occurred. See Tricarico, 51 S.E.C. 457, 459 n.3 (1993) (citing Kenneth Sonken, 48 S.E.C. 832, 835-36 (1987)).

^{20/} Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000).

^{21/} Id.

^{22/} See James Alan Schneider, 52 S.E.C. 840, 843 (1996), *aff'd*, 118 F.3d 1577 (3d Cir. 1997).

^{23/} Alton, 52 S.E.C. at 382.

^{24/} See, e.g., Jay Alan Ochanpaugh, Exchange Act Rel. No. 54363 (Aug. 25, 2006), 88 SEC Docket 2653, 2660-61 (citing Joseph G. Chiulli, 54 S.E.C. 515, 523 (2000)).

Craig contends that he did not understand the questions on the Form U4, that he did not know that he needed to disclose misdemeanors, and that his fatigue, due to completing the form after an eleven-hour work day, magnified his confusion. We have previously held that "[i]gnorance of the [NASD]'s rules is no excuse for their violation. Participants in the securities industry must take responsibility for compliance and cannot be excused for lack of knowledge, understanding or appreciation of these requirements." 25/

We find that Craig's failure to disclose on his Form U4 his four felony charges and his misdemeanor larceny conviction willfully violated Membership Rule IM-1000-1 and Conduct Rule 2110.

IV.

We sustain NASD sanctions unless we find, giving due regard to the public interest and the protection of investors, that the sanctions are excessive, oppressive, or impose an unnecessary or inappropriate burden on competition. 26/ NASD barred Craig in all capacities. We sustain the sanction because it is neither excessive nor oppressive and will protect investors and the public interest.

NASD's determination to bar Craig is consistent with NASD Sanction Guidelines. 27/ For filing a false, misleading, or inaccurate Form U4, the Guidelines recommend a fine between \$2,500 and \$50,000 and a suspension for five to thirty business days. 28/ Where an individual engaged in egregious conduct, such as misconduct involving inaccurate or misleading filings that fail to disclose a statutory disqualification, the Guidelines recommend up to a two-year

25/ See Richard J. Lanigan, 52 S.E.C. 375, 378 n.13 (1995) (citing David A. Gingras, 50 S.E.C. 1286, 1291 n.12 (1992); Kirk A. Knapp, 51 S.E.C. 115, 129 (1992)).

26/ Securities Exchange Act of 1934, Section 19(e)(2), 15 U.S.C. § 78s(e)(2). Craig does not claim, nor does the record show, that NASD's action imposed an unnecessary or inappropriate burden on competition.

27/ NASD promulgated the Sanction Guidelines in an effort to achieve greater consistency, uniformity, and fairness in the sanctions that are imposed for violations. NASD Sanction Guidelines at 1 (2007 ed.). Since 1993, NASD has published and distributed the Sanction Guidelines so that members, associated persons, and their counsel will have notice of the types of disciplinary sanctions that may be applicable to various violations. Id. The Guidelines are not NASD rules that are approved by the Commission, but NASD-created guidance for NASD Adjudicators—which the Guidelines define as Hearing Panels and the NAC. Id. Although the Sanction Guidelines do not bind the Commission, they serve as a benchmark in reviewing sanctions under Exchange Act Section 19(e)(2).

28/ NASD Sanction Guidelines at 73-74.

suspension or a bar in any or all capacities. 29/ In determining the proper sanction, the Guidelines provide three "Principal Considerations": (1) the nature and significance of the information at issue; (2) whether the failure resulted in a statutorily disqualified individual becoming associated with a firm; and (3) whether the member firm's conduct resulted in harm to a registered person, another member firm, or any other person or entity. 30/

The information Craig withheld was significant. Form U4 "is a critical tool for self-regulatory organizations to determine the fitness of applicants for registration as securities professionals." 31/ Member firms use Form U4 to screen applicants for employment and to establish procedures to supervise employees with criminal or disciplinary histories. Information concerning Craig's criminal history would have been significant to Hantz in determining whether to employ Craig and, if it did, what supervisory procedures were necessary to protect investors.

Craig also failed to disclose that he was statutorily disqualified. Any person who has been convicted of a misdemeanor involving the larceny of funds within the ten years preceding the filing of a Form U4 is statutorily disqualified. 32/ A person who is statutorily disqualified cannot become associated with a NASD member unless that member applies for and receives a waiver from NASD. 33/ Craig's failure to provide accurate information on his Form U4 resulted in a statutorily disqualified person becoming associated with a member firm without proper approval or supervision.

Craig's conduct was egregious and intentional. Craig asserted in his brief to us that he believed his criminal charges would be a "problem" and that he deliberately failed to disclose them. 34/ He had several opportunities to disclose his criminal history to Hantz and failed to do so, even when directly asked by Horney and McClain. After Craig submitted his Form U4,

29/ Id.

30/ Id. NASD does not allege that Principal Consideration (3) is applicable to this case.

31/ Toth, Exchange Act Rel. No. 58074 (July 1, 2008), __ SEC Docket __, appeal filed, No. 08-3289 (3d Cir. July 31, 2008); see also Howard, 55 S.E.C. at 1103 n.16 (noting the "important function served by the information made available through Form U-4").

32/ Securities Exchange Act of 1934, Sec. 3(a)(39)(F), 15 U.S.C. § 78c(39)(F); NASD By-Laws, Art. III Sec. 4(g) (adopting SEC definition).

33/ NASD By-Laws, Art. III Sec. 3.

34/ NASD Sanction Guidelines at 74; see also Alton, 52 S.E.C. 380 (barring and fining applicant \$50,000 for failing to disclose a felony conviction of perjury even though it was vacated three weeks after completing the Form U4).

Horney twice approached him about the undisclosed charges and requested documentation on their status. Despite these requests, Craig claimed ignorance and never provided documentation. 35/

Craig also tried to shift blame to Horney for his incomplete disclosures. Craig testified that he did not have all of the information with him that he needed to complete his Form U4 and that Horney instructed him to complete the form to best of his ability. However, the Hearing Panel found Craig not to be credible. Moreover, if Craig did not have the information he needed or was unsure of how to answer a question, he should have postponed completing his Form U4 until he could provide accurate responses. 36/ Craig's failure to take responsibility for his conduct makes recurrence more likely.

Craig raises a number of facts that he alleges mitigate his conduct. He argues that the lawyer who represented him in front of the Hearing Panel provided him with ineffective assistance of counsel. Craig claims that his lawyer did not warn Craig that the Hearing Panel could impose higher sanctions than the settlement NASD offered him. 37/ Craig also argues that his lawyer did not adequately prepare for the hearing. We have reviewed the record and find that NASD provided Craig with a fair proceeding, as required under Section 15A(b)(8) of the Securities Exchange Act of 1934. 38/ Through his attorney, Craig had the opportunity to present evidence and arguments in his favor, to testify, and to cross-examine witnesses. Moreover, there is no right to counsel in NASD disciplinary proceedings and Craig must accept the consequences of the actions of the agent whom he freely selected. 39/ Furthermore, the Sanction Guidelines,

35/ Craig claims that he provided Horney with his attorney's phone number so that she could obtain the necessary documentation. Regardless of whether Craig gave Horney his attorney's number, it was Craig's responsibility to ensure that Hantz had all of the required information. See, e.g., Dennis A Pearson, Exchange Act Rel. No. 54913 (Dec. 11, 2006), 89 SEC Docket 1627, 1633-34 (holding that an associated person cannot satisfy an information request simply by referring the matter to an attorney).

36/ See Schneider, 52 S.E.C. at 843 (holding that applicant should have checked with proper authority if he was unsure how to respond accurately to a question on Form U4).

37/ According to Craig, NASD initially offered to settle the action with an 18-month suspension and a \$10,000 fine.

38/ 78 U.S.C. § 78o-3(b)(8).

39/ Link v. Wabash R. Co., 370 U.S. 626, 633-34 (1962); Mark H. Love, 57 S.E.C. 315, 326 (2004).

which are publicly available, state that imposing lower sanctions in settlement provides parties with incentives to settle, thus avoiding cost- and time-consuming adversary proceedings. 40/

Craig next argues that his sanction should be reduced because Hantz, in an unrelated proceeding, received a lower punishment. Craig claims that NASD imposed a \$500,000 fine on Hantz and suspended its owner for thirty days after Hantz falsely represented itself as an independent-investment firm. However, the sanctions Hantz received for an unrelated violation have no bearing on the sanction NASD imposed upon Craig. In any event, because "the appropriate remedial action depends on the facts and circumstances of each particular case," the proper sanction "cannot be precisely determined by comparison with action taken in other cases." 41/

Craig asserts that we should reduce the sanction because he repaid the bank for his no-account check violation and the credit union for his larceny conviction. The Sanction Guidelines allow restitution to be considered if the respondent voluntarily and reasonably attempted, prior to detection or intervention, to reimburse the harmed parties. 42/ However, Craig reimbursed the bank only pursuant to his sentence for the no-account check violation. Likewise, Craig repaid the credit union for the altered checks only after the credit union sent him a letter demanding restitution. Craig's restitution, made after detection, is not mitigating.

Craig further requests that his sanctions be reduced because he claims that, since the incident at issue here, he has not been arrested in four years and has remained sober. Craig also states that he cares for his mother, who is ill. Craig's current actions do not outweigh the need to protect the investing public. 43/ Craig's intentional failure to disclose material information on Form U4 and his subsequent obfuscation raise serious doubts about Craig's ability to meet the high standards of those employed in the securities industry. The fact that three of Craig's felony

40/ NASD Sanction Guidelines at 1; see also Dennis Todd Lloyd Gordon, Exchange Act Rel. No. 57655 (Apr. 11, 2008), SEC Docket __ ("It is well established that those who offer to settle may properly receive lesser sanctions than they otherwise might have."); Howard R. Perles, 55 S.E.C. 686, 710 (2002) (citing Richard J. Puccio, 52 S.E.C. 1041, 1045 (1996)).

41/ Pac. On-Line Trading & Sec., Inc., 56 S.E.C. 1111, 1123 (2003) (citing John R. D'Alessio, 56 S.E.C. 396, 427 (2003), aff'd, 380 F.3d 112 (2d Cir. 2004); Butz v. Glover Livestock Comm'n Co., Inc., 411 U.S. 182, 187 (1973)); see also Alton, 52 S.E.C. at 387 n.27 (citation omitted); Hiller v. SEC, 429 F.2d 856, 858-59 (2d Cir. 1970); First Choice Securities Corp., 50 S.E.C. 1167, 1172 (1992)).

42/ NASD Sanction Guidelines at 6.

43/ See Lee Gura, 57 S.E.C. 972, 976-77 (2004).

charges and his misdemeanor conviction involved the wrongful taking of property and forgery are further evidence of his inability to meet these standards. 44/

Craig also argues as mitigating his lack of disciplinary history and the "amount of time, money, and loss of work" suffered as a result of his conduct. We have held that a lack of disciplinary history is insufficient to mitigate sanctions. 45/ We also do not consider mitigating the economic disadvantages Craig alleges he suffered because they are a result of his misconduct. 46/

We find that a bar in this case is remedial and not punitive. The information Craig failed to disclose was material in determining whether Craig could fulfill the high standards of conduct demanded of associated persons. By not disclosing the information, Craig impeded Hantz from adequately screening his application and deprived Hantz of its duty to protect the investing public. Hantz could not accurately determine whether Craig was suitable for employment or

44/ See Brian G. Allen, 50 S.E.C. 509, 510 (1991) ("There can hardly be more serious conduct in the securities business than forgery and theft.").

45/ See John D. Audifferen, Exchange Act Rel. No. 58230 (July 25, 2008), __ SEC Docket __ (citing Michael A. Rooms, Exchange Act Rel. No. 51467 (Apr. 1, 2005), 85 SEC Docket 444, aff'd, 444 F.3d 1208, 1214 (10th Cir. 2006) (lack of disciplinary history is not a mitigating factor in NASD disciplinary proceeding); Robert J. Prager, Exchange Act Rel. No. 51974 (July 6, 2005), 85 SEC Docket 3413, 3436 n.66 (rejecting argument that respondent's lack of disciplinary history serves as a mitigating factor)). In addition, Craig has filed affidavits from a potential employer offering to supervise Craig should the bar be lifted. These affidavits, as well as an affidavit from Craig regarding his rehabilitation, an excerpt from his investigative testimony, and a toxicity report, were never admitted into evidence. The NAC declined to admit this new evidence on appeal. The NAC determined, under NASD Rule 9346(b), that Craig failed to provide good cause for failing to introduce the evidence in front of the Hearing Panel. Craig has not sought to adduce this evidence before the Commission.

46/ Hans N. Beerbaum, Exchange Act Rel. No. 55731 (May 9, 2007), 90 SEC Docket 1863, 1871-72.

whether he needed heightened supervision. The bar will prevent Craig from making incomplete and inaccurate disclosures in the future and will impress upon others the importance of the accuracy of the information in Form U4. 47/

Accordingly, we find this sanction satisfies the standards of Exchange Act Section 19(e) in that it is neither excessive nor oppressive.

An appropriate order will issue. 48/

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

Florence E. Harmon
Acting Secretary

47/ Paz Secs., Inc. v. SEC, 494 F.3d 1059, 1066 (D.C. Cir. 2007) ("Although general deterrence is not, by itself, sufficient justification for expulsion or suspension . . . it may be considered as part of the overall remedial inquiry.") (quoting McCarthy v. SEC, 406 F.3d 179, 189 (2d Cir. 2005)).

48/ We have considered all of the arguments advanced by the parties. 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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JASON A. CRAIG
57401 Robert Street
Washington Township, MI 48094

For Review of Disciplinary Action Taken by

NASD

ORDER SUSTAINING DISCIPLINARY ACTION TAKEN BY NASD

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

ORDERED that the disciplinary action taken by NASD against Jason A. Craig be, and it hereby is, sustained.

By the Commission.

Florence E. Harmon
Acting Secretary