

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES AND EXCHANGE ACT OF 1934
Rel. No. 54913 / December 11, 2006

Admin. Proc. File No. 3-12229

In the Matter of the Application of

DENNIS A. PEARSON, JR.
13722 Trento Place
San Diego, CA 92130

For Review of Action Taken by

NASD

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION - - REVIEW OF NASD ACTION

Former registered representative of former member firm of registered securities association who failed to respond to requests for information appealed association's sanction. Held, the application for review is dismissed.

APPEARANCES:

Dennis A. Pearson, Jr., pro se.

Marc Menchel, Alan Lawhead, James S. Wrona, and Leavy Matthews III, for NASD.

Appeal filed: March 3, 2006

Last brief received: June 30, 2006

I.

Dennis A. Pearson, Jr., formerly a registered representative associated with Intra Network Securities, Inc. ("INSI" or the "Firm"), a former NASD member firm, seeks review of NASD action. 1/ NASD found that Pearson failed to provide information that it requested pursuant to

1/ Pearson was registered with INSI from May 1996 until December 2004, where he was an owner and served as its Chief Executive Officer. Richard W. Simpson, INSI's other
(continued...)

NASD Procedural Rule 8210. 2/ As a result of his failure to respond, NASD barred Pearson from association with any member firm in any capacity. We base our findings on an independent review of the record.

II.

NASD's Information Requests. On August 25, 2004, NASD staff sent Pearson a written request to appear for an on-the-record interview ("OTR") on, and provide various documents and related information by, September 8, 2004, in connection with an NASD investigation of a private placement offering of the securities of Deltacom Network, Inc. ("Deltacom"), for which INSI was a selling agent. 3/ The letter, which was sent by mail to Pearson's residential address in San Diego, California, contained in NASD's Central Registration Depository ("CRD"), with a

1/ (...continued)
principal owner, served as its President and Chief Operating Officer. In December 2004, INSI was expelled from NASD membership.

Pearson is currently associated with XO Financial Group, Inc., a registered investment adviser. XO is owned by Pearson and Simpson and shares the same business address as INSI. Pearson serves as XO's CEO and Simpson serves as its president.

2/ NASD Procedural Rule 8210 requires members and associated persons to provide information if requested by NASD as part of an investigation, complaint, examination, or proceeding.

3/ NASD's inquiry arose following a routine examination of INSI by NASD staff in February 2004. Pursuant to its investigation, the staff sought information about the possibility that sales practice abuses occurred in connection with the Deltacom offering. The staff's letter to Pearson requested that he provide NASD with information concerning his and INSI's involvement in the sale of the Deltacom securities, including, among other items, (1) a list of investors who purchased Deltacom's securities through INSI, along with a copy of "all incoming and outgoing correspondence (electronic and hard copy)" with those investors; (2) copies of the offering memorandum and other sales materials sent to the purchasers or used to sell the Deltacom securities; (3) a copy of INSI's due diligence file for the Deltacom offering; (4) a statement "as to what made Deltacom a suitable investment for his clients, including a description as to whom it would not be suitable;" (5) a detailed list of the fees earned by Pearson, Simpson, and INSI through the sale of the Deltacom securities; and (6) information about the nature of the relationship between INSI, Deltacom, and their respective owners and executive officers.

copy to INSI's offices in Rancho Santa Fe, California, 4/ stated that Pearson was "obligated to appear on" the date specified in the letter but that, if that date was not acceptable, Pearson should contact the staff so that a mutually acceptable date for the OTR could be scheduled. Pearson did not appear for the OTR, provide the requested information, or otherwise respond to NASD's August 25 letter.

On September 8, 2004, NASD staff mailed a second letter to Pearson's residential address directing him to appear for an OTR interview on September 29, 2004, and provide the requested information by September 23, 2004. Pearson did not respond to this letter. A third request letter was mailed to Pearson's residence on September 27, 2004. This letter notified Pearson that he had not provided any of the requested information and directed that he do so by the date of his previously scheduled September 29 OTR. The letter notified Pearson that this was NASD's "final request" and that "[f]ailure to comply with this request may subject [him] and [INSI] to disciplinary action, including the imposition of sanctions that may provide for a bar in all capacities."

On September 29, 2004, NASD staff mailed a fourth letter to Pearson's residential address notifying him that, because he did not appear at the September 29 OTR, he was requested to appear at an OTR on October 13, 2004, and to provide the requested information by October 6, 2004. Again, NASD advised Pearson that this was its "final request," and warned him that failure to comply could subject him to disciplinary action, which could result in a bar. 5/ Pearson did not respond to the letter.

On October 7, 2004, NASD staff mailed a fifth letter to Pearson's residence notifying him that it had not received any of the requested information and directing that Pearson submit it by October 12, the day before his rescheduled OTR. 6/ As before, Pearson failed to respond to the letter. Pearson does not deny receiving any of these five NASD requests and expressly acknowledges in his brief that he received the August 25, September 8, September 29 and October 7, 2004 requests.

4/ NASD sent one copy of the letter to INSI's post office address in Rancho Santa Fe, California, and another copy to INSI's street address, also in Rancho Santa Fe. The record indicates that this was the only one of NASD's request letters to Pearson where a copy was also sent to INSI's address.

5/ This letter was sent by certified mail, return receipt requested to Pearson's residential address. The return receipt was signed by "D. Pearson" on October 1, 2004.

6/ The letter was sent by certified mail, return receipt requested. The return receipt was signed by "Dennis Pearson" on October 8, 2004.

It appears that, at some point during October 2004, Pearson's attorney, Dudley Muth, contacted NASD staff to try to reschedule the OTR for a time in early 2005. 7/ It is unclear from the record whether any agreement was reached between Muth and NASD regarding the rescheduling of the OTR, but the record does show that Pearson never appeared for an OTR and that he did not respond to NASD's information requests. 8/

NASD Issues Suspension Notice. In a July 29, 2005 letter, NASD notified Pearson of its intent to suspend him (the "Initial Notice") because he had "failed to provide information to NASD, which had been requested of [him] in accordance with and pursuant to Procedural Rule 8210." The Initial Notice specifically noted that Pearson had failed to respond to four separate NASD request letters and informed him that, pursuant to NASD Procedural Rule 9552, 9/ if he did not provide the information NASD had requested by August 23, 2005 (the "Suspension Date"), NASD would suspend him from association in all capacities with any member. 10/ The Initial Notice was delivered by Federal Express to Pearson's home address in San Diego as reported in the CRD. 11/ The Federal Express tracking notice for the Initial Notice stated that the letter was signed for by "D. Pearson." Pearson did not respond to the Initial Notice.

7/ The evidence of this contact consists of a copy of an e-mail Muth sent to Pearson and Simpson in October 2004 stating that Muth "had discussed a time for the OTR in mid-January 2005 and [an NASD staff person] will get back to me after talking to her superiors."

8/ The record does not show whether proceedings were ever instituted against INSI or any other party as a result of NASD's investigation.

9/ NASD Procedural Rule 9552(a) provides that, if an associated person fails to furnish information requested by NASD, NASD may provide written notice specifying the nature of that associated person's failure and stating that the failure to take corrective action within twenty-one days after service of such written notice will result in the suspension of that person's association.

10/ The Initial Notice did not cite Pearson's failures to appear at the OTR as a reason for the sending of the notice and NASD states in its brief that "[t]he bar imposed on Pearson . . . is not based on his failure to appear for this interview."

11/ The Initial Notice further stated that Pearson could request a hearing pursuant to NASD Procedural Rule 9552(e), which would operate as a stay. NASD Procedural Rule 9552(e) provides that a person requesting a hearing must do so in writing before the effective date of the suspension.

The Federal Express tracking system showed that the Initial Notice was sent on July 29, 2005 and was delivered on August 1, 2005.

On August 24, 2005, NASD staff sent Pearson a letter (the "Suspension Notice") to Pearson's home address stating that, because he failed to provide the requested information by the Suspension Date, he was suspended from association with any NASD member in any capacity. The Suspension Notice advised Pearson that he could file a request for termination of the suspension, pursuant to NASD Procedural Rule 9552(f). ^{12/} The Suspension Notice further stated that, pursuant to NASD Procedural Rule 9552(h), if Pearson failed to file a request for termination of the suspension within six months of the Initial Notice, he would automatically be barred. The Suspension Notice was sent to Pearson's home address by an overnight delivery service and by first class mail. ^{13/} Pearson did not file a request for termination of the suspension or otherwise respond.

On February 3, 2006, NASD advised Pearson by letter, sent to Pearson's residential address, that, effective immediately, he was barred from associating with any NASD member firm in any capacity (the "Bar Notice"). Pearson admits that he received the Bar Notice. One month later, on March 3, 2006, Pearson filed this appeal.

III.

Section 19(f) of the Securities Exchange Act of 1934 provides the standards for our review. ^{14/} If we find that "the specific grounds" on which NASD based its action "exist in fact," that NASD's determination not to permit Pearson's association is in accordance with its rules, that such rules were applied in a manner consistent with the purposes of the Exchange Act,

^{12/} NASD Procedural Rule 9552(f) provides that a person subject to a suspension may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Procedural Rule 9552(h) provides that a person who is suspended and fails to request termination of the suspension within six months of issuance of the original notice of suspension will automatically be expelled or barred.

^{13/} The DHL Waybill indicates that the Suspension Notice was sent to Pearson's home at the address reported on the CRD on August 24, 2005. The DHL tracking system shows that the Suspension Notice was delivered on August 25, 2005 and left at the front door at 10:59 a.m. It appears that no one signed for this delivery.

Pearson states, in the application for review he filed with us, that "NASD properly sent two letters entitled Notice of Intent to Suspend and Notice of Suspension dated July 29, 2005, and August 24, 2005" to his home and business addresses as listed in CRD. Pearson further states that the copy sent to his business address was "signed for by Cassandra King, a secretary who is now suing Pearson for sexual harassment" and who, according to Pearson, "never forwarded the July 29, 2005 and August 24 2005 letters to Pearson."

^{14/} 15 U.S.C. § 78s(f).

and that NASD's action does not impose an undue burden on competition, we must dismiss Pearson's appeal. We turn first to whether the grounds on which NASD acted existed in fact and whether NASD's barring of Pearson accorded with its rules.

A.

Pearson admittedly was aware, as discussed above, of NASD's Deltacom investigation and that NASD had made several requests to him for information related to that investigation. Pearson also admittedly failed personally to respond to any of those requests or to appear before NASD to give testimony in the matter. As a result, NASD, acting pursuant to its Procedural Rule 9552, notified Pearson that, because he had repeatedly failed to provide information requested pursuant to NASD Procedural Rule 8210, he would be suspended. Six months later, by automatic operation of NASD Procedural Rule 9552(h), Pearson was barred based on his failure to request, during that six-month period, termination of the suspension.

1. Pearson argues that the specific grounds for NASD's action do not "exist in fact" because, in his view, he did respond to NASD's information requests. Although Pearson seems to concede that he did not personally respond to any of those requests, he contends that he nevertheless took reasonable steps to ensure that NASD obtained the documents it was seeking. ^{15/} Pearson claims that, when he and INSI's president Richard Simpson received the first NASD request letter in August 2004, they "immediately took steps to retain legal counsel." Pearson asserts that he and Simpson provided their attorney "with a box of documents that included documents already provided to the NASD, as well as additional documents that the NASD might want for the Deltacom investigation." ^{16/} According to Pearson, the attorney also

^{15/} In support of this and other contentions, Pearson seeks to adduce nine exhibits that are not a part of the record. Our Rule of Practice 452 provides that a motion to introduce new evidence must "show with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously." 17 C.F.R. § 201.452. NASD objects to the admission of most of these exhibits, arguing that they are not material, because they mainly consist of correspondence, declarations and phone records that evidence what Simpson and Simpson's and Pearson's joint attorney did, or claimed they did, to comply with NASD's requests to Simpson and Pearson. We find that there is probative value to Pearson's exhibits since they arguably have some bearing on the question of whether Pearson attempted to comply with NASD's requests. Moreover, since NASD's sanction was imposed automatically and without a hearing being held, there were reasonable grounds for Pearson's failure to adduce this evidence previously. Accordingly, we will treat Pearson's inclusion of these exhibits in his brief as a motion to adduce additional evidence and will grant Pearson's motion.

^{16/} Pearson does not give details about the contents of the "box of documents" that he purportedly gave to his attorney so it is unclear what "additional documents" were

(continued...)

had a number of conversations with NASD staff regarding the scheduling of Pearson's and Simpson's OTRs. Pearson contends that neither he nor Simpson heard anything further from their attorney about the OTRs or NASD's information requests. 17/ Pearson claims that, under these circumstances, he "reasonably believed that NASD's investigatory needs had been addressed by Muth and, as the months passed, believed that NASD had abandoned its investigation." 18/

We have held that the person to whom an information request is directed "ha[s] a duty to respond himself or to supervise others diligently with adequate follow-up to ensure a prompt response to the NASD." 19/ We have further held that the person to whom such a request is made "is responsible for responding directly to the NASD's requests for information and cannot shift responsibility to [another] for his own failure to provide requested information in a timely fashion." 20/ Thus, a member or an associated person cannot satisfy his obligation to respond to

16/ (...continued)
included. It is also not clear from the record or Pearson's brief whether NASD ever received any of these documents, although he appears to concede that his attorney failed to deliver them to NASD.

17/ Muth advised Pearson that he had discussed the possibility of rescheduling his OTR with an NASD staff person who had agreed to discuss with her superiors the rescheduling of the OTR for sometime in mid-January 2005. However, there is no evidence in the record showing whether or not NASD agreed to this rescheduling. See supra note 7 and accompanying text.

18/ Pearson claims that the remaining documents NASD had not originally received were eventually provided after Pearson discovered that his lawyer had failed to transmit them. However, there is no evidence in the record that Pearson sent any such documents to NASD or otherwise communicated with NASD staff regarding its information request. Moreover, regardless of whether Pearson sent these additional documents, it is undisputed that they were not sent within the time period specified by NASD.

19/ Richard J. Rouse, 51 S.E.C. 581, 585 (1993).

20/ Ashton Noshir Gowadia, 53 S.E.C. 786, 792 (1998); see also Mark Allen Elliott, 51 S.E.C. 1148, 1151 (1994) (noting that broker's asserted reliance on his wife's responses was no defense to his failure to furnish the information requested of him); Michael David Borth, 51 S.E.C. 178, 181 (1992) (rejecting registered representative's attempt to shift his responsibility to provide NASD with requested information to his firm's legal counsel).

an information request by simply referring the matter to a lawyer, 21/ particularly where, as here, the member or person fails to act to ensure that the lawyer had provided the requested information. 22/

Pearson also contends that the information requests that NASD made to him were duplicative and unnecessary because the same information had already been obtained from INSI. Pearson claims that the information requested in the letters NASD sent to him and Simpson between August and October 2004 was "the same information that the NASD had already received just weeks, or in some cases, days earlier." He argues that it is "irrelevant . . . [w]hether Pearson himself physically handed the [requested] documents to NASD or his agent did so . . . [because] [t]he relevant inquiry is whether NASD received the documents, which they did." He contends that, "[a]s nearly all, if not all, of the same documents called for by the NASD Request Letters had already been produced by INSI, there was no regulatory need for the document and information requests." 23/

21/ Michael Markowski, 51 S.E.C. 553, 557-58 (1993), aff'd, 34 F.3d 99 (2d Cir. 1994) (holding that respondent "knew or should have known that he could not delegate to counsel the ultimate responsibility for complying with the NASD's request"); Robert Fitzpatrick, 55 S.E.C. 419, 425 (2001) (holding that respondent's "only apparent response to the NASD's requests was to refer them to [his firm's] outside counsel . . . [and that was] not an adequate response"); Borth, 51 S.E.C. at 181 n.10 (holding that respondent's responsibility to comply with NASD information request was not excused by his decision to follow his firm's policy of referring such requests to the firm's counsel).

22/ Cf. Paz Sec., Inc., Securities Exchange Act Rel. No. 52693 (Oct. 28, 2005), 86 SEC Docket 1880, 1887 (rejecting respondents' contention that their counsel's negligence in failing to file an answer on their behalf provided "good cause" for setting aside default in proceeding based on violation of NASD Procedural Rule 8210, and noting that, among other things, there was no evidence that respondents took any actions to consult with counsel about the status of the answer or of the disciplinary matter).

23/ Pearson argues that NASD should not have sent its letters to him because, he claims, "the documents and information request were for Firm records and related business records, and not the personal records of Pearson. . . [but were rather] the property of the the corporation (i.e., the Firm), not Pearson personally" (emphasis in original). However, Pearson was INSI's chief executive officer and he and Simpson were its only principals. It is undisputed that the requested documents were within Pearson's control. Indeed, Pearson's claim that he and Simpson had provided their attorney with some of the documents that were responsive to NASD's requests indicates his control over the documents. Moreover, even if there were certain documents that Pearson was unable to furnish to NASD because they were not within his control, he should have so informed NASD, rather than simply ignore the request.

It is well established, however, that a member or an associated person may not "second guess[]" an NASD information request and that a belief that NASD no longer needs the requested information "provides no excuse for a failure to provide it." 24/ As we have held, a member or an associated person has "an obligation to respond to an NASD request even if his response [is] a statement that he believed he had already provided the NASD with the information it had requested." 25/

Moreover, and contrary to Pearson's assertion, the record indicates that NASD's requests to him were not entirely duplicative of the one made to INSI. For example, NASD asked Pearson to explain the basis for his own determination that Deltacom securities were "suitable investments for his clients" and a description of the type of client for whom the securities would not be suitable. 26/ NASD also requested that Pearson provide all "incoming and outgoing correspondence (electronic and hard copy)" related to the Deltacom offering. Certainly some of this correspondence could have been held by Pearson alone and not by the Firm. Moreover, NASD may have been interested in determining whether there were discrepancies in the responses given by the various targets of the investigation. Thus, while there was undoubtedly some overlap in what had been requested of INSI and Pearson, there was a legitimate investigatory basis for the inquiry being directed to Pearson, as well as to Simpson and INSI. In addition, Pearson asserts that, at some point after his receipt of the information requests, he provided his attorney with "additional documents" for delivery to NASD -- which, as discussed above, the attorney failed to deliver -- thus conceding that there was additional information that NASD had not received through its initial requests to INSI that was nevertheless potentially responsive to the requests. Finally, Pearson's failure to respond impeded the Deltacom investigation by, at a minimum, delaying it, even if much of the requested information ultimately was provided by others. 27/

24/ Borth, 51 S.E.C. at 181.

25/ Gowadia, 53 S.E.C. at 790.

26/ See supra note 3.

We note that NASD separately asked Simpson, on behalf of INSI, to provide a statement from Pearson as to what made Deltacom a suitable investment for his clients, although it is unclear from the record whether Simpson provided NASD with the requested suitability statement from Pearson.

27/ As we recently noted, "[w]hen members and associated persons delay their responses to requests for information, they impede the ability of NASD to conduct its investigations fully and expeditiously." Elliot M. Hershberg, Exchange Act Rel. No. 53145 (Jan. 19, 2006), 87 SEC Docket 494, 498.

2. Pearson also challenges NASD's action based on what he claims was the inadequacy of NASD efforts to notify him of its suspension, which he claims conflicted with NASD rules. While Pearson acknowledges that he received at least four of NASD's requests for information, he denies ever receiving either the Initial Notice or the Suspension Notice. ^{28/} Pearson concedes that they were sent to his home, his residential CRD address, but claims that, at such time, he was temporarily living elsewhere due to marital problems. ^{29/} Pearson states, without any evidentiary support, that it is "likely that [his then-] estranged wife or another person received the correspondence and discarded it."

These notices were issued pursuant to NASD Procedural Rule 9552, which refers to NASD Rule 9134 with respect to how service of such notices is to be effected. NASD Procedural Rule 9134 provides that service may be accomplished through personal service, service by mail, or by courier. It further provides that "[s]ervice by courier may be accomplished by sending the papers through a courier service that generates a written confirmation of receipt or of attempts at delivery." The record establishes that NASD complied with the requirements of NASD Procedural Rule 9134 by sending the notices through courier services that generated the requisite confirmation. ^{30/}

Pearson contends however that, because of his special personal circumstances, NASD's service of the notices was insufficient. He claims that "[b]ecause NASD staff apparently had

^{28/} Pearson also claims that the Initial Notice failed to comply with NASD Procedural Rule 9552 because it did not state "the specific grounds and include a factual basis for the suspension and subsequent bar." The Initial Notice stated that Pearson would be suspended because he had "failed to respond to request letters issued by NASD staff on August 25, 2004, September 8, 2004, September 29, 2004 and October 7, 2004" pursuant to NASD Procedural Rule 8210. The Initial Notice, which included copies of the referenced request letters, also stated that Pearson would be barred in six months if he failed to request termination of the suspension. This fully satisfied NASD Procedural Rule 9552's requirement to provide the basis for NASD's action.

^{29/} Pearson explains that "from at least July 2005 through August 2005, [he] was temporarily staying elsewhere due to marital problems that were subsequently resolved," and that he had moved back to his home by the time NASD notified him in February 2006 that he had been barred. We note that, other than this assertion, Pearson has failed to substantiate this claim.

^{30/} Although, as mentioned, the FedEx tracking slip shows that Initial Notice was signed for by a "D. Pearson," Pearson denies that the signature was his. We need not determine whether the signature was his, however, because NASD rules do not require that receipt be acknowledged by the addressee. See, e.g., Jeffrey King, Exchange Act Rel. No. 52571 (Oct. 7, 2005), 86 SEC Docket 1439, 1441 n.8 (noting that suspension notice based on failure to respond to information requests "was left at [respondent's] door").

actual knowledge that Pearson had not received the suspension notices at his CRD residential address, fairness and NASD rules dictate that NASD staff obtain a current address for Pearson by simply asking [other INSI personnel] for this information, or by sending the suspension notices to the CRD business address for Pearson." He supports his claim that NASD had actual knowledge that Pearson had not received the correspondence by noting that, after NASD had sent similar request letters to his business partner Simpson, Simpson challenged the action. According to Pearson, NASD "must have known" that Pearson would also have challenged NASD's action if he had received these notices "because he had, in fact, fully complied with the NASD Request Letters." Pearson also contends that NASD should have tried to reach him at his home and, if they had done so, would have learned that he was not then residing there. 31/

NASD Procedural Rule 9134(b)(1) provides that "[p]apers served on a natural person may be served at the natural person's residential address, as reflected in the [CRD]." It further provides that:

When a Party or other person responsible for serving such person has actual knowledge that the natural person's [CRD] address is out of date, duplicate copies shall be served . . . at the . . . last known residential address and the business address in the [CRD] of the entity with which the natural person is employed or affiliated.

Contrary to Pearson's claim, we do not find that NASD had actual knowledge that Pearson's CRD address was out of date. 32/ First, Pearson argues only that NASD must have known. That is not proof of actual knowledge. In fact, Pearson provided no evidence on this subject at all. Second, although Pearson argues that NASD must have known that he had not received the notices because he did not respond, that is exactly what he did in response to the previous requests for information, most of which he admittedly received. Thus, Pearson's response to the notices was fully consistent, from the perspective of NASD, with his earlier response to the information requests, and there is nothing about his failure to respond that would have indicated he had not received them, such as the notices being returned as undeliverable. Third, for similar reasons, no strong logical inference that Pearson had not received the notices arises because Simpson was challenging the suspension. Pearson did not provide evidence that NASD knew he would not act independently of Simpson.

31/ Pearson also contends that, because of its "actual knowledge that Pearson had not received the suspension notices," NASD should have sent them to Pearson's business address. However, he expressly admitted that the notices were sent to his business address. See supra note 13.

32/ We note that we have previously remanded to NASD proceedings brought under similar NASD provisions where, among other things, the record raised questions about whether NASD was aware that its information requests and notices were not reaching the respondent. See Robert J. Langley, Exchange Act Rel. No. 50917 (Dec. 22, 2004), 84 SEC Docket 1959, 1964. As discussed, that is not the situation presented here.

It is the responsibility of NASD members and their associated persons to keep NASD apprised of any changes in their addresses, and a failure to respond to NASD in connection with an investigation, as is the case here, is not excused by that person's having temporarily moved from the address listed in the CRD. ^{33/} As we have previously held, associated persons have "a continuing duty to notify the Association . . . of [their] current address, and to receive and read mail sent to [them] at that address." ^{34/} Pearson "cannot shift the burden of keeping [address] information current to the NASD" because "NASD must be able to rely on its records." ^{35/} Nor are we persuaded by Pearson's claim that NASD must have known he would challenge the suspension because he had fully complied with NASD's information request. To the contrary, as discussed, the evidence establishes that Pearson had not complied.

B.

We now turn to the question of whether NASD applied its rules in a manner that is consistent with the purposes of the Exchange Act. Pearson claims that NASD's action is inconsistent with those purposes. In doing so, Pearson focuses on the sanction imposed, arguing that it was "fundamentally unfair" for NASD to bar him because, among other things, Pearson never had the opportunity to defend himself before the automatic bar was imposed. While Pearson questions the fairness of the Rule 9552 procedures, which resulted in his having been barred without a hearing, we do not believe that those procedures operated unfairly here, for the reasons already explained. Pearson has presented no mitigating evidence that would raise questions about the appropriateness of the sanction and, in our view, the circumstances amply

^{33/} See, e.g., Paz Sec., Inc., 86 SEC Docket at 1885 (finding that associated person who was temporarily out of the country was still obligated to respond to NASD requests for information and to provide CRD with address at which he could receive documents).

We also note that the record contains a declaration from Simpson in which Simpson averred that he was in close contact with Pearson throughout the period and that they had discussed the fact that Simpson had received a pre-suspension notice, while Pearson presumed that he had not. In light of Pearson's knowledge of the NASD's action against Simpson and their apparently similar situations, a reasonably diligent person would have sought to ascertain whether similar action was being taken against him, particularly when, as Pearson's assertions indicate, he had some uncertainty about his spouse's willingness to forward mail to him.

^{34/} Warren B. Minton, Jr., Exchange Act Rel. No. 46709 (Oct. 23, 2002), 78 SEC Docket 2369, 2375 n.15 (quoting William T. Banning, 50 S.E.C. 415, 416 (1990)).

^{35/} Nazmi C. Hassanieh, 52 S.E.C. 87, 90-91 n.13. (1994).

justify a bar. 36/ As discussed, NASD sent Pearson a series of requests for information and for him to appear at an OTR, most of which he admittedly received. He responded to none of them. Moreover, to the extent that Pearson did not learn about NASD's action against him, the fault is not NASD's but his own because he neither apprised NASD of his change of address nor inquired of NASD after his partner Simpson told him about his own notice of suspension stemming from the same investigation. Thus, this is not a case where a respondent unintentionally failed to respond or where other mitigating circumstances might support a lesser sanction. 37/

In sum, we find that NASD applied its rules in a manner consistent with the purposes of the Exchange Act. As we have repeatedly emphasized, it is critically important to the self-regulatory system that members and their associated persons cooperate with NASD investigations by complying with information requests. 38/ In this connection, we have observed that, because NASD lacks subpoena power, it "must rely upon Procedural Rule 8210 in

36/ We note that NASD's Sanction Guidelines direct that if an individual fails to respond in any manner to an NASD request for information under NASD Procedural Rule 8210, "a bar should be standard." NASD Sanction Guidelines (2001 ed.) at 39 ("Failure to Respond or Failure to Respond Truthfully, Completely, Timely to Requests Made Pursuant to NASD Procedural Rule 8210").

We further note that Pearson has been subject to other NASD disciplinary proceedings. In December 2002, Pearson and INSI executed a Letter of Acceptance, Waiver and Consent ("AWC") with NASD, without admitting or denying the allegations, for engaging in what the NASD alleged was fraudulent securities solicitation and sales practices. In the AWC, Pearson and INSI were suspended from all broker-dealer activities for seven months, ordered to make offers of rescission to investors, and fined \$30,000. On December 13, 2004, the NASD revoked Pearson's registration and expelled INSI from NASD membership for "for Failing to Pay Fines and/or Costs." NASD Case #C02030001 (available at http://www.nasd.com/web/groups/enforcement/documents/monthly_disciplinary_actions/nasdw_007450.pdf, and http://www.nasd.com/web/groups/enforcement/documents/monthly_disciplinary_actions/nasdw_013015.pdf).

37/ See Ryan R. Henry, Exchange Act. Rel. No. 53957 (June 8, 2006), 88 SEC Docket 587, 592 (remanding to NASD, among other reasons, to determine whether bar was appropriate given questions about whether respondent had received NASD's requests and notices and whether his failure to respond was intentional).

38/ See, e.g., Hershberg, 87 SEC Docket at 498; Paz Sec., Inc., 86 SEC Docket at 1889; Fitzpatrick, 55 S.E.C. at 423-24; Borth, 51 S.E.C. at 180.

connection with its obligation to police the activities of its members and associated persons." 39/ Vigorous enforcement of Rule 8210, therefore, helps to ensure the continued strength of the self-regulatory system by making it more likely that members and their associated persons will provide prompt and full cooperation with NASD investigations. NASD's barring of Pearson is "consistent with the Exchange Act's basic purpose of protecting public investors." 40/ Based, therefore, on our consideration of the elements identified in Section 19(f), we shall dismiss this appeal.

An appropriate order will issue. 41/

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

Nancy M. Morris
Secretary

39/ Joseph Patrick Hannan, 53 S.E.C. 854, 858-59 (1998); see also Rouse, 51 S.E.C. at 584 (finding rule requiring NASD members and associates to comply with its information requests to be "a key element in the NASD's effort to police its members").

40/ Gershon Tannenbaum, 50 S.E.C. 1138, 1141 (1992).

Pearson also contends that NASD's requests imposed unnecessary costs on the Firm and constituted an undue burden on competition. This contention is without merit. There is no evidence in the record quantifying the cost to the Firm of complying with NASD's requests or its impact on the Firm's finances. Even if such evidence were produced, however, we do not believe that such cost, being necessary to ensure regulatory compliance, constitutes an undue burden on competition. Cf. Joseph Dillon & Co., Inc., 54 S.E.C. 960, 965 (2000) (acknowledging that, while the cost of complying with special supervisory procedures was "high," such costs were "necessary for the protection of investors"). Pearson also did not demonstrate how the compliance costs harmed the Firm's ability to compete with other firms.

41/ 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
Rel. No. 54913 / December 11, 2006

Admin. Proc. File No. 3-12229

In the Matter of the Application of

DENNIS A. PEARSON, JR.
13722 Trento Place
San Diego, CA 92130

For Review of Action Taken by

NASD

ORDER DISMISSING APPLICATION FOR REVIEW OF NASD ACTION

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

ORDERED that Dennis A. Pearson, Jr.'s application for review be, and it hereby is,
dismissed.

By the Commission.

Nancy M. Morris
Secretary