

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

SPARTAN CAPITAL SECURITIES, LLC  
(CRD No. 146251),

JOHN D. LOWRY  
(CRD 4336146),

and

KIM M. MONCHIK  
(CRD 2528972),

Respondents.

Disciplinary Proceeding  
No. 2019061528001

Hearing Officer—MJD

**EXTENDED HEARING PANEL  
DECISION**

March 28, 2023

**Spartan Capital Securities, LLC, is censured and fined \$600,000 for failing to amend, or timely amend, in 220 instances, the Forms U4 and Forms U5 of more than 70 registered representatives and Firm executives to disclose the filing or disposition of customer arbitrations, the receipt or disposition of written customer complaints, and reportable financial events. Spartan is also required to retain an independent consultant to review its supervisory procedures and to amend the Forms U4 and Forms U5 of its registered persons, including John D. Lowry and Kim M. Monchik, to reflect the filing and disposition of customer arbitrations and customer written complaints. Spartan's failures to disclose reportable events involving its executives were willful. The Firm's misconduct violated Article V, Sections 2(c) and 3(b) of FINRA's By-Laws and FINRA Rules 1122 and 2010.**

**Lowry is fined \$40,000 and suspended for two years from associating with any member firm in any capacity for willfully failing to amend his Form U4, in 38 instances, to disclose, or timely disclose, the filing and disposition of customer arbitrations in which he was a named respondent. Lowry is also required to amend his Form U4 to reflect the filing and disposition of customer arbitrations.**

**Monchik is fined \$30,000 and suspended for two years from associating with any member firm in any capacity for willfully failing to amend her Form U4, in 15 instances, to disclose, or timely disclose, the filing and disposition of customer arbitrations in which she was a named respondent. Monchik is also required to amend her Form U4 to reflect the filing and disposition of customer arbitrations.**

**Lowry's and Monchik's willful misconduct violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010.**

*Appearances*

For the Complainant: John R. Baraniak, Jr., Esq., David Monachino, Esq., Jeffrey E. Baldwin, Esq., and Sathish Dhandayutham, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondents: David A. Schrader, Esq., Paykin Krieg & Adams LLP

**DECISION**

**I. Introduction**

From January 1, 2015, to December 31, 2020 (“the Relevant Period”), Respondent Spartan Capital Securities, LLC (“Spartan” or “the Firm”) failed to file, or timely file, mandatory amendments to industry registration forms—the Uniform Application for Securities Industry Registration or Transfer (Form U4) and the Uniform Termination Notice for Securities Industry Registration (Form U5)—for 72 registered representatives, including 11 executive officers of the Firm. Most amendments related to customer arbitrations. Others involved written customer complaints and discloseable financial events. Spartan’s failures to file, or timely file, mandatory amendments to the registration forms of executive officers of the Firm, including Respondents John D. Lowry and Kim M. Monchik, were willful. Additionally, Lowry, the Firm’s Chief Executive Officer (“CEO”) and owner, and Monchik, the Chief Administrative Officer (“CAO”) and currently its Chief Compliance Officer (“CCO”), willfully failed to update their own registration forms.

Respondents concede that the Firm failed in many instances to timely amend the Forms U4 of registered representatives to disclose financial events. They deny, however, that Spartan had an obligation to disclose arbitrations naming Firm executives, including Lowry and Monchik, for alleged supervisory deficiencies. Respondents also contend that the arbitrations they failed to disclose did not contain sufficiently specific allegations against the Firm’s executive officers to trigger a reporting obligation. Additionally, they note that they acted in good faith because they reasonably relied on the advice of the Firm’s various CCOs, outside

counsel, and FINRA staff. For this reason, Respondents deny that they acted willfully and argue that their actions conformed with industry practice.

After carefully weighing the evidence, the parties' arguments, and the applicable law, the Hearing Panel finds that Respondents committed the violations alleged. The Panel also finds that Spartan acted willfully when it failed to amend the registration forms of its executive officers, and Lowry and Monchik acted willfully when they failed to amend their own registration forms.<sup>1</sup>

## **II. Background of Respondents**

### **A. Spartan Capital Securities, LLC**

Spartan has been a FINRA member firm since July 2008. In October 2021, when Enforcement filed the Complaint, it employed 133 registered representatives and 13 unregistered persons at its principal office in New York City and two branch offices in Long Island. The Firm's primary business is servicing about 5,000 retail customer accounts.<sup>2</sup>

Between 2015 and 2020, Spartan also served as the placement agent or investment banker for about 30 private placement transactions.<sup>3</sup> The Firm's estimated annual revenues ranged between \$20 and \$30 million during the Relevant Period.<sup>4</sup>

### **B. John D. Lowry**

Lowry entered the securities industry in September 2000 and first registered with FINRA in January 2001. He has been associated with Spartan since 2008, when he co-founded the Firm. After the Firm terminated another co-founder and co-CEO, Lowry became the Firm's sole CEO in September 2014, and later, through a holding company, its sole owner.<sup>5</sup> He is registered with FINRA as a General Securities Representative, General Securities Principal, Investment Banking Representative, Investment Banking Principal, and Operations Professional.<sup>6</sup>

Lowry's primary responsibilities at Spartan are to develop business and operate the broker-dealer. Until about 2017, Lowry also managed Spartan's investment banking business.<sup>7</sup>

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<sup>1</sup> A nine-day hearing began on July 18, 2022. The hearing was held via videoconference pursuant to FINRA rule filing SR-FINRA-2022-004, which temporarily amended FINRA Rules 9261 and 9830 to permit conversion of FINRA's in-person disciplinary hearings to videoconference hearings because of health and safety concerns caused by the COVID-19 pandemic.

<sup>2</sup> Complaint ("Compl.") ¶ 6; Answer ("Ans.") ¶ 6.

<sup>3</sup> Hearing Transcript ("Tr.") 922-23.

<sup>4</sup> Tr. 920-21.

<sup>5</sup> Compl. ¶¶ 7-8; Ans. ¶¶ 7-8; Tr. 629-33. Lowry owns 100 percent of the holding company that owns 100 percent of Spartan. Tr. 632.

<sup>6</sup> Compl. ¶¶ 7-8; Ans. ¶¶ 7-8; Complainant's Exhibit ("CX-") 16, at 3-13.

<sup>7</sup> Tr. 923-24.

In 2015, he was the representative for about 50 customer accounts.<sup>8</sup> At the time of the hearing, he managed approximately 20 customer accounts, which he said were mostly family and friends.<sup>9</sup> According to the Firm’s organizational chart, during the Relevant Period, three persons reported directly to Lowry—the Firm’s Financial and Operations Principal (“FINOP”) and Chief Financial Officer (“CFO”), the CCO, and Monchik as the CAO.<sup>10</sup> Lowry had supervisory responsibilities over the persons who held these positions.<sup>11</sup>

### **C. Kim M. Monchik**

Monchik entered the securities industry in 1994 and first became registered with FINRA in 2000. She joined Spartan in 2008 as a compliance assistant.<sup>12</sup> She is currently registered with Spartan as a General Securities Representative, General Securities Principal, Equity Trader Limited Representative, Securities Trader, Investment Banking Representative, Investment Banking Principal, and Operations Professional.<sup>13</sup>

Monchik became Spartan’s CAO in June 2015.<sup>14</sup> Three times during the Relevant Period, totaling less than two years, Monchik also served as the CCO. During the Relevant Period, five persons besides Monchik served as Spartan’s CCO.<sup>15</sup> While serving as CCO, Monchik retained her administrative and operational responsibilities.<sup>16</sup>

Contrary to Lowry’s testimony and Spartan’s written supervisory procedures (“WSPs”), Monchik testified that when she was not the CCO, she supervised the persons who served as CCO.<sup>17</sup> Monchik was also responsible for filings in FINRA’s Central Registration Depository (“CRD”), an electronic, web-based system accessible to authorized users, including securities regulators and other member firms.<sup>18</sup> Her CRD filing responsibilities included the filing of Forms U4 and Forms U5 for the Firm’s registered representatives and executive officers. In that

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<sup>8</sup> Tr. 917-18.

<sup>9</sup> Tr. 634-35.

<sup>10</sup> Tr. 633-34; CX-15.

<sup>11</sup> Tr. 918-19. Lowry testified that he did not supervise any brokers. Tr. 919. According to the Firm’s procedures in place during the Relevant Period, Lowry had supervisory responsibility over the Firm’s investment banking operations since 2008. CX-14, at 149.

<sup>12</sup> Tr. 943; CX-27, at 41.

<sup>13</sup> Compl. ¶ 10; Ans. ¶ 10.

<sup>14</sup> CX-7a; CX-402.

<sup>15</sup> CX-7; CX-7a; CX-401; CX-402; Respondents’ Exhibit (“RX-”) 7.

<sup>16</sup> Tr. 951-53; CX-17, at 5.

<sup>17</sup> Tr. 2133.

<sup>18</sup> Tr. 378-80. *See also* <https://www.finra.org/registration-exams-ce/classic-crd#overview>.

role, Monchik had authorized access to CRD.<sup>19</sup> She has more than 15 years of experience dealing with issues related to making disclosures on Forms U4 and Forms U5.<sup>20</sup> Monchik testified that she was involved in decisions whether to report customer arbitrations on Lowry's Form U4, including the disposition of the arbitrations.<sup>21</sup>

#### **D. Jurisdiction**

Respondents do not dispute that FINRA has jurisdiction over each of them. Spartan is currently a member firm and Lowry and Monchik are associated with Spartan and registered with FINRA. The alleged misconduct occurred while Spartan was a member firm and while Lowry and Monchik were associated with Spartan and registered with FINRA.<sup>22</sup>

### **III. Legal Standards Relating to Disclosures on Form U4 and Form U5**

#### **A. Form U4 and Form U5**

Member firms use Forms U4 to register applicants for registration and must update information pertaining to their registered representatives.<sup>23</sup> Member firms file a Form U5 when they terminate the registration of a registered representative and must update a Form U5 if reportable information changes.<sup>24</sup> Both Form U4 and Form U5 require firms to disclose identified reportable events.<sup>25</sup> FINRA collects and maintains the information that is reported on a Form U4 and Form U5 in CRD.<sup>26</sup>

Some of the information that appears in CRD about member firms and individual registered representatives is also available to the public via BrokerCheck, a website that FINRA operates and maintains. BrokerCheck "helps [investors] make informed choices about brokers and brokerage firms and provides easy access to investment adviser information."<sup>27</sup> BrokerCheck provides "a snapshot of a broker's employment history, regulatory actions, and

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<sup>19</sup> Tr. 956-57; CX-14, at 149. Monchik did not manage customer accounts at Spartan. Tr. 967.

<sup>20</sup> Tr. 971-72, 1179-80.

<sup>21</sup> Tr. 1110, 1116-17.

<sup>22</sup> Compl. ¶ 11; Ans. ¶ 11. The disciplinary proceeding resulted from FINRA staff's multiple reviews of Spartan's alleged failures to amend, or timely amend, the Forms U4 and Forms U5 of its registered representatives, including Spartan's executive officers, to disclose the filing of customer arbitrations and complaints against them and the existence of judgments and liens. It also resulted from the staff's review of Lowry's and Monchik's alleged failures to disclose, or timely disclose, the filing and disposition of customer arbitrations that named them as respondents. *See* CX-117; CX-120; CX-121; CX-355; CX-356.

<sup>23</sup> Tr. 378; CX-9. *See also* <https://www.finra.org/registration-exams-ce/broker-dealers/registration-forms/form-u4>.

<sup>24</sup> Tr. 434; CX-10. *See also* <https://www.finra.org/registration-exams-ce/broker-dealers/registration-forms/form-u5>.

<sup>25</sup> Tr. 378-79.

<sup>26</sup> Tr. 378-82.

<sup>27</sup> *See* <https://brokercheck.finra.org/>.

investment-related licensing information, arbitrations, and complaints.”<sup>28</sup> In addition to disciplinary actions, the publicly available information on BrokerCheck includes bankruptcies filed in the past ten years, unsatisfied judgments and liens, and certain criminal events.<sup>29</sup>

## **B. Form U4 and Form U5 Disclosures Required by Law**

FINRA uses Form U4 to screen applicants and monitor their fitness for registration within the securities industry.<sup>30</sup> To register with FINRA through a member firm, an applicant signs an initial Form U4 and, after being registered, the applicant must also sign any amendment to information disclosed on the Form U4.<sup>31</sup> FINRA’s By-Laws provide that a registered person’s Form U4 be kept current at all times by supplementary amendments that must be filed within 30 days of learning of facts or circumstances giving rise to the amendment.<sup>32</sup> The duty to amend a Form U4 assures regulatory organizations, employers, and the investing public that they have all material, up-to-date information about the securities professionals with whom they are dealing.<sup>33</sup>

Member firms designate persons with authority to amend their registered representatives’ Forms U4 and Forms U5 by filing amendments that update existing information and add new information.<sup>34</sup> Member firms also have a duty to maintain accurate Forms U4 on behalf of their registered persons and can be held liable for failing to do so.<sup>35</sup>

Member firms and registered persons are expected to self-report required disclosures on the Form U4. Section 14 of Form U4 is titled “Disclosure Questions.” This section of the Form U4 is designed to elicit a “Yes” or “No” answer to a series of questions involving certain events—including criminal convictions or pleas, findings against the associated person by certain

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<sup>28</sup> See <https://brokercheck.finra.org/>.

<sup>29</sup> Tr. 379-82.

<sup>30</sup> *Michael Earl McCune*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026, at \*10 (Mar. 15, 2016), *aff’d*, 672 F. App’x 865 (10th Cir. 2016).

<sup>31</sup> Tr. 394; CX-9, at 15.

<sup>32</sup> Article V, Section 2(c) of FINRA’s By-Laws. Article V, Section 3(b) of the By-Laws obligates firms to amend a former registered representative’s Form U5 when it learns of facts or circumstances requiring disclosure.

<sup>33</sup> *Louis Ottimo*, Exchange Act Release No. 83555, 2018 SEC LEXIS 1588, at \*20-21 (SEC June 28, 2018), *sanctions reaffirmed*, No. 200901744201r, 2020 FINRA Discip. LEXIS 34 (NAC Mar. 27, 2020), *aff’d*, Exchange Act Release No. 95141, 2022 SEC LEXIS 1578 (June 22, 2022).

<sup>34</sup> Tr. 380. A person authorized by the member firm also signs the Form U4 whenever it files an amendment to a registered representative’s Form U4. CX-9, at 17.

<sup>35</sup> *N. Woodward Fin. Corp.*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867, at \*28 (May 8, 2015), *petition for review denied sub nom. Troszak v. SEC*, No. 15-3729, 2016 U.S. App. LEXIS 24259 (6th Cir. June 29, 2016); *Dep’t of Enforcement v. Wedbush Sec., Inc.*, No. 20070094044, 2014 FINRA Discip. LEXIS 40, at \*56-59 (NAC Dec. 11, 2014) (finding that member firm failed to file, late filed, and filed inaccurate Forms U4 and Forms U5 to disclose arbitration filings, customer complaints, settlements with customers, and financial events, in violation of FINRA By-Laws and FINRA Rule 2010), *aff’d*, Exchange Act Release No. 78568, 2016 SEC LEXIS 2794 (August 12, 2016), *petition for review denied*, 719 F. App’x 724 (9th Cir. 2018).

regulators, and financial setbacks involving bankruptcy or unsatisfied liens and judgments.<sup>36</sup> A “Yes” answer to a disclosure question requires the applicant to provide details on Form U4’s Disclosure Reporting Pages (“DRP”).<sup>37</sup>

## 1. Disclosures Relating to Arbitrations

Question 14I(1) of Form U4 sets forth the circumstances in which disclosure is required when a registered person is a named respondent in an arbitration.<sup>38</sup> Disclosure must be made if (a) the arbitration is still pending; (b) the arbitration resulted in an award or civil judgment against the registered person; or (c) the arbitration was settled for at least \$15,000 (on or after May 18, 2009). Question 7E of Form U5<sup>39</sup> contains the same disclosure requirements as Question 14I of Form U4 for customer arbitrations naming a firm’s former registered representative in connection with events that occurred while the registered representative was associated with the firm.<sup>40</sup> For each affirmative response to Question 14I of Form U4—and, for a

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<sup>36</sup> CX-9, at 12-14.

<sup>37</sup> Tr. 397; CX-9, at 16-39.

<sup>38</sup> Question 14I(1) asks:

(1) Have you ever been named as a respondent/defendant in an *investment-related*, consumer-initiated arbitration or civil litigation which alleged that you were *involved* in one or more *sales practice violations* and which:

- (a) is still pending, or;
- (b) resulted in an arbitration award or civil judgment against you, regardless of amount, or;
- (c) was settled, prior to 05/18/2009, for an amount of \$10,000 or more, or;
- (d) was settled, on or after 05/18/2009, for an amount of \$15,000 or more?

CX-9, at 13 (emphasis in original).

<sup>39</sup> CX-10, at 6.

<sup>40</sup> Question 7E(1) of Form U5 asks:

In connection with events that occurred while the individual was employed by or associated with your *firm*, was the individual named as a respondent/defendant in an *investment-related*, consumer-initiated arbitration or civil litigation which alleged that the individual was *involved* in one or more *sales practice violations* and which:

- (a) is still pending, or;
- (b) resulted in an arbitration award or civil judgment against the individual, regardless of amount, or;
- (c) was settled, prior to 05/18/2009, for an amount of \$10,000 or more, or;
- (d) was settled, on or after 05/18/2009, for an amount of \$15,000 or more?

CX-10, at 6 (emphasis in original).

firm, Question 7E(1) of Form U5—the registered representative and firm must complete the corresponding DRP and provide details about the customer arbitration or complaint.<sup>41</sup>

## 2. Disclosures Relating to Customer Complaints

Questions 14I(2) and 14I(3) of Form U4 require that a firm and registered representative disclose a written, non-arbitration complaint that alleges a sales practice violation and damages of at least \$5,000. Question 14I(2) of Form U4 asks whether the registered representative was the subject of a written or oral complaint alleging that the registered representative was involved in a sales practice violation that was settled for at least \$15,000.<sup>42</sup> Question 14I(3) asks whether, in the past 24 months, the registered representative has been the subject of a written complaint (other than an arbitration) alleging that the registered representative was involved in a sales practice violation and containing a claim for damages of at least \$5,000.<sup>43</sup> If the customer alleges no damage amount, the complaint is reportable unless the firm has made a good-faith determination that the damages would be less than \$5,000.

For each affirmative response to Questions 14I(2) and (3), the registered representative and firm must complete the corresponding DRP and provide details about the customer and the complaint.<sup>44</sup> Question 6 of the DRP section of Form U4 requires disclosure of customer complaints, arbitrations, and civil litigations where the damage amount is \$5,000 or higher. If the

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<sup>41</sup> CX-9, at 13-14, 29; CX-10, at 6, 13-14. The details to be provided by the registered representative or the firm in the DRP include the name of the customer, the customer's state of residence, a summary of the allegations, the product type, the amount of damages, and the settlement amount, if any.

<sup>42</sup> Question 14I(2) asks:

Have you ever been the subject of an *investment-related*, consumer initiated (written or oral) complaint, which alleged that you were *involved* in one or more sales practice violations, and which:

- (a) was settled, prior to 5/18/2009, for an amount of \$10,000 or more, or;
- (b) was settled, on or after 5/18, 2009, for an amount of \$15,000 or more?

CX-9, at 14 (emphasis in original).

<sup>43</sup> Question 14I(3) asks:

Within the past twenty-four (24) months, have you been the subject of an *investment-related*, consumer-initiated, written complaint, not otherwise reported under question 14I(2) above, which:

(a) alleged that you were *involved* in one or more *sales practice violations* and contained a claim for compensatory damages of \$5,000 or more (if no damage amount is alleged, the complaint must be reported unless the *firm* has made a good faith determination that the damages from the alleged conduct would be less than \$5,000), or;

- (b) alleged that you were *involved* in forgery, theft, misappropriation or conversion of funds or securities?

CX-9, at 14 (emphasis in original).

<sup>44</sup> CX-9, at 12, 14.

complaint does not state a damage amount, the firm must report the complaint unless it has made a good-faith determination that the damages would be less than \$5,000.<sup>45</sup>

### 3. Disclosures Relating to Financial Events

Question 14M of Form U4, under the section entitled “Financial Disclosure,” requires a member firm and a registered representative to identify an unsatisfied judgment and lien against the registered representative within 30 days of learning of it.<sup>46</sup> Question 14K(1) requires a firm and a registered representative to disclose whether the registered representative has, among other things, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition within the past ten years.<sup>47</sup>

#### C. Defined Terms Related to Form U4 and Form U5

The Form U4 requires disclosure when a respondent is named in an investment-related, consumer-initiated arbitration that alleges the respondent was *involved* in one or more *sales practice violations*.

FINRA has defined the above highlighted terms to assist member firms and associated persons to comply with disclosure obligations. The Form U4 Explanation of Terms and the Form U5 Explanation of Terms (together “Explanation of Terms”) defines a “sales practice violation” as follows:

any conduct directed at or involving a customer which would constitute a violation of: any rules for which a person could be disciplined by any *self-regulatory organization*; any provision of the Securities Exchange Act of 1934; or any state statute prohibiting fraudulent conduct in connection with the offer, sale, or purchase of a security or in connection with the rendering of investment advice.<sup>48</sup>

The Explanation of Terms defines being “involved” as “doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or *failing reasonably to supervise* another in doing an act.”<sup>49</sup>

FINRA provides additional guidance in its “Form U4 and U5 Interpretive Questions and Answers” (“Form U4 FAQ”), which addresses, among other topics, when a registered representative is obligated to disclose an arbitration alleging a failure to supervise. Except in

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<sup>45</sup> CX-9, at 29.

<sup>46</sup> Question 14M asks “Do you have any unsatisfied judgments or liens against you?” CX-9, at 14.

<sup>47</sup> Question 14K(1) asks “Within the past 10 years: (1) have you made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition?” CX-9, at 14.

<sup>48</sup> CX-11, at 3, 6 (emphasis in original).

<sup>49</sup> CX-11, at 2, 5 (emphasis added).

unique circumstances not present here, the Form U4 FAQ requires disclosure of claims alleging a failure to supervise.<sup>50</sup>

#### **IV. Summary of the Complaint and Reportable Events at Issue**

On October 19, 2021, Enforcement filed a three-cause Complaint.

Cause one alleges that Spartan failed, or failed timely, to amend Forms U4 and Forms U5 in 223 instances. Of those 223 instances, according to the Complaint, 162 involved the filing or resolution of customer arbitrations naming Lowry, Monchik, other executive officers, registered representatives, or some mixture of all four.<sup>51</sup> Ten non-arbitration instances involved the Firm failing to make timely disclosures relating to written customer complaints alleging sales practice violations and damages in excess of \$5,000.<sup>52</sup> In 51 instances, the Complaint alleges, Spartan failed to timely disclose financial events—specifically 50 unsatisfied judgments and liens and one bankruptcy petition—on its registered representatives’ Forms U4.<sup>53</sup> Exhibits A and B to the Complaint identify the failures. With respect to the Firm’s failures to disclose information on the Forms U4 of the Firm’s executive officers and a branch manager, Enforcement alleges that the Firm acted willfully.<sup>54</sup>

At the hearing, Enforcement dropped three of the 162 alleged failures by Spartan to disclose or timely disclose arbitration-related events on behalf of its registered representatives, reducing the number to 159.<sup>55</sup> The number of undisclosed events relating to written customer complaints (10) and financial events (51) remained unchanged.

According to the Complaint, in 162 instances (reduced to 159 at the hearing) associated with 49 arbitrations Spartan failed to file, or timely file, amendments to the Forms U4 or Forms U5 of its registered representatives to disclose filings of customer arbitrations, including the disposition of an arbitration by an unfavorable award or a settlement. Of the 49 investment-related arbitrations filed by Spartan customers during the Relevant Period, all but one<sup>56</sup> was filed

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<sup>50</sup> CX-12, at 7.

<sup>51</sup> Compl. ¶¶ 3, 24-33, 100-01.

<sup>52</sup> Compl. ¶ 81. The Complaint also alleges the Firm failed to disclose a settlement with one of the complaining customers but did not include this violation in its overall count of 223 violations. Compl. ¶¶ 82-83, 101.

<sup>53</sup> Compl. ¶¶ 86, 88, 101.

<sup>54</sup> Compl. ¶ 103.

<sup>55</sup> See Department of Enforcement’s Pre-Hearing Brief (“Enforcement’s Pre-Hr’g Br.”) 1, 31 (referring to Spartan’s failure to report 159 arbitration events); Department of Enforcement’s Post-Hearing Brief (“Enforcement’s Post-Hr’g Br.”) 12, 54 (referring to Spartan’s failure to report 159 arbitration events). See also CX-1, at 11; CX-1a, at 7; CX-393, at 9; CX-394, at 6 (totaling the number of failures to disclose, or timely disclose, arbitration filings and dispositions of arbitrations).

<sup>56</sup> Compl. ¶¶ 24-25. As discussed below in more detail, one of the 49 arbitrations identified by Enforcement was initiated by Spartan in the American Arbitration Association (“AAA”) forum against a corporate investment banking

with FINRA’s Dispute Resolution.<sup>57</sup> The arbitrations named about 70 registered representatives as respondents besides Lowry and Monchik. Nearly all the arbitrations alleged serious misconduct, which included churning, fraud, unsuitable recommendations, unauthorized transactions, misrepresentation, or failure to supervise. According to the Complaint, the allegations in the arbitration claims meet the definition of a “sales practice violation” set forth in the Explanation of Terms.<sup>58</sup>

All the arbitrations at issue named the Firm as a respondent and at least one registered representative—typically the broker assigned to the customer’s (or customers’) account. Nearly all the arbitrations named more than one individual as a respondent. Some registered representatives were named in multiple arbitrations.<sup>59</sup> In addition to the registered representative assigned to the customer’s account, Firm executives were often also named as respondents. Of Spartan’s alleged failures to disclose customer arbitrations against its registered representatives, 15 arbitrations named nine Spartan executives, including a branch manager, other than Lowry and Monchik.

The Complaint also alleges that Spartan failed to disclose, or timely disclose, ten written, non-arbitration customer complaints on the Forms U4 of three brokers.<sup>60</sup>

The Complaint also alleges that the Firm failed to timely amend (i.e., within 30 days of the Firm’s learning of the financial event) its registered representatives’ Forms U4 to disclose 51 financial events. Fifty of the alleged violations involved a judgment or lien, while one concerned

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client that had retained Spartan to raise money in a private placement. The respondent in that arbitration asserted a counterclaim against Spartan claiming that Lowry had engaged in securities-related misconduct. *See* CX-139.

<sup>57</sup> An investor must arbitrate a dispute if the investor’s contract with the brokerage firm requires arbitration, the dispute is with a member of FINRA, including an individual broker or a brokerage firm, and the dispute involves the securities business of the broker or the brokerage firm. *See* <https://www.finra.org/arbitration-mediation/arbitration-overview>.

Arbitration is an alternative to litigation or mediation in order to resolve a dispute. Arbitration panels are composed of one or three arbitrators who are selected by the parties. They read the pleadings filed by the parties, listen to the arguments, study the documentary and/or testimonial evidence, and render a decision. The panel’s decision, called an “award,” is final and binding on all the parties.

Available at: <https://www.finra.org/arbitration-mediation/arbitration-overview>.

FINRA provides an arbitration forum through its Dispute Resolution Services program. *See* <https://www.finra.org/arbitration-mediation/initiate-arbitration-or-mediation>.

<sup>58</sup> Compl. ¶¶ 21-22.

<sup>59</sup> Compl. ¶¶ 24-27. *See also* CX-1; CX-393.

<sup>60</sup> Compl. ¶¶ 80-81. According to the Complaint, Spartan failed to disclose nine written complaints and disclosed the tenth written complaint late. However, the Complaint also alleged that Spartan failed to disclose a settlement with one of the complaining customers. Compl. ¶¶ 82-83. At the hearing, Enforcement identified and proved ten disclosure failures associated with the written customer complaints—eight failures to disclose a written complaint, one untimely disclosure of a written complaint, and one failure to disclose a settlement. *See* CX-5; CX-400.

a bankruptcy filing.<sup>61</sup> In nearly all instances, Spartan learned of the financial event from FINRA staff, who had inquired why the Firm had not yet disclosed the events.

Cause two alleges that in 38 instances, Lowry willfully failed, or failed timely, to amend his Form U4 to disclose arbitrations and dispositions of arbitrations. Of those 38 instances, cause two alleges that Lowry never disclosed 22 arbitrations naming him as a respondent and failed to timely disclose the filing of four arbitrations. It also alleges that Lowry failed to disclose the disposition of eight customer arbitrations and, in four other instances, disclosed the dispositions of arbitrations late.<sup>62</sup>

Cause three alleges that in 15 instances, Monchik willfully failed, or failed timely, to amend her Form U4 to disclose arbitrations and the dispositions of arbitrations. Of those 15 instances, cause three alleges that Monchik never disclosed 11 customer arbitrations naming her as a respondent and disclosed one customer arbitration late. Cause three also alleges that she failed to disclose the disposition of two arbitrations and failed to timely disclose the disposition of one arbitration.<sup>63</sup>

## **V. Findings of Fact**

### **A. Spartan's Violations**

In 220 instances, Spartan failed to disclose reportable events on its registered representatives' Forms U4 or Forms U5. In 159 of the 220 instances, Spartan failed to disclose, or timely disclose, an arbitration-related event—specifically the filing of an arbitration or the disposition of an arbitration. Besides failing willfully to amend Lowry's and Monchik's Forms U4 to disclose (or timely disclose) reportable arbitration-related events, Spartan also willfully failed to disclose arbitrations and dispositions of arbitrations naming nine other Firm executives.

Spartan also did not disclose, or timely disclose, arbitrations and dispositions of arbitrations against non-executive registered representatives at the Firm. Spartan concedes that these were reportable events but that it failed in many instances to timely disclose them against non-executive brokers.

In ten instances, Spartan failed to make disclosures relating to written customer complaints it received. It failed to disclose eight complaints, disclosed one complaint late, and did not disclose a settlement with a customer.

Finally, Spartan did not disclose 51 financial events on its registered representatives' Forms U4. Below we discuss Spartan's violations in detail.

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<sup>61</sup> Compl. ¶ 86.

<sup>62</sup> Compl. ¶¶ 111-16.

<sup>63</sup> Compl. ¶¶ 126-31.

## 1. Reportable Events Relating to Arbitrations

### a. Arbitrations Naming Nine Firm Executives (Besides Lowry and Monchik)

Spartan did not disclose 36 reportable arbitration events that named nine Firm executives, besides Lowry and Monchik, and a branch manager, as respondents. Of the 36 reportable events, in 26 instances, Spartan did not amend the Forms U4 of the nine other executives to disclose the filing of an arbitration naming them.<sup>64</sup> In the remaining ten instances, it did not disclose the disposition of the arbitration.<sup>65</sup> In all but one case, the executives were co-respondents in arbitration claims that also named Lowry, Monchik, or both, as co-respondents.<sup>66</sup> Spartan did not disclose the arbitrations against these executives because, Respondents claim, they were named solely because of their executive positions in the Firm.<sup>67</sup>

The nine executives (named as respondents in 15 arbitrations) included five former CCOs, two former FINOPs, one registered options principal (“ROP”), and one branch manager. Below we discuss examples of the 36 undisclosed arbitration events involving Spartan executives.

#### *Arbitrations Naming CCOs (Other than Monchik)*

Many arbitrations leveled the same or even identical claims against the executive officers as they did against Lowry and Monchik. For example, the Firm’s CCO from April 2014 to June 2015 was a named respondent in seven arbitrations and was a party to two settlements, none of which Spartan ever disclosed.<sup>68</sup>

An arbitration filed by customer JR in 2015 alleged that the Firm’s then-CCO, along with Lowry, failed to supervise two brokers who JR claims churned his account.<sup>69</sup> Spartan did not amend its CCO’s Form U4 to disclose the arbitration or the parties’ \$50,000 settlement.<sup>70</sup>

In May and June 2015, customers DE and GW filed arbitrations that alleged that the former CCO and the Firm’s FINOP, along with Lowry and Monchik, failed to supervise brokers who engaged in an unsuitable margin trading strategy and churned the accounts to generate

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<sup>64</sup> CX-1; CX-393.

<sup>65</sup> CX-1a; CX-394.

<sup>66</sup> CX-1; CX-393.

<sup>67</sup> Tr. 1814-16.

<sup>68</sup> CX-1; CX-1a; CX-393; CX-394; CX-401.

<sup>69</sup> CX-122, at 10.

<sup>70</sup> Tr. 1814-15; CX-1, at 11; CX-1a, at 7; CX-393, at 9; CX-394, at 6.

commissions.<sup>71</sup> Customer DE alleged that the former CCO was “responsible for ... supervising the activities of registered representatives ... and for ensuring that ... clients’ accounts are protected.”<sup>72</sup> Customer DE alleged that the FINOP had supervisory responsibilities “over the conduct of business at Spartan Capital.”<sup>73</sup> Both the former CCO and the FINOP (together with Lowry and Monchik) allegedly “failed to adequately supervise the firm’s registered representatives and protect its clients from mismanagement and abusive activity.”<sup>74</sup>

In July 2015, Monchik wrote to FINRA’s Disclosure Review—formerly part of FINRA’s Regulatory Review and Disclosure (or RAD), which is responsible for reviewing disclosures on Forms U4—to state that Spartan was not disclosing the DE and GW arbitrations on the Forms U4 of executive officers, including Lowry and herself. She explained that they were “solely named due to their position held at the firm” and the customers made no “specific claims against” them.<sup>75</sup> A few days later, Disclosure Review responded by email asking Monchik to “please review” a highlighted excerpt from the Form U4 FAQ focusing on the definitions of “involved” and “sales practice violations,” both of which suggest that the Firm should have disclosed the DE and GW arbitrations.<sup>76</sup> Monchik acknowledged that Disclosure Review’s response showed it did not agree with her conclusion to not disclose the two arbitrations.<sup>77</sup>

#### *Arbitration Naming a CCO and a Branch Manager*

The Firm did not disclose an arbitration that customer LC filed naming another Firm CCO, Lowry, and a branch manager. LC alleged that the CCO “direct[ed] the management and policies of Spartan Capital. As such he is liable for failure to supervise and as a control person as defined in State and Federal securities laws.”<sup>78</sup> The statement of claim alleged that the branch manager failed to supervise the two brokers who allegedly churned LC’s account and made unsuitable recommendations.<sup>79</sup> The two brokers worked at the Spartan branch managed by the named branch manager.<sup>80</sup> According to the Firm’s WSPs, that branch manager was the

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<sup>71</sup> CX-123; CX-124; CX-251; CX-252. The arbitration panels issued awards denying DE’s and GW’s claims in May 2016.

<sup>72</sup> CX-123, at 3.

<sup>73</sup> CX-123, at 3.

<sup>74</sup> CX-123, at 6.

<sup>75</sup> CX-212, at 2.

<sup>76</sup> CX-213, at 2.

<sup>77</sup> Tr. 1069.

<sup>78</sup> CX-138, at 3.

<sup>79</sup> CX-138, at 3.

<sup>80</sup> CX-90, at 6, 17; CX-99, at 148; CX-100, at 1, 3.

designated supervisor at the branch.<sup>81</sup> The parties settled for \$60,000, which Spartan also did not disclose on the Forms U4 of the executives, including Lowry, and the branch manager.<sup>82</sup>

### *Arbitrations Naming the ROP*

Among other failures, Spartan also did not disclose five arbitrations that included as a named respondent the Firm's ROP, and alleged that the ROP failed to supervise options trading. The Firm's WSPs provide that brokers who engage in the sale of options "are required to be supervised" by the ROP, who "shall regularly review the firm's options business, including procedures periodically."<sup>83</sup> The ROP is "responsible for day-to-day supervision of [registered representatives] including review and approval of option accounts and daily review of options transactions."<sup>84</sup>

The five statements of claim each alleged abusive options trading and churning by the customers' brokers and failure to supervise by the ROP. In all five cases Lowry and, in two cases, Monchik were named as respondents. Three of the arbitrations (filed by customers LC, MF, and RM) that named the Firm's ROP resulted in settlements totaling \$580,500. Spartan did not disclose the three settlements on its ROP's Form U4.<sup>85</sup>

Another arbitration was customer DL's claim against the Firm's CCO, ROP, and the broker.<sup>86</sup> DL claimed that after receiving a cold call from the broker, he opened an account with Spartan and deposited \$30,000. He claimed to have lost all his money within six months from trading options recommended by his broker. DL alleged that all respondents failed to reasonably supervise the broker and engaged in fraud, made misrepresentations, and recommended unsuitable transactions. He also specifically alleged that the Firm's CCO, ROP, or both improperly approved his account to trade options even though he lacked the experience and financial means to do so.<sup>87</sup> Spartan did not disclose DL's arbitration on its CCO's and ROP's Forms U4.<sup>88</sup>

In 2019, customer RM (together with eight other claimants) filed an arbitration naming Lowry, the Firm's then-CCO, the Firm's ROP, and a broker as respondents. The claimants alleged they were inexperienced in options trading and suffered losses of \$1.9 million because of "boiler room sales tactics" to market options trades. The statement of claim alleged that Spartan

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<sup>81</sup> CX-14, at 150.

<sup>82</sup> CX-1a, at 4; CX-394, at 3.

<sup>83</sup> CX-14, at 276.

<sup>84</sup> CX-14, at 276.

<sup>85</sup> CX-1a, at 3-4; CX-394, at 2-3.

<sup>86</sup> CX-1; CX-393.

<sup>87</sup> CX-162, at 1-3.

<sup>88</sup> CX-1, at 4; CX-393, at 3.

“appears to be nothing more than a boiler room operation” that employs many brokers with a “checkered past.”<sup>89</sup> The claimants alleged that the broker pursued an “inappropriate trading strategy” and respondents, including Lowry, the Firm’s then-CCO, and the Firm’s ROP, “failed to supervise [the broker’s] misconduct.”<sup>90</sup> The parties settled the claim for \$233,000. Besides not disclosing the arbitration filing and settlement on Lowry’s Form U4, Spartan did not amend the Firm’s then-CCO’s and the Firm’s ROP’s Forms U4.<sup>91</sup>

### *Arbitration Against a FINOP*

The Firm’s then-CFO/FINOP was a respondent in customer MF’s arbitration claim filed in May 2018 seeking more than \$950,000 in damages for alleged churning and excessive and unauthorized trading. Customer MF alleged that the Firm’s CFO/FINOP, “as [a] control and supervisory” person, failed to supervise the brokers and thus allowed the misconduct to go undetected.<sup>92</sup> In August 2018, the Firm’s then-CCO emailed Disclosure Review that the arbitration filing did not trigger a “disclosure amendment of registered personnel who are not the actual rep alleged to have engaged in sales practice violations or their branch managers. [The CFO/FINOP] is neither a broker accused of sales practice violations nor a branch manager. Thus, no disclosure is required.”<sup>93</sup> Spartan did not disclose the MF arbitration on its CFO/FINOP’s Form U4.<sup>94</sup>

### **b. Arbitrations Involving Non-Executive Registered Representatives**

In 70 instances, Spartan failed to amend, or timely amend, the Forms U4 and Forms U5 of dozens of registered representatives who did not hold executive positions at the Firm to disclose the filing or disposition of arbitrations.<sup>95</sup> In each of these instances, the claimant alleged the broker committed a sales practice violation.<sup>96</sup> Below we discuss some examples of the Firm’s failures to timely disclose arbitrations on its brokers’ Forms U4.

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<sup>89</sup> CX-144, at 2, 4, 9.

<sup>90</sup> CX-144, at 18. In September 2019, four months after the arbitration filing, the claimants voluntarily dismissed their claims against the Firm’s then-CCO. CX-1a, at 3; CX-292; CX-293; CX-394, at 2.

<sup>91</sup> CX-1, at 4; CX-1a, at 3; CX-393, at 3; CX-394, at 2.

<sup>92</sup> CX-140, at 8.

<sup>93</sup> CX-228, at 11.

<sup>94</sup> CX-1, at 6; CX-393, at 5.

<sup>95</sup> CX-1; CX-1a; CX-393; CX-394. In 55 cases, the Firm amended the broker’s Form U4 or Form U5 late—i.e., more than 30 days after learning of the arbitration filing. The number of days late ranged from just two days to 1,121 days. Tr. 94-96; CX-1, at 11; CX-393, at 9.

<sup>96</sup> See CX-122 through CX-173.

In early 2015, for example, a customer filed an arbitration against two brokers.<sup>97</sup> Respondents acknowledge that Spartan amended the two brokers' Forms U4 untimely—272 and 553 days late.<sup>98</sup> Even though Monchik was the CCO for a year beginning in June 2015, she could not explain why she did not amend the two brokers' Forms U4 sooner, other than stating, "I missed it."<sup>99</sup>

The Firm amended a broker's Form U4 to report a 2016 arbitration filed by customer TW and his wife 950 days late.<sup>100</sup> Through counsel, Respondents conceded that Spartan "has no excuse for reporting that late, [and] that was a compliance error."<sup>101</sup>

Respondents also acknowledge that the Firm "dropped the ball" by failing to timely disclose arbitrations on the Forms U4 of nine registered representatives filed by eight other customers in 2017.<sup>102</sup> Monchik testified that "an administrative error" caused the Firm to amend two brokers' Forms U4 64 and 66 days late to disclose customer LC's 2017 arbitration.<sup>103</sup> In connection with another customer arbitration filed in 2017, Monchik blamed the Firm's then-CCO for the untimely amendment—33 days late—to a broker's Form U4.<sup>104</sup>

Respondents also acknowledge that the Firm failed to disclose customer RS's 2017 arbitration against his broker within 30 days.<sup>105</sup> Spartan was 159 days late in amending the broker's Form U4.<sup>106</sup> In a Rule 8210 response, Spartan told FINRA staff that it "erred in not making this disclosure in a more timely manner."<sup>107</sup> Respondents also acknowledged that Spartan amended the broker's Form U4 only after FINRA brought the matter to the Firm's attention.<sup>108</sup>

In 2018, customer RW and eight co-claimants filed an arbitration claim against nine brokers and Lowry and Monchik.<sup>109</sup> Spartan failed to timely and consistently update Forms U4 for the brokers and Forms U5 for departed brokers. In one case, it was 283 days late in amending

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<sup>97</sup> CX-1, at 11; CX-393, at 9.

<sup>98</sup> Tr. 2226; CX-1, at 11; CX-393, at 9.

<sup>99</sup> Tr. 1821.

<sup>100</sup> CX-1, at 8; CX-393, at 6.

<sup>101</sup> Tr. 2224; CX-1, at 8; CX-393, at 6.

<sup>102</sup> Tr. 2223-24.

<sup>103</sup> Tr. 1816-17.

<sup>104</sup> Tr. 1817-18.

<sup>105</sup> Tr. 2224.

<sup>106</sup> CX-1, at 7; CX-393, at 6.

<sup>107</sup> CX-335, at 7. *See also* CX-1, at 6; CX-393, at 6.

<sup>108</sup> Tr. 2224.

<sup>109</sup> CX-143.

a broker's Form U4. In another instance, it amended a former broker's Form U5 265 days late.<sup>110</sup> Respondents concede that the Firm's compliance department failed to "properly report [the RW arbitration] in a timely fashion" by amending the registered representatives' Forms U4 and Forms U5.<sup>111</sup>

Respondents state that a Spartan compliance failure resulted in the untimely disclosure—64 days late—of customer RG's 2019 arbitration claim on a broker's Form U4.<sup>112</sup> Respondents also concede that the Firm has no "valid excuse" for disclosing customer DL's arbitration on a broker's Form U4 34 days late.<sup>113</sup>

The arbitration filed in December 2019 by customer SC together with 18 other co-claimants named 19 non-executive registered representatives as respondents. The Firm amended the 19 brokers' Forms U4 between 97 and 112 days late.<sup>114</sup> Respondents do not dispute Enforcement's calculation of the number of days it reported late.<sup>115</sup> Instead, they state that the then-CCO had erroneously concluded that the claims made "no specific sales practice allegations" and so were not reportable.<sup>116</sup> According to Monchik, three months after the arbitration filing, a Firm compliance assistant concluded that the SC arbitration claim should be disclosed on the brokers' Forms U4.<sup>117</sup>

In 25 of the 70 instances of failing to amend non-executive registered representatives' Forms U4, Spartan untimely disclosed the disposition of customer arbitrations on its brokers' Forms U4.<sup>118</sup> Respondents concede that there were "compliance failures"<sup>119</sup> and that arbitration dispositions "should have been filed at an earlier time."<sup>120</sup> They point to the fact that the Firm had multiple CCOs during the Relevant Period as the cause, in part, of the untimely filings.

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<sup>110</sup> CX-1, at 5; CX-393, at 4.

<sup>111</sup> Tr. 2222; CX-1, at 5; CX-393, at 4.

<sup>112</sup> Tr. 2221.

<sup>113</sup> Tr. 2221.

<sup>114</sup> CX-1, at 2; CX-393, at 2.

<sup>115</sup> Tr. 1825-26. Monchik testified that *maybe* "someone made a mistake" in the dates reported on the Forms U4 of the various brokers concerning this arbitration but she could not point to any inaccuracies. Tr. 1825-26.

<sup>116</sup> Tr. 1824.

<sup>117</sup> Tr. 1824-25, 2219-20.

<sup>118</sup> CX-1a; CX-394.

<sup>119</sup> Tr. 2228.

<sup>120</sup> Tr. 2230.

In sum, Respondents admit that in multiple instances the Firm was late in amending the Forms U4 of its brokers. They acknowledge there were “things that clearly fell through the cracks and didn’t get timely addressed.”<sup>121</sup>

**c. Respondents Dispute Some of Enforcement’s Calculations of the Number of Days Late in Reporting Arbitrations**

At the hearing, without identifying any specific documents or evidence, Respondents contended that Spartan was not late in reporting some arbitration disclosures on Forms U4 because Enforcement used an incorrect date as the day Spartan received notice of the event. Generally, these instances involve cases in which Enforcement’s evidence shows that Spartan was fewer than 20 days late. The Hearing Panel reviewed the record evidence and concluded that in none of the disputed instances did the Firm in fact timely disclose the arbitrations.<sup>122</sup> Examples of Respondents’ disputes and the Panel’s conclusions are discussed below.

With respect to customer DE’s arbitration, Respondents state that the Firm “had notice [of the arbitration] on a different date than is being contended by Enforcement” and so it was not five days late in amending the broker’s Form U4.<sup>123</sup> The broker’s Form U5, as amended by Spartan on July 20, 2015, states the Firm learned of the claim “on or about” June 15, 2015.<sup>124</sup> Based on this evidence alone, the Panel finds that Spartan disclosed the arbitration five days late, as Enforcement calculated.

In another case, Respondents say they “believe” that Spartan was not two days late in disclosing customer RF’s arbitration on the Forms U4 of two brokers.<sup>125</sup> But when amending the two brokers’ Forms U4 on January 4, 2016, the Firm stated that the claim was served on it on December 3, 2015.<sup>126</sup> Accordingly, Spartan’s filing disclosing the arbitration was in fact two days late.

Spartan says it was not 11 days late in disclosing the JEP arbitration on the Form U4 of his broker.<sup>127</sup> But in a Rule 8210 response during the investigation, the Firm acknowledged

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<sup>121</sup> Tr. 2231.

<sup>122</sup> We note that in the July 29, 2022 Order Governing Post-Hearing Briefs, the Hearing Officer instructed Respondents to provide specific citations—exhibit numbers and page numbers—to support their position that Enforcement incorrectly claimed Spartan filed Form U4 or Form U5 amendments untimely. Respondents failed to cite to the record to support their contentions.

<sup>123</sup> Tr. 2226; CX-1, at 11; CX-393, at 9.

<sup>124</sup> CX-94, at 6, 9.

<sup>125</sup> Tr. 2225-26; CX-1, at 9; CX-393, at 8.

<sup>126</sup> CX-79, at 35, 37; CX-87, at 126, 128.

<sup>127</sup> Tr. 2221-22; CX-1, at 4; CX-393, at 4.

learning of the claim on February 2, 2019.<sup>128</sup> It did not disclose the arbitration on the broker's Form U4 until March 15, 2019, which was 11 days late.<sup>129</sup>

Spartan asserts it was not six days late in disclosing customer RM's arbitration on the broker's Form U4.<sup>130</sup> The evidence shows, however, that Monchik received an email from the Firm's ROP on May 13, 2019, telling her about the arbitration filing. Monchik also accessed the Dispute Resolution portal the next day.<sup>131</sup> Spartan did not disclose the arbitration on the broker's Form U4 until June 18, 2019, six days beyond the 30-day limit.<sup>132</sup>

As another example, Respondents dispute that Spartan was untimely in disclosing customer JP's arbitration against a broker.<sup>133</sup> The evidence shows, however, that Monchik reviewed JP's claim on April 6, 2020, by accessing the Dispute Resolution portal.<sup>134</sup> The Firm did not amend the broker's Form U4 until June 3, 2020, which was 28 days past the 30-day deadline.<sup>135</sup>

Respondents assert the Firm was not 11 days late in disclosing customer DD and his wife's arbitration claiming damages of \$985,000 against a broker.<sup>136</sup> The Form U4 amendment Spartan filed for the broker stated that the Firm was served with a copy of the arbitration on May 8, 2020. It did not amend the Form U4 until June 18, 2020—11 days after the deadline to do so.<sup>137</sup>

Finally, Respondents insist that Spartan was not 1,121 days late in disclosing customer WC's arbitration filed in December 2015 against a broker. Monchik testified that Spartan did not have to amend the broker's Form U5 because he was withdrawn from the claim "almost immediately" after it was filed.<sup>138</sup> However, there is no evidence in the record supporting that the broker was dismissed or withdrawn from the claim. In fact, the evidence is otherwise. In April

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<sup>128</sup> CX-340, at 7. Monchik also emailed a copy of the statement of claim to the branch manager on February 5, 2019. CX-239.

<sup>129</sup> CX-56, at 39, 46. On the Form U4, the Firm incorrectly stated that it learned of the claim on February 11, 2019. CX-56, at 46. Even if this were the case, the disclosure would still be late by two days.

<sup>130</sup> Tr. 2220.

<sup>131</sup> CX-244, at 1-2; CX-248, at 3 (showing Monchik accessed Dispute Resolution portal on May 14, 2019 to view RM arbitration).

<sup>132</sup> CX-1, at 4; CX-32, at 67, 75; CX-393, at 3.

<sup>133</sup> Tr. 2218-19; CX-1, at 1; CX-393, at 1.

<sup>134</sup> CX-248, at 3.

<sup>135</sup> CX-61, at 62, 68; CX-248, at 3. The Form U4 amendment filed by the Firm states that it received a copy of the arbitration claim on May 19, 2020, even though Monchik reviewed the claim a month earlier. CX-61, at 68.

<sup>136</sup> Tr. 2218; CX-168, at 1, 7, 14.

<sup>137</sup> CX-105, at 114, 119.

<sup>138</sup> Tr. 1822-23.

2019, the Firm amended the broker's Form U5 to disclose a \$7,500 settlement of the arbitration dated July 1, 2016.<sup>139</sup> In an April 2019 Rule 8210 response to FINRA, Spartan stated it received notice of the arbitration filing on February 15, 2016.<sup>140</sup> Accordingly, it should have amended the broker's Form U5 by about March 17, 2016.

Accordingly, as a factual matter, the Panel rejects Respondents' contention that Enforcement sometimes miscalculated the numbers of days late and that it timely disclosed certain reportable events associated with arbitration claims against the Firm's registered representatives.

## **2. Ten Complaint-Related Failures – Nine Non-Arbitration Written Customer Complaints and One Settlement of a Customer Complaint**

In addition to arbitration claims, Spartan also received written customer complaints during the Relevant Period alleging misconduct by its brokers. As stated above, Form U4 requires the disclosure of written customer complaints alleging a sales practice violation and damages of at least \$5,000.

In ten instances, Spartan failed to make required disclosures involving written customer complaints on the Forms U4 of its brokers. In eight cases, it never disclosed the written complaint on its brokers' Forms U4. In one case, it made the disclosure 949 days late. In one other instance, Spartan did not disclose a settlement it had reached with a complaining customer.

The written customer complaints generally alleged serious misconduct against the Firm's brokers—including churning or excessive and unauthorized trading.<sup>141</sup> When asked why these written complaints were not disclosed, Monchik stated that generally there were "various reasons" why—for example, the CCOs had determined that some complaints sought damages that were less than \$5,000 or the "details of the letter that was written to the firm didn't qualify ... as a written complaint."<sup>142</sup>

### **a. Customer Complaints Specifying Damage Figures**

In five of the written complaints, customers specified damages that exceeded the \$5,000 threshold required for reporting. However, Spartan failed to timely make the required disclosure.<sup>143</sup>

Customer VG's attorney wrote Spartan in March 2017 alleging that his broker made two unauthorized purchases of securities for \$165,819. He demanded that the Firm reverse the two

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<sup>139</sup> CX-55, at 1, 3.

<sup>140</sup> CX-335, at 13.

<sup>141</sup> Tr. 172-75; CX-5; CX-400.

<sup>142</sup> Tr. 1835.

<sup>143</sup> CX-5; CX-304, at 1; CX-305, at 2; CX-309, at 2; CX-310, at 3; CX-312, at 2.

trades and credit his account.<sup>144</sup> Spartan did not disclose VG’s complaint on the broker’s Form U4.<sup>145</sup>

In another written complaint, customer PJ emailed his broker in August 2017 saying he had lost \$13,000—allegedly from the mishandling of his options orders—that he wanted “added” to his account.<sup>146</sup> Monchik testified that customer PJ also emailed Spartan to say he was “not lodging any complaint, let’s just see how the account does.”<sup>147</sup> According to Monchik, the CCO at the time reviewed the complaint and determined that it was not reportable.<sup>148</sup> Respondents explained that Spartan ultimately decided to amend the broker’s Form U4—949 days late—after FINRA questioned the Firm about not disclosing the complaint.<sup>149</sup>

In November 2018, Customer RG demanded payment of \$25,656 for losses allegedly caused by churning of his account and unauthorized trading by his broker.<sup>150</sup> Spartan did not disclose RG’s complaint on the broker’s Form U4.<sup>151</sup>

In February 2019, customer JJ wrote to Spartan to complain that a broker was making investments on his behalf even though he had not agreed to open an account at the Firm and “never wanted any services from” Spartan. The customer stated that Spartan employees were also making “harassing” phone calls and threatening him, and that the named broker had made most of the phone calls himself.<sup>152</sup> Customer JJ also claimed that Spartan had committed multiple separate violations of the federal Fair Debt Collection Practices Act because it was trying to collect a non-existent debt. The customer asked Spartan to reverse the unauthorized transactions, repair his credit rating, and pay \$100,000 to resolve the dispute.<sup>153</sup> Monchik testified that, although she was “not sure,” she thought this complaint was not disclosed on the broker’s Form U4 because the customer did not state the amount of damages sought, despite asking for \$100,000 as settlement.<sup>154</sup>

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<sup>144</sup> CX-304, at 1.

<sup>145</sup> CX-5; CX-400.

<sup>146</sup> CX-305. *See also* CX-5; CX-400.

<sup>147</sup> Tr. 1838-39. Respondents did not produce evidence of an email from customer PJ.

<sup>148</sup> Tr. 1839.

<sup>149</sup> Tr. 2214-15; CX-5; CX-400.

<sup>150</sup> CX-309, at 2.

<sup>151</sup> CX-5; CX-400.

<sup>152</sup> CX-310, at 1-2.

<sup>153</sup> CX-310, at 2-3.

<sup>154</sup> Tr. 1840-41.

Similarly, Customer GJ complained in February 2019 that he had lost about \$37,400 and was charged \$8,200 in commissions because of his broker's selling all his securities and using the proceeds to purchase other securities.<sup>155</sup> The Firm never disclosed this complaint.<sup>156</sup>

#### **b. Customer Complaints Without Damage Figures**

In four other cases, the customer did not provide a damage figure. But in one case, involving customer JS, Spartan itself calculated the damages at the time to be \$16,230 in its Rule 4530 filing.<sup>157</sup> Despite its own calculation exceeding \$5,000, the Firm still did not disclose the complaint on the broker's Form U4.<sup>158</sup>

In three instances related to customers CS, MS, and PD, Enforcement presented evidence at the hearing of the alleged damages based on its examiner's calculations. The examiner reviewed the customers' written complaints and the relevant securities transactions as reflected in their Spartan securities accounts.<sup>159</sup> The customers' damages as calculated by the examiner ranged from \$11,000 to more than \$54,000.<sup>160</sup> Spartan did not rebut Enforcement's evidence showing that damages were at least \$5,000, and we credited the examiner's calculations and testimony.

Customer CS complained in October 2018 that his broker had engaged in unauthorized trading and demanded that his account be "rectified immediately" by reversing the transactions.<sup>161</sup> FINRA's examiner calculated potential losses of \$54,100, representing the difference between the price CS paid for the unauthorized trades and the value of the securities on the date of the complaint.<sup>162</sup> We credit the examiner's calculations and testimony.

Customer MS wrote in an email in late October 2019 that he had just logged into his account and saw that his broker had sold securities from his account and used the proceeds to purchase other securities without his authorization. He demanded that the Firm reverse the

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<sup>155</sup> CX-312, at 2. Customer GJ alleged losses of "just under \$50K" and "gains totalling \$12.4K," resulting in a net loss of approximately \$37,600. He also claimed he was charged "\$8.2K" for the allegedly unauthorized trading activity. CX-5 n.8; CX-312, at 2; CX-400 n.8.

<sup>156</sup> CX-5; CX-400.

<sup>157</sup> Tr. 176-77, 279; CX-5; CX-400. FINRA Rule 4530 generally requires a member firm to report to FINRA receipt of a customer complaint against an associated person of the firm alleging violation of securities laws, rules, and regulations or standards of conduct. *See* FINRA Regulatory Notice 11-06 (Feb. 2011), <https://www.finra.org/rules-guidance/notices/11-06>.

<sup>158</sup> Tr. 176; CX-5; CX-400, at 2 n.3. *See also* CX-306.

<sup>159</sup> Tr. 177.

<sup>160</sup> Tr. 285-86; CX-5; CX-307, at 6-7; CX-392, at 5; CX-400.

<sup>161</sup> CX-307, at 1-2.

<sup>162</sup> Tr. 177-78.

transactions and refund the costs associated with the unauthorized trades.<sup>163</sup> FINRA’s examiner testified that she used the customer’s account statements and the Firm’s trade blotter to calculate the costs charged to MS’s account for the unauthorized sales and purchases.<sup>164</sup> The total came to \$11,587 even before factoring in the customer’s potential unrealized losses from the transactions.<sup>165</sup> We again credit the examiner’s calculations and testimony.

Monchik testified that she spoke to customer MS, who told her that “there was no issue and he was rescinding anything that he put in writing and life went on.”<sup>166</sup> She also testified that the branch manager calculated damages to be less than \$5,000, thus not requiring disclosure on the broker’s Form U4.<sup>167</sup> But Respondents produced no evidence that customer MS withdrew his complaint or that Spartan had made a good-faith calculation that the damages were less than \$5,000.

With respect to customer PD, besides not disclosing the written complaint, Spartan also failed to report a settlement on the broker’s Form U4. In early February 2019, customer PD complained in writing that his broker sold shares of a security without authorization. He demanded that Spartan put him in the same “financial position as if the unauthorized sale had never occurred.”<sup>168</sup> Enforcement calculated the alleged damages to be \$34,982—the difference between the amount the customer paid for the securities and the net amount he received from the sale of the shares.<sup>169</sup>

Spartan settled customer PD’s complaint. The settlement agreement does not specify damages, but the broker testified during the investigation that led to this disciplinary proceeding that he had to pay Spartan more than \$15,000 “to repair this.”<sup>170</sup>

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<sup>163</sup> CX-314, at 5.

<sup>164</sup> Tr. 1943-47; CX-387, at 4-6; CX-390, at 3-5 (identifying commissions and fees associated with trades).

<sup>165</sup> Tr. 285-86, 1947.

<sup>166</sup> Tr. 1837. Monchik also claims that the broker had left Spartan. But the broker that customer MS complained about was still registered with Spartan at the time the customer wrote the complaint. The disputed transactions occurred in October 2019 and the account statement for the month identifies the broker named in MS’s complaint as the account representative. The customer also communicated with the named broker through his Spartan email address. Tr. 1836-38; CX-314; CX-387, at 1.

<sup>167</sup> Tr. 1837.

<sup>168</sup> CX-311, at 9.

<sup>169</sup> Tr. 1949-50; CX-5 n.7a; CX-388, at 4; CX-389; CX-400, at 2 n.7a.

<sup>170</sup> CX-5, at 2 n.7b; CX-311, at 11-15; CX-386, at 43; CX-400, at 2 n.7b. Spartan agreed to reverse the sale of the security in question and re-purchase shares for the account. CX-311, at 11.

### 3. Spartan's Untimely Disclosure of 51 Financial Events

As stated above, Form U4 also obligates firms and registered persons to disclose unsatisfied judgments, liens, and bankruptcies.

Spartan failed to timely disclose 51 financial events on the Forms U4 of its registered representatives. In 50 instances, involving 24 registered representatives, including Monchik, Spartan failed to disclose an unsatisfied judgment or lien within 30 days of learning of it.<sup>171</sup> In calculating the number of days late, Enforcement used the date Spartan learned of a financial event to calculate whether it timely reported it—not the date the judgment or lien was recorded.<sup>172</sup>

In 30 of the 51 instances, Spartan was more than 200 days late in disclosing the reportable event on the registered representative's Form U4 after learning about it.<sup>173</sup> Additionally, in one instance, Spartan did not timely disclose a registered representative's bankruptcy petition after he told the Firm about it.<sup>174</sup> Some judgments and liens were for large monetary amounts. Five of the 50 judgments or liens exceeded \$100,000; one was over \$400,000.<sup>175</sup>

Spartan was not proactive in researching publicly available sources to discover reportable events of its brokers. In 46 of these 51 instances, Spartan learned of the unsatisfied lien or judgment directly from FINRA when FINRA staff asked the Firm why events had not been disclosed on brokers' Forms U4.<sup>176</sup> FINRA staff had learned of the events through its own searches of public records, including LEXIS.<sup>177</sup> In the other five instances, Spartan learned of the event either directly from the broker or from a pre-hire background check performed by a third-party vendor.<sup>178</sup>

Even after learning of the existence of a financial event, Spartan often was slow to disclose it. Monchik explained why that happened. She testified that once Spartan learned of a financial event, in her view it had an obligation to first investigate it before amending the broker's Form U4 to reflect a lien or judgment.<sup>179</sup> Monchik said she had to do a "significant

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<sup>171</sup> CX-4; CX-399.

<sup>172</sup> CX-4; CX-399. Monchik falsely testified that FINRA used the date the judgment or lien was recorded to calculate the number of days Spartan was late in reporting a financial event. Tr. 1313-14, 1323-24.

<sup>173</sup> CX-4; CX-399.

<sup>174</sup> CX-4; CX-399.

<sup>175</sup> CX-4; CX-399.

<sup>176</sup> CX-4; CX-399.

<sup>177</sup> CX-339, at 5-10.

<sup>178</sup> CX-4; CX-399.

<sup>179</sup> Tr. 1313-14.

amount of legwork to figure out if [the judgments and lien information provided was] accurate,” even when the information came directly from a registered person.<sup>180</sup> “You don’t want to report inaccurate information because that’s the purpose of . . . the reporting.”<sup>181</sup> According to Monchik, she would ask the broker to go to the courthouse to confirm the existence of the judgment or lien.<sup>182</sup> She would contact the Internal Revenue Service (“IRS”) if it involved a federal tax lien or state authorities in the case of a state tax lien.<sup>183</sup> Monchik testified that she did not disclose a judgment and tax lien recorded against her until she first verified the information by doing research.<sup>184</sup> She said she was not going to report something on her own Form U4 or on others’ Forms U4 that was inaccurate.<sup>185</sup>

Spartan learned of the largest number of disclosable financial events from two Enforcement Rule 8210 requests for information. In July 2019, Enforcement sent Spartan a request for information about multiple judgments and liens entered against more than 40 of its registered representatives, asking Spartan to explain why it had not disclosed the events.<sup>186</sup> The Firm responded in writing, saying that it was not able to “independently review” the information FINRA had provided because it had to rely on its brokers to tell it about disclosable financial events. It also said that many brokers were unaware of some of the identified financial events.<sup>187</sup> The Firm informed FINRA that it would amend the Forms U4 but only after the broker confirmed the financial event and provided details about it.<sup>188</sup> In every instance, FINRA provided Spartan with the exact judgment or lien amount, the creditor, and the date it was recorded.<sup>189</sup>

Spartan learned of two unreported tax liens from an earlier FINRA staff investigative inquiry. In September 2016, the staff sent Spartan a Rule 8210 request for information asking why judgments and liens totaling over \$90,000 involving one of the firm’s brokers were not

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<sup>180</sup> Tr. 1313.

<sup>181</sup> Tr. 1311.

<sup>182</sup> Tr. 1313.

<sup>183</sup> Tr. 1313.

<sup>184</sup> Tr. 1849-50.

<sup>185</sup> Tr. 1850. At the commencement of the Relevant Period, Spartan was already on notice that Monchik had undisclosed financial events. In January 2015, the SEC had informed Spartan that Monchik had two undisclosed judgments and an undisclosed state tax lien recorded against her. CX-107, at 10.

<sup>186</sup> CX-339. Enforcement identified a broker who had 16 undisclosed judgments or liens against him and another who had 12 undisclosed judgments or liens against him. Enforcement identified another broker with five undisclosed tax liens and judgments, totaling approximately \$500,000, one of which was a \$406,984 IRS tax lien. CX-339, at 6-7, 9-10. Spartan ultimately disclosed the \$406,984 IRS tax lien in June 2020, which was 302 days late. CX-4; CX-399.

<sup>187</sup> CX-341, at 1.

<sup>188</sup> CX-341, at 1-2.

<sup>189</sup> CX-339, at 5-10.

disclosed.<sup>190</sup> After receiving FINRA’s Rule 8210 request, Spartan disclosed two tax liens on the broker’s Form U4 in late October and early November 2016—13 and 20 days late.<sup>191</sup>

In addition to sending Rule 8210 requests to Spartan, FINRA also alerted Spartan in disclosure letters accessible in CRD. The letters told the Firm that a review of public records showed that a financial event involving a specific broker may be reportable.<sup>192</sup> Nine of the Firm’s 51 disclosure failures were first shown to Spartan in disclosure letters FINRA staff sent between 2016 and 2019.<sup>193</sup> For example, in late October 2018, FINRA sent the Firm a disclosure letter stating that a broker was subject to a \$92,676 IRS tax lien recorded in June 2016.<sup>194</sup> Spartan disclosed the lien on the broker’s Form U4 in late March 2019, or 109 days late.<sup>195</sup>

In another case, in June 2017, FINRA sent Spartan a disclosure letter that a broker had two tax liens recorded against him—a \$39,218 state tax lien and a \$59,010 IRS tax lien, in February and March 2017.<sup>196</sup> Spartan did not amend the broker’s Form U4 to report the two liens until February and March 2019, or 571 and 605 days late.<sup>197</sup>

In March 2019, FINRA sent the Firm a disclosure letter inquiring why it had not disclosed a \$33,062 lien recorded against yet another broker in December 2018.<sup>198</sup> The Firm did not report the existence of the lien on the broker’s Form U4 until May 2020, which was 385 days late.<sup>199</sup>

In three other cases, Spartan learned of the existence of tax liens against newly hired registered representatives through a pre-hire background check, yet did not disclose the liens until much later.<sup>200</sup> For example, Spartan was informed in January 2016 by the vendor performing pre-hire checks that a new broker had a \$6,433 tax lien against him.<sup>201</sup> Spartan amended the registered representative’s Form U4 to disclose the tax lien and report that it was

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<sup>190</sup> CX-320. Two of the undisclosed financial events were unsatisfied IRS tax liens for \$23,066 and \$50,215.

<sup>191</sup> CX-4; CX-399.

<sup>192</sup> CX-4; CX-399.

<sup>193</sup> CX-4; CX-399.

<sup>194</sup> CX-4; CX-399; CX-327, at 3.

<sup>195</sup> CX-4; CX-399; CX-89, at 196, 212; CX-327, at 3.

<sup>196</sup> CX-330, at 1-2. The then-CCO reviewed the two disclosure letters the same day that FINRA sent them. CX-330, at 1-2 (showing “first viewed” date).

<sup>197</sup> CX-4; CX-399; CX-103, at 95, 102-03, 150, 159.

<sup>198</sup> CX-326, at 1. A Firm compliance associate reviewed FINRA’s inquiry the same day that FINRA sent it. CX-326, at 1.

<sup>199</sup> CX-4; CX-399; CX-84, at 1, 5-6.

<sup>200</sup> CX-4, at 1; CX-399, at 1.

<sup>201</sup> CX-323, at 26, 29.

still outstanding in November 2018.<sup>202</sup> The amendment was 1,009 days late. This was the longest it took Spartan to disclose a financial event identified in the Complaint.<sup>203</sup>

In another case, Spartan received a background check for a new hire in December 2017 showing that the IRS had recorded a \$31,657 tax lien just a month earlier.<sup>204</sup> Spartan did not amend the registered representative's Form U4 to disclose the lien until April 2019, 439 days late.<sup>205</sup>

In two other cases, the brokers themselves told Spartan about a reportable financial event—a bankruptcy filing and a civil judgment—but the Firm failed to timely disclose them. According to a statement Spartan provided FINRA during the investigation, one of its registered representatives told the Firm that he would be filing a bankruptcy petition even before he did so in late December 2017.<sup>206</sup> The same representative told FINRA that he also informed the Firm about the bankruptcy right after the filing and even provided it with a copy of the petition.<sup>207</sup> Spartan's then-CCO assured the representative that the Firm would amend his Form U4.<sup>208</sup> Spartan did not disclose the representative's bankruptcy petition until August 2018—191 days later than it should have.<sup>209</sup> Spartan explained to FINRA in a written submission that the late disclosure “was the result of a ministerial oversight.”<sup>210</sup>

Another Firm broker told Spartan in October 2018 that a civil judgment for \$64,601 had been entered against him.<sup>211</sup> Spartan did not amend his Form U4 until mid-January 2019, 56 days late.<sup>212</sup> In the amendment to the Form U4, Spartan acknowledged that the broker had timely reported the judgment to the compliance department in October 2018.<sup>213</sup>

Other evidence demonstrates the Firm's lax attitude toward reporting judgments and liens against its brokers. In January 2015, the Securities and Exchange Commission (“SEC”) sent Spartan an examination deficiency letter informing it that, using publicly available information, the SEC had identified 25 Firm employees with judgments, liens, or bankruptcies that the Firm

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<sup>202</sup> CX-67, at 107, 114-15.

<sup>203</sup> CX-4, at 1; CX-399, at 1.

<sup>204</sup> CX-318, at 1, 4.

<sup>205</sup> CX-4; CX-48, at 96, 103; CX-399.

<sup>206</sup> CX-328.

<sup>207</sup> CX-329, at 1.

<sup>208</sup> CX-329, at 1-2.

<sup>209</sup> CX-4; CX-89, at 310, 314; CX-399.

<sup>210</sup> CX-328.

<sup>211</sup> CX-317.

<sup>212</sup> CX-4, at 1; CX-36, at 36, 43; CX-399, at 1.

<sup>213</sup> CX-317; CX-36, at 36, 43.

had not disclosed on the registered representatives' Forms U4.<sup>214</sup> The SEC instructed Spartan to take "immediate corrective action."<sup>215</sup>

On behalf of the Firm, Monchik responded to the SEC that, before 2015, Spartan had started using a company called Business Information Group ("BIG") to conduct background checks on new job applicants. Monchik also told the SEC that BIG would immediately start performing quarterly checks on all currently employed registered representatives.<sup>216</sup> She added that most of its brokers did not know about the judgments or liens, and that in at least one case the information the SEC had provided was inaccurate.<sup>217</sup> Contrary to the SEC's instruction to take immediate corrective action, Spartan's response to the deficiency letter, Lowry testified, was to hire a compliance assistant four years later, in early 2019, to address overall registration and disclosure issues.<sup>218</sup>

FINRA informed Spartan of other failures to disclose financial events in 2016, 2017, and 2018, some of which were still unreported since the SEC's January 2015 deficiency letter. In March 2016, after conducting a cycle examination, FINRA Member Supervision informed the Firm that it had failed to make required disclosures for five brokers who were among the 25 brokers the SEC had identified in January 2015 as having undisclosed judgments or liens.<sup>219</sup> In April 2016, Spartan acknowledged to FINRA that it had told the SEC it would perform quarterly background checks using BIG, besides those conducted in the new hire process.<sup>220</sup> But it also told FINRA that it would now perform background checks twice a year instead of quarterly.<sup>221</sup>

Similarly, in February 2017, after the 2016 cycle examination, FINRA staff informed Spartan it had not disclosed a \$23,109 IRS tax lien against one broker and the correct lien amount for another broker.<sup>222</sup> In April 2018, Member Supervision informed Spartan that three of its brokers had five undisclosed judgments or liens.<sup>223</sup>

Spartan did not perform background checks on its brokers in a systematic fashion and often ignored or was late in responding to warnings from regulators that it had not properly

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<sup>214</sup> CX-107, at 8-11. One of the persons the SEC identified as having undisclosed judgments or liens in January 2015 was Monchik. According to the SEC, Monchik failed to disclose two unsatisfied judgments and a state tax lien. CX-107, at 10.

<sup>215</sup> CX-107, at 1.

<sup>216</sup> CX-108, at 1-2, 6.

<sup>217</sup> CX-108, at 6.

<sup>218</sup> Tr. 713, 845-46.

<sup>219</sup> CX-109, at 11.

<sup>220</sup> CX-110, at 5.

<sup>221</sup> Tr. 727-28; CX-110, at 5.

<sup>222</sup> CX-111, at 8-9.

<sup>223</sup> CX-117, at 8-10.

disclosed its registered representatives' financial events. Monchik testified during the investigation that Spartan began doing post-hire background checks on its brokers in 2019, after the Firm hired a compliance assistant.<sup>224</sup> In a January 2021 response to an inquiry from Enforcement, Spartan stated that it “has conducted post-hire background checks on its registered person(s) at random or at times based on their background financial events.”<sup>225</sup>

## **B. Lowry’s Violations**

Lowry failed to disclose or timely disclose arbitrations and dispositions of arbitrations in 38 instances. During the Relevant Period, Lowry was a respondent in, or was the subject of, 27 arbitration claims, 26 of which were either not disclosed or disclosed late.<sup>226</sup> Lowry did not disclose 22 of them on his Form U4.<sup>227</sup> In four instances, he made the disclosure but did so late. He timely disclosed the filing of one arbitration.<sup>228</sup>

Of the 27 arbitrations, 12 resulted in an award against Lowry or a settlement of at least \$15,000, requiring him to disclose the outcome on his Form U4. Ten of the 12 arbitration disposition were either not disclosed or disclosed late. Lowry did not disclose eight of the dispositions.<sup>229</sup> Two of the 12 resolved arbitrations resulted in awards against Lowry that he disclosed 164 and 508 days late.<sup>230</sup> He disclosed them only after FINRA filed a Uniform Disciplinary Action Reporting Form (Form U6)<sup>231</sup> in August 2016 and October 2018.<sup>232</sup> For the dispositions of claims involving two other customers, Lowry was 354 and 578 days late in making disclosures on his Form U4.<sup>233</sup> He disclosed one settlement in October 2020 after receiving a Wells notice in August 2020.<sup>234</sup>

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<sup>224</sup> Tr. 1130-31.

<sup>225</sup> CX-353, at 3.

<sup>226</sup> CX-1b; CX-395.

<sup>227</sup> CX-1b; CX-395.

<sup>228</sup> CX-1b; CX-395. For the four untimely arbitration disclosures, Lowry amended his Form U4 between 406 and 1,118 days late. CX-1b; CX-395.

<sup>229</sup> CX-1b; CX-395.

<sup>230</sup> CX-1b; CX-395.

<sup>231</sup> Form U6 is used by the SEC, self-regulatory organizations, and state securities regulators to report disciplinary actions against broker-dealers and associated persons. FINRA also uses the form to report final arbitration awards against broker-dealers and associated persons. *See* <https://www.finra.org/registration-exams-ce/broker-dealers/registration-forms>. Events reported on a Form U6 are generally available to the public in BrokerCheck. Tr. 431-32.

<sup>232</sup> CX-1b; CX-395.

<sup>233</sup> CX-1b; CX-395.

<sup>234</sup> Tr. 819-20; CX-1b; CX-355; CX-395. “A Wells notice is a communication from a regulator or self-regulatory organization, such as FINRA, stating that it intends to recommend bringing an enforcement or disciplinary action against the recipient.” *Dep’t of Enforcement v. Springsteen-Abbott*, No. 2011025675501r, 2017 FINRA Discip.

The arbitration claims against Lowry can be divided broadly into two categories—those alleging Lowry directly engaged in the violation as the registered representative on the account, and those alleging he failed to supervise someone who engaged in a sales practice violation or was responsible for business practices at Spartan that tolerated abusive sales practices.<sup>235</sup> Below we discuss these two categories.

## **1. Six Arbitrations Alleged that Lowry Was Directly Involved in Sales Practice Violations**

We first discuss six arbitrations alleging that Lowry was directly involved in the sales practice violation, as opposed to having failed to supervise a broker. In five cases, the arbitration claimant alleged that Lowry was the registered representative on the customer’s account or was directly involved in a sales practice violation. Another arbitration involved a claim Spartan initiated with the AAA. The respondent in that claim—a corporate investment banking client and not a customer with a securities account at Spartan—alleged in a counterclaim that Lowry had engaged in fraudulent conduct.

### **a. 2015 Unauthorized Options Trading Arbitration Claim**

Lowry timely disclosed an arbitration filed by customer CH on his Form U4, but he did not timely disclose the settlement in the case.<sup>236</sup> In December 2015, the customer filed an arbitration naming Lowry and the Firm’s then-CCO claiming losses of nearly \$164,000.<sup>237</sup> It claimed that after Lowry began managing the account as the assigned broker, he liquidated a stock position and began trading options in the same security without CH’s consent.<sup>238</sup> CH claimed that Lowry told him the trading was a “‘can’t lose’ proposition.”<sup>239</sup> The allegations included fraudulent churning, misrepresentation, unsuitable recommendations, and unauthorized trading.<sup>240</sup> In January 2016, when Lowry timely disclosed the CH arbitration, he also entered comments in the DRP section of his Form U4 to record that he disputed the merits of the claim.<sup>241</sup>

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LEXIS 23, at \*9 n.4 (NAC July 20, 2017) (citing FINRA Regulatory Notice 09-17, 2009 FINRA LEXIS 45, at \*5–6 (Mar. 2009) (explaining FINRA’s Wells process)), *modified*, Exchange Act Release No. 88156, 2020 SEC LEXIS 2684 (Feb. 7, 2020), *petition for review dismissed in part and denied in part*, 989 F.3d 4 (D.C. Cir. 2021).

<sup>235</sup> Tr. 118-19; CX-1b.

<sup>236</sup> CX-1b; CX-395.

<sup>237</sup> CX-129, at 1-2, 16.

<sup>238</sup> CX-129, at 3-4.

<sup>239</sup> CX-129, at 3.

<sup>240</sup> CX-129.

<sup>241</sup> Tr. 680-83; CX-26, at 87, 92-93. Lowry acknowledged that he was the broker of record for CH’s account. Tr. 880-81. In a memo to Lowry in February 2016, Monchik said that even though he was the broker on the account,

The parties settled the matter in 2018 for \$35,000, which Lowry ultimately disclosed on his Form U4 in May 2019, which was 354 days late.<sup>242</sup> Monchik testified that the late reporting of the CH settlement on Lowry's Form U4 was "an administrative error."<sup>243</sup>

### **b. Two 2017 Fraudulent Churning Arbitration Claims**

Customer RS filed an arbitration in January 2017, against Lowry and two other executives—a former co-owner and the Firm's then-CCO. The statement of claim alleged excessive trading, churning, unsuitable transactions, and failure to supervise leading to estimated losses of \$50,000.<sup>244</sup> RS alleged that Lowry and the other executive officer "exercised control over" his account and that Lowry engaged in fraudulent conduct by churning the account "with scienter."<sup>245</sup> The arbitration claim alleged that the respondents "engaged in a manipulative, deceptive and fraudulent scheme ... [and] acted with intent to defraud and/or with reckless disregard of their customer's interest by seeking to maximize their own remuneration in disregard of the interest of the Claimant."<sup>246</sup> The arbitration claim also alleged that Lowry failed to supervise.<sup>247</sup> Lowry did not disclose the RS arbitration on his Form U4.<sup>248</sup>

In June 2018, Spartan's outside counsel wrote FINRA a letter addressing the RS arbitration. He stated that Lowry (and the other executive officer) did not have to disclose the RS arbitration because "there is not a single, specific factual allegation that ... Lowry [and the other executive officer], in their individual capacities, were *involved* in any conduct that would trigger an obligation to report."<sup>249</sup> Spartan's counsel argued that the claim "merely aggregates Spartan, Mr. Lowry, ... and others for purposes of assessing generalized blame, but never sets forth any particularized allegation of wrongdoing against either [Lowry or the other executive officer]."<sup>250</sup>

In April 2017, customer RJW and his wife filed an arbitration claiming losses of more than \$294,000.<sup>251</sup> They alleged that Lowry, another executive officer, and a broker controlled the customers' account, recommended unsuitable transactions, engaged in excessive trading, and

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Lowry "was servicing the account in an administrative capacity only and following the orders of the client." Spartan determined that the arbitration should be reported on Lowry's Form U4. CX-112, at 27-28.

<sup>242</sup> Tr. 907-08; CX-1b, at 2; CX-24, at 27, 30; CX-261; CX-395, at 2.

<sup>243</sup> Tr. 1113.

<sup>244</sup> CX-135.

<sup>245</sup> CX-135, at 3.

<sup>246</sup> CX-135, at 4.

<sup>247</sup> CX-135, at 5. The arbitration resulted in an award in favor of Spartan and Lowry. CX-1b; CX-395. Lowry testified that he was not the assigned broker on RS's account. Tr. 884.

<sup>248</sup> CX-1b; CX-395.

<sup>249</sup> CX-119, at 2.

<sup>250</sup> CX-119, at 3.

<sup>251</sup> CX-136, at 1, 3, 6.

fraudulently churned their account.<sup>252</sup> The customers also alleged that Lowry failed to supervise Spartan's registered representatives and that he "failed to protect Claimants from mismanagement and abusive activity."<sup>253</sup> The customers withdrew their claim in late May 2017,<sup>254</sup> 41 days after Spartan acknowledged it learned of the claim.<sup>255</sup> Lowry did not disclose this arbitration on his Form U4.<sup>256</sup>

In February 2018, FINRA sent the Firm a letter following up on a cause examination into why the RS and RJW arbitrations were not disclosed on Lowry's and others' Forms U4. FINRA told Spartan that it believed the Firm had not complied with its reporting obligations.<sup>257</sup> In April 2018, Spartan's then-CCO emailed FINRA's examiner that the RS and RJW allegations must be "bona fide" to be reportable. The CCO argued that a claimant's allegation that "everyone in the firm churned me' ... would not, obviously, be a bona fide allegation of sales practice violations."<sup>258</sup>

In July 2018, FINRA wrote Spartan reiterating its finding that the RS arbitration needed to be disclosed by Lowry because it alleged that he churned the customer's account.<sup>259</sup> Lowry never disclosed the arbitration.<sup>260</sup>

### **c. 2018 Unsuitable Investment in Private Placement Arbitration Claim**

In September 2018, corporate customer GDE filed an arbitration naming Lowry alleging that while he was the broker of record, he solicited the customer's owner to invest in INeedMD, a medical device company, and two other private placements. GDE alleged it was a victim of securities fraud and that each of the stocks was part of a "pump and dump" scheme.<sup>261</sup> The customer sought rescission of the securities transactions for which it paid \$965,180 or compensatory damages the arbitration deemed to be appropriate.<sup>262</sup>

According to the statement of claim, while soliciting the customer Lowry said that INeedMD would be worth \$20 per share and that "[Lowry] himself planned to retire on the

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<sup>252</sup> CX-136, at 3-4.

<sup>253</sup> CX-136, at 3-5.

<sup>254</sup> CX-277.

<sup>255</sup> CX-1b; CX-77, at 1, 4-5; CX-395.

<sup>256</sup> CX-1b; CX-395.

<sup>257</sup> CX-115, at 3.

<sup>258</sup> CX-116.

<sup>259</sup> CX-120, at 3.

<sup>260</sup> CX-1b; CX-395.

<sup>261</sup> CX-142, at 3-4.

<sup>262</sup> CX-142, at 3, 5-7.

performance of the stock.”<sup>263</sup> The customer also claimed that Lowry had dissuaded its owner from selling the stocks because Lowry told him that “the prospects for each of these companies was bright.”<sup>264</sup> “Dissuading Claimant and others who purchased these shares through the private placements was a part of the ongoing scheme to defraud,” according to the claim.<sup>265</sup>

In August 2020, Enforcement sent Lowry a Wells notice stating that FINRA had made a preliminary determination to recommend a disciplinary action for his alleged failure to disclose arbitrations in which he was a named respondent.<sup>266</sup> Lowry testified that he relied on the advice of Spartan’s outside counsel to initially not report the GDE matter, but after he received the Wells notice, his attorney reviewed the statement of claim and determined that Lowry should disclose it.<sup>267</sup> He did so in September 2020, a month after receiving the Wells notice, or 708 days late.<sup>268</sup>

According to a later amendment to Lowry’s Form U4, made in October 2020, the parties settled the claim in February 2019 for \$300,000, which represented the amount Spartan would pay to buy back the disputed shares from the customer.<sup>269</sup> Lowry signed the settlement agreement individually and on behalf of the Firm.<sup>270</sup> He disclosed the disposition of the arbitration claim 578 days late.<sup>271</sup> Lowry testified that one reason he did not initially disclose the GDE arbitration filing and settlement was that the claimant withdrew the claim and the parties did not follow through with the terms of the settlement.<sup>272</sup> Lowry testified that the claimant said the allegations in the claim were not accurate, and he had not wanted to file the arbitration.<sup>273</sup>

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<sup>263</sup> CX-142, at 3 n.1.

<sup>264</sup> CX-142, at 4.

<sup>265</sup> CX-142, at 4.

<sup>266</sup> CX-355.

<sup>267</sup> Tr. 800-01.

<sup>268</sup> Tr. 804-05, 818-19; CX-1b; CX-24, at 51, 54; CX-395. In the DRP section of the Form U4, Lowry wrote “Claimant withdrew all claims and admitted they were erroneously filed against Mr. Lowry. Claimant advised that he had been relentlessly solicited by ... an organization that is run by a barred former broker, to file claims. Claimant suffered no losses in his account and he still maintains an active account [with] Mr. Lowry. Mr. Lowry will move to have this claim expunged based on the withdrawal of the claim and the admission of the erroneous filing by the claimant.” CX-24, at 55.

<sup>269</sup> CX-24, at 75, 86. The October 2020 amendment to Lowry’s Form U4 states that the parties’ agreement provided for the Firm to re-purchase the disputed shares for \$300,000, but the re-purchase “ultimately never occurred.” CX-24, at 75, 86. Lowry testified that the claimant “walked away” from the settlement. Tr. 820-21.

<sup>270</sup> CX-288, at 33-36.

<sup>271</sup> CX-1b; CX-395.

<sup>272</sup> Tr. 819-20.

<sup>273</sup> Tr. 858-61.

#### **d. 2020 Unsuitable Investment in Private Placement Arbitration Claim**

Another arbitration claim involved a customer's investment in the INeedMD private placement. Customer RIF and three other customers filed an arbitration in June 2020 (and amended in July 2020) asserting that collectively they lost more than \$320,000 because of unsuitable recommendations to invest in INeedMD.<sup>274</sup>

The statement of claim named Lowry and three brokers as respondents. The claim alleged that Lowry, "a Spartan broker and principal, sold INeedMD to [one of the claimants] representing to him that it was a great investment and promised to be the wave of the future and that funds were needed to get it FDA approved."<sup>275</sup> The customer lost his \$50,000 investment. The arbitration claim asserted that the four claimants' combined losses "proximately resulted from [Spartan's and Lowry's] failure to supervise their registered representatives."<sup>276</sup> The claim also asserted that Lowry was the broker on the customer's account.<sup>277</sup> Lowry acknowledged at the hearing that he made the recommendation to purchase INeedMD.<sup>278</sup>

Spartan and Lowry learned of the RIF arbitration in early July 2020.<sup>279</sup> Lowry testified that he did not know why he did not disclose it.<sup>280</sup> Lowry telephoned one of the customers, who was also a friend, he said, when he received the claim. He "thought" the customer to whom he sold INeedMD withdrew the claim "pretty much right after the claim was filed."<sup>281</sup> Respondents produced no evidence at the hearing that the RIF claim was withdrawn.<sup>282</sup>

#### **e. Counterclaim in AAA**

In 2018, Spartan filed an arbitration claim against SFH and persons associated with SFH with the AAA for failing to pay for investment banking services related to a public offering of SFH securities.<sup>283</sup>

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<sup>274</sup> CX-149, at 3-4, 19.

<sup>275</sup> CX-149, at 9.

<sup>276</sup> CX-149, at 15.

<sup>277</sup> CX-149, at 10.

<sup>278</sup> Tr. 926-27. Spartan was the sole placement agent for the INeedMD private placement. Tr. 922, 926-27.

<sup>279</sup> CX-40, at 1, 3; CX-61, at 13, 18; CX-91, at 6, 9-10. Spartan timely disclosed the RIF arbitration on the Forms U4 or Forms U5 of the three brokers named as respondents. *See also* CX-1, at 1; CX-393, at 1.

<sup>280</sup> Tr. 797-98.

<sup>281</sup> Tr. 926-27. As discussed below, even when a claim is withdrawn it must be disclosed on Form U4.

<sup>282</sup> On July 27, 2020, the arbitration respondents, including Lowry, filed an Answer and asserted a counterclaim against the claimants seeking \$2.5 million in damages. CX-247. As of December 31, 2020, the end of the Relevant Period, the arbitration was still pending. CX-1b; CX-395.

<sup>283</sup> Tr. 819-20, 887-88, 2054-56; CX-139, at 13-14. SFH did not have a securities account at Spartan. Tr. 2055.

In May 2019, SFH counterclaimed against Spartan (but without naming Lowry as a respondent). It alleged that Lowry intentionally drove down the price of its stock by selling shares he owned or controlled and by feeding other shareholders “inside and/or false information to persuade them to sell their shares to further depress the stock price.”<sup>284</sup> The counterclaim alleged that Lowry used an SFH insider to obtain material nonpublic information in an attempt to control the company’s stock for Spartan’s benefit and at the expense of other shareholders of SFH securities.<sup>285</sup> SFH asserted tortious interference, alleging that Lowry interfered with its business relationships with holders of its securities by “purposefully tanking the value of the stock.”<sup>286</sup> SFH alleged damages of \$5 million.<sup>287</sup>

Lowry disclosed the SFH counterclaim on his Form U4 in September 2020, 470 days late and a month after receiving the Wells notice related to this disciplinary proceeding.<sup>288</sup> In the DRP section of the Form U4, Lowry wrote that SFH’s counterclaim was filed “as a retaliation tactic alleging misrepresentations.”<sup>289</sup> One of Spartan’s outside counsels and Monchik testified that the claim was not a typical customer complaint because it involved a breach of an investment banking agreement and it was brought with the AAA, not with FINRA.<sup>290</sup> The attorney provided Spartan an opinion letter in June 2020, more than a year after the counterclaim was filed, stating that Lowry did not have to disclose the counterclaim. The attorney reasoned that SFH was not a “consumer,” citing the definition in the Form U4 FAQ, which provides “The term includes a current, former, or prospective customer or a person who can act for such a person by law or contract, including an executor, conservator, or a person holding a power of attorney.”<sup>291</sup>

## 2. Arbitrations Alleging Lowry Failed to Supervise

The remaining arbitration claims naming Lowry mainly alleged that he failed to supervise the broker or was directly responsible for implementing a lax supervisory system at Spartan. Lowry did not disclose, or timely disclose, all but one of these arbitrations. Below we discuss examples of arbitrations alleging that Lowry failed to supervise.

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<sup>284</sup> CX-139, at 20-21.

<sup>285</sup> CX-139, at 21.

<sup>286</sup> CX-139, at 21, 26-27.

<sup>287</sup> CX-139, at 27.

<sup>288</sup> CX-1b, at 1; CX-24, at 51, 64-66; CX-395, at 1.

<sup>289</sup> CX-24, at 65. According to the Form U4 amendment, the dispute was resolved in March 2020 without either party paying damages. CX-24, at 66.

<sup>290</sup> Tr. 1344-46, 2054-55.

<sup>291</sup> RX-4, at 81-82. *See also* CX-12, at 3.

### *TW Arbitration*

In one example, customer TW and his wife filed an arbitration in late 2016 against Lowry (and two brokers), alleging churning, unsuitable recommendations, and fraud. They sought over \$700,000 in damages.<sup>292</sup> Among other things, they alleged that “Spartan and Lowry were under a duty to supervise the activities of its associated persons in a manner that is reasonably designed to achieve compliance with applicable securities laws and regulations and with FINRA’s rules. Had ... Lowry been supervising and training properly, Claimants’ accounts would not have been mismanaged by [the two brokers].”<sup>293</sup> The claim also alleges that Lowry “was and is ... a ‘control person’ of Spartan within the meaning of Federal and State securities laws .... He knew or should have known about the abuses occurring in Claimants’ accounts, and could have, and should have, acted to prevent them. As a consequence, Lowry is liabl[e] for all damages sought herein.”<sup>294</sup>

In August 2018, an arbitration panel awarded TW and his wife \$330,000.<sup>295</sup> In October 2018, FINRA filed a Form U6 to disclose the arbitration award.<sup>296</sup> Lowry disclosed both the filing of the arbitration and the award on his Form U4 in February 2020—1,118 and 508 days late, respectively.<sup>297</sup> Even though Lowry testified that he made the disclosures because of the Form U6 filing, he did not explain why he waited more than a year to do so.<sup>298</sup> In the DRP section of his Form U4 disclosing the award, Lowry wrote, “The unsupported allegations are a specious attempt of a customer to recover market losses. The applicant was named in his role as the CEO and had no direct supervisory responsibility nor contact with the customer.”<sup>299</sup>

### *LA Arbitration*

Customer LA filed an arbitration in late 2015 alleging losses exceeding \$100,000 resulting from misconduct by his broker that included churning his account, engaging in unauthorized trading, and making unsuitable recommendations.<sup>300</sup> The claim alleged that Lowry (and the then-CCO) failed to supervise the broker when he failed to “detect and respond

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<sup>292</sup> CX-134.

<sup>293</sup> CX-134, at 5.

<sup>294</sup> CX-134, at 6.

<sup>295</sup> CX-271, at 3-4.

<sup>296</sup> CX-24, at 24-26.

<sup>297</sup> CX-1a, at 5; CX-24, at 37, 46-49; CX-394, at 4.

<sup>298</sup> Tr. 852-53.

<sup>299</sup> CX-24, at 37, 49. Lowry also wrote “There are no specific allegations against Applicant. Applicant was solely named due to his position at the Firm with no basis.” CX-24, at 46.

<sup>300</sup> CX-131.

vigorously” to improper trading in his account.<sup>301</sup> In July 2018, the parties settled the claim for \$38,000.<sup>302</sup> Lowry did not disclose the LA arbitration or settlement on his Form U4.<sup>303</sup>

#### *BR Arbitration*

In an arbitration filed in 2017 against a broker and Lowry, customer BR alleged damages of nearly \$100,000 from churning and excessive commissions.<sup>304</sup> He alleged that Lowry “was under a duty to supervise the activities” of the broker. Had Lowry been supervising properly, BR claimed, his account “would not have been mismanaged.”<sup>305</sup> Lowry and Spartan settled BR’s claim in July 2018 for \$37,500.<sup>306</sup> Lowry did not disclose the arbitration or the settlement on his Form U4.<sup>307</sup>

#### *LC Arbitration*

Similarly, customer LC filed an arbitration alleging that Lowry (and other named Spartan executives) failed to supervise: “Respondents violated the supervisory obligations (periodic examination of customer account to detect and prevent irregularities or abuses) as set forth in the FINRA Rules. As a result of Respondents’ failure to supervise Claimant suffered damages.”<sup>308</sup> Lowry did not disclose the arbitration on his Form U4.<sup>309</sup>

#### *PH arbitration*

In May 2018, customer PH filed an arbitration against Lowry, two brokers and three other Spartan executives alleging churning and excessive trading that led to losses of more than \$70,000.<sup>310</sup> PH alleged that Lowry, along with other executives, “failed to supervise the firm’s registered representative” which allowed the account to be “abused.”<sup>311</sup> Lowry did not disclose the arbitration on his Form U4.<sup>312</sup>

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<sup>301</sup> CX-131, at 16.

<sup>302</sup> CX-264.

<sup>303</sup> CX-1b; CX-395.

<sup>304</sup> CX-137, at 2-3.

<sup>305</sup> CX-137, at 4.

<sup>306</sup> CX-278.

<sup>307</sup> CX-1b; CX-395.

<sup>308</sup> CX-138, at 12.

<sup>309</sup> CX-1b; CX-395.

<sup>310</sup> CX-141.

<sup>311</sup> CX-141, at 8.

<sup>312</sup> CX-1b; CX-395.

### C. Monchik's Violations

The Complaint alleges that Monchik failed to disclose or timely disclose arbitrations and dispositions in 15 instances. Monchik was named as a respondent in 12 arbitrations.<sup>313</sup> In each case, Lowry was also one of the other named respondents. Each claimant generally alleged that Monchik in some manner failed to supervise one or more registered representatives. In 11 of the 12 cases, Monchik did not amend her Form U4 to disclose that she was named in the arbitration.<sup>314</sup> In one case, Monchik disclosed the arbitration 562 days late.<sup>315</sup> She did so only after FINRA filed a Form U6 in August 2016 to disclose the filing of the claim.<sup>316</sup>

Monchik failed to disclose or timely disclose dispositions of three arbitrations. In two cases, she did not disclose a settlement (the MF and RF arbitrations).<sup>317</sup> One arbitration (by customer LK) against Monchik resulted in a \$41,842 award against her, which she disclosed 320 days late.<sup>318</sup>

#### *LK Arbitration*

The LK arbitration against Monchik also named Lowry and the claimant's broker. LK alleged that all three churned the account, made unsuitable recommendations, engaged in unauthorized trading, and made fraudulent misrepresentations.<sup>319</sup> Customer LK alleged that Monchik, as "a principal ... had supervisory responsibility over [the broker] and others at the firm."<sup>320</sup> LK's claim also alleged that "Lowry and Monchik failed to adequately supervise the firm's registered representatives and protect [Spartan's] clients from mismanagement and abusive activity."<sup>321</sup>

In April 2016, an arbitration panel found Monchik, Lowry, and the broker jointly and severally liable to LK.<sup>322</sup> In August 2016, FINRA filed Forms U6 disclosing the filing of LK's arbitration and the resulting \$41,842 award against Lowry and Monchik.<sup>323</sup> Spartan disclosed the

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<sup>313</sup> CX-1c; CX-396.

<sup>314</sup> CX-1c; CX-396.

<sup>315</sup> CX-1c; CX-396.

<sup>316</sup> CX-1c; CX-396.

<sup>317</sup> CX-1c; CX-396.

<sup>318</sup> Tr. 1010-12; CX-25, at 1-3.

<sup>319</sup> CX-126.

<sup>320</sup> CX-126, at 3.

<sup>321</sup> CX-126, at 7.

<sup>322</sup> CX-254. The arbitration panel also denied Monchik's and Lowry's request for expungement. CX-254, at 2.

<sup>323</sup> CX-1b; CX-1c; CX-395; CX-396.

award on Lowry's Form U4 in October 2016, 164 days late, and on Monchik's Form U4 in March 2017, 320 days late.<sup>324</sup>

In February 2017, in connection with Spartan's 2016 cycle exam, Member Supervision asked the Firm why it had not timely disclosed the \$41,842 award on Lowry's and Monchik's Forms U4.<sup>325</sup> In its response signed by Monchik, Spartan said that because it had disclosed the award on the broker's Form U4, the Firm "had interpreted the disclosure as satisfaction of full disclosure, not recognizing that a filing was required for each party."<sup>326</sup> Monchik testified that she and Spartan did not timely disclose the LK arbitration award because the underlying claim against her and Lowry was "factually impossible."<sup>327</sup> Neither she nor Lowry served in supervisory capacities at that time and there were no "specific allegations" that they failed to supervise.<sup>328</sup>

At the hearing, Monchik agreed that an arbitration claim need not have merit to trigger a firm's obligation to disclose it.<sup>329</sup> However, Monchik testified that if Lowry was not in fact the supervisor of the customer's broker, "that is something that you take into account."<sup>330</sup> According to Monchik, executive officers must disclose an arbitration only if there is merit to the claim.<sup>331</sup>

#### *MF Arbitration*

In May 2018, customer MF filed an arbitration against Lowry, Monchik, two other Firm executives, and two brokers, alleging churning, fraudulent conduct, excessive and unauthorized trading, unsuitable recommendations, and supervisory failures.<sup>332</sup> MF alleged that Spartan and the executives "in their capacities as control and supervisory personnel, failed to supervise the firm's registered representatives and, therefore, permitted the Claimant's account to be abused in the manner described herein."<sup>333</sup> In September 2019, the respondents settled MF's claim for

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<sup>324</sup> CX-1b; CX-1c; CX-395; CX-396.

<sup>325</sup> CX-111.

<sup>326</sup> CX-112, at 9.

<sup>327</sup> CX-216, at 1.

<sup>328</sup> Tr. 1713-15; CX-216, at 1.

<sup>329</sup> Tr. 1853-54.

<sup>330</sup> Tr. 1853.

<sup>331</sup> Tr. 1854-55.

<sup>332</sup> CX-140.

<sup>333</sup> CX-140, at 8.

\$287,500.<sup>334</sup> Lowry and Monchik never reported the initial arbitration filing or the settlement on their Forms U4.<sup>335</sup>

### *RF Arbitration*

Similarly, customer RF filed two arbitrations, in 2015 and 2016, naming Lowry and Monchik as respondents. In the second arbitration, RF alleged that Lowry and Monchik (and another former CCO) failed “to establish and enforce a reasonable supervisory system designed to prevent[,] in particular, quantitative [un]suitability and fraudulent churning violations.”<sup>336</sup> RF alleged damages of nearly \$200,000.<sup>337</sup> The claim identified Monchik as “the direct supervisor of the brokers ... at Spartan during the period complained of herein.”<sup>338</sup> It claimed that Lowry and Monchik “failed to detect and respond vigorously to trading in Claimant’s account by the brokers at levels that FINRA deems presumptively unsuitable.”<sup>339</sup> The claim also stated that “The way the accounts were handled suggests a culture of noncompliance wherein departments that are responsible for trade reconciliation and management are marginalized in order to generate commissions for the firm.”<sup>340</sup>

According to RF’s claim, Lowry and Monchik shared responsibility for “foster[ing] a culture of noncompliance that resulted in widespread sales practice violations, numerous customer complaints, and cold-calling abuses. As a result of the grossly inadequate supervisory system established, Claimant suffered significant losses.”<sup>341</sup> The claim adds, “Despite numerous ‘red flags’ that the brokers were making recommendations that were quantitatively [unsuitable] for their customers or to prevent churning accounts, these members of management failed to take any action.”<sup>342</sup>

In March 2018, Lowry and Monchik settled RF’s claim for \$40,000.<sup>343</sup> Monchik testified that she consulted with counsel who advised her that the arbitration and settlement were not reportable.<sup>344</sup> Monchik also said that she did not disclose the settlement because RF agreed to

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<sup>334</sup> CX-1a, at 4; CX-394, at 3.

<sup>335</sup> CX-1c; CX-284; CX-396.

<sup>336</sup> CX-133, at 15.

<sup>337</sup> CX-133.

<sup>338</sup> CX-133, at 2.

<sup>339</sup> CX-133, at 14.

<sup>340</sup> CX-133, at 14.

<sup>341</sup> CX-133, at 15.

<sup>342</sup> CX-133, at 15.

<sup>343</sup> CX-270.

<sup>344</sup> Tr. 1090-91.

withdraw his claim against her.<sup>345</sup> This statement conflicts with Monchik’s other hearing testimony in which she acknowledges that an arbitration claim need not have merit to trigger a reporting obligation.<sup>346</sup> It is also not applicable in connection with the RF arbitration because he did not withdraw the arbitration against Monchik. Instead, Monchik settled with RF.<sup>347</sup>

#### **D. FINRA Communications with Respondents**

During the Relevant Period, FINRA staff in Disclosure Review, Member Supervision, and Enforcement repeatedly told Respondents that they needed to disclose arbitration claims made against Lowry, Monchik, and other Firm executives, including the disposition of such claims. We now review Disclosure Review’s general practices and significant communications that staff in three FINRA departments had with Respondents about the arbitrations at issue.

##### **1. Disclosure Review’s Practices**

FINRA’s Disclosure Review Group<sup>348</sup> is responsible for reviewing Forms U4 and Forms U5 and amendments to them. It also files Forms U6 when necessary.<sup>349</sup> Disclosure Review communicates with firms using disclosure letters, sent electronically through CRD, to request disclosure of an event or an update. When Disclosure Review learns of an event that appears to require disclosure by a firm or registered representative, it sends the firm a disclosure letter directing the firm to disclose the event, update an existing disclosure, or explain why no disclosure is required.<sup>350</sup> If a firm does not timely respond to a disclosure letter, Disclosure Review’s practice is to treat the letter as outstanding, labeling it as “Unresolved,” until the firm responds.<sup>351</sup> If after some period a firm does not respond, Disclosure Review typically sends another disclosure letter, marks the prior letter “Resolved,” and notes “New Letter Sent.”<sup>352</sup> Thus, the fact that a letter is marked “Resolved” does not always indicate that the firm has responded satisfactorily or made the required disclosure.

Disclosure Review reviews all firm responses to disclosure letters. If it determines that it still needs more information to evaluate a potentially reportable event, Disclosure Review sends a new disclosure letter. Disclosure Review can keep a pending inquiry open or close it and mark

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<sup>345</sup> Tr. 1029.

<sup>346</sup> See Tr. 1852-54.

<sup>347</sup> CX-270.

<sup>348</sup> FINRA’s Disclosure Review Group was re-named Credentialing, Registration, Education and Disclosure (“CRED”) during the Relevant Period. We refer to it here by its former name because testimony and documents admitted at the hearing referred to the office as Disclosure Review.

<sup>349</sup> Tr. 374-75.

<sup>350</sup> Tr. 451-52, 460-61.

<sup>351</sup> Tr. 463-64.

<sup>352</sup> Tr. 463-65.

the CRD disclosure letter as “Resolved” even if a new inquiry resulted from the initial inquiry.<sup>353</sup> A notation in CRD that a disclosure letter is “Resolved” does not mean that Disclosure Review agreed with a firm’s position about whether an event needed to be disclosed on a Form U4 or Form U5. Marking an inquiry “Resolved” simply indicates that Disclosure Review has determined not to pursue the pending inquiry.<sup>354</sup>

A disclosure letter to a firm by itself does not trigger a reporting obligation, and Disclosure Review’s failure to send a disclosure letter does not mean that the firm does not have a disclosure obligation. The obligation to disclose an event is independent of whether Disclosure Review sends a disclosure letter or whether it is later recorded as “Resolved” or “Unresolved.”<sup>355</sup> Regardless of Disclosure Review’s actions, member firms and registered representatives have an independent duty to determine whether an event is reportable and then to self-report the event on a Form U4.<sup>356</sup>

Firms also often email and telephone Disclosure Review with questions about whether a specific event triggers a disclosure obligation.<sup>357</sup> By policy and practice, Disclosure Review does not provide legal advice.<sup>358</sup> It also does not provide direct answers to inquiries about whether to report an event.<sup>359</sup> Instead, it directs persons to the guidance in the Explanation of Terms and the Form U4 FAQ.<sup>360</sup>

## 2. Disclosure Letters Sent to Spartan

During the Relevant Period, Disclosure Review sent disclosure letters to Spartan through CRD to ask why the Firm had not disclosed arbitrations against its executives<sup>361</sup> and why Lowry and Monchik had not amended their own Forms U4 to disclose arbitrations.<sup>362</sup> In some cases,

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<sup>353</sup> Tr. 464-69.

<sup>354</sup> Tr. 483-84, 586-87.

<sup>355</sup> Tr. 588-89.

<sup>356</sup> Tr. 605.

<sup>357</sup> Tr. 554, 561.

<sup>358</sup> Tr. 471.

<sup>359</sup> Tr. 556-57.

<sup>360</sup> Tr. 520; CX-230.

<sup>361</sup> Disclosure Review sent dozens of disclosure letters to Spartan concerning undisclosed arbitrations naming executive officers besides Lowry and Monchik. *See* CX-180—CX-200. One of the Firm’s former CCOs was the subject of 11 disclosure letters during the Relevant Period. *See* CX-194; CX-195.

<sup>362</sup> A typical disclosure letter is one Disclosure Review sent to Spartan in October 2016 concerning an undisclosed arbitration that named Lowry. It stated, “U4 on file with no disclosure of FINRA arbitration [case number].

\*\*\*Timely response required.” It also provided details: “Amend disclosure questions as applicable and provide complete details of the consumer-initiated disclosure event on the appropriate DRP type \*or\* submit written correspondence within 30 days if disclosure is not required.” CX-112, at 17; CX-175, at 11.

Disclosure Review sent more than one follow-up disclosure letter, with many remaining outstanding and marked as “Unresolved.”<sup>363</sup>

Monchik accessed CRD to review disclosure letters about herself and others at Spartan.<sup>364</sup> Monchik was the primary person at Spartan who spoke to Disclosure Review about whether certain arbitrations needed to be disclosed,<sup>365</sup> and she sometimes telephoned Disclosure Review for guidance.<sup>366</sup> Monchik claimed that in some cases someone at Disclosure Review told her that one or more arbitrations need not be disclosed.<sup>367</sup> The Panel finds that Monchik was not credible on this point—that Disclosure Review told her certain arbitrations need not be disclosed. There is no documentary evidence in the record that Disclosure Review ever agreed with or told Spartan in writing that it did not need to disclose a particular arbitration. Monchik did not memorialize such purported conversations with FINRA staff in writing.<sup>368</sup> When questioned about other arbitrations, Monchik could not recall Disclosure Review telling her they need not be disclosed.<sup>369</sup> A director in Disclosure Review testified credibly that the office’s practice was not to give legal advice on the non-reportability of arbitrations or dispositions but instead directed firms to consult FINRA’s guidance to make their own decisions.<sup>370</sup> The evidence at the hearing corroborates the director’s testimony and contradicts Monchik.<sup>371</sup>

Monchik testified that Respondents interpreted a notation, which occurred in only a few cases, marking a disclosure letter as “Resolved” to mean that Disclosure Review agreed that the arbitration was not reportable.<sup>372</sup> However, even when disclosure letters to Lowry were left marked as “Unresolved,” Spartan and Lowry did not disclose them. In Lowry’s case, disclosure letters for 14 arbitrations were marked “Unresolved.”<sup>373</sup> And for two other arbitrations, involving customers LK and TW, inquiries were marked “Resolved” only because Disclosure Review had

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<sup>363</sup> CX-3; CX-3a.

<sup>364</sup> Tr. 957.

<sup>365</sup> Tr. 1091.

<sup>366</sup> Tr. 1076-77.

<sup>367</sup> Tr. 1037-38. *See also* Tr. 1081-82, 1085-86 (Monchik testifying that in a telephone conversation Disclosure Review purportedly agreed that the RJW and SC arbitrations did not have to be disclosed).

<sup>368</sup> Tr. 1081-83. Monchik testified that she or a compliance assistant might have memorialized conversations with Disclosure Review in a notebook or in an email. Tr. 1084, 1368-70. Respondents did not offer the purported notebook entries or emails into evidence. Monchik testified that she never told Spartan’s counsel or outside consultants, in writing, that Disclosure Review had told her that a particular arbitration need not be reported. Tr. 1092-94.

<sup>369</sup> Tr. 1080.

<sup>370</sup> Tr. 471-72, 557-58.

<sup>371</sup> *See, e.g.*, CX-213; CX-219; CX-220; CX-230.

<sup>372</sup> Tr. 1093.

<sup>373</sup> CX-3; CX-397.

filed a Form U6 to disclose them.<sup>374</sup> Furthermore, as already discussed, the fact that a disclosure letter is marked “Resolved” does not always indicate that the firm has responded satisfactorily or made the required disclosure. In Monchik’s case, disclosure letters for three arbitrations were marked “Unresolved,” and she and Spartan never disclosed them.<sup>375</sup> Nine arbitrations against Monchik were marked “Resolved.”<sup>376</sup> For one of these, Disclosure Review made the disclosure in a Form U6.<sup>377</sup> Disclosure letters associated with five arbitrations against Lowry and three against Monchik marked “Resolved” became the subject of a cautionary action in August 2017.<sup>378</sup> With the exception of the LK arbitration (disclosed late), Lowry and Monchik still did not disclose these arbitrations.<sup>379</sup>

Disclosure Review did not just send disclosure letters. It also communicated with the Firm via email and telephone. Spartan occasionally inquired about its obligations to report arbitrations, particularly those alleging violations by its executive officers.<sup>380</sup> Disclosure Review often responded, as was its practice, by referring to the guidance in the Form U4 FAQ.<sup>381</sup> Monchik acknowledged that Disclosure Review sent Spartan language copied from the Form U4 FAQ “all the time” in response to Spartan’s inquiries.<sup>382</sup> In March 2019, for example, Disclosure Review emailed Monchik, the then-CCO, and the Firm’s compliance assistant an excerpt from the Explanation of Terms defining “involved” as including “failing to reasonably supervise another in doing an act.”<sup>383</sup> Disclosure Review also stated in its email that disclosure Question 14I(1) of Form U4 is “allegation driven” so Spartan should “review the disclosure questions, the [arbitration statement of claim’s] allegations and published guidance [and] then make the required disclosure.”<sup>384</sup>

### 3. Three Forms U6 Filed for Lowry and Monchik

In addition to responding to Spartan’s telephone or email inquiries and sending disclosure letters, Disclosure Review also made CRD filings about arbitrations that named Lowry and Monchik. In August 2016, Disclosure Review filed Forms U6 for Lowry and Monchik to report

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<sup>374</sup> CX-3; CX-397.

<sup>375</sup> CX-1b; CX-3a; CX-396; CX-398.

<sup>376</sup> CX-3a; CX-398.

<sup>377</sup> CX-3a; CX-398.

<sup>378</sup> CX-111, at 5-6, 12; CX-113, at 1, 6, 12.

<sup>379</sup> CX-1b; CX-1c; CX-395; CX-396.

<sup>380</sup> *See, e.g.*, CX-223; CX-224; CX-232.

<sup>381</sup> *See, e.g.*, CX-230; CX-231.

<sup>382</sup> Tr. 1037-38, 1064-65.

<sup>383</sup> CX-230, at 1.

<sup>384</sup> CX-230, at 1.

the April 2016 \$41,842 award against them in the LK arbitration.<sup>385</sup> Lowry and Monchik had both failed to disclose the filing of the arbitration and the award. Lowry and Spartan waited 56 days after the Form U6 filing before disclosing the LK arbitration and the award.<sup>386</sup> Monchik and Spartan took 212 days to amend her Form U4 after the Form U6 filing.<sup>387</sup>

Disclosure Review filed another Form U6 for Lowry two years later. In October 2018, it reported the \$330,000 award against Lowry in the TW arbitration.<sup>388</sup> Lowry and Spartan did not amend Lowry's Form U4 to disclose the arbitration or the award until February 2020—508 days late.<sup>389</sup>

In October 2020, Disclosure Review filed a third Form U6 to disclose the RIF arbitration that was filed in June 2020 against Lowry.<sup>390</sup> At the end of the Relevant Period, Lowry and Spartan had not yet amended Lowry's Form U4 to disclose it.<sup>391</sup>

#### **4. Two Cautionary Actions**

Disclosure Review was not the only FINRA office warning Respondents that they had to disclose arbitrations alleging sales practice violations and supervisory failures by the Firm's executive officers. FINRA's Department of Member Supervision issued two cautionary actions addressing this issue.

##### **a. August 2017 Cautionary Action**

In February 2017, Member Supervision sent Spartan a report for the 2016 Financial/Operational and Sales Practice examination of the Firm. One of the examination exceptions cited by Member Supervision staff was Spartan's failure to disclose five arbitrations on Lowry's Form U4 and three arbitrations on Monchik's Form U4 alleging that they failed to reasonably supervise brokers.<sup>392</sup>

Spartan responded a month later disputing that the arbitrations had to be reported. It said that Lowry and Monchik "took all steps possible in order to determine [their] disclosure obligations."<sup>393</sup> It also claimed that it relied on Disclosure Review's notations in CRD that

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<sup>385</sup> CX-24, at 11-12; CX-25, at 1-2.

<sup>386</sup> CX-1b, at 2; CX-395, at 2.

<sup>387</sup> CX-1c; CX-396.

<sup>388</sup> CX-24, at 24-26.

<sup>389</sup> CX-1b; CX-24, at 37, 46-48; CX-395.

<sup>390</sup> CX-24, at 98-99.

<sup>391</sup> CX-1b; CX-395.

<sup>392</sup> CX-111, at 5-6, 12.

<sup>393</sup> CX-112, at 6, 8.

disclosure letters it sent to the Firm were “Resolved” and “Correspondence Received.”<sup>394</sup> Spartan stated it had received guidance from industry professionals, counsel, and FINRA before determining that it did not have to disclose the arbitrations.<sup>395</sup>

Member Supervision rejected these arguments. It sent the Firm a disposition letter in August 2017 cautioning Spartan for the arbitration disclosure failures cited in the 2016 report.<sup>396</sup>

One of Spartan’s former CCOs serving in 2016 and 2017 was aware of this cautionary action. He testified that he understood that FINRA disagreed with Respondents’ decision not to disclose the arbitrations but was nonetheless “on the fence” about whether they should be disclosed.<sup>397</sup> He could not recall any effort by Spartan to reevaluate its practice of not disclosing certain arbitrations.<sup>398</sup> Spartan and Lowry never disclosed four of the five arbitrations identified in the exam report and cautionary action and disclosed one late.<sup>399</sup> Spartan and Monchik never disclosed the three arbitrations FINRA staff identified.<sup>400</sup>

### **b. July 2018 Cautionary Action**

In February 2018, Member Supervision sent Spartan an examination report from a 2017 cause examination specifically addressing undisclosed arbitrations. The report contained an exception for Spartan’s failure to disclose the RS arbitration, filed in January 2017, on Lowry’s and a former CCO’s Forms U4. The exception noted that customer RS alleged that the named respondents “engaged in a manipulative, deceptive and fraudulent scheme by churning Claimant’s account.”<sup>401</sup> Spartan’s subsequent CCO disputed the exception, arguing in an email to FINRA that allegations had to be “bona fide” to be disclosable.<sup>402</sup> Spartan’s counsel followed up with a letter in June 2018. He wrote that customer RS made no “specific factual allegation” that Lowry or the Firm’s former CCO were involved in conduct that obligated them to make a disclosure.<sup>403</sup>

A month later, in July 2018, Member Supervision sent Spartan a disposition letter containing a cautionary action for failing to disclose the RS arbitration on Lowry’s and the

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<sup>394</sup> See, e.g., CX-112, at 7-8 (Spartan claiming that “disclosure letter was cleared”).

<sup>395</sup> CX-112, at 6-8, 16-19.

<sup>396</sup> CX-113, at 1, 5-6.

<sup>397</sup> CX-22, at 142-43.

<sup>398</sup> CX-22, at 146-47.

<sup>399</sup> CX-1b; CX-111, at 12; CX-113, at 12; CX-395.

<sup>400</sup> CX-1c; CX-111, at 12; CX-113, at 12; CX-396.

<sup>401</sup> CX-115, at 3.

<sup>402</sup> CX-116.

<sup>403</sup> CX-119, at 2.

former CCO's Forms U4.<sup>404</sup> In April 2019, responding to a Rule 8210 request asking why the Firm had still not disclosed it on Lowry's and the former CCO's Forms U4, Spartan stated that it was unnecessary because the statement of claim "was prepared by a non-attorney representative, ... which contained false, misleading and defamatory allegations against each ... [respondent]."<sup>405</sup>

Lowry and Monchik participated in FINRA's examination exit interviews during which they discussed the disclosure of arbitrations.<sup>406</sup> They also received the exam reports and participated in preparing the Firm's responses.<sup>407</sup> Additionally, both Lowry and Monchik were aware of the August 2017 and July 2018 cautionary actions when the Firm received them.<sup>408</sup>

### **c. Lowry and Monchik's Responses to FINRA's Cautionary Actions**

Monchik never amended her Form U4 to disclose the arbitrations at issue in the August 2017 cautionary action.<sup>409</sup> After that date, Monchik failed to disclose four additional arbitration filings alleging deficient supervision and two settlements with claimants.<sup>410</sup> Monchik admitted at the hearing that neither she nor the Firm's then-CCO elected to disclose the arbitrations identified in the cautionary actions that named Lowry.<sup>411</sup> Lowry testified that after receiving the two cautionary actions he let Spartan's compliance department and outside counsel handle the matter.<sup>412</sup> He did not direct the compliance department to disclose the arbitrations on his Form U4.<sup>413</sup> Lowry was named in 12 more arbitrations after the first cautionary action in August 2017, nearly all of which also alleged supervisory failures.<sup>414</sup> He disclosed two arbitrations after the cautionary action but did so 470 and 708 days late.<sup>415</sup>

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<sup>404</sup> CX-120. Member Supervision also cautioned Spartan that it had disclosed the RS arbitration on the named broker's Form U4 approximately five months late. CX-120, at 3. Spartan stated that it "erred" in not timely disclosing the arbitration on the broker's Form U4. CX-335, at 7.

<sup>405</sup> CX-335, at 7.

<sup>406</sup> *See, e.g.*, Tr. 731, 757, 1432, 2133-35.

<sup>407</sup> Tr. 731.

<sup>408</sup> Tr. 749, 810-11, 1138.

<sup>409</sup> CX-1c; CX-396.

<sup>410</sup> CX-1c; CX-396.

<sup>411</sup> Tr. 1141.

<sup>412</sup> Tr. 800-04.

<sup>413</sup> Tr. 812-16.

<sup>414</sup> CX-1b; CX-395.

<sup>415</sup> CX-1b; CX-395.

Monchik testified that she understood that FINRA’s position was that the arbitrations at issue should have been disclosed.<sup>416</sup> But she testified that the cautionary actions did not require the disclosure of the arbitrations identified in them.<sup>417</sup> During testimony, Monchik answered “No” when asked whether Spartan’s receipt of two cautionary actions “was ... sufficient to think that [the Firm had] to report these?”<sup>418</sup> Monchik explained that she believed FINRA departments were applying conflicting standards of disclosure because Disclosure Review and Member Supervision had identified different arbitrations that should have been disclosed.<sup>419</sup> Monchik also testified that Spartan asked FINRA to explain why a particular arbitration was reportable, but FINRA staff “refused to engage in conversation with us.”<sup>420</sup> Spartan’s outside counsel represented to Spartan that the arbitrations were not reportable, according to Monchik, who also noted there was no formal procedure for Spartan to appeal a cautionary action.<sup>421</sup>

## **5. Enforcement Begins Investigation and Sends Wells Notice About Undisclosed Occurrences**

By early 2019, Enforcement was also involved. It warned Respondents that arbitrations alleging that Spartan’s executive officers were involved in sales practice violations and supervision failures had to be disclosed. In February 2019, Enforcement sent each Respondent a letter under FINRA Rule 8210 asking them why they did not disclose arbitrations on their and other executive officers’ Forms U4.<sup>422</sup> Enforcement also took on-the-record testimony from Lowry and Monchik focusing on their and the Firm’s failure to disclose arbitrations.<sup>423</sup>

In August 2020, Enforcement sent Wells notices to Lowry and Monchik formally informing them that Enforcement had made a preliminary determination to recommend disciplinary action for their failures to amend, or timely amend, their Forms U4 to disclose arbitration filings and dispositions.<sup>424</sup> A month later, Lowry disclosed two arbitrations (filed by GDE and SFH) initiated in 2018 and 2019.<sup>425</sup> But Monchik did not disclose any more

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<sup>416</sup> Tr. 1139-41.

<sup>417</sup> Tr. 1140-41, 1862-64.

<sup>418</sup> Tr. 1862.

<sup>419</sup> Tr. 1863-65.

<sup>420</sup> Tr. 1864.

<sup>421</sup> Tr. 1864-65.

<sup>422</sup> CX-335, at 1 (Spartan April 10, 2019, letter to Enforcement referring to three February 14, 2019, Rule 8210 letters addressed to Respondents).

<sup>423</sup> Tr. 902, 1122.

<sup>424</sup> CX-355; CX-356.

<sup>425</sup> CX-1b; CX-395.

arbitrations.<sup>426</sup> She testified that after receiving FINRA’s Wells notices, she relied on a securities compliance consultant who told her that Spartan’s position was correct.<sup>427</sup>

### **E. Respondents’ Claimed Reliance on Outside Counsel and Securities Industry Consultants**

Lowry and Monchik testified that they relied on Spartan’s CCOs, outside counsel, and securities industry consultants when deciding whether to report arbitrations on their Forms U4 and the Forms U4 of Firm executive officers. According to Lowry, Spartan used five or six outside attorneys and two consultants to help make reporting decisions.<sup>428</sup>

Lowry repeatedly asserted that in every instance he depended on others to decide which arbitrations to disclose on his Form U4.<sup>429</sup> He testified that he “never” made a reporting decision himself.<sup>430</sup> When he received a statement of claim, he would “skim over it briefly,” then turn it over to the CCO.<sup>431</sup> Most arbitrations that named him, Lowry stated, contained similar “cookie cutter” allegations.<sup>432</sup> Lowry believed he was “not qualified to make determinations [about reporting arbitrations].”<sup>433</sup> “I would rely in all instances on the [CCO],” he said.<sup>434</sup> According to Lowry, after he gave Spartan’s CCOs a statement of claim, they conducted a “thorough analysis” with outside counsel and securities consultants the Firm had retained.<sup>435</sup> According to Lowry, the CCOs did not always report back to him with their determinations.<sup>436</sup> He “just left it in their hands to make the qualified determination of what to do with [the statement of claim] at that point.”<sup>437</sup> Lowry could not recall discussing a statement of claim after he provided a CCO with a copy.<sup>438</sup>

Lowry was unable to explain why Spartan did not disclose arbitrations and dispositions of arbitrations on his Form U4.<sup>439</sup> Lowry never discussed an arbitration claim with Disclosure

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<sup>426</sup> CX-1c; CX-396.

<sup>427</sup> Tr. 1087.

<sup>428</sup> Tr. 668.

<sup>429</sup> Tr. 661-63, 668, 670, 706, 709, 797.

<sup>430</sup> Tr. 663.

<sup>431</sup> Tr. 664.

<sup>432</sup> Tr. 664.

<sup>433</sup> Tr. 668.

<sup>434</sup> Tr. 668.

<sup>435</sup> Tr. 664, 668.

<sup>436</sup> Tr. 669-70.

<sup>437</sup> Tr. 669.

<sup>438</sup> Tr. 670, 707.

<sup>439</sup> Tr. 797-99.

Review and never checked CRD to review a disclosure letter.<sup>440</sup> Lowry also testified that he never reviewed a legal opinion letter prepared by outside counsel before it was sent to FINRA.<sup>441</sup>

Two former Spartan CCOs testified during the investigation. A CCO who served in that capacity in 2016 and 2017 testified that he would first review a statement of claim and then make a “good faith determination” to decide whether to disclose the arbitration.<sup>442</sup> Another person who served as CCO during 2019 also testified that he made a “good faith determination” when deciding whether to disclose an arbitration.<sup>443</sup> This CCO was involved in deciding which arbitrations against Lowry should be disclosed.<sup>444</sup> If a person named in the arbitration was “not involved in the sales process” with a customer, the CCO testified, he would not disclose it.<sup>445</sup> Similarly, the CCO testified that, if a statement of claim contained allegations that were “factual impossibilities,” he would not disclose the claim on the person’s Form U4.<sup>446</sup> He asserted that he would not have disclosed an arbitration alleging that Lowry failed to supervise because Lowry was not involved in supervising brokers.<sup>447</sup> The CCO also testified that he did not know that Spartan had received two cautionary actions in 2017 and 2018 about failures to disclose arbitrations against Lowry and Monchik.<sup>448</sup>

During testimony, Lowry recalled talking to outside counsel about just two arbitration claims against him.<sup>449</sup> He talked to them more than one year after the arbitrations were filed.<sup>450</sup> Lowry testified that counsel ultimately advised him to disclose the two arbitrations, and he did so, but he could not remember the reasoning for doing so.<sup>451</sup>

According to Monchik, Spartan conferred with two securities industry compliance consultants about disclosure of arbitrations.<sup>452</sup> She sent four statements of claim filed between June and August 2015 to an outside compliance consultant for review. She did not have a

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<sup>440</sup> Tr. 706.

<sup>441</sup> Tr. 769.

<sup>442</sup> CX-22, at 53-54, 84-86.

<sup>443</sup> CX-23, at 44, 47.

<sup>444</sup> CX-23, at 52-53.

<sup>445</sup> CX-23, at 47-49.

<sup>446</sup> CX-23, at 71-72.

<sup>447</sup> CX-23, at 123-24, 127-28.

<sup>448</sup> CX-23, at 117-18, 121-22.

<sup>449</sup> Tr. 799-800.

<sup>450</sup> Tr. 800-02.

<sup>451</sup> Tr. 800-01.

<sup>452</sup> Tr. 1002-03, 1021, 1087.

compliance consultant review any other statements of claim.<sup>453</sup> There is no written evidence in the record of any of the consultant's reasoning why certain arbitrations need not be disclosed. No consultant testified at the hearing.

The only written evidence of an opinion that Monchik received from a securities industry compliance professional came from a compliance associate at another firm where a Firm FINOP previously had worked. In October 2018, this person advised Spartan's FINOP in an email to have Spartan amend his Form U4 to disclose an arbitration in which he was named as a respondent.<sup>454</sup> The FINOP forwarded the email to Monchik who conferred with the Firm's then CCO.<sup>455</sup> Spartan did not amend the FINOP's Form U4.<sup>456</sup> According to Monchik, one reason was that she believed the compliance associate had not seen the customer's statement of claim.<sup>457</sup>

One of the outside attorneys Spartan retained testified that he never spoke to Lowry about disclosures of arbitrations because Lowry "just typically wasn't involved in these type[s] of issues."<sup>458</sup> Another outside counsel testified that he talked to Lowry about some arbitrations. In some cases, the attorney concluded that Lowry did not handle the complaining customers' accounts and had no "direct involvement in the underlying facts that gave rise to the claims," thereby justifying his legal conclusion that the arbitrations need not be disclosed.<sup>459</sup>

Some of the Firm's outside counsel appeared to be unaware that FINRA would view as serious misconduct multiple failures to disclose arbitrations involving executive officers. For example, one of the attorneys was unaware of the cautionary actions FINRA issued until after Enforcement began the investigation that led to the initiation of this disciplinary proceeding.<sup>460</sup>

One outside counsel provided opinions about the DE and GW arbitrations for the first time in July 2015.<sup>461</sup> The attorney could not recall either Lowry or Monchik telling him that FINRA staff had said the arbitrations at issue needed to be disclosed.<sup>462</sup> In fact, the attorney believed, because someone at Spartan told him, that Disclosure Review agreed with his analysis

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<sup>453</sup> Tr. 1087.

<sup>454</sup> CX-228, at 1.

<sup>455</sup> Tr. 1711-12.

<sup>456</sup> CX-1, at 6; CX-228, at 2 (referring to customer RF's arbitration case number); CX-393, at 5.

<sup>457</sup> Tr. 1711.

<sup>458</sup> Tr. 1576-77. The attorney testified that it was not necessary to speak with Lowry once he obtained a copy of a statement of claim. If he needed information concerning disclosure of an arbitration, he would get it from someone else at Spartan. Tr. 1578-79.

<sup>459</sup> Tr. 1774-76.

<sup>460</sup> Tr. 1779-80.

<sup>461</sup> RX-26, at 6. The Firm learned of the DE and GW arbitrations in June 2015. CX-1, at 10-11; CX-393, at 9.

<sup>462</sup> Tr. 1579-80.

in these instances that disclosure was not required.<sup>463</sup> That attorney also was not made aware of the cautionary actions at the time, even though he continued to provide advice to Spartan on this issue until 2018.<sup>464</sup>

Respondents also received legal advice about specific arbitrations from another outside counsel. This attorney testified that he first became involved with Spartan in late 2017.<sup>465</sup> He first provided Respondents with advice in 2018 about six arbitration claims that he told Monchik need not be disclosed on Lowry's and her Forms U4.<sup>466</sup> The attorney acknowledged that FINRA staff never responded to Spartan in writing stating that it agreed with Respondents that a particular arbitration need not be disclosed.<sup>467</sup> Although he was aware, when he testified, of the second FINRA cautionary action, issued in July 2018, he could not recall seeing a previous one before giving Spartan an opinion in June 2020 about disclosure of arbitrations.<sup>468</sup>

In October 2020, Spartan responded to a Rule 8210 request for information asking it to identify, among other things, arbitrations for which outside counsel provided an opinion about disclosure.<sup>469</sup> It identified seven arbitrations. In the Firm's 8210 response letter, prepared by one of the Firm's outside counsels, Spartan stated that because many statements of claim contained similar language alleging a failure to supervise, it was unnecessary for Spartan to get an opinion for every arbitration.<sup>470</sup>

Finally, to demonstrate they acted in good faith and to support their continuing failure to disclose arbitrations, Respondents rely on a report Spartan commissioned from a law firm in 2020. The report concluded that Respondents were correct in not reporting arbitrations against Firm executives because it found that few other firms like Spartan made such disclosures.<sup>471</sup> The report purported to survey Form U4 disclosure practices by more than 900 member firms of the same size and with the same sort of business as Spartan.<sup>472</sup> The report was limited to Form U4 disclosures of arbitration claims alleging supervisory deficiencies by a firm's top executive

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<sup>463</sup> Tr. 1580-81.

<sup>464</sup> Tr. 1583-84; RX-24. The first cautionary action, issued in August 2017, addressed the failure to disclose five arbitrations against Lowry.

<sup>465</sup> Tr. 2021-22.

<sup>466</sup> Tr. 2022-23.

<sup>467</sup> Tr. 2062.

<sup>468</sup> RX-4, at 81-82.

<sup>469</sup> CX-351.

<sup>470</sup> CX-351, at 3, 5-10.

<sup>471</sup> RX-22, at 1-2.

<sup>472</sup> RX-22, at 1-2.

officers.<sup>473</sup> By the time Spartan received the report in late June 2020, Spartan had learned of the filing of all but two of the arbitrations at issue.<sup>474</sup>

The Panel did not find this report persuasive. Respondents could not reasonably have relied on it for continuing not to update Form U4 and Form U5 disclosures. The attorney who prepared the survey acknowledged its limited scope. He relied only on information available in BrokerCheck, which does not include all the information maintained in CRD.<sup>475</sup> The attorney agreed that the survey therefore did not include arbitration claims archived in CRD or that were expunged.<sup>476</sup> It was limited to firms in the New York City area and included only CEOs and not all executive officers of a firm.<sup>477</sup> The attorney also conceded that he was unable to review the statements of claim to determine if they contained allegations similar to those filed against Lowry, Monchik, and Spartan's other executives.<sup>478</sup>

## **VI. Conclusions of Law**

Cause one of the Complaint alleges that Spartan violated Article V, Sections 2(c) and 3(b) of FINRA's By-Laws and FINRA Rules 1122 and 2010 by failing to disclose, or timely disclose, 162 arbitration-related events (reduced to 159 at the hearing), ten written customer complaints, 50 judgments and liens, and one bankruptcy filing on its registered representatives' Forms U4 and Forms U5.<sup>479</sup> The Complaint also alleges that Spartan acted willfully when it failed to amend, or timely amend, the Forms U4 and Forms U5 of its executive officers, including Lowry and Monchik, to disclose arbitrations naming them as respondents.<sup>480</sup>

Causes two and three allege that Lowry and Monchik willfully violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010 by not amending their Forms U4 to disclose arbitrations and dispositions of arbitrations.<sup>481</sup>

FINRA's By-Laws obligate firms and associated persons to timely amend Forms U4 and, in the case of a firm, Forms U5 to disclose information deemed important to regulators and the investing public. Article V, Section 2(a)(2) of the By-Laws requires that applicants for FINRA registration provide "reasonable information with respect to the applicant as [FINRA] may require." Article V, Section 2(c) provides that "[e]very application for registration filed with

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<sup>473</sup> RX-22, at 1-2.

<sup>474</sup> CX-1, at 1; CX-393, at 1.

<sup>475</sup> Tr. 2009.

<sup>476</sup> Tr. 2008-11.

<sup>477</sup> Tr. 2008.

<sup>478</sup> Tr. 2013-14.

<sup>479</sup> Compl. ¶¶ 33, 80-81, 86, 101; Exhibits A and B attached to the Complaint.

<sup>480</sup> Compl. ¶ 103.

<sup>481</sup> Compl. ¶¶ 118, 133.

[FINRA] shall be kept current at all times by supplementary amendments” and that any “[s]uch amendment . . . shall be filed with [FINRA] not later than 30 days after learning of the facts or circumstances giving rise to the amendment.”

Article V, Section 3(b) of the By-Laws requires that a member firm amend a registered representative’s Form U5 when “the member learns of the facts or circumstances causing any information set forth in [the Form U5] to become inaccurate or incomplete” and to file an amendment “not later than 30 days after the member learns of the facts or circumstances giving rise to the amendment.”

FINRA Rule 1122 prohibits a member firm or a person associated with a member from “fil[ing] with FINRA information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof.” This requirement applies to the Form U4.<sup>482</sup>

The information in Form U4 is important to regulators, employers, and the investing public.<sup>483</sup> “Because ‘[r]egistration of broker-dealers is a means of protecting the public,’ every person submitting a Form U4 has the obligation to ensure that the information provided on the form is true and accurate.”<sup>484</sup> Furthermore, “[a] registered representative has a continuing obligation to timely update information required by Form U4 as changes occur.”<sup>485</sup> A registered representative is responsible for the completeness and accuracy of the information on the Form U4.<sup>486</sup> Securities industry professionals “cannot be excused for lack of knowledge, understanding or appreciation of these requirements.”<sup>487</sup> A registered person has the obligation to determine whether the information on the Form U4 is complete and accurate, and cannot shift this obligation to another person at a firm.<sup>488</sup> Filing a misleading Form U4, or failing to timely

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<sup>482</sup> *Richard A. Neaton*, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719, at \*16 (Oct. 20, 2011); *Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at \*8 (Dec. 22, 2008).

<sup>483</sup> *Scott Mathis*, Exchange Act Release No. 61120, 2009 SEC LEXIS 4376, at \*16, 29 (Dec. 7, 2009), *aff’d*, 671 F.3d 210 (2d Cir. 2012); *Dep’t of Enforcement v. Elgart*, No. 2013035211801, 2017 FINRA Discip. LEXIS 9, at \*14 (NAC Mar. 16, 2017), *aff’d*, Exchange Act Release No. 81779, 2017 SEC LEXIS 3097 (Sept. 29, 2017), *petition for review denied*, 750 F. App’x 821 (11th Cir. 2018).

<sup>484</sup> *Neaton*, 2011 SEC LEXIS 3719, at \*16; *see also Mathis*, 2009 SEC LEXIS 4376, at \*16 (“[T]he candor and forthrightness of [individuals making these filings] is critical to the effectiveness of this screening process.”); *Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at \*19 (Nov. 9, 2012) (stating that “FINRA ‘cannot investigate the veracity of every detail in each document filed with it, [and] must depend on its members to report to it accurately and clearly in a manner that is not misleading.’”).

<sup>485</sup> *McCune*, 2016 SEC LEXIS 1026, at \*10-12.

<sup>486</sup> *Mathis*, 2009 SEC LEXIS 4376, at \*16 (“Every person submitting a Form U4 has the obligation to ensure that the information provided on the form is true and accurate.”) (citations omitted); *Craig*, 2008 SEC LEXIS 2844, at \*15 (a registered representative “cannot shift his responsibility to comply with NASD Rules to his firm”).

<sup>487</sup> *Neaton*, 2011 SEC LEXIS 3719, at \*23.

<sup>488</sup> *Mathis*, 2009 SEC LEXIS 4376, at \*27-28. *See also Guang Lu*, Exchange Act Release No. 51047, 2005 SEC LEXIS 117, at \*22 (Jan. 14, 2005) (Respondent maintained that his new broker-dealer employer “advised him not to

update it, also violates FINRA Rule 2010, which requires firms and associated persons to observe high standards of commercial honor and just and equitable principles of trade.<sup>489</sup>

## A. Spartan’s Disclosure Failures (Cause One)

We address first Spartan’s failures to disclose or timely disclose arbitration filings and arbitration dispositions. Then we discuss its failures to disclose written customer complaints followed by the Firm’s failure to timely disclose 51 financial events of its registered representatives.

### 1. Spartan Failed to Disclose 159 Arbitration-Related Events

#### a. Disclosure Standards and Guidance

The Panel finds that the language of Form U4 and the Explanation of Terms, including an example provided in the Form U4 FAQ, require disclosure of the arbitrations at issue. Form U4 and Form U5 require disclosure of an “investment-related consumer-initiated arbitration” when a registered representative is named as a respondent, or is the subject of a claim, and the statement of claim alleges that the registered representative was “involved in one or more sales practice violations.”<sup>490</sup>

A “sales practice violation” includes “any conduct directed at or involving a customer which would constitute a violation of: any rules for which a person could be disciplined by any *self-regulatory organization*; any provision of the Securities Exchange Act of 1934; or any state statute prohibiting fraudulent conduct in connection with the offer, sale or purchase of a security or in connection with the rendering of investment advice.”<sup>491</sup> The term “involved,” as used in Form U4 and Form U5, specifically includes a failure to supervise; it is defined as “doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or *failing reasonably to supervise* another in doing an act.”<sup>492</sup>

The language of Form U4 and Form U5 requires disclosure when a statement of claim *alleges* that a respondent has failed to supervise. This obligation to disclose is made clear in the

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disclose the discharge [from a previous broker-dealer] on the Form U-4 because the matter was pending. However, a registered representative is responsible for his actions and cannot shift that responsibility to the firm or his supervisor.”), *aff’d*, 179 F. App’x 702 (D.C. Cir. 2006); *Allen Holeman*, Exchange Act Release No. 86523, 2019 SEC LEXIS 1903, at \*29 (July 31, 2019) (holding that “delegation of responsibility for filing Form U4 to another employee or department at an applicant’s firm does not eliminate the applicant’s obligation to make certain that appropriate filings were made.”) (internal quotation marks omitted), *petition for review denied*, 833 F. App’x 485 (D.C. Cir. 2021).

<sup>489</sup> *Neaton*, 2011 SEC LEXIS 3719, at \*16.

<sup>490</sup> CX-9, at 13-14; CX-10, at 6-7.

<sup>491</sup> CX-11, at 3 (emphasis in original).

<sup>492</sup> CX-11, at 2, 5 (emphasis added).

Form U4 FAQ, Question 4, which addresses Question 14I(1) of Form U4 and when a firm executive must disclose an arbitration.<sup>493</sup> Much of the evidence presented at the hearing centered on the meaning and application of Question 4 of the Form U4 FAQ, set forth below:

Q4: If an arbitration claim names several registered persons as respondents, and the statement of claim contains allegations of sales practice violations, but does not specifically allege that each respondent was involved in a violation, which respondents should answer “Yes” to Question 14I(1)(a)? For example, if the statement of claim alleges that a broker engaged in churning and that his office manager should have been overseeing the broker’s activities, and the persons named as respondents are the broker and his branch manager, as well as the compliance director and the president of the broker/dealer, who should report?

A: The broker and his branch manager should answer “Yes” to Question 14I(1)(a), but the compliance director and the president may answer “No.” A registered person must report an arbitration under Question 14I(1)(a) if he is named as a respondent and the statement of claim alleges that he was involved in one or more sales practice violations. Because the statement of claim alleges no sales practice violation by the compliance director or the president, they are not required to report the arbitration, even though they are named as respondents.

The terms “involved” and “sales practice violations” are defined to clarify reporting obligations. The term “involved” includes both doing an act and failing reasonably to supervise another in doing an act. The term “sales practice violations” includes any conduct directed at or involving a customer that would constitute a violation of an SRO rule for which a person could be disciplined; any provision of the Securities and Exchange Act of 1934; or any state statute prohibiting fraudulent conduct in connection with the offer, sale or purchase of a security or in connection with the rendering of investment advice, and thus includes churning. Thus, the broker and the branch manager must report the arbitration.

It is not necessary that a statement of claim use precise legal terminology. The fact that the claim does not use the legal term “failing reasonably to supervise” does not alleviate the branch manager’s obligation to report. *The allegation that the manager should have been overseeing a broker’s activities is sufficient to trigger reporting.* Firms and registered persons should review each claim on a case-by-case basis and make a good faith determination as to whether reporting is required.<sup>494</sup>

The plain language of Form U4 and Form U5, together with the defined terms and the Form U4 FAQ, obligates persons to disclose an arbitration that makes an allegation of a failure

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<sup>493</sup> CX-12, at 7.

<sup>494</sup> CX-12, at 7 (emphasis added). The Form U4 FAQ was originally posted in February 1998 and last revised in September 1999.

to supervise a broker allegedly engaged in sales practice violations. In the Form U4 FAQ hypothetical, the branch manager who allegedly “should have been overseeing the broker’s activities,” is required to report the arbitration because not only is he a named respondent, but the statement of claim alleges that he failed to supervise.

Also in the hypothetical, the firm president and compliance director are named as respondents, but because the statement of claim does not allege that they failed to supervise or personally committed a sales practice violation, they are not required to disclose the arbitration. Based on this hypothetical, therefore, the president and compliance director would have to disclose only if they had been named as respondents *and* the statement of claim alleged that they failed to supervise the broker (which is a “sales practice violation” for Form U4 purposes).

While Respondents concede that they were required to disclose arbitrations that alleged sales practice violations against the Firm’s registered representatives, they dispute that they had to disclose arbitrations and dispositions naming Lowry, Monchik, and other executive officers. Respondents argue that Form U4, when read together with FINRA’s available guidance, does not obligate them to disclose arbitrations against Firm executives for alleged supervision failures or that allege what Respondents characterize as general, rather than specific, allegations.<sup>495</sup> They argue that the claims must have a “factual basis” to be reportable.<sup>496</sup> They add that because Lowry and Monchik were not involved in the securities transactions or the customers’ accounts, they were not involved in a sales practice violation. “Rather, in almost all cases,” they argue, Lowry and Monchik “were named in the subject arbitrations solely because they are the CEO and/or CCO of Spartan” and “these arbitrations are not reportable.”<sup>497</sup>

Respondents rely on the Form U4 FAQ hypothetical above to justify not disclosing arbitrations with allegations of a failure to supervise. They argue that such an allegation is not reportable because in the cited Form U4 FAQ only the branch manager (besides the broker) must disclose the arbitration. The language of the last paragraph of the hypothetical, they insist, allows them to review arbitrations on a “case-by-case basis” and apply “good faith” in determining whether an arbitration alleging supervisory failures needs to be disclosed.<sup>498</sup>

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<sup>495</sup> Respondents’ Post-Hearing Memorandum of Law (“Resp’ts Post-Hr’g Mem.”) 14-15.

<sup>496</sup> Resp’ts Post-Hr’g Mem. 15.

<sup>497</sup> Resp’ts Post-Hr’g Mem. 3. Respondents also argue they did not have to report about half of the arbitrations at issue because they were filed by a non-lawyer “ambulance chasing firm” run by a barred registered representative. *Id.* There is no exception to reporting arbitrations that are filed by non-attorneys.

<sup>498</sup> *Id.* at 4. Respondents rely on the hearing testimony of a Director in Disclosure Review to support their assertion that arbitration respondents can, on a case-by-case basis, apply a good-faith determination in deciding whether to disclose. *Id.* at 4-5. The Hearing Panel finds that Respondents misconstrue the witness’s testimony. The Director testified clearly that if a named respondent is alleged to have failed to supervise the conduct, then “that would be a specific allegation that would require disclosure .... [T]he expectation is, clearly, they would need to disclose.” Tr. 603. Only when given a hypothetical in which a claim describes a CEO as having broad supervisory duties over a firm, and no specific failure to supervise the account representative, did the witness testify that applying good faith might be appropriate. Tr. 604-05. The Panel finds that the witness’s testimony was consistent with Form U4 FAQ. It

There is no basis to invoke “good faith” in a determination of which arbitrations to disclose when the statement of claim specifically alleges Lowry’s and Monchik’s failures to supervise.<sup>499</sup> The cited hypothetical in the Form U4 FAQ provides for a “good faith” determination of whether an arbitration must be disclosed only when the allegations use inexact terms. The Form U4 FAQ instructs that a statement of claim does not need to use “precise legal terminology.”<sup>500</sup> A claim alleging involvement in a sales practice violation by unmistakably asserting that a respondent, such as Lowry and Monchik, “failed to supervise” triggers a reporting obligation.

Even though applying “good faith” is irrelevant in this context, Respondents have failed to produce credible evidence that they acted in such a manner. Lowry testified that he never made a disclosure decision himself but left the determination to others.<sup>501</sup> Respondents repeatedly ignored warnings from FINRA staff—first Disclosure Review, then Member Supervision, and finally Enforcement itself—that they had to disclose the arbitrations at issue.

The Form U4 FAQ also makes it clear that it is the *allegation* of involvement in a sales practice violation in the statement of claim that triggers the obligation to disclose.<sup>502</sup> Conversely, disclosure is not required where the statement of claim alleges no sales practice violation.<sup>503</sup> Respondents wrongly argue that the Form U4 FAQ provides that disclosure under Question 14I of Form U4 turns on whether an arbitration respondent is in fact a day-to-day supervisor as opposed to an executive of a firm.<sup>504</sup> But the Form U4 FAQ does not state this. Instead, it requires disclosure when the *allegations* assert that an arbitration respondent was involved in a sales practice violation, which includes a failure to supervise.<sup>505</sup> Disclosure, therefore, is determined by the allegations made in the claim, and not on a respondent’s view of the allegations or belief that they are factually impossible.

In a case with similar facts, a FINRA hearing panel in a disciplinary proceeding found that a respondent willfully violated Article V, Section 2(c) of FINRA’s By-Laws and FINRA Rules 1122 and 2010 for not disclosing, and not disclosing timely, arbitrations on his

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permits a firm to make a good-faith determination only when allegations use imprecise legal terminology about a named respondent’s involvement in a sales practice violation. In its review of the record, the Panel found no instances where the allegations used imprecise legal terminology permitting a good faith determination by the firm. The Panel finds the Director’s testimony credible and consistent with FINRA’s published guidance.

<sup>499</sup> The only reference to “good faith” in Form U4 itself and in Form U5 is in connection with a firm’s determination whether damages not expressly stated in a written customer complaint are less than \$5,000. *See* CX-9, at 14, 29; CX-10, at 14.

<sup>500</sup> CX-12, at 7.

<sup>501</sup> Tr. 659-63.

<sup>502</sup> CX-12, at 7.

<sup>503</sup> *See* CX-12, at 7.

<sup>504</sup> Resp’ts Post-Hr’g Mem. 3.

<sup>505</sup> *See* CX-9, at 13; CX-11, at 3.

Form U4.<sup>506</sup> The respondent in that case was the firm’s majority owner, president, and CCO. There, the arbitrations at issue claimed the respondent failed to supervise brokers who allegedly committed sales practice violations, including fraud, excessive and unauthorized trading, and unsuitable investments.<sup>507</sup> The hearing panel held that it is the allegations in a claim that trigger a reporting obligation.<sup>508</sup> Citing the Explanation of Terms, the hearing panel found that the respondent was “involved” in the sales practice violations because the statements of claim alleged that he failed to supervise brokers, just as the arbitrations at issue here allege that Lowry, Monchik, and other Firm executives failed to supervise brokers.<sup>509</sup>

The Panel thus finds that Form U4 and Form U5, when read together with the definitions in the Explanation of Terms and the Form U4 FAQ, require the disclosure of arbitrations alleging that an executive failed to supervise a broker. This includes cases in which the executive arguably had no direct supervisory obligation over the broker.

### **b. Respondents’ Other Arguments**

Respondents also argue that they did not have to disclose arbitrations withdrawn by the claimant.<sup>510</sup> However, the Form U4 FAQ states that disclosure is required even when a customer later withdraws a claim as part of a settlement agreement.<sup>511</sup> Lowry testified, for example, that he did not have to disclose the GDE arbitration because even though there was a settlement, the customer withdrew the claim.<sup>512</sup> But based on the Form U4 FAQ, Lowry should have disclosed both the arbitration and the settlement agreement. Allowing a respondent to not disclose an arbitration when the claimant agreed to withdraw the claim as part of a settlement would undermine the purpose of requiring disclosure of customer complaints.

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<sup>506</sup> See *Dep’t of Enforcement v. Otalvaro*, No. 2008011725901, 2011 FINRA Discip. LEXIS 39 (OHO June 24, 2011) (finding that respondent willfully failed to disclose seven arbitration filings and five related settlements and violated NASD Rule IM-1000-1, the predecessor to FINRA Rule 1122).

<sup>507</sup> *Id.* at \*6-7.

<sup>508</sup> *Id.* at \*12.

<sup>509</sup> *Id.* at \*11.

<sup>510</sup> Resp’ts Post-Hr’g Mem. 9-10, 12.

<sup>511</sup> The Form U4 FAQ states:

Q2: What if a customer withdraws an arbitration claim against a named particular respondent as part of a settlement of ... \$15,000 or more on or after 5/18/09?

A: The registered person should answer “Yes” to Question 14I(1)( c) or (d), as appropriate. The registered person should report in items 14-16 of the DRP that the claim was settled and in item 24 that the claim against him was withdrawn as part of the settlement and that no contribution was made to the settlement.

CX-12, at 6.

<sup>512</sup> Tr. 820-21.

Respondents concede that Spartan made untimely disclosures of dozens of arbitrations and dispositions against non-executive registered representatives.<sup>513</sup> Spartan presented no evidence that justifies the untimely disclosures. All the claims against non-executive registered representatives alleged their direct involvement with customers in sales practice violations—typically churning, making unsuitable recommendations, or engaging in unauthorized trading.

### **c. Conclusion**

Accordingly, the Panel finds that in 159 instances Spartan failed to amend, or timely amend, the Forms U4 and Forms U5 of its registered representatives, including those of its executive officers, Lowry, and Monchik, to disclose the filing of arbitrations and dispositions of arbitrations. Specifically, in 60 instances, Spartan failed to disclose an arbitration filing and, in 55 instances, disclosed it late.<sup>514</sup> In 19 instances, Spartan did not disclose the disposition of an arbitration and in 25 instances it made the disclosure late.<sup>515</sup>

## **2. Spartan Failed to Disclose, or Timely Disclose, Nine Written Customer Complaints and One Settlement**

### **a. Disclosure Standards for Customer Complaints**

At the hearing, Enforcement identified and proved that Spartan failed to disclose eight written customer complaints and that it disclosed one written complaint 949 days late. It also proved that, as it alleges in the Complaint, Spartan settled one of the written complaints without reporting it on the broker's Form U4.<sup>516</sup>

As discussed above, Form U4 requires registered representatives and firms to disclose written customer complaints (as opposed to arbitrations) under certain circumstances. Questions 14I(2) and 14I(3) ask whether the registered representative has been the subject of a written complaint (other than an arbitration) alleging that the registered representative was involved in a sales practice violation and containing a claim for damages of at least \$5,000. If the customer alleges no damage amount, the complaint is reportable unless the firm has made a good-faith determination that the damages would be less than \$5,000. Question 14I(2) requires the disclosure of a settlement for \$15,000 or more of a customer complaint alleging a sales practice violation.<sup>517</sup>

The written complaints made allegations that constitute a “sales practice violation,” as the term is defined in the Explanation of Terms. Each of the allegations would, at a minimum,

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<sup>513</sup> Tr. 2217-20; Resp'ts Post-Hr'g Mem. 10-13.

<sup>514</sup> CX-1, at 11; CX-393, at 9.

<sup>515</sup> CX-1a, at 7; CX-394, at 6.

<sup>516</sup> Compl. ¶¶ 81-82; CX-5; CX-400.

<sup>517</sup> CX-9, at 14.

constitute a violation of rules for which a person could be disciplined by a self-regulatory organization.<sup>518</sup> Enforcement proved that each of the nine complaints was for at least \$5,000 in damages, the threshold for triggering an obligation to disclose, and the undisclosed settlement was for more than \$15,000. Some customers stated the damage amount in their complaint. In other cases, Enforcement’s examiner credibly calculated the implied damages using customer and Firm documents. In one instance, Spartan itself identified the damages amount in its Rule 4530 filing.

### **b. Respondents’ Arguments**

Respondents argue that the nine written complaints did not have to be reported because the Firm determined they did not constitute a reportable complaint, or they were withdrawn.<sup>519</sup>

For instance, Spartan claims that it did not have to disclose customer PJ’s written complaint about a broker because it “was retracted and deemed not reportable.”<sup>520</sup> The relevant Form U4 FAQ states that a written complaint later withdrawn by the customer must be reported “regardless of whether the customer withdraws the complaint even if the withdrawal is received within 30 days of receipt of the original complaint and prior to disclosure to CRD.”<sup>521</sup> Accordingly, Spartan should have disclosed customer PJ’s complaint on the broker’s Form U4.

Respondents focus their attention on three of the four written complaints that did not specify a damage amount (from customers CS, PD, and GJ). They argue that the Panel should not find that Spartan failed to disclose these written complaints because “there was no definitive testimony by anybody at FINRA that they had actually ever done any real calculations in advance of the hearing as to whether these were reportable events.”<sup>522</sup>

The Panel rejects this argument. Enforcement’s examiner testified credibly about how she calculated damages or confirmed calculations made first by others in the instances in which a customer did not identify damage amounts in the written complaint.<sup>523</sup> In contrast, Respondents did not provide evidence supporting their contention that Spartan made good-faith determinations that the complaints were for damages below \$5,000.

### **c. Conclusion**

The Panel finds that Spartan failed to disclose eight investment-related written customer complaints alleging a sales practice violation that asserted at least \$5,000 in damages and that it

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<sup>518</sup> CX-11, at 3.

<sup>519</sup> Resp’ts Post-Hr’g Mem. 9.

<sup>520</sup> *Id.*

<sup>521</sup> CX-12, at 10.

<sup>522</sup> Resp’ts Post-Hr’g Mem. 9 n.1. *See also* Tr. 2215-16 (Respondents’ closing argument); CX-5; CX-400.

<sup>523</sup> Tr. 171-80, 277-86.

disclosed one written complaint 949 days late. The Panel also finds that Spartan failed to disclose a settlement for at least \$15,000 with one of the complaining customers.<sup>524</sup>

### **3. Spartan Failed to Timely Disclose 51 Financial Events**

#### **a. Disclosure Requirements**

Unsatisfied judgments and liens and bankruptcies must be reported on a Form U4. Question 14M of the Form U4 requires firms and registered representatives to report an unsatisfied judgment and lien. It asks, “Do you have any unsatisfied judgments or liens against you?” Question 14K(1) obligates a registered representative to disclose bankruptcy filings. It asks, “Within the past 10 years ... have you made a compromise with creditors, filed a bankruptcy petition or been the subject of an involuntary bankruptcy petition?”<sup>525</sup>

The Complaint alleges that Spartan failed to timely disclose 51 financial events (50 judgments and liens and one bankruptcy filing) for its registered representatives after it received notice of them.<sup>526</sup> In all but five instances, Spartan learned from FINRA that it had failed to report an event.<sup>527</sup> In most cases, in addition to identifying the broker, FINRA or a third-party vendor disclosed the amount of the judgment or lien, the creditor, the jurisdiction, and the date it was recorded.<sup>528</sup> In two instances—one involving a bankruptcy petition and the other a civil judgment—the brokers themselves had promptly informed Spartan of the events.<sup>529</sup>

#### **b. Respondents’ Arguments**

Spartan does not dispute that it failed to timely disclose the 51 financial events on its registered representatives’ Forms U4.<sup>530</sup> It argues, however, that its tardiness was reasonable under the circumstances. In their Answer, Respondents stated that Spartan “made reasonable efforts to obtain information on its brokers and reported matters for which they were apprised.”<sup>531</sup> They argue that Spartan used “an evolving process over time” employing different sources and methodologies to get information on its brokers’ judgments and liens.<sup>532</sup>

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<sup>524</sup> CX-5; CX-400.

<sup>525</sup> CX-9, at 14.

<sup>526</sup> Compl. ¶¶ 84-89, 101. *See also* CX-4; CX-399.

<sup>527</sup> CX-4; CX-399.

<sup>528</sup> CX-4; CX-339, at 5-10; CX-399.

<sup>529</sup> CX-4; CX-399.

<sup>530</sup> Tr. 2208-09 (Referring generally to Spartan’s obligations to report events concerning its brokers, Respondents concede that the Firm “had problems with some of the reporting with regard to brokers several years back,” and “[t]here were a large number of matters that were not getting timely reported.”).

<sup>531</sup> Ans. 28 (Brief Counterstatement of Fact).

<sup>532</sup> Resp’ts Post-Hr’g Mem. 5-6.

The Firm contends that FINRA had alerted it to so many potential disclosure events in its July 2019 Rule 8210 letter that it took the Firm a long time to disclose them. Spartan also argues that it took corrective action by hiring a compliance assistant in early 2019. This, however, ignores the fact that many disclosures were still made untimely after the compliance assistant joined the Firm—some as late as 2020.<sup>533</sup>

Spartan repeats Monchik’s defense that it must first “confirm the accuracy of the [judgment and lien] information before it can be reported.”<sup>534</sup> Our precedents do not support the argument that Spartan was obligated to research the financial event before amending a broker’s Form U4. FINRA has rejected similar defenses that a financial event need not be disclosed—and that an associated person is not on notice of it—until the fact of its existence is confirmed.<sup>535</sup> Also, in *Department of Enforcement v. Elgart*, FINRA’s National Adjudicatory Council (“NAC”) rejected the respondent’s defense that he was absolved from reporting a tax lien because he could not be sure of its existence or the amount.<sup>536</sup> The NAC noted that the respondent could have chosen to explain in the DRP comment section on Form U4 any disputes he may have had about the liens, and that “any such disputes did not excuse his basic obligation to disclose the liens on Form U4.”<sup>537</sup> In another case, the SEC rejected a respondent’s defense that he had a right to withhold disclosure of judgments and liens on his Form U4 so long as he was still contesting them.<sup>538</sup>

### c. Conclusion

The Hearing Panel finds that Spartan failed to timely disclose 51 financial events on the Forms U4 of its registered representative—specifically, 50 judgments and liens and one bankruptcy petition filing.<sup>539</sup>

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<sup>533</sup> CX-4; CX-399.

<sup>534</sup> Resp’ts Post-Hr’g Mem. 8.

<sup>535</sup> See *Dep’t of Enforcement v. Holeman*, No. 2014043001601, 2018 FINRA Discip. LEXIS 12, at \*15-16 (NAC May 21, 2018) (rejecting respondent’s defense that he “did not actually have knowledge of [federal tax liens] until he confirmed their existence” by obtaining copies of the recorded liens at the county clerk’s office), *aff’d*, Exchange Act Release No. 86523, 2019 SEC LEXIS 1903 (July 31, 2019), *petition for review denied*, 833 F. App’x 485 (D.C. Cir. 2021).

<sup>536</sup> *Elgart*, 2017 FINRA Discip. LEXIS 9, at \*16-17 n.8 (finding that respondent willfully failed to disclose five federal and state tax liens).

<sup>537</sup> *Id.*

<sup>538</sup> See *Tucker*, 2012 SEC LEXIS 3496, at \*23 n.44.

<sup>539</sup> CX-4; CX-399.

## **B. Lowry’s and Monchik’s Disclosure Failures (Causes Two and Three)**

### **1. Lowry Failed to Disclose 38 Arbitration-Related Events**

Cause two of the Complaint alleges that Lowry failed to disclose 38 reportable arbitration-related events on his Form U4 involving 27 arbitration claims.<sup>540</sup> Specifically, it alleges that he failed to disclose 22 arbitration filings and disclosed four arbitrations late.<sup>541</sup> He also never disclosed the disposition of eight arbitrations and in four instances disclosed the disposition of an arbitration late.<sup>542</sup>

#### **a. Arbitrations Alleging Lowry Was Directly Involved in Sales Practice Violations**

The Complaint alleges that in six of the arbitrations at issue the claimant asserted that Lowry was the registered representative on the customer’s account or was directly involved in the sales practice violations, rather than having failed to reasonably supervise a broker.<sup>543</sup>

In five of the arbitrations, Lowry was a named respondent. The claims alleged that he engaged in unauthorized trading (customer CH), participated in the fraudulent churning of accounts (customers RS and RJW), or recommended unsuitable securities (customers RIF and GDE).<sup>544</sup> Each of the claims was filed by a Spartan customer and was therefore “consumer-initiated.” Each alleged that Lowry was “involved,” as the term is used in Form U4, which includes “doing an act,” according to the Explanation of Terms. Each of the claims makes allegations that meet the definition of a “sales practice violation” because they allege, at a minimum, misconduct by Lowry that would constitute a violation of rules for which he could be disciplined by a self-regulatory organization—namely FINRA. Lowry never disclosed two arbitrations (RS and RIF), disclosed two late (TW and GDE) and untimely disclosed a settlement in one arbitration (CH).<sup>545</sup>

In the arbitration that Spartan initiated in the AAA forum against SFH, a Firm investment banking client, SFH did not name Lowry as a respondent in the counterclaim, but he was the subject of its allegations against Spartan. Question 14I(5) of Form U4 requires disclosure when a person is the subject (rather than a named respondent) of an investment-related, consumer-initiated arbitration claim or civil action alleging the person was involved in a sales practice violation and seeking damages of at least \$5,000.<sup>546</sup> (SFH asserted \$5 million in damages.) Even

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<sup>540</sup> Compl. ¶¶ 35-37, 108, 116.

<sup>541</sup> Compl. ¶¶ 41-42.

<sup>542</sup> Compl. ¶¶ 45-49, 111-116.

<sup>543</sup> Compl. ¶ 38.

<sup>544</sup> CX-129; CX-135; CX-136; CX-142; CX-149.

<sup>545</sup> CX-1b; CX-395.

<sup>546</sup> CX-9, at 14.

though SFH did not maintain an account with Spartan, it was a consumer, or customer, of Spartan for purposes of Form U4.<sup>547</sup>

SFH's counterclaim alleged that Lowry was involved in a sales practice violation because it asserted that he knowingly made material misrepresentations and omissions of fact to manipulate the price of SFH securities.<sup>548</sup> These claims therefore alleged misconduct by Lowry for which he could be disciplined by FINRA or other securities regulators. The Panel finds that Lowry should have timely disclosed the SFH arbitration. Lowry disclosed the arbitration, but did so 470 days late.

#### **b. Arbitrations Alleging That Lowry Failed to Supervise**

The remaining arbitrations allege that Lowry failed to reasonably supervise brokers. For the reasons we discussed above concerning Spartan's failures to disclose arbitrations alleging supervision failures by its executives, we find that Lowry was obligated to disclose the arbitration filings and the dispositions of arbitrations that alleged he failed to supervise.

The Panel has reviewed each of the statements of claim. Each claim explicitly and clearly alleged that Lowry failed to supervise one or more brokers who allegedly committed a sales practice violation. We discussed some of the claims above. They assert, for example, that Lowry "failed to supervise" or "failed to adequately supervise"<sup>549</sup> the actions of Spartan's brokers.

The arbitrations naming Lowry resulted in 12 reportable awards and settlements totaling more than \$1.6 million.<sup>550</sup> Lowry was a party to all the settlements and awards. The largest award was for \$330,000 and the largest settlement was for \$300,000, both of which he disclosed untimely. He never disclosed eight of the awards and settlements and disclosed four untimely—between 164 and 578 days late.<sup>551</sup>

Accordingly, the Panel finds, as alleged in cause two, that Lowry failed to disclose or timely disclose 38 arbitration-related events.<sup>552</sup> Specifically, in 22 instances, Lowry did not disclose an arbitration and in four instances he disclosed it untimely.<sup>553</sup> In eight other instances,

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<sup>547</sup> "Cases interpreting the term 'customer' in the securities context have viewed the term broadly to encompass individuals or entities that have some brokerage or investment relationship with the broker-dealer." *Dep't of Enforcement v. Zayed*, No. 2006003834901, 2010 FINRA Discip. LEXIS 13, at \*18 (NAC Aug. 19, 2010) (rejecting respondent's defense that Question 14I of Form U4 did not require that he disclose the filing of a civil complaint against him because the plaintiff did not have an account at his firm).

<sup>548</sup> CX-139, at 23.

<sup>549</sup> *See, e.g.*, CX-122, at 10; CX-123, at 2; CX-127, at 8; CX-141, at 8; CX-145, at 4.

<sup>550</sup> CX-1b; CX-395.

<sup>551</sup> CX-1b; CX-395.

<sup>552</sup> CX-1b; CX-395.

<sup>553</sup> CX-1b; CX-395.

he did not disclose the disposition of an arbitration. In four cases, he disclosed the disposition of an arbitration untimely.<sup>554</sup>

## 2. Monchik Failed to Disclose 15 Arbitration-Related Events

Cause three of the Complaint alleges that Monchik failed to disclose 15 arbitration-related events.<sup>555</sup> It asserts that she was named as a respondent in 12 arbitrations (each of which also named Lowry) alleging that she failed to supervise one or more registered representatives who committed sales practice violations.<sup>556</sup> Monchik failed to disclose 11 arbitrations and untimely disclosed one arbitration 562 days late, according to the Complaint.<sup>557</sup> Three arbitrations resulted in two settlements and one award. Each settlement exceeded the \$15,000 threshold required for disclosure. Monchik never disclosed the two settlements, and she disclosed the award late, according to the Complaint.<sup>558</sup>

The Panel has reviewed the arbitration claims against Monchik, each of which alleges that she failed to supervise. We discussed above some of the claims. The claims each alleged that Monchik had “supervisory responsibility over”<sup>559</sup> or “failed to supervise”<sup>560</sup> one or more brokers. The claims therefore allege that Monchik was involved in a sales practice violation by failing to reasonably supervise a broker.

For the same reasons we stated above concerning Spartan’s failures to disclose arbitrations alleging supervision failures by its executives, we find that Monchik was obligated to disclose the arbitration filings and dispositions of arbitrations identified in the Complaint.

Accordingly, the Panel finds, as alleged in cause three, that in 11 instances Monchik did not disclose an arbitration filing and in one instance she untimely disclosed one arbitration.<sup>561</sup> We also find that Monchik did not disclose dispositions of two arbitrations and in one case she made the disclosure late.<sup>562</sup>

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<sup>554</sup> CX-1b; CX-395.

<sup>555</sup> Compl. ¶ 51.

<sup>556</sup> Compl. ¶¶ 51-52.

<sup>557</sup> Compl. ¶¶ 54-56.

<sup>558</sup> Compl. ¶¶ 57-62.

<sup>559</sup> *See, e.g.*, CX-123, at 3; CX-124, at 3; CX-126, at 3; CX-130, at 3.

<sup>560</sup> *See, e.g.*, CX-133, at 14; CX-140, at 8; CX-140, at 8; CX-143, at 12.

<sup>561</sup> CX-1c; CX-396.

<sup>562</sup> CX-1c; CX-396.

### C. Respondents Acted Willfully and Are Statutorily Disqualified

The Panel finds that Respondents are statutorily disqualified because they acted willfully, and the undisclosed arbitrations are material. Statutory disqualification applies equally to member firms and individuals.<sup>563</sup> FINRA’s By-Laws provide that a person is subject to a statutory disqualification, as defined in Section 3(a)(39) of the Securities Exchange Act of 1934 (“Exchange Act”), if the person has:

willfully made or caused to be made in any application for membership or participation in, or to become associated with a member of, a self-regulatory organization . . . any statement which was at the time, and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application . . . any material fact which is required to be stated therein.<sup>564</sup>

This provision applies to a person who has willfully provided false statements on a Form U4 with respect to a material fact or who has willfully failed to amend a Form U4 with material information that is required to be stated on the Form U4.<sup>565</sup> A person is subject to disqualification with respect to membership or association with a member pursuant to Article III, Section 4 of FINRA’s By-Laws.

#### 1. Respondents Acted Willfully

The Panel finds that Spartan knowingly and intentionally elected to not disclose customer arbitrations and dispositions of arbitrations against its executive officers, including Lowry and Monchik, by amending their Forms U4. Lowry and Monchik knowingly failed to amend their own Forms U4 to disclose the arbitrations and dispositions of arbitrations. Respondents do not argue that they did not know about the arbitrations or that they were negligent in not making the disclosures. Instead, they admit that they made a deliberate decision not to disclose the arbitrations because they concluded they did not have to do so. Respondents’ voluntary actions not to disclose the arbitrations constitute willfulness.

Willfulness does not require an awareness that a person knew he was violating federal laws or regulations. “A willful violation under the federal securities laws simply means ‘that the

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<sup>563</sup> Article III, Section 3(a) of FINRA’s By-Law states “[N]o member shall be continued in membership, if such . . . member is or becomes subject to a disqualification under Section 4 [of Article III of FINRA’s By-Laws].” *See also Dep’t of Enforcement v. The Dratel Grp. Inc.*, No. 2009016317701, 2015 FINRA Discip. LEXIS 10, at \*12-17 (NAC May 6, 2015) (respondent firm was statutorily disqualified under Section 3(a)(39) of the Exchange Act by acting willfully); *Dep’t of Enforcement v. Dakota Sec. Int’l, Inc.*, No. 2016047565702, 2022 FINRA Discip. LEXIS 2 (NAC Mar. 16, 2022) (firm statutorily disqualified for willful violations of recordkeeping rules in Exchange Act Section 17(a) and Exchange Act Rule 17a-3).

<sup>564</sup> 15 U.S.C. § 78c(a)(39)(F).

<sup>565</sup> *See, e.g., McCune*, 2016 SEC LEXIS 1026, at \*13-23 (finding that applicant was statutorily disqualified for willfully failing to amend Form U4).

person charged with the duty knows what he is doing.”<sup>566</sup> “A failure to disclose is willful ... if the respondent of his own volition provides false answers on his Form U4.”<sup>567</sup> A failure to disclose is willful if the registered representative “subjectively intended to omit material information from” required disclosures.<sup>568</sup>

In determining that Respondents acted willfully, the Panel carefully reviewed the evidence. We took notice of a statement Monchik made at the hearing that made clear Respondents’ dismissive attitude towards customer complaints. She testified “I don’t put much faith in arbitrators, if I’m being honest.”<sup>569</sup> We also considered that Respondents made decisions not to disclose even though FINRA had cautioned Spartan that nine arbitrations against Lowry and Monchik needed to be disclosed. Lowry and Monchik were aware of the cautionary actions at the time, yet Respondents did not make the disclosures. Later arbitrations against Lowry and Monchik and other executives made similar allegations—that they were involved in sales practice violations by failing to supervise. Even after FINRA staff filed a Form U6 disclosing two arbitration awards in favor of customers LK and TW against Lowry, Lowry waited 164 and 508 days, respectively, to amend his Form U4 to disclose them.

Lowry and Monchik even failed to disclose arbitrations that made allegations nearly identical to those that they did ultimately disclose. Lowry and Monchik disclosed the LK arbitration 406 and 562 days late, respectively, after a Form U6 was filed for each of them.<sup>570</sup> The statement of claim alleged that Lowry was “responsible for, among other things, the supervision of brokers” at Spartan and “for ensuring that the firm’s clients are treated fairly and according to industry rules and laws.” Monchik, the claim alleged, had “supervisory responsibility over [the broker] and others at the firm.” It also alleged that Lowry and Monchik “failed to adequately supervise the firm’s registered representatives and protect its clients from mismanagement and abusive activity.”<sup>571</sup> But Lowry and Monchik did not disclose five other arbitrations (filed by customers DE, GW, BD, EF, and WC) making the same or similar allegations and using the same language.<sup>572</sup>

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<sup>566</sup> *Tucker*, 2012 SEC LEXIS 3496, at \*24 (quoting *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000)).

<sup>567</sup> *Id.* at \*24-25.

<sup>568</sup> *Holeman*, 2019 SEC LEXIS 1903, at \*38 (finding that respondent’s failure to timely disclose tax liens was willful) (quoting *Robare v. SEC*, 922 F.3d 468, 479 (D.C. Cir. 2019)).

<sup>569</sup> Tr. 1024.

<sup>570</sup> CX-1b; CX-1c; CX-395; CX-396.

<sup>571</sup> CX-126, at 3, 7.

<sup>572</sup> CX-123; CX-124; CX-125; CX-127; CX-130.

Other arbitration claims filed by customers TW and BR included similar language that Lowry had failed to supervise a broker.<sup>573</sup> Lowry ultimately disclosed one of the arbitrations (TW) but never disclosed the other one (BR), even though both asserted the same allegations.<sup>574</sup>

Similarly, Lowry and Monchik did not timely disclose awards and settlements. Customer LK alleged that Lowry and Monchik engaged in sales practice violations by failing to supervise a broker. The arbitration panel found Lowry and Monchik liable, awarded the customer \$41,842, and denied Lowry's and Monchik's expungement requests. After a hearing in another arbitration, the panel awarded customer TW \$330,000, finding Lowry liable. Lowry's request for expungement in that case was also denied.<sup>575</sup> Lowry and Monchik did not disclose these arbitration dispositions until after FINRA filed Forms U6, and their disclosures were not timely.<sup>576</sup>

Lowry and Monchik also did not disclose other arbitrations that alleged they failed to supervise even after reaching large settlements with the claimants. Lowry and Monchik settled the MF and RF claims for \$287,500 and \$40,000, respectively.<sup>577</sup> Lowry settled RM's claim for \$233,000 and WS's claim for \$207,500.<sup>578</sup> Neither Lowry nor Monchik disclosed the filings of the arbitrations or the settlements with these customers.<sup>579</sup>

In an effort to demonstrate that they acted in good faith, and not willfully, Respondents argue that the cautionary action letters "left Spartan with no guidance on how to report arbitrations or what the standard was" because there was "no continuity and no logic behind what" FINRA was doing and FINRA "refused to articulate the discrepancy or standard."<sup>580</sup> They argue that FINRA staff told them "you have to report everything," but claim that FINRA did so "while refusing to explain or analyze the arbitrations individually or their allegations."<sup>581</sup>

The Panel finds this argument lacks any merit. Respondents try to make a case that they received conflicting signals from FINRA staff—for example, they claim to be confused because some arbitrations were the subject of a cautionary action and others were not.<sup>582</sup> The evidence

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<sup>573</sup> Both statements of claim alleged that Lowry "had the power to implement supervisory procedures and supervisory systems and policies of compliance. He knew or should have known about the abuses occurring in Claimant's account, and could have, and should have, acted to prevent them." CX-134, at 6; CX-137, at 5.

<sup>574</sup> CX-1, at 7-8; CX-393, at 6. *See* CX-134; CX-137.

<sup>575</sup> CX-271, at 4.

<sup>576</sup> CX-1a; CX-394.

<sup>577</sup> CX-1a, at 4-5; CX-394, at 3-4.

<sup>578</sup> CX-1a, at 3, 5; CX-394, at 2, 4.

<sup>579</sup> CX-1b; CX-1c; CX-395; CX-396.

<sup>580</sup> Resp'ts Post-Hr'g Mem. 24.

<sup>581</sup> *Id.*

<sup>582</sup> *Id.* at 26-27.

does not support their arguments. We find that FINRA staff was clear about the reportability of the arbitrations at issue. Disclosure Review repeatedly sent Spartan emails highlighting Form U4 FAQ and the Explanation of Terms. It also sent Respondents disclosure letters about multiple undisclosed arbitrations naming Lowry, Monchik, and other Firm executives. Spartan received two cautionary actions about its failure to report arbitrations on Lowry's and Monchik's Forms U4. On three occasions, Disclosure Review filed Forms U6 to disclose arbitrations and dispositions of arbitrations naming Lowry and Monchik.

Furthermore, even if Respondents genuinely did not understand their obligations, our precedents hold that a respondent may not shift responsibility for compliance with applicable rule requirements to FINRA, even where the respondent claims that FINRA failed to respond to inquiries. Indeed, the NAC has held that FINRA is not obligated to inform a member firm that it disagrees with the firm's conclusion about a course of conduct.<sup>583</sup> The NAC has applied this holding to instances when a person seeks guidance from FINRA about Form U4 reporting obligations but receives no response.<sup>584</sup> The NAC has concluded "It is well-settled ... that FINRA members and associated persons are solely responsible for their knowledge of and compliance with FINRA's rules."<sup>585</sup>

Respondents also assert as a defense that they relied in good faith on the advice of counsel.<sup>586</sup> This defense is fatally deficient. To establish such a defense, Respondents must show that they made complete disclosure to counsel, sought advice as to the legality of the conduct, received advice that the intended conduct was legal, and relied on that advice in good faith.<sup>587</sup> The evidence here is that Respondents did not make complete disclosure to their attorneys. They did not tell them at the time that Spartan had received cautionary actions about its failure to disclose arbitrations involving its executives. And at least one attorney believed that FINRA staff

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<sup>583</sup> See *Dep't of Enforcement v. Merrimac Corp. Sec., Inc.*, No. 2007007151101, 2012 FINRA Discip. LEXIS 43, at \*21-22 (Bd. of Governors May 2, 2012) (firm cannot use FINRA's silence as approval to conduct lines of business not permitted under its membership agreement) (citing *Dep't of Enforcement v. FCS Sec.*, No. 2007010306901, 2010 FINRA Discip. LEXIS 9, at \*18 (NAC July 30, 2010)), *aff'd*, Exchange Act Release No. 64852, 2011 SEC LEXIS 2366 (July 11, 2011) (holding that respondent firm could not shift responsibility to FINRA when FINRA failed to respond to respondent's letter seeking advice about how to structure its activities so as to come within the terms of an exemption from filing audited annual reports). See also *Apex Fin. Corp.*, Exchange Act Release No. 16749, 1980 SEC LEXIS 1663, at \*5 (Apr. 16, 1980) (rejecting firm's argument that it could assume it was not violating regulatory provisions concerning a private offering because NASD, FINRA's predecessor, did not respond to its request for comments on the offering).

<sup>584</sup> *Dep't of Enforcement v. America First Assoc. Corp.*, No. E1020040926-01, 2008 FINRA Discip. LEXIS 27, at \*17-18 (NAC Aug. 15, 2008) (holding that individual respondent cannot shift responsibility for failing to disclose a federal court action on his Form U4 to FINRA).

<sup>585</sup> *Id.* at 17.

<sup>586</sup> See Ans. 19, 21 (Sixth and Eighteenth Affirmative Defenses); Resp'ts Post-Hr'g Mem. 19.

<sup>587</sup> *SEC v. Markowski*, 34 F.3d 99, 105 (2d Cir. 1994) (rejecting registered representative's advice-of-counsel defense in appeal of SEC decision affirming FINRA's imposition of sanctions) (quoting *SEC v. Savoy Indus., Inc.*, 665 F.2d 1310, 1314 n.28 (D.C. Cir. 1981)).

agreed with his legal opinion because Monchik told him so. Respondents also typically consulted with attorneys after the 30-day period within which to timely make a disclosure had passed, and after Respondents had decided not to disclose an arbitration.

Even if these conditions were present (which they are not), reliance on advice of counsel is not a complete defense but only a factor to consider as to sanctions. At a minimum, Respondents did not rely on the legal advice in good faith. Such purported reliance was not reasonable given FINRA staff's persistent communications about Respondents' disclosure obligations.<sup>588</sup> It is apparent to the Panel that Respondents sought ratification of a broad strategy they adopted to not disclose the arbitrations at issue and avoid compliance with their reporting obligations. We are therefore unpersuaded by their stated reliance on legal advice. "An advice of counsel claim is not mitigating if it is premised on a strategy to avoid full compliance with applicable regulatory requirements."<sup>589</sup>

Respondents were at a minimum reckless when they failed to disclose the arbitrations, and thus they acted willfully.<sup>590</sup> Despite repeated and consistent communications from FINRA staff to disclose the arbitrations and dispositions, Respondents chose to ignore the staff's warnings. Respondents disclosed arbitrations only when compelled to do so after staff filed Forms U6 or when they felt they had no choice—and even then, they did so untimely. Their decision to rely on the Firm's revolving CCOs, outside counsel, and compliance consultants was made at their own risk and reflected a conscious disregard of their disclosure obligations. Respondents' reliance was particularly unreasonable given that FINRA staff's frequent and clear communications spanned six years.

The Panel finds that Respondents acted willfully when they did not disclose the arbitrations and the arbitration dispositions at issue.

## **2. The Undisclosed and Untimely Disclosed Arbitrations Are Material**

Having found that Respondents acted willfully, we turn next to whether the undisclosed and untimely disclosed customer arbitrations were material for purposes of disclosure on the Forms U4 of Spartan's executives, including Lowry and Monchik. We find that they are.

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<sup>588</sup> *Dep't of Enforcement v. Jarkas*, No. 2009017899801, 2015 FINRA Discip. LEXIS 50, at \*54 (NAC Oct. 5, 2015) ("While reasonable reliance on competent legal advice can be mitigating for purposes of assessing sanctions, such reliance must be *reasonable* and based on *competent* legal advice.") (emphasis in original).

<sup>589</sup> *Dep't of Enforcement v. N. Woodward Fin. Corp.*, No. 2011028500201, 2016 FINRA Discip. LEXIS 35, at \*46 (NAC July 19, 2016) (citing *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141 (Nov. 14, 2008), *petition for review denied*, 347 F. App'x 692 (2d Cir. 2009) (citing *Toni Valentino*, Exchange Act Release No. 49255, 2004 SEC LEXIS 330, at \*12-14 (February 13, 2004))).

<sup>590</sup> *Dep't of Enforcement v. Henderson*, No. 2017053462401, 2022 FINRA Discip. LEXIS 15 (NAC Dec. 29, 2022) (finding that respondent's failure to disclose four tax liens on his Form U4 was "at least extremely reckless" and thus willful).

The standard for materiality is an objective one. A fact is material if there is a substantial likelihood that a reasonable regulator, employer, or customer would have viewed it as significantly altering the total mix of information made available.<sup>591</sup> Information omitted from a Form U4 is material if the “omitted information would have significantly altered the total mix of information made available.”<sup>592</sup> Importantly, the NAC has held that “essentially all of the information that is reportable on the Form U4 may be considered to be material.”<sup>593</sup> The materiality of arbitration information is particularly evident here because disclosure should have been triggered by specific questions on Form U4 addressing arbitrations.

Customer arbitrations and complaints, including settlements, are material because they are important to regulators, investors, and potential employers. FINRA and other regulators need to be made aware of arbitrations promptly because they could be evidence of sales practice violations and supervision problems at a firm necessitating regulatory attention. Multiple arbitrations would generate even greater concern.<sup>594</sup>

Arbitrations could also alert customers to whether they should rely on a broker. A “clean” Form U4 could give customers comfort that a firm is free of sales-related problems and that a firm is diligently supervising its brokers.<sup>595</sup> Arbitrations and complaints that make serious allegations could call into question a registered representative’s fitness to serve in the securities industry.<sup>596</sup> Here, there are multiple failures to disclose by Respondents. Nearly all the arbitrations included serious allegations against Lowry, Monchik, and the Firm’s other executives, which makes disclosure even more necessary in determining their fitness as securities professionals.

We find that Respondents willfully failed to disclose, or timely disclose, arbitrations and dispositions of arbitrations naming Lowry, Monchik, other Firm executive officers, or all these parties. We also find that the arbitration-related information that the Firm failed to disclose

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<sup>591</sup> *N. Woodward Fin. Corp.*, 2014 FINRA Discip. LEXIS 32, at \*17 n.13 (citing *Mathis v. SEC*, 671 F.3d 210, 220 (2d Cir. 2012)).

<sup>592</sup> *Mathis*, 2009 SEC LEXIS 4376, at \*29 n.27 (quoting *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)).

<sup>593</sup> *Dep’t of Enforcement v. Toth*, No. E9A2004001901, 2007 NASD Discip. LEXIS 25, at \*34 (NAC July 27, 2007).

<sup>594</sup> *Otalvaro*, 2011 FINRA Discip. LEXIS 39, at \*14-15.

<sup>595</sup> *Id.* at \*15-16.

<sup>596</sup> See *The Dratel Grp., Inc.*, 2015 FINRA Discip. LEXIS 10, at \*53 (stating that information on a Form U4 is important to member firms and the investing public when deciding whether to hire a broker); *Wedbush Sec., Inc.*, 2014 FINRA Discip. LEXIS 40, at \*58 (“The failure to properly file Forms U4 and U5 harmed both FINRA and the investing public by depriving them of material information.”).

was material and was required to be disclosed on the Forms U4. Accordingly, Spartan, Lowry, and Monchik are subject to statutory disqualification from the securities industry.<sup>597</sup>

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The Hearing Panel finds that Respondents violated Article V, Section 2(c) of FINRA’s By-Laws and FINRA Rules 1122 and 2010. The Panel further finds that Spartan also violated Article V, Section 3(b) of FINRA’s By-Laws. In addition, the Panel finds that Spartan’s failures to disclose related to its executive officers were willful, and Lowry and Monchik also acted willfully.

## VII. Sanctions

In determining the appropriate sanctions, the Panel considered FINRA’s Sanction Guidelines (“Guidelines”), including the General Principles Applicable to All Sanction Determinations (“General Principles”), the Principal Considerations in Determining Sanctions (“Principal Considerations”) applicable to all violations, and the guideline-specific considerations for failing to amend a Form U4 and Form U5.<sup>598</sup> We also considered all relevant facts and circumstances, including the nature of the underlying misconduct, any potentially aggravating and mitigating factors, and the risk of future harm that Respondents pose to the investing public.

### A. Background on FINRA’s Sanction Guidelines

The General Principles explain that disciplinary sanctions “should be designed to protect the investing public by deterring misconduct and upholding high standards of business conduct.”<sup>599</sup> Adjudicators are therefore instructed to “design sanctions that are meaningful and significant enough to prevent and discourage future misconduct by a respondent and deter others from engaging in similar misconduct.”<sup>600</sup> Sanctions should also be “more than a cost of doing business.”<sup>601</sup> They should be “a meaningful deterrent and reflect the seriousness of the

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<sup>597</sup> Statutory disqualification is not a sanction. Rather, it is automatic when a respondent has willfully failed to disclose material information on a Form U4. *See McCune*, 2016 SEC LEXIS 1026, at \*37 (“FINRA does not subject a person to statutory disqualification as a penalty or remedial sanction.”); *Richard Allen Riemer*, Exchange Act Release No. 84513, 2018 SEC LEXIS 3022, at \*28-29 (Oct. 31, 2018) (“[A] person is subject to statutory disqualification by operation of Exchange Act Section 3(a)(39)(F) whenever there has been ... a determination that a person willfully failed to disclose material information on a Form U4.”).

<sup>598</sup> Guidelines at 2-8 (2022), [https://www.finra.org/sites/default/files/Sanctions\\_Guidelines.pdf](https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf). On September 29, 2022, the NAC revised FINRA’s Sanction Guidelines. *See* Regulatory Notice 22-20, <https://www.finra.org/rules-guidance/notices/22-20>. The revised Guidelines “are effective as of the date of publication, and apply to all disciplinary matters, including pending matters.” Guidelines at 8. Accordingly, the Hearing Panel applied the revised Guidelines.

<sup>599</sup> Guidelines at 2 (General Principles Applicable to All Sanction Determinations, No. 1).

<sup>600</sup> *Id.*

<sup>601</sup> *Id.*

misconduct at issue.”<sup>602</sup> Furthermore, adjudicators should impose sanctions “tailored to address the misconduct involved in each particular case.”<sup>603</sup> “[T]o achieve deterrence and remediate misconduct,” the Guidelines permit adjudicators “to impose sanctions that . . . require a respondent firm to retain a qualified independent consultant” to design and/or implement “procedures for improved future compliance with regulatory requirements.”<sup>604</sup>

The Guidelines provide for two ranges of sanctions—one for small firms and one for mid- and large-size firms.<sup>605</sup> The Guidelines state that, when determining sanctions for a firm, sanctions should be “remedial and designed to deter future misconduct, both by the respondent and others, regardless of firm size.”<sup>606</sup> The Guidelines also state that adjudicators “should presumptively apply the guideline range specified for the firm’s size” but should also “consider whether the other range would be more appropriate with a view toward ensuring that the sanctions imposed are remedial and designed to deter future misconduct.”<sup>607</sup>

Besides a firm’s size, other factors to consider in determining whether it would be more appropriate to apply the other sanction range include the firm’s financial resources, the nature of the firm’s business, the number of firm customers, and the level of trading activity at the firm. The Guidelines state that this list of factors is illustrative and not exhaustive.<sup>608</sup>

The Guidelines for failing to file and late filing of amendments to Form U4 and Form U5, including filing false, misleading, or inaccurate forms or amendments, by a small firm<sup>609</sup> recommend a fine between \$5,000 and \$77,000. The suggested fine range for a midsize or large firm is \$10,000 to \$200,000. Where aggravating factors predominate, regardless of firm size, adjudicators should consider a higher fine and suspending the firm with respect to the relevant business lines or activities until the firm corrects the deficiency.<sup>610</sup>

For an individual’s registration violations, the Guidelines recommend a fine of \$5,000 to \$20,000, and a suspension in any or all capacities for a period of ten business days to six months.

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<sup>602</sup> *Id.*

<sup>603</sup> *Id.* at 3 (General Principles Applicable to All Sanction Determinations, No. 3).

<sup>604</sup> *Id.*

<sup>605</sup> *Id.*

<sup>606</sup> *Id.*

<sup>607</sup> *Id.* n.3 (General Principles Applicable to All Sanction Determinations, No. 3) (emphasis added). *See also* FINRA Regulatory Notice 22-20, at 2.

<sup>608</sup> Guidelines at 3 n.3 (General Principles Applicable to All Sanction Determinations, No. 3).

<sup>609</sup> The Guidelines, at 3, adopt the definition of firm size set forth in FINRA’s By-Laws. Article I(ww) of the By-Laws defines a “small firm” as a member firm that has at least one and no more than 150 registered persons. The parties agreed that Spartan has 133 registered persons. Compl. ¶ 6; Ans. ¶ 6. Accordingly, the Firm falls within the small firm category.

<sup>610</sup> Guidelines at 55.

Where aggravating factors predominate, adjudicators should consider a longer suspension in any or all capacities of up to two years or, where the respondent intended to conceal information or mislead, a bar.<sup>611</sup>

## **B. Numerous Aggravating and No Mitigating Factors Exist**

We find that numerous aggravating factors and no mitigating factors are present. The violation-specific principal considerations applicable to amendments to Form U4 (and Form U5) are virtually identical for member firms and individuals.<sup>612</sup>

The Panel considered and found aggravating the seriousness of the allegations that customers made in the arbitrations and written complaints.<sup>613</sup> The alleged misconduct includes, in most cases, churning, unauthorized trading, unsuitable recommendations, fraud, and failures to reasonably supervise to prevent the alleged harm customers suffered. This information would be extremely important to investors.

The Panel also considered the number of violations and the dollar value of the arbitrations and complaints not disclosed or disclosed late.<sup>614</sup> Although the disclosure failures involved 49 arbitrations, some arbitrations had multiple claimants and named as respondents more than 60 non-executive registered representatives and 11 executives, including Lowry and Monchik. These facts are aggravating. Spartan did not disclose, or disclosed late, 169 arbitration-related events and events associated with customers' written complaints, including dispositions. It was also late in disclosing 51 financial events against registered representatives after learning of their existence. By any measure, these are large numbers that merit significant sanctions against the Firm. Furthermore, the total dollar value of the settlements and awards in the arbitrations at issue against Spartan and its registered representatives and executive officers (including Lowry and Monchik) exceeds \$1.9 million.<sup>615</sup> The undisclosed written customer complaints together allege damages of more than \$450,000.<sup>616</sup> All of these facts are aggravating.

Concerning Spartan's failure to timely disclose 51 judgments and liens and a bankruptcy, the SEC has held that the existence of unsatisfied liens is "material to the ability of regulators, ... employers, and ... customers to assess [a registered representative's] capability to function as an associated person of a FINRA member firm."<sup>617</sup> The Panel considered the extensive amount of time Spartan took to disclose the judgments and liens and found it aggravating. In 34 of the 51

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<sup>611</sup> *Id.* at 108.

<sup>612</sup> *Id.* at 55, 108.

<sup>613</sup> *Id.* at 55 (Guideline-Specific Consideration No. 1) (the nature and significance of information at issue).

<sup>614</sup> *Id.* (Guideline-Specific Consideration No. 2) (the number, nature, and dollar value of the disclosable events at issue).

<sup>615</sup> CX-1a; CX-394.

<sup>616</sup> CX-5; CX-400.

<sup>617</sup> *Holeman*, 2019 SEC LEXIS 1903, at \*45.

cases, Spartan was more 100 days late reporting a financial event on a broker's Form U4.<sup>618</sup> Some of the undisclosed events involved large dollar amounts. This too is aggravating. The largest—an IRS tax lien—was for more than \$400,000.<sup>619</sup> Some brokers had multiple undisclosed judgments or liens. For example, one broker had four undisclosed tax liens totaling more than \$220,000. Spartan was 266 days late in amending the broker's Form U4 to disclose the liens. Another broker had four tax liens totaling more than \$170,000. Spartan was between 207 and 250 days late in reporting the four liens on the broker's Forms U4.<sup>620</sup>

In determining appropriate sanctions for Lowry and Monchik, the Panel considered that they did not disclose or were late disclosing 38 and 15 reportable customer arbitration events, respectively.<sup>621</sup> The undisclosed sales practice misconduct allegedly committed by brokers under their supervision was serious. Lowry never disclosed 22 arbitrations and eight dispositions of arbitrations. In the few instances when he did disclose an arbitration and a disposition of an arbitration, he was considerably late. The arbitrations in which Lowry was named resulted in awards or settlements that totaled more than \$1.6 million.<sup>622</sup> All of these facts are aggravating. Furthermore, in six arbitrations, Lowry allegedly directly committed serious sales practice violations—including churning of accounts, unauthorized trading, unsuitable recommendations, misrepresentation, and fraud. Lowry never disclosed two of these arbitrations and disclosed three arbitrations untimely—in one case, an astounding 1,118 days late.<sup>623</sup>

Monchik never disclosed 11 arbitrations and two settlements with claimants. She was late in disclosing one arbitration and the award in that arbitration. The arbitrations in which she was named resulted in awards or settlements totaling more than \$360,000, a significant amount that is also aggravating.<sup>624</sup>

The Panel finds that Respondents acted intentionally to conceal the extent and seriousness of the customers' allegations against them, Spartan's registered representatives, and Spartan's executive officers.<sup>625</sup> The Panel finds that they amended Lowry's and Monchik's Forms U4 only when they felt they could no longer withhold disclosure—for example, after the filing of Forms U6 or a Wells notice. These facts too are aggravating.

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<sup>618</sup> CX-4; CX-399.

<sup>619</sup> CX-4; CX-399.

<sup>620</sup> CX-5; CX-400.

<sup>621</sup> Guidelines at 55 (Guideline-Specific Consideration No. 2) (the number, nature, and dollar value of the disclosable events at issue).

<sup>622</sup> CX-1b; CX-395.

<sup>623</sup> CX-1b; CX-395.

<sup>624</sup> CX-1c; CX-396.

<sup>625</sup> Guidelines at 55, 108 (Guideline-Specific Consideration No. 3) (whether the omission of the information or the inclusion of false information was done in an intentional effort to conceal information or in an attempt to mislead).

Also aggravating is that Respondents' misconduct began in 2015 and continues to today—a period of more than eight years.<sup>626</sup> The Panel finds that this is an extraordinarily long time, particularly as Respondents elected to disregard repeated and consistent warnings from FINRA staff. Respondents acted at least with recklessness, which amounts to intentional and knowing misconduct and is aggravating.<sup>627</sup> And, they engaged in a pattern of misconduct that involved repeated violative actions over an extended period.<sup>628</sup> This, too, is aggravating.

Although Enforcement did not present direct evidence of harm to investors or others, the Panel also considered that the undisclosed information—multiple customer arbitrations, significant financial disclosures, and written complaints—was material. In multiple cases involving executives, arbitrations simply were never disclosed. The Firm failed to timely disclose many arbitrations and dispositions against its brokers, too, and in some cases for long periods of time. This deprived customers of valuable information when considering whether to retain the services of the Firm and various brokers. The existence of judgments and liens against registered representatives is also material. Spartan's failure to disclose these events, including a personal bankruptcy, significantly affected the mix of information available to customers in assessing whether to invest their money with Spartan and trust the Firm's registered representatives. The panel finds this aggravating.

The Panel also finds aggravating that Respondents engaged in the misconduct even after receiving warnings, notices, and guidance from FINRA staff.<sup>629</sup> The panel finds it aggravating that Spartan, Lowry, and Monchik disregarded ongoing warnings and the frequent receipt of guidance from FINRA staff and the SEC. FINRA staff sent Respondents multiple disclosure letters about unreported arbitrations and then followed up with cautionary actions and Forms U6 when Respondents failed to correct deficiencies. Also aggravating is the fact that Respondents have not accepted responsibility for the misconduct or acknowledged wrongdoing. Lowry and Monchik have yet to disclose many arbitrations, and Spartan still has not amended the Forms U4 of its other executive officers.<sup>630</sup>

In sum, the Panel finds a plethora of aggravating factors and not one mitigating factor present in this case.

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<sup>626</sup> Guidelines at 55, 108 (Guideline-Specific Consideration No. 4) (the duration of the delinquency).

<sup>627</sup> *Id.* at 8 (Principal Considerations in Determining Sanctions No. 13) (whether the individual respondent's or the respondent firm's misconduct was the result of an intentional act, recklessness, or negligence).

<sup>628</sup> *Id.* at 7 (Principal Considerations in Determining Sanctions Nos. 8 and 9) (whether the individual respondent or respondent firm engaged in numerous acts or a pattern of misconduct) (whether the individual respondent or respondent firm engaged in the misconduct over an extended period of time).

<sup>629</sup> *Id.* at 8 (Principal Considerations in Determining Sanctions No. 14) (whether the individual respondent or respondent firm engaged in the misconduct at issue notwithstanding prior warnings from FINRA, another regulator, or a supervisor that the conduct violated FINRA rules or applicable securities laws and regulations).

<sup>630</sup> *Id.* at 7 (Principal Considerations in Determining Sanctions No. 2) (whether an individual respondent or respondent firm accepted responsibility for and acknowledged the misconduct).

### C. Respondents' Sanctions Arguments Are Unpersuasive

The Panel carefully considered Respondents' purported reliance on legal advice but we give it no mitigating value. Respondents could not have reasonably relied on the legal advice because the advice conflicted with the guidance and warnings FINRA staff provided throughout the Relevant Period.<sup>631</sup> The Panel finds that Respondents misled their attorneys by falsely telling them that FINRA staff had agreed with their analysis that certain arbitrations against executives did not have to be disclosed. The attorneys' opinions—for example, that the Firm did not have to disclose arbitration claims if they did not make sufficiently specific allegations or were factually impossible—contradicts FINRA guidance.

Spartan blames many of its disclosure failures on personnel issues. Spartan claims that the failures—particularly the untimely reporting of financial events and arbitration events for non-executive registered representatives—were caused by CCOs other than Monchik. It also states that when it learned of a problem with a CCO, it took corrective action to replace the person.<sup>632</sup> But Spartan sidesteps its repeated failure to report arbitrations against Firm executives. The Panel finds that Spartan's failure to report these arbitrations was caused not by CCO deficiencies but by a culture and attitude at Spartan to simply not report arbitrations against executives, including Lowry and Monchik, at all costs.

Lowry and Monchik argue, with respect to sanctions, that they exercised good faith by relying on attorneys and compliance professionals and did not act willfully.<sup>633</sup> As we have already stated, the Panel finds Respondents' purported reliance on their attorneys' legal advice and Spartan's CCOs unreasonable. By repeatedly ignoring FINRA staff's guidance, Respondents acted willfully.

Respondents also persist in incorrectly stating that FINRA's guidance is that an arbitration against an executive is not disclosable when the allegations are "broad and non-specific," and are made solely because of the executive's position at a firm.<sup>634</sup> This is a misstatement of the requirements of Form U4. Form U4 obligates a named respondent to make disclosure when the claim alleges involvement in a sales practice violation, which includes a failure to supervise.

Respondents also claim, without basis, that FINRA staff provided inconsistent statements, or guidance, about the reportability of arbitrations that had similar allegations about failures to supervise. They say that their only recourse would have been to "simply report every

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<sup>631</sup> *Id.* at 7 (Principal Considerations in Determining Sanctions No. 7) (whether the individual respondent or respondent firm demonstrated reliance on competent legal or accounting advice).

<sup>632</sup> Resp'ts Post-Hr'g Mem. 25.

<sup>633</sup> *Id.* at 26-27.

<sup>634</sup> *Id.* at 26.

single arbitration—without regard to whether they were actually reportable.”<sup>635</sup> In fact, FINRA staff provided consistent and repeated guidance to Respondents about their disclosure obligations. The Panel finds that the arbitrations at issue should have been disclosed, and FINRA staff’s guidance was consistent on this issue.

#### **D. Hearing Panel Sanctions**

Consistent with the Guidelines, and after carefully considering the number and nature of the aggravating factors present here, the lack of mitigating factors, and the facts and circumstances of this case, the Panel concludes that for Spartan a monetary sanction exceeding the Guidelines range is appropriate. In reaching this conclusion, we also considered the Firm’s financial resources.<sup>636</sup> Spartan’s revenues ranged between approximately \$20 million and \$30 million during the Relevant Period.<sup>637</sup> We find that aggravating factors predominate, and therefore a significant fine is called for to provide a meaningful deterrent and reflect the seriousness of the misconduct at issue. Accordingly, the Panel imposes a fine of \$600,000 against Spartan.

We also censure Spartan and order the Firm to amend the Forms U4 and Forms U5 of its registered persons, including Lowry and Monchik, to reflect the filing and disposition of customer arbitrations and customer written complaints, as set forth in the attached Schedules A and B.<sup>638</sup> Finally, because of the egregious failures to disclose reportable events at issue and our conclusion that the Firm has exhibited a culture of regulatory noncompliance, the Panel orders Spartan to retain an independent consultant within 60 days of this decision becoming FINRA’s final disciplinary action. The independent consultant must be not unacceptable to Enforcement and must conduct a comprehensive review of the Firm’s policies, systems, and procedures related to Form U4 and Form U5 disclosures.<sup>639</sup> In retaining an independent consultant, the Firm must comply with the specific procedures and requirements outlined in the Order section of this Decision.

In determining the appropriate sanctions for Lowry and Monchik, we again find that aggravating factors predominate and no mitigating factors exist. We also find that Lowry and Monchik set the tone for the Firm’s lax regulatory culture and sought to conceal Firm executives’ arbitration-related disclosures (including their own arbitration-related disclosures) at all costs. Throughout the hearing, Monchik consistently minimized the merits of the arbitration

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<sup>635</sup> *Id.* at 27.

<sup>636</sup> See Guidelines at 3 & n.3 (General Principles Applicable to All Sanction Determinations, No. 3) (stating that factors to consider in determining whether it would be more appropriate to apply the sanction range other than that specified for the firm’s size include the firm’s financial resources).

<sup>637</sup> Tr. 920-21.

<sup>638</sup> Schedules A and B are provided only to the parties in this case and are not public.

<sup>639</sup> See *Dep’t of Enforcement v. Silver Leaf Partners, LLC*, No. 2014042606902, 2020 FINRA Discip. LEXIS 36, at \*73-76 (NAC June 29, 2020), *appeal docketed*, No. 3-19896 (SEC July 28, 2020).

claims to justify Respondents' ongoing decisions to not disclose, even in the face of warnings from regulators. The Panel also finds that Monchik fabricated Respondents' claim that FINRA staff was providing conflicting guidance to excuse their failures to disclose. As with Spartan, the Panel finds that Lowry's and Monchik's decision to ignore FINRA staff's warnings is particularly inexcusable.

After reviewing the facts prevailing in this proceeding, we find that appropriate sanctions for Lowry are a \$40,000 fine and a two-year suspension in all capacities. We find that the appropriate sanctions for Monchik are a \$30,000 fine and a two-year suspension in all capacities.<sup>640</sup> The Panel considers the number of undisclosed arbitrations and untimely disclosures, together with failures to timely disclose dispositions, to be aggravating factors.

Furthermore, Lowry failed to disclose six arbitrations in which he allegedly had directly engaged in one or more serious sales practice violations. The other arbitrations alleged that he failed to supervise serious misconduct that allegedly caused significant financial losses. He was a respondent in arbitrations that resulted in awards and settlements that exceeded \$1.6 million. Monchik was named in 12 arbitrations that she did not disclose and in one case disclosed late. She never disclosed two settlements and disclosed one arbitration award late. The three cases were resolved for over \$360,000.

Lowry and Monchik are also ordered to amend their Forms U4 to disclose the filing of customer arbitrations and the disposition of the arbitrations, as set forth in the attached Schedules C and D.<sup>641</sup>

The Panel believes that the sanctions imposed against each of the Respondents are appropriately remedial and will serve to deter others from engaging in similar misconduct.

## **VIII. Order**

The Hearing Panel orders that, for willfully violating Article V, Sections 2(c) and 3(b) of FINRA's By-Laws and FINRA Rules 1122 and 2010, as alleged in cause one, Respondent Spartan Capital Securities, LLC is censured and fined \$600,000. Additionally, Spartan Capital is required to retain, within 60 days of this Decision becoming FINRA's final disciplinary action, an independent consultant not unacceptable to Enforcement to conduct a comprehensive review of the Firm's policies, systems, and procedures related to Form U4 and Form U5 disclosures. Spartan shall comply with the following procedures:

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<sup>640</sup> Lowry and Monchik claim that their misconduct merits only modest sanctions. As support, they cite three disciplinary actions that FINRA settled with individuals via a Letter of Acceptance, Waiver and Consent. Resp'ts Post-Hr'g Mem. 27-28. However, FINRA has repeatedly stated it is not appropriate to compare sanctions in settled cases to sanctions in litigated cases. *See, e.g., Dep't of Enforcement v. C.L. King & Assoc., Inc.*, No. 2014040476901, 2019 FINRA Discip. LEXIS 43, at \*136-37 (NAC Oct. 2, 2019).

<sup>641</sup> Schedules C and D are provided only to the parties in this case and are not public.

- a. Spartan shall exclusively bear all costs, including compensation and expenses, associated with the retention of the independent consultant.
- b. Spartan shall cooperate with the independent consultant in all respects, including providing staff support. The Firm shall place no restrictions on the independent consultant's communications with FINRA staff and, upon request, shall make available to FINRA staff any and all communications between the independent consultant and the Firm and documents reviewed by the independent consultant in connection with his or her engagement. Once retained, the Firm shall not terminate its relationship with the independent consultant without Enforcement's written approval.
- d. Spartan shall not have an attorney-client relationship with the independent consultant and shall not seek to invoke the attorney-client privilege or other doctrine or privilege to prevent the independent consultant from transmitting any information, reports, or documents to FINRA.
- e. Spartan shall require that the independent consultant enter into a written agreement that provides that, for the period of engagement and for a period of two years from completion of the engagement, the independent consultant shall not enter into any other employment, consultant, attorney-client, auditing, or other professional relationship with the Firm, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. In addition, any firm with which the independent consultant is affiliated in performing his or her duties pursuant to this Decision shall not, without prior written consent of FINRA staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with the Firm or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.
- f. At the conclusion of the independent consultant's review, which shall be no more than 90 days after retention of the independent consultant, Spartan shall require the independent consultant to submit to the Firm and FINRA staff a Report. At a minimum, the Report shall provide (i) a description of the review performed and the conclusions reached; and (ii) recommended changes to the Firm's policies, systems, procedures, and training related to Form U4 and Form U5 disclosures.
- g. Within 60 days after delivery of the Report, Spartan shall adopt and implement the recommendations of the independent consultant.

- h. Within 30 days after the issuance of the independent consultant's Report, Spartan shall provide to FINRA staff a written Implementation Report, certified by an officer of the Firm, attesting to, containing documentation of, and setting forth the details of the Firm's implementation of the independent consultant's recommendations.
- i. Twelve months after Spartan provides its Implementation Report to FINRA staff, the independent consultant shall review Spartan's compliance with the Implementation Report. At the conclusion of this follow-up review, Spartan shall require the independent consultant to submit to the Firm and FINRA staff a Final Report. At a minimum, the Final Report shall provide (i) a description of the review performed; and (ii) an evaluation of Spartan's compliance with the Implementation Report.

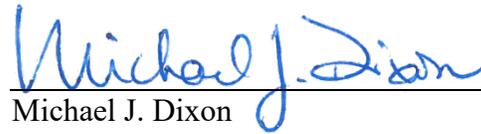
Furthermore, to the extent it has not already done so, within 30 days of this Decision becoming FINRA's final disciplinary action, Spartan is ordered to amend the Forms U4 and Forms U5 of its registered persons, including Lowry and Monchik, to reflect the filing and disposition of customer arbitrations and customer written complaints, as set forth in Schedules A and B attached to the Decision served on the parties.

The Panel finds that John D. Lowry and Kim M. Monchik willfully violated Article V, Section 2(c) of FINRA's By-Laws and FINRA Rules 1122 and 2010, as alleged in causes two and three. The Panel fines Lowry \$40,000 and Monchik \$30,000 and suspends them for two years from associating with any FINRA member firm in any capacity.

Lowry and Monchik are also separately ordered to amend their Forms U4 to disclose the filing of customer arbitrations and the disposition of the arbitrations, as set forth in Schedules C and D attached to the Decision served on the parties, within 30 days of this Decision becoming FINRA's final disciplinary action.

Respondents are also ordered to pay, jointly and severally, the hearing costs of \$17,768.31, consisting of a \$750 administrative fee and \$17,018.31 for the cost of the transcript.

If this Decision becomes FINRA’s final disciplinary action, the suspensions of Lowry and Monchik shall become effective with the opening of business on May 15, 2023, and end at the close of business on May 14, 2025. The fines and assessed costs shall be due on a date set by FINRA, but not sooner than 30 days after this Decision becomes FINRA’s final disciplinary action in this proceeding.<sup>642</sup>



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Michael J. Dixon  
Hearing Officer  
For the Extended Hearing Panel

Copies to:

Spartan Capital Securities, LLC (via overnight courier and first-class mail)  
John D. Lowry (via overnight courier and first-class mail)  
Kim M. Monchik (via overnight courier and first-class mail)  
David A. Schrader, Esq. (via email)  
John R. Baraniak, Jr., Esq. (via email)  
David Monachino, Esq. (via email)  
Jeffrey E. Baldwin, Esq. (via email)  
Sathish Dhandayutham, Esq. (via email)  
Jennifer L. Crawford, Esq. (via email)

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<sup>642</sup> The Hearing Panel considered and rejected without discussion all other arguments by the parties.