

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of

Department of Enforcement,

Complainant,

vs.

North Woodward Financial Corp.
Birmingham, MI,

and

Douglas A. Troszak
Birmingham, MI,

Respondents.

DECISION

Complaint No. E8A2005014902

Dated: December 10, 2008

Respondents failed to prepare a general ledger and trial balance. Held, findings affirmed and sanctions modified.

Appearances

For the Complainant: Marcletta Kerr, Esq., Leo F. Orenstein, Esq., and Pamela L. Shu, Esq.,
Department of Enforcement, Financial Industry Regulatory Authority

For the Respondents: Douglas A. Troszak, Pro Se

Decision

North Woodward Financial Corp. ("North Woodward" or the "Firm") and Douglas A. Troszak ("Troszak") (together, the "Respondents") appeal a November 30, 2007 Hearing Panel decision. The Hearing Panel found that North Woodward, acting through its financial and operations principal ("FINOP"), Troszak, failed to prepare a general ledger and trial balance, in violation of Securities Exchange Act of 1934 ("Exchange Act") Rules 17a-3(a)(2) and 17a-3(a)(11), and NASD Rules 3110(a) and 2110. The Hearing Panel fined North Woodward and Troszak \$10,000, jointly and severally, ordered Troszak to requalify as a FINOP, and assessed \$1,950.42 in costs. After a complete review of the record, we affirm the Hearing Panel's findings, but modify the sanctions imposed. We reduce North Woodward's and Troszak's fine

to \$2,500, joint and several, eliminate Troszak's requalification requirement, but affirm the imposition of hearing costs.

I. Factual and Procedural Background

A. North Woodward and Troszak

Troszak entered the securities industry in February 1992 when he associated with a FINRA member firm as a general securities representative. In November 2000, Troszak left that firm to establish North Woodward, which became a member of FINRA in November 2000. Troszak registered through North Woodward as a general securities representative, general securities principal, and since July 2003, a FINOP. Troszak is North Woodward's president, chief financial officer, chief compliance officer, and its sole registered representative. In addition to his activities with North Woodward, Troszak is a certified public accountant, and he has been the president and owner of Troszak C.P.A. Group since January 1985. Troszak remains registered with North Woodward.

B. The May 2005 Examination

The allegations in the complaint result from FINRA's May 2005 general compliance examination of North Woodward. The examination consisted of a review for general compliance, including the verification of North Woodward's net capital as of March 31, 2005. On Friday, May 13, 2005, the FINRA compliance examiner emailed North Woodward a records request listing documents to be reviewed during the examination, which was to begin on Monday, May 16, 2005. Among other records, the examiner requested North Woodward's general ledger and trial balance from February through April 2005.

When asked for the records at the examination, North Woodward and Troszak failed to provide a general ledger or a trial balance. Instead, the Respondents provided the examiner with the following North Woodward documents: (1) a check register; (2) cleared checks from February through April 2005; (3) the Financial and Operational Combined Uniform Single Report, Part IIA, for the period between January and March 2005 (the "FOCUS Report"); (4) a commission statement from North Woodward's clearing firm for the period between January and March 2005; (5) a brokerage statement from the clearing firm for the month of March 2005; (6) bank statements from January to March 2005, containing Troszak's handwritten notes of North Woodward's revenues, expenses, net capital, and profit computations; (7) copies of bills from Blue Cross Blue Shield of Michigan from January to March 2005; and (8) a January 2005 invoice from the Securities Investor Protection Corporation ("SIPC").

The examiner inquired about the Firm's February and March 2005 general ledgers. Troszak stated that the financial documents that he provided represented information that would be found in a general ledger. Troszak specifically mentioned that the check register, cleared checks, commission statement, brokerage statement, bank statements, and bills reflected the information contained in a general ledger.

Similarly, when the examiner requested the February and March 2005 trial balances, Troszak referred the examiner to the Firm's FOCUS Report, stating that North Woodward's statement of financial condition contained in its FOCUS Report was the same as a trial balance.¹

Because the examiner was not provided with North Woodward's general ledger and trial balance for February and March 2005, he used North Woodward's cleared checks, brokerage statement, commission statement, bank statements, and bills to check the Firm's net capital calculation as of March 31, 2005. The examiner determined that North Woodward maintained an excess amount of net capital for the period, but that the Firm's net capital calculation was inaccurate. Specifically, the examiner concluded that North Woodward's net capital calculation was understated by \$6,994. As a result of the inaccurate net capital computation, North Woodward's quarterly FOCUS Report, for the period ending March 31, 2005, was also inaccurate.

In June 2005, Troszak conceded that North Woodward's general ledger and trial balance were not prepared, and that the Firm's net capital computation and FOCUS Report were inaccurate. North Woodward and Troszak assured FINRA, at that time, that steps were taken to alleviate those issues, and that the records had been prepared. In December 2005, the examiner requested actual copies of North Woodward's general ledger and trial balance for the period between January and March 2005. North Woodward and Troszak provided the records. FINRA issued North Woodward a Letter of Caution for the inaccurate net capital computation and FOCUS Report filing.

C. Procedural Background

On August 16, 2006, FINRA's Department of Enforcement ("Enforcement") filed a one-cause complaint against North Woodward and Troszak, alleging that they violated the Commission's and FINRA's recordkeeping rules because they failed to prepare a general ledger and trial balance. North Woodward and Troszak filed an answer on November 29, 2006, and requested a hearing. The hearing took place on September 11, 2007. The Hearing Panel heard testimony from the FINRA compliance examiner and FINRA's associate director for the Chicago district. Troszak, appearing on behalf of himself and North Woodward, also testified.

The Hearing Panel issued its decision on November 30, 2007, finding that North Woodward's and Troszak's failure to maintain the records constituted a violation of Exchange Act Rules 17a-3(a)(2) and 17a-3(a)(11), and NASD Rules 3110(a) and 2110. The Hearing Panel fined North Woodward and Troszak \$10,000, jointly and severally, and ordered Troszak to requalify as a FINOP. On December 24, 2007, North Woodward and Troszak timely filed their notice of appeal.

¹ Although the preexamination records request sought North Woodward's general ledger and trial balance from February through April 2005, during the examination, the examiner only reiterated the requests for the February and March 2005 general ledger and trial balance. We therefore limit our analysis to North Woodward's and Troszak's failure to prepare the general ledger and trial balance only for February and March 2005.

II. Discussion

A preponderance of the evidence demonstrates that North Woodward and Troszak violated NASD Rules 3110(a) and 2110, and Exchange Act Rules 17a-3(a)(2) and 17a-3(a)(11).² NASD Rule 3110(a) requires, in pertinent part, that FINRA members keep books and records as prescribed by Exchange Act Rule 17a-3. Exchange Act Rules 17a-3(a)(2) and 17a-3(a)(11), respectively, require that member firms prepare a general ledger and trial balance. Here, it is beyond dispute that North Woodward and Troszak failed to prepare a general ledger and trial balance for February and March 2005.³ We affirm the findings of violation in this case.⁴

A. The Recordkeeping Requirements

FINRA member firms must prepare general ledgers and trial balances. Exchange Act Rule 17a-3(a)(2) requires the preparation of general ledgers, specifically, “ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts.”⁵ Exchange Act Rule 17a-3(a)(11) governs the preparation of trial balances and requires “[a] record of the proof of money balances of all ledger accounts in the form of trial balances, and a record of the computation of aggregate indebtedness and net capital, as of the trial balance date . . . Such trial balances shall be prepared currently at least once a month.”⁶

² North Woodward and Troszak suggest that the proper standard of proof to apply in this case is clear and convincing evidence. North Woodward and Troszak are mistaken – the preponderance of evidence standard of proof applies in FINRA disciplinary proceedings. *See Jay Michael Fertman*, 51 S.E.C. 943, 949 (1994) (upholding sanctions where FINRA met preponderance of the evidence standard); *Dep’t of Enforcement v. Fiero*, Complaint No. CAF980002, 2002 NASD Discip. LEXIS 16, at *104 (NASD NAC Oct. 28, 2002) (explaining that the standard of proof applied to FINRA disciplinary proceedings is preponderance of the evidence).

³ In June 2005, Troszak prepared a response to address the deficiencies highlighted during the May 2005 examination. In that response, Troszak admitted that the general ledger and trial balance were not current as of March 31, 2005, but noted that the deficiency had been corrected.

⁴ Enforcement alleges no independent theory of violation under NASD Rule 2110. Nevertheless, violations of the Commission’s and FINRA’s rules constitute a violation of NASD Rule 2110. *See Fox & Co. Inv.*, Exchange Act Rel. No. 52697, 2005 SEC LEXIS 2822, at *27 n.29 (Oct. 28, 2005) (concerning violations of net capital, recordkeeping, and FOCUS Report requirements).

⁵ A general ledger “assemble[s] aggregate data for all accounts (and many subsidiary account[s] thereof) displayed on an enterprise’s balance sheet and operating statement.” Dan L. Goldwasser & Samuel P. Gunther, *Accounting for Lawyers*, Prac. L. Inst. 73-75, 314 (1988).

⁶ A trial balance “assemble[s] and combine[s] the data assembled in an enterprise’s general ledger . . . to make [the] necessary accruals and adjustments to that data, preparatory to the creation of financial statements.” Dan L. Goldwasser & Samuel P. Gunther, *Accounting for Lawyers*, Prac. L. Inst. 76, 323 (1988).

In April 1974, the Commission provided guidance regarding the preparation of certain books and records prescribed in Exchange Act Rule 17a-3(a), including general ledgers and trial balances. *See Statement Regarding the Maintenance of Current Books and Records by Brokers and Dealers*, Exchange Act Rel. No. 10756, 1974 SEC LEXIS 3290, at *4 (Apr. 26, 1974). Under the heading “General Ledgers,” the Commission stated:

The ledgers prescribed in [Exchange Act Rule 17a-3(a)(2)] are the general records reflecting all asset, liability and capital accounts and all income and expense accounts The blotters and other records of original entry [prescribed in Exchange Act Rule 17a-3(a)(1)] should be maintained not only on a daily basis as discussed above, but in a form which will facilitate posting of the genera[l] ledger as frequently as necessary to enable the broker-dealer to make the computations necessary to ascertain his compliance with the net capital rule.

Id. (footnote omitted). With regard to the preparation of trial balances, the Commission explained, “[Exchange Act Rule 17a-3(a)(11)] requires the monthly preparation of a trial balance of all ledger accounts and a computation of aggregate indebtedness and net capital as of the trial balance date.” *Id.* at *9.

In 1996, FINRA’s Board of Governors also issued guidance regarding the preparation of the books and records outlined in Exchange Act Rule 17a-3(a). *See Memorandum of the NASD Board of Governors re: Rule 17a-3* (1996) (“NASD Memorandum”). The NASD Memorandum stated, specifically, that Exchange Act Rule 17a-3(a)(2), “refers to what is usually known as the general ledger in which a record of all asset, liability and nominal accounts [is] kept and from which a trial balance can be abstracted in order to prepare financial statements showing the broker’s or dealer’s financial condition.” *Id.* (emphasis added).

The NASD Memorandum also spoke to the trial balance requirement in Exchange Act Rule 17a-3(a)(11), noting that trial balances (as well as net capital and aggregate indebtedness calculations) must be prepared “currently at least once a month.” Commenting on the importance of this requirement, the NASD Memorandum noted that “[s]uch trial balances and computations will serve as a check upon the current status and accuracy of the ledger accounts which members are required to maintain and keep current and will also help to keep members currently informed of their capital positions.” The Commission’s and FINRA’s rules and guidance regarding the recordkeeping requirements are clear – they mandate that member firms prepare general ledgers and trial balances.

B. North Woodward’s and Troszak’s Explanations Do Not Excuse Their Liability

Nevertheless, on appeal, North Woodward and Troszak offer several explanations to justify their failure to maintain a general ledger and trial balance for February and March 2005. North Woodward’s and Troszak’s excuses, however, do not absolve their liability in this case.

First, noting that the recordkeeping rules do not specify the format of general ledgers and trial balances, North Woodward and Troszak argue that the source documents that they provided during the May 2005 examination represented what would be contained in a general ledger and a trial balance and, standing alone, met the requirements of the rules. It is irrelevant that the recordkeeping rules do not specify the format of general ledgers or trial balances. *See generally NASD Memorandum* (stating that the recordkeeping rules do not require that the books or records be maintained in any prescribed form). North Woodward and Troszak failed to offer any document that remotely complied with the general ledger and trial balance requirements. At best, North Woodward and Troszak maintained source documents that would have formed the basis of a general ledger and trial balance. The mere maintenance of such source documents, however, does not relieve a broker-dealer of its duty to prepare and maintain the records prescribed in the Commission's and FINRA's recordkeeping rules. *See Frank DeFelice*, 47 S.E.C. 124, 129 (1979) (stating that broker-dealers are not relieved of their recordkeeping obligations even if the required data can be delivered from other sources); *J.B. Howard*, 41 S.E.C. 960, 961 (1964) (explaining that the availability of necessary information in other maintained records does not alleviate a broker-dealer's compliance with the recordkeeping rules).

In a related argument, the Respondents assert that the Firm's bank statements, in particular, are an acceptable substitute for the general ledger required by the recordkeeping rules. They are not. Unlike a general ledger, a bank account statement cannot effectively be used to calculate a firm's net capital. A bank account statement is simply a record of deposits and withdrawals of cash from, and the cash balance in, a specific bank account. It does not classify individual transactions into asset, liability, capital, expense, and income ledger accounts. Nor does it reflect corresponding debits or credits for each transaction listed in the bank account statement.

Likewise, the Firm's bank account statements (and the Firm's reconciliations of such statements) were no substitute for a trial balance. A trial balance is a document that verifies that the total debits and credits posted in all ledger accounts in a double-entry bookkeeping system are in balance. The Firm's bank statements, and the reconciliations of those statements, did nothing of the sort. Thus, North Woodward's bank statements are insufficient to meet the general ledger and trial balance requirements.⁷

North Woodward and Troszak also argue that the recordkeeping rules do not prescribe the timing for the preparation of general ledgers, and suggest that such records do not need to be created more than annually. The Respondents are incorrect. In October 2004, FINRA offered member firms guidance that unequivocally stated that general ledgers should be prepared at least monthly. *See Suggested Formats for Books and Records*, at 9 (general ledgers "should be kept

⁷ North Woodward's quarterly FOCUS Report fails to satisfy the trial balance requirement for similar reasons. A FOCUS Report summarizes the basic financial and operational information of broker-dealers that are subject to minimum net capital requirements. A FOCUS Report must accurately reflect the information contained in all ledger accounts. A FOCUS Report is a reporting mechanism for finalized financial records. It is not a verification tool of that financial information, and it is therefore insufficient to meet the trial balance requirement.

up-to-date and should be posted as frequently as activity warrants – daily, if necessary, but at least monthly in order to prepare financial statements”);⁸ *see also Statement Regarding the Maintenance of Current Books and Records by Brokers and Dealers*, 1974 SEC LEXIS 3290, at *5 (explaining that general ledgers should be posted on at least a monthly basis).

The Commission’s financial responsibility rules reinforce the monthly maintenance of general ledgers because they require that net capital calculations be prepared at least once a month. *See* Exchange Act Rule 17a-3(a)(11) (the preparation of “a record of the computation of aggregate indebtedness and net capital . . . [should be prepared] currently at least once a month.”). Net capital calculations are based on the information in general ledgers, which identify and classify financial transactions that impact member firms’ asset, liability, revenue, expense, and capital accounts. *See Dillon Sec., Inc.*, 51 S.E.C. 142, 147 (1992) (“To reliably ascertain the accuracy of a firm’s net capital computation, examiners need an accurate statement not only of net worth but also of all deductions to net worth and other line items.”). Thus, because the financial responsibility rules require the computation of net capital at least monthly, it follows that general ledgers also should be prepared, at a minimum, on a monthly basis. *See Statement Regarding the Maintenance of Current Books and Records by Brokers and Dealers*, 1974 SEC LEXIS 3290, at *4 (“[G]enera[l] ledger[s] [should be prepared] as frequently as necessary to enable the broker-dealer to make the computations necessary to ascertain his compliance with the net capital rule . . .”).

The timing requirements for preparing trial balances also confirm that general ledgers should be maintained on at least a monthly basis. Exchange Act Rule 17a-3(a)(11) mandates that trial balances should be prepared “at least once a month.”⁹ Trial balances confirm the financial transactions identified and classified on general ledgers. *See* Exchange Act Rule 17a-3(a)(11) (stating that trial balances provide a “record of the proof of money balances of all ledger accounts”); *NASD Memorandum* (explaining that trial balances are extracted from general ledgers). Because general ledgers are the foundation of trial balances, and trial balances should be prepared at least once a month, it follows that general ledgers must be maintained on at least a monthly basis.

Neither North Woodward’s nor Troszak’s assurances that they prepared the general ledger and trial balance in June 2005, nor their actual delivery of the records in December 2005, excuses their recordkeeping violation. The recordkeeping requirement is a requirement to keep *current* records. *See* Exchange Act Rule 17a-3(a) (requiring that broker-dealers make and “keep current” books and records); *Davis*, 40 S.E.C. at 996 (“The requirements that books be kept current and in proper form are important in the regulatory scheme since deficient records make it difficult or impossible to determine whether or not other types of violations have occurred.”). North Woodward’s and Troszak’s failure to maintain a current general ledger and trial balance

⁸ *Suggested Formats for Books and Records*, at 9, http://www.finra.org/web/groups/corp_comm/documents/home_page/p009847.pdf (Oct. 2004).

⁹ North Woodward and Troszak erroneously argue that there are no prescribed timing requirements for the preparation of trial balances.

cannot be cured by their assurance of compliance in June 2005, or their delivery of the records in December 2005.

North Woodward and Troszak next assert that the size and volume of North Woodward's business did not warrant preparation of the general ledger and trial balance. Troszak specifically stated that North Woodward's minimal level of financial activity did not merit preparation of the records. Although the Commission has indicated that the frequency with which books and records are maintained may fluctuate with the size or volume of a broker-dealer's business, the Commission emphasized that the records should still be kept on a monthly basis, even for firms with limited activity.¹⁰ The size and volume of North Woodward's business therefore does not excuse the Respondents' failure to maintain the general ledger and trial balance on a monthly basis.

Finally, North Woodward and Troszak argue that the Commission's and FINRA's recordkeeping rules are "archaic," and do not reflect what actually happens in the accounting world. North Woodward's and Troszak's view of the recordkeeping rules, however, has no bearing on their obligations to comply with those rules. See *Hans N. Beerbaum*, Exchange Act Rel. No. 55731, 2007 SEC LEXIS 971, at *17 (May 9, 2007) (holding that, "[w]hatever negative opinion [applicant] has of the rule does not obviate the need to comply with it").

In sum, we find that North Woodward and Troszak failed to prepare a general ledger and trial balance for February and March 2005. The explanations that North Woodward and Troszak provided do not remedy that failure. We therefore find that North Woodward and Troszak violated Exchange Act Rules 17a-3(a)(2) and 17a-3(a)(11), and NASD Rules 3110(a) and 2110.

C. North Woodward's and Troszak's Procedural Arguments

North Woodward and Troszak assert several "general objections" to FINRA's disciplinary process. North Woodward and Troszak argue that the rejection of their evidence, the time limitations imposed, the duration of the May 2005 examination, and the accounting inexperience of the Hearing Panel and Enforcement hindered their ability to defend themselves

¹⁰ The Commission explained, "If a broker-dealer effects only a limited number of transactions during an accounting period and it is clear from the nature of the business conducted that such transactions would have no material adverse effect on the broker-dealer's financial and operational condition, net capital or customer's protection requirements during the period it may be appropriate to post the general ledger on a monthly basis." *Statement Regarding the Maintenance of Current Books and Records by Brokers and Dealers*, 1974 SEC LEXIS 3290, at *5.

in this proceeding.¹¹ North Woodward and Troszak further state that the disciplinary proceedings were unfair, including a specific bias against small firms.¹² There is nothing in the record, however, to support North Woodward's and Troszak's arguments that the disciplinary process or proceeding was unfair, or that North Woodward and Troszak were discriminated against in any way. We therefore reject these arguments.

III. Sanctions

For recordkeeping violations, FINRA's Sanction Guidelines (the "Guidelines") recommend a fine of \$1,000 to \$10,000.¹³ The Guidelines also recommend that we consider a suspension in any and all capacities for both the member firm and the FINOP for up to 30 business days.¹⁴ In egregious cases, the Guidelines recommend an increased fine of \$10,000 to \$100,000, and a longer suspension of up to two years, or an expulsion of the member firm and a

¹¹ North Woodward and Troszak assert several objections to FINRA's general compliance examination. North Woodward and Troszak argue that they did not have sufficient notice of the examination because the examiner sent the examination records request on Friday, May 13, 2005, and the examination commenced on Monday, May 16, 2005. North Woodward and Troszak also state that the examination was improper because it was too long, noting that the examiners took five days to complete the examination. Each of these arguments is without merit and has no bearing on the alleged violation. North Woodward's and Troszak's obligation to prepare a general ledger and trial balance applied regardless of the notice, or duration, of FINRA's compliance examination.

¹² Nearly six weeks after the hearing, on October 23, 2007, North Woodward and Troszak attempted to introduce new evidence as part of their post hearing brief. The new evidence consisted of North Woodward's Wells Submission and its annual audit report for fiscal year 2005. On November 6, 2007, Enforcement filed a motion to strike the exhibits as prejudicial, irrelevant, and untimely. On November 15, 2007, North Woodward responded to Enforcement's motion to strike, explaining that the Wells Submission demonstrated North Woodward's and Troszak's general compliance with FINRA's rules, and that the annual audit report proved that North Woodward's general ledger and trial balance were prepared by the end of the year. The Hearing Panel found that the new evidence was untimely, and that North Woodward and Troszak failed to demonstrate good cause for failing to introduce the documents previously. We do not disturb the Hearing Panel's findings or conclusions regarding this evidence.

¹³ See *FINRA Sanction Guidelines 30* (2007), <http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf> (hereinafter, *Guidelines*).

¹⁴ See *id.*

bar of the FINOP.¹⁵ The specific principal consideration to determine sanctions for this violation is the nature and materiality of the missing information.¹⁶

The Hearing Panel analyzed the general and specific considerations applicable to North Woodward's and Troszak's recordkeeping violation, and concluded that the nature and materiality of the records, the intentional nature of the misconduct, and North Woodward's and Troszak's prior disciplinary history were aggravating factors that rendered this case serious, and supported the imposition of significant sanctions. In line with this reasoning, the Hearing Panel fined North Woodward and Troszak \$10,000, jointly and severally, required Troszak to requalify as a FINOP, and assessed hearing costs of \$1,950.42. For the reasons discussed below, we reduce the fine to \$2,500, joint and several, eliminate Troszak's requalification requirement, but affirm the assessment of hearing costs.¹⁷

The Hearing Panel found that the nature and materiality of the missing records rendered North Woodward's and Troszak's misconduct serious.¹⁸ The Hearing Panel explained that general ledgers and trial balances are fundamental documents that are key to the preparation of member firms' other financial reports, without which member firms cannot ascertain their net capital positions. We agree that general ledgers and trial balances are important records for the calculation of net capital. *See Dillon Secs.*, 51 S.E.C. 142, 147 (1992) (stating that accurate financial statements are necessary to reliably ascertain the accuracy of member firms' net capital computations). We stress, however, that the importance of these financial records derives from their utility to assess net capital compliance, and that in this case, North Woodward maintained excess net capital for the entire period at issue. Considering these circumstances, the materiality of North Woodward's general ledger and trial balance is substantially diminished, which supports reducing the sanctions that the Hearing Panel imposed.

The Hearing Panel emphasized the intentional nature of North Woodward's and Troszak's recordkeeping violation.¹⁹ Violations of the recordkeeping rules are, however, essentially based on a strict liability standard, *i.e.*, whether the records were properly maintained or not. Once North Woodward and Troszak did not have the general ledger and trial balance prepared to present to the examiner, liability for the violation was complete. This is not a case

¹⁵ *See id.*

¹⁶ *See id.* This specific consideration is in addition to the Principal Considerations in Determining Sanctions that must be considered in every disciplinary case. *See id.* at 6-7.

¹⁷ It is appropriate to sanction both the Firm and Troszak for the misconduct in this case. As North Woodward's FINOP, Troszak was responsible for the preparation of the Firm's general ledger and trial balance, and the Firm's failure to maintain those records is attributable to him. *See James S. Pritula*, 53 S.E.C. 968, 976 (1998) (imposing sanctions on a member firm and its FINOP for recordkeeping violations).

¹⁸ *See id.* at 30.

¹⁹ *See id.* at 7 (Principal Considerations in Determining Sanctions, No. 13).

where, for example, records were irrevocably destroyed. In such cases, the negligent, reckless, or intentional actions of a violator would be far more important. Here, Troszak prepared the general ledger and trial balance, albeit after he was required to prepare them. We therefore do not find an inquiry into his mental state to yield important aggravating or mitigating factors for this violation in light of the other factors that are present.

The Hearing Panel also considered, but failed to give sufficient weight to, North Woodward's size, and the fact that Troszak is North Woodward's sole registered representative.²⁰ The Guidelines state that, "[a]djudicators also should consider firm size with a view toward ensuring that the sanctions imposed are not punitive but are sufficiently remedial to achieve deterrence."²¹ The Guidelines offer several factors to consider to assess firm size including, but not limited to, the financial resources of the firm; the nature of the firm's business; the number of individuals associated with the firm; and the level of trading activity at the firm.²² Each of these factors confirms that North Woodward is a small firm. North Woodward has few customers and customer accounts. North Woodward's business is limited – North Woodward engages in minimal trading activity, and primarily derives its revenues from the sales of mutual funds. Troszak also is North Woodward's only operating professional – he is the Firm's president, chief financial officer, and chief compliance officer, in addition to its only general securities representative, general securities principal, and FINOP.

Our review of the record suggests that a fine at the very low end of the Guidelines would be appropriate. We ascend from the low end of the Guidelines because of the existence of a single aggravating factor – North Woodward's and Troszak's prior disciplinary history.²³ North Woodward and Troszak have relevant disciplinary history, which includes past violations of the financial responsibility rules. In January 2005, North Woodward and Troszak consented to a fine of \$5,000, jointly and severally, for operating a securities business and submitting financial reports without a FINOP for a period of 13 months. During that same period, North Woodward received a Letter of Caution for submitting an inaccurate general ledger. These regulatory failings weigh in favor of imposing higher sanctions in this case. *See Cuzzo*, 2007 NASD Discip. LEXIS 12, at *38 (stating that the "existence of a disciplinary history is an aggravating factor when determining appropriate sanctions").

After carefully balancing this aggravating factor against the evidence of mitigation, we reduce North Woodward's and Troszak's fine to \$2,500, joint and several, eliminate Troszak's

²⁰ See *id.* at 2 (General Principles Applicable to All Sanction Determinations, No. 1); *NASD Notice to Members 06-55* (Sept. 2006).

²¹ See *Guidelines*, at 2 (General Principles Applicable to All Sanction Determinations, No. 1).

²² See *id.* at 2 (General Principles Applicable to All Sanction Determinations, No. 1).

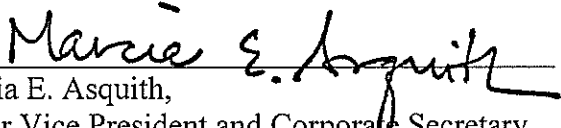
²³ See *id.* at 6 (Principal Considerations in Determining Sanctions, No. 1).

requalification requirement, but affirm the imposition of hearing costs.²⁴ These modified sanctions are sufficient to protect the public interest.

IV. Conclusion

We affirm the Hearing Panel's findings that North Woodward and Troszak violated Exchange Act Rules 17a-3(a)(2) and 17a-3(a)(11), and NASD Rules 3110(a) and 2110, by failing to prepare a general ledger and trial balance. We reduce North Woodward's and Troszak's fine to \$2,500, joint and several, and eliminate the requirement that Troszak requalify as a FINOP. We affirm the Hearing Panel's order to pay costs of \$1,950.42.²⁵

On behalf of the National Adjudicatory Council,



Marcia E. Asquith,
Senior Vice President and Corporate Secretary

²⁴ Requalification is appropriate where the respondent has “demonstrated a lack of knowledge or familiarity with the rules and laws governing the securities industry.” *Id.* at 5 (General Principles Applicable to All Sanction Determinations, No. 7); see *Leonard John Ialeggio*, 53 S.E.C. 601, 604 (1998) (explaining that requalification requirement is a “reasoned means of reeducating [the respondent] about his regulatory responsibilities to both his customers and his employer.”). There is insufficient evidence in the record to demonstrate that Troszak misunderstands, or is unfamiliar with, FINRA’s rules. We therefore eliminate the Hearing Panel’s order to requalify.

²⁵ Pursuant to NASD Rule 8320, any member that fails to pay any fine, costs, or other monetary sanction imposed in this decision, after seven days’ notice in writing, will summarily be suspended or expelled from membership for non-payment. Similarly, the registration of any person associated with a member who fails to pay any fine, costs or other monetary sanction, after seven days’ notice in writing, will summarily be revoked for non-payment.

We also have considered and reject without discussion all other arguments of the parties.