BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

| | |
|---|---|
| In the Matter of<br><br>Department of Enforcement,<br><br>Complainant,<br><br>vs.<br><br>CMG Institutional Trading, LLC,<br><br>and<br><br>Shawn D. Baldwin<br>Chicago, IL,<br><br>Respondent. | DECISION<br><br>Complaint No. 2006006890801<br><br>Dated: May 3, 2010 |

**CMG was expelled and Baldwin was barred for numerous violations of NASD, SEC, and MSRB rules. Held, findings and sanctions modified.**

## Appearances

For the Complainant: Richard S. Schultz, Esq. and Pamela Shu, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Pro Se

## Decision

Pursuant to NASD Rule 9311, CMG Institutional Trading, LLC ("CMG" or "the Firm") and Shawn D. Baldwin ("Baldwin") (together "the Respondents") appeal an October 14, 2008 Hearing Panel decision.[1] In that decision, the Hearing Panel found that CMG and Baldwin:

---

[1] Following the consolidation of NASD and the member regulation, enforcement and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a new "Consolidated Rulebook" of FINRA Rules. The first phase of the new consolidated rules became effective on December 15, 2008. *See FINRA Regulatory Notice 08-57* (Oct. 2008). Because the complaint in this case was filed before December 15, 2008, the procedural rules that

[Footnote continued on next page]

(1) engaged in municipal securities business without a qualified municipal securities principal and failed to report the primary electronic mail contact to MSRB, in violation of MSRB Rules G-3 and G-40;

(2) failed to identify issuers with whom CMG engaged in municipal securities business, in violation of MSRB Rule G-37;

(3) failed to establish, maintain, and enforce adequate written supervisory procedures, in violation of MSRB Rule G-27;

(4) failed to develop and implement an anti-money laundering compliance program, in violation of NASD Rules 3011 and 2110 and MSRB Rule G-41;

(5) failed to develop and implement an anti-money laundering compliance program, in violation of MSRB Rule G-41;

(6) failed to create and maintain a business continuity plan, in violation of NASD Rules 3510 and 2110;

(7) engaged in securities related activities without a qualified financial operations principal ("FINOP"), in violation of NASD Rules 1022 and 2110;

(8) failed to maintain adequate net capital, in violation of the Securities Exchange Act of 1934 ("Exchange Act") Rule 15c3-1 and NASD Rule 2110;

(9) failed to prepare an accurate general ledger and trial balances and made inaccurate net capital computations, in violation of Exchange Act Rule 17a-3 and NASD Rules 3110 and 2110;

(10) failed to prepare accurate books and records and failed to timely file an annual audit report for the fiscal year ending on December 31, 2004, in violation of Exchange Act Rules 17a-4 and 17a-5 and NASD Rules 3110 and 2110;

(11) failed to apply for approval of a change in business operations and failed to abide by the Firm's membership agreement, in violation of NASD Rules 1017 and 2110;

(12) made improper communications with the public, in violation of NASD Rules 2210 and 2110; and

---

[cont'd]

apply are those that existed on December 14, 2008. The conduct rules that apply are those that existed at the time of the conduct at issue.

(13) failed to timely file an annual audit report for the fiscal year ending December 31, 2005 and a FOCUS report, in violation of Exchange Act Rule 17a-5, and NASD Rule 2110.[2]

In addition, the Hearing Panel found that CMG *and* Baldwin failed to comply with continuing education requirements, in violation of NASD Rules 1120, 3010, and 2110. The complaint, however, alleged only that CMG violated these rules. Citing the cumulative effect of the number and extent of the violations, the Hearing Panel expelled CMG and barred Baldwin in all capacities. The Hearing Panel determined these sanctions by imposing a single overall sanction for all 14 causes on each respondent. After reviewing the record, we affirm the Hearing Panel's findings, except for the finding of liability against Baldwin for a continuing education violation that was not alleged in the complaint. We also impose an expulsion on CMG and a bar in all capacities on Baldwin. We, however, determine our sanctions by assessing an individual sanction for each cause, rather than assessing a single, unitary sanction for all 14 causes.

## I. Background

Baldwin entered the securities industry in 2000 and became registered with FINRA as a general securities representative in September 2000. CMG became a registered broker-dealer in December 2001 and operated as a broker-dealer with a minimum net capital requirement of $5,000. Since that time, Baldwin has been the President, Chief Executive Officer, Chief Compliance Officer, and owner of more than 75% of CMG. Baldwin was registered through CMG as a general securities representative and a general securities principal. CMG's registration with FINRA was cancelled on June 29, 2009, for a failure to pay fees.

## II. Procedural History

On August 30, 2007, FINRA's Department of Enforcement ("Enforcement") filed a 14-cause complaint against CMG and Baldwin alleging the aforementioned violations of SEC, NASD, and MSRB Rules. On September 26, 2007, CMG and Baldwin filed answers to the complaint. The Hearing Panel conducted a hearing on July 7, 2008. In a decision issued on October 14, 2008, the Hearing Panel found CMG and Baldwin liable under each cause alleged in the complaint. On November 4, 2008, the Respondents appealed the Hearing Panel's decision. Oral argument was held on June 12, 2009.

---

[2] NASD Rule 0115 makes all FINRA rules applicable to both FINRA members and all persons associated with FINRA members. A violation of any other NASD Rule also is a violation of NASD Rule 2110, which requires member firms to observe high standards of commercial honor and just and equitable principles of trade.

III. Facts

The complaint in this case arose from a routine FINRA examination of CMG's books and records on June 21, 2005. As part of this examination, FINRA staff reviewed the results of a separate March 2003 examination of CMG. Upon the conclusion of its June 2005 examination, FINRA found a variety of violations of Exchange Act, NASD, and MSRB rules. A description of the facts surrounding these violations follows.

A. Financial and Accounting Violations

*1. Engaging in Securities-Related Activities Without a Qualified FINOP*

During the June 2005 examination of CMG, FINRA examiner Joseph Sularz ("Sularz") told Baldwin that CMG did not have a registered FINOP.[3] In response, Baldwin told Sularz that he would either hire a FINOP or qualify for registration himself.[4] After the June 2005 examination, Sularz wrote to Baldwin on July 12, July 14, and July 22, 2005, each time asking for a statement of who would serve as CMG's FINOP and on what date. Baldwin testified that he attempted to "outsource" the FINOP responsibilities to a company called Forrest Brokerage Services ("FB Services"). Baldwin described FB Services as a "rent-a-FINOP" company that would supply him with the names of potential candidates who could serve as a FINOP for broker-dealers in need of such services. From approximately August 12 through September 26, 2005, Baldwin tried to obtain a FINOP through FB Services. Neither of the persons referred to Baldwin by FB Services during this period was properly registered.[5]

---

[3] The March 2003 examination of CMG had also revealed that the Firm did not have a registered FINOP. Robin Kole ("Kole"), who was properly registered as a FINOP at another firm, was employed by CMG from July 2002 until March 10, 2003, but she was never properly registered through CMG as a FINOP because FINRA did not receive a fingerprint submission with her Uniform Application for Industry Registration or Transfer ("Form U4"). Baldwin testified that CMG sent two sets of Kole's fingerprints to FINRA, but offered no evidence to corroborate this testimony. CMG did not duly register a FINOP until October 2005.

[4] The official results from Baldwin's Central Registration Depository ("CRD") ® form show that Baldwin registered to take the qualification examination for FINOPs, but did not pass the examination. Baldwin admitted that he did not adequately prepare for the exam because of an extensive travel schedule, which rarely allowed him to be in Chicago for more than three or four days at a time.

[5] Baldwin replied to Sularz's July letters on August 12, 2005, stating that, on that date, the Firm had added John O'Connell ("O'Connell") as FINOP. On August 30, 2005, Sularz wrote to Baldwin, informing him that a Form U4 for O'Connell had not been processed through CRD, and that CRD did not show that O'Connell ever took an examination to qualify as a FINOP. On September 26, 2005, Baldwin wrote to Sularz that the Firm had added Victor Samuel ("Samuel") as the Firm's FINOP. On October 13, 2005, Sularz wrote Baldwin, stating that CRD did not

[Footnote continued on next page]

On October 19, 2005, CMG registered Lawrence Savallo ("Savallo") as the Firm's FINOP. FINRA staff did not find any problems with Savallo's registration. From June 22, 2005, through October 19, 2005, when CMG had no registered FINOP, it participated in 13 underwritings.

*2. Failure to Maintain Adequate Net Capital*

On March 23, 2005, the Firm entered into a firm commitment offering of Genworth Financial Class A common stock ("Genworth Offering"). CMG was listed in the prospectus as an underwriter of 597,713 shares, with a price to the public of $26.50 per share. As an underwriter, CMG committed to buying up to 597,713 shares. Enforcement calculated the open contractual commitment "haircut" for this purchase to be $2,106,938.33. As a result of this transaction, Enforcement calculated that CMG had a net capital deficit of $2,138,421.09 on March 23, 2005.

*3. Failure to Prepare an Accurate General Ledger, and Trial Balances, and Making Inaccurate Net Capital Computations*

On December 31, 2004, Baldwin, as a managing member of the Firm, made what was described in a corporate resolution as a contribution of capital to CMG in the amount of $190,000. The funds were deposited in CMG's bank account. One business day later, on January 3, 2005, $185,000 of the $190,000 was withdrawn from CMG's bank account. CMG's auditor relied on the $190,000 deposit to prepare the Firm's 2004 annual audit report and compute the Firm's net capital as of December 31, 2004. As of that date, the auditor's notes show that CMG had net capital of $240,503. However, because $185,000 was withdrawn only one business day after the $190,000 deposit, the Firm's net capital should have been shown as only $55,503.

In June 2005, FINRA examiner Deborah Whitfield ("Whitfield") examined CMG's records and found deficiencies in the Firm's general ledger that led her to recalculate the Firm's April 2005 net capital. She noted that there were zero liabilities on the Firm's balance sheet and that a number of administrative expenses, such as salaries, rent, and utilities, were not entered on the Firm's income statement. In discussing the omission of such expenses from the financials, CMG informed her that it had an expense sharing agreement with its affiliate, Capital Management Group Securities ("CMG Securities").[6] The expense sharing agreement, however,

---

[cont'd]

show Samuel as a person registered with CMG, and that a search of CRD did not show that Samuel had passed any examination to qualify as a FINOP.

[6] CMG Securities is not a broker-dealer. It is an events management firm and a legal entity that is separate from CMG. CMG Securities' business focuses on hosting conferences and

[Footnote continued on next page]

did not include an allocation of specific amounts for each expense.[7] Whitfield calculated that the Firm had not booked $60,458 in expenses. In addition, Whitfield found that five of the Firm's checks, amounting to $8,704.85, had not cleared in April 2005, and were not reflected in the bank balance on the Firm's checkbook.

*4. Failure to Timely File an Annual Audit Report and a FOCUS Report*

CMG's annual audit report for the year ending December 31, 2005, was due on March 1, 2006. On February 20, 2006, CMG sought an extension that was denied by letter dated February 24, 2006. By letter dated March 17, 2006, FINRA notified CMG that if it did not file its annual audit report within 21 days, its membership with FINRA would be suspended. On April 19, 2006, FINRA notified CMG that its membership was suspended. CMG eventually filed the annual audit report on July 24, 2006, and the suspension was lifted.

CMG's quarterly FOCUS Report for the end of the first quarter of 2007 was due to be filed by April 25, 2007. On May 10, 2007, FINRA notified CMG that it would suspend the Firm's membership if the report was not filed within 21 days. CMG filed the quarterly FOCUS report two weeks later, on May 24, 2007.

B. Violations of NASD Rules

*1. Failure to Develop and Implement an Anti-Money Laundering ("AML") Compliance Program*

Examiner Whitfield reviewed CMG's written AML compliance program ("AML Program") and found no evidence that, in a sample of seven recent customer accounts, CMG had verified any of the customer identification information that it had obtained from those customers. Whitfield also found that CMG's AML Program did not have a procedure for designating an AML compliance officer or for transmitting contact information to FINRA. In addition, CMG's AML Program did not designate one of its employees, Anne Sprecher ("Sprecher"), as an AML contact person. Whitfield found, however, that the FINRA contact system showed that CMG had designated Sprecher as an AML contact person. Finally, Whitfield found that CMG did not conduct any AML training in 2003 or 2004 for its personnel.

---

[cont'd]

workshops dealing with securities-related issues. CMG Securities shared office space with CMG, and Baldwin split his time among these two operations, traveling frequently.

[7] *See NASD Notice to Members 03-63* (Oct. 2003) (stating that the Exchange Act requires that "a broker-dealer must make a record reflecting each expense incurred relating to its business and any corresponding liability, regardless of whether the liability is joint or several with any person and regardless of whether a third party has agreed to assume the expense or liability").

*2. Failure to Apply for Approval of a Change in Business Operations and Failure to Abide by a Membership Agreement*

CMG's Membership Agreement provided that, as a broker-dealer with a $5,000 minimum net capital requirement, it was not permitted to participate in offerings of securities as an underwriter on a firm commitment basis. CMG, nevertheless, participated in at least one offering, the Genworth Offering, as an underwriter on a firm commitment basis.[8]

*3. Inaccurate Communications to the Public*

As part of its June 2005 examination of CMG, FINRA found that the Firm had created sales literature in the form of a "flipbook." This flipbook inaccurately represented that CMG Securities, the events management firm with which CMG shared office space, was a broker-dealer, as well as a member of NASD, the Chicago Stock Exchange, and the Securities Investor Protection Corporation ("SIPC").[9] There is no evidence in the record that the flipbook had been approved by a principal. In addition, Sularz found that the flipbook had been freely available online. In August 2005, however, Sularz checked online again and discovered that a password was required to access the website containing the flipbook.

*4. Failure to Create and Maintain a Business Continuity Plan*

FINRA's June 2005 examination of CMG revealed that CMG's business continuity plan did not address the following issues: (1) data back-up and recovery; (2) mission critical systems; (3) financial and operational assessments; (4) reporting to and communications with regulators; (5) alternate communications between the Firm and its customers and employees; (6) alternate physical location of employees; (7) impact of a disruption upon critical counterparties; (8) the customer's prompt access to funds and securities; and (9) designation of a principal to approve the plan and his/her responsibility for conducting the required annual review. In a letter dated September 11, 2006 ("Wells response"), CMG asserted that during the June 2005 examination, it had submitted a revised plan that corrected the deficiencies in its business continuity plan.

*5. Failure to Comply with Continuing Education Requirements*

Baldwin's registration was inactive from June 6, 2003, until July 10, 2003, because he failed to complete the regulatory element of the continuing education requirement under NASD Rule 1120. During this period, he continued to engage actively in CMG's securities business as President, Chief Executive Officer, and Chief Compliance Officer.

---

8 *See supra* Part III.A.2.

9 *See supra* note 8.

C. Violations of MSRB Rules

*1. Engaging in Municipal Securities Business Without a Qualified Municipal Securities Principal and Failure to Report the Primary Electronic Mail Contact*

From May 22, 2004, to October 19, 2005, CMG had no municipal securities principal, but participated in two municipal securities offerings.[10] Also during this period, CMG's Compliance Policy and Procedures Manual inaccurately stated that Baldwin was registered as a Series 51 or Series 53 securities principal on its Primary Mail Contact Form G-40. On October 19, 2005, Baldwin notified FINRA that CMG was withdrawing its registration with MSRB.

*2. Failure to Establish, Maintain, and Enforce Adequate Written Supervisory Procedures*

From approximately April 16, 2003 through June 20, 2005, CMG's procedures manual contained almost no procedures related to MSRB Rules. The only reference in the manual to MSRB rules was to the requirement that an MSRB investor brochure be sent to any customer who filed a complaint involving municipal securities.

*3. Failure to File Timely a List of Issuers*

CMG participated in municipal securities transactions during the quarters ending March 31, 2003, December 31, 2003, and December 31, 2004. CMG did not file with the MSRB Board a list of issuers with whom the Firm had engaged in municipal securities business until July 5, 2005.

IV. Discussion

Many of the critical facts in this case are undisputed. From these facts, we find that CMG's office was characterized by carelessness, inattention to detail, and a casual approach to both staffing and regulatory compliance. We further find that Enforcement proved all 14 causes of action by a preponderance of the evidence. Our analysis of each cause follows.

A. Cause 1: Participating in Municipal Securities Transactions Without a Registered Municipal Securities Principal

MSRB Rules G-3 and G-40 require that each municipal securities broker who participates in municipal securities transactions shall properly qualify and register at least one qualified municipal securities principal. At the hearing below, there was no dispute that CMG participated in at least two municipal securities transactions without a registered municipal

---

[10] These offerings were: (1) the City of Chicago O'Hare International Airport General Airport Third Lien Revenue Funding Bonds ("City of Chicago Offering"); and (2) the City of Detroit, Michigan, Taxable Certificates of Participation Series 2005 ("City of Detroit Offering").

securities principal. On appeal, however, Baldwin argues that CMG participated in these transactions in name only, and that the Firm did not receive any bonds or fees in these transactions. Baldwin, however, offered no evidence to support this argument. Instead, he argued that FINRA's "failure" to demonstrate CMG's participation "by means of a brokerage statement, wire payment or check" meant that FINRA had not met its burden of proof.

In his Wells response and in post-hearing submissions, however, Baldwin admitted that CMG participated in two municipal securities transactions. Moreover, an exhibit to the "Agreement among Underwriters" indicates that CMG participated in the City of Chicago Offering as an underwriter and an offering circular lists CMG as a co-manager in the City of Detroit Offering. We therefore find that Enforcement has proved by a preponderance of the evidence that the Respondents violated MSRB Rules G-3 and G-40.

B. Cause 2: Failure to Identify Issuers

MSRB Rule G-37 requires that each broker shall, by the last day of the month following the end of each calendar quarter, file a form providing, among other things, a list of issuers with which the broker has engaged in a municipal securities business during the calendar quarter.[11] CMG admits that it failed to file timely such a list for the quarters ending March 31, 2003, December 31, 2003, and December 31, 2004. Consequently, we find that the Respondents violated MSRB Rule G-37.[12]

C. Cause 3: Failure to Establish Written Supervisory Procedures to Ensure Compliance with MSRB Rules

MSRB Rule G-27(c) provides that each broker shall adopt, maintain, and enforce written supervisory procedures reasonably designed to ensure that the conduct of the municipal securities activities of the broker and its associated persons are in compliance with MSRB rules and that the procedures shall codify the broker's supervisory system for ensuring compliance. As noted earlier, between April and June of 2005, CMG's manual made only one brief reference to compliance with MSRB rules. Thus, for approximately two months in 2005, CMG did not

---

[11] "Rule G-37 . . . address[es] practices in the municipal securities market known as 'pay to play'. . . where a municipal securities firm makes contributions to, or solicits contributions for, officials of state and local issuers in order to be considered for an award of certain types of municipal securities business over which the officials have influence." *Morgan Stanley & Co., Inc.*, 53 S.E.C. 379, 381 (1997). The rule "seeks to insulate the municipal securities industry from the potentially corrupting influence of political contributions that are made in close proximity to the awarding of municipal securities business." *Id.*

[12] Baldwin asserts that no CMG employees ever made any financial contributions to state officials. Nevertheless, we find that CMG was still required to comply with the filing requirements of MSRB Rule G-37.

have written procedures related to MSRB Rules. We therefore find that the Respondents violated MSRB Rule G-27(c).

D. Cause 4: Failure to Comply with Continuing Education Requirements

"NASD Rule 1120 requires that [FINRA] member firms not permit association of any registered person unless and until [that person] has complied with the [r]egulatory [e]lement of the [continuing education program] requirement." *East/West Sec. Co.*, 54 S.E.C. 947, 952 (2000). Beginning on June 6, 2003, Baldwin remained associated with CMG and continued to engage in CMG's securities business even though his registration was inactive for 35 days due to his failure to complete a continuing education course. Thus, we find that CMG violated NASD Rule 1120.[13]

E. Causes 5 and 6: Deficient AML Program

NASD Rule 3011 requires FINRA members to develop and implement a written anti-money laundering program reasonably designed to achieve and monitor compliance with the Bank Secrecy Act.[14] Similarly, MSRB Rule G-41 provides that municipal securities dealers who are FINRA members must establish and implement an anti-money laundering program that complies with FINRA's requirements under NASD Rule 3011.[15]

Examiner Whitfield's review of CMG's AML Program found that CMG failed to comply with several of NASD Rule 3011's requirements, including the requirements that CMG verify customer identification information, conduct independent testing of its AML Program, and designate a person to transmit contact information to FINRA. Moreover, Whitfield's review showed that CMG had not provided AML training for its personnel for two consecutive years. Baldwin asserts that CMG had a compliant AML program and that documents he produced to

---

[13] We note that the Hearing Panel erred in finding Baldwin liable under cause 4. Enforcement's complaint alleges only that CMG failed to comply with the continuing education requirements. We therefore reverse this finding.

[14] The Bank Secrecy Act requires broker-dealers "to make and keep certain reports and records to facilitate the prevention, detection, and prosecution of international money laundering and the financing of terrorism." *Crowell, Weedon & Co.*, Exchange Act Rel. No. 53847, 2006 SEC LEXIS 1142, at *2 (May 22, 2006).

[15] "The MSRB proposed Rule G-41 to ensure that all brokers, dealers and municipal securities dealers . . . that effect transactions in municipal securities, and in particular those that only effect transactions in municipal securities . . . are aware of, and in compliance with, anti-money laundering program requirements." *Order Granting Approval of a Proposed Rule Change by the Municipal Securities Rulemaking Board to Require Dealers to Establish Anti-Money Laundering Compliance Programs*, Exchange Act Rel. No. 48169, 2003 SEC LEXIS 1644, at *2 (July 11, 2003).

FINRA in an earlier disciplinary action against him support his assertion. These documents, however, are not a part of this record, and Baldwin made no effort to introduce these purported documents into the record for our consideration. Consequently, we find that Enforcement has proven by a preponderance of the evidence that the Respondents violated NASD Rule 3011 and MSRB Rule G-41.

F. Cause 7: Failure to Create and Maintain a Business Continuity Plan

NASD Conduct Rule 3510 provides that members shall create and maintain a business continuity plan identifying procedures detailing how members will respond to an emergency or significant business disruption.[16] CMG's initial business continuity plan did not comply with nine specific requirements of the rule.[17] At some point, CMG and Baldwin submitted a revised plan that corrected these deficiencies.[18] We find that the Respondents' initial business continuity plan violated Rule 3510 and that the Respondents' subsequent compliance does not cure its original violation of the rule.

G. Cause 8: Engaging in Securities Transactions without a Qualified FINOP

NASD Rule 1022 provides that a member shall designate a qualified FINOP before engaging in securities-related activities. From March 2003 through October 2005, there was no FINOP registered through CMG. During this time, it is undisputed that CMG participated in 13 underwritings. We therefore find that the Respondents violated Rule 1022.[19]

---

[16] In proposing the rule, FINRA considered "steps that member firms can take to ensure that they are prepared for possible future business disruptions" like those experienced following the events of September 11, 2001. *NASD Notice to Members 02-23* (Apr. 2002).

[17] *See supra* Part III.B.4.

[18] It is unclear exactly when the Respondents submitted the revised business continuity plan to FINRA. Respondents claim it was submitted during the June 2005 examination, but the revised plan that was admitted into the record contains a signature page that is undated and unsigned.

[19] Baldwin suggests that if CMG was operating without a FINOP, FINRA's multiple visits to his office should have alerted him to this problem. Moreover, Baldwin claims that it "would have been extremely derelict" for FINRA to allow such misconduct and that we should therefore overturn the Hearing Panel's finding of liability. Baldwin's contention has no merit. The Commission has long held that "[a] regulatory authority's failure to take early action neither operates as an estoppel against later action nor cures a violation." *See W.N. Whelen & Co., Inc.*, 50 S.E.C. 282, 284 (1990).

H. Cause 9: Net Capital Deficiency

Exchange Act Rule 15c3-1 ("the Net Capital Rule") provides that every broker or dealer engaging in a securities business shall have and maintain adequate net capital.[20] "The Net Capital Rule is one of the most important tools that the SEC and [FINRA] use to protect investors because it imposes financial responsibility on the securities industry by: (1) establishing minimum net capital requirements for broker-dealers; and (2) defining the process used by broker-dealers to determine their net capital at all times." *Inv. Mgmt. Corp*, 2003 NASD Discip. LEXIS, at *47. To establish a violation of the Net Capital Rule, Enforcement had to prove that CMG conducted a securities business on March 23, 2005, while the Firm's net capital was below the required minimum. It is undisputed that CMG conducted a securities business on this date. Moreover, on March 23, 2005, CMG participated in the Genworth Offering underwriting where it committed to purchases that made the Firm's net capital deficient by roughly $2.2 million.[21]

We note that whether CMG was net capital deficient turns on whether its participation in the Genworth Offering was on a firm commitment basis. Baldwin claims that CMG did not participate in the Genworth Offering on a firm commitment basis because it was participating as a member of a "selling group" rather than as an underwriter. The Hearing Panel did not find Baldwin's testimony to be credible on this issue, and we find nothing in the record that would prompt us to reverse the Hearing Panel's credibility determination.[22] *See Dane S. Faber*, Exchange Act Rel. No. 49216, 2004 SEC LEXIS 277, at *17-18 (Feb. 10, 2004). Consequently, we find that the Respondents violated the Net Capital Rule on March 23, 3005.

---

[20] "Section 15(c) of the Exchange Act is the foundation for Exchange Act Rule 15c3-1 . . . and it prohibits broker-dealers from engaging in a securities business if their net capital falls below certain amounts." *Dep't of Enforcement v. Inv. Mgmt. Corp.*, Complaint No. C3A010045, 2003 NASD Discip. LEXIS 47, at *13-14 (NASD NAC Dec. 15, 2003).

[21] Baldwin asserts that Enforcement never provided him with a net capital computation to prove its allegation that Respondents violated the Net Capital Rule. To the contrary, Enforcement submitted an exhibit at the hearing below and provided testimony detailing precisely how it calculated CMG's March 23, 2005 net capital deficiency.

[22] Indeed, CMG was listed on the Genworth Offering prospectus and the "Agreement Among Underwriters" as an underwriter, and the prospectus describes a firm commitment underwriting. In addition, the record did not contain any other evidence that CMG was a member of a selling group, or was offering the shares on a "best efforts" basis. Even if there were such evidence, it would not excuse CMG's commitment to purchase the shares on a firm commitment basis. *See J.V. Ace & Co. Inc.*, 50 S.E.C. 461, 462-63 (1990) (holding that a $5,000 broker participated on a firm commitment basis in an offering of shares even though: (1) the prospectus for the offering did not list the broker as an underwriter, and (2) the president of the managing underwriter stated in a letter that it would have purchased the offered stock back from the broker if the broker had been unable sell the stock).

I. Cause 10: Failure to Prepare an Accurate General Ledger, Trial Balances, and Net Capital Computations

Exchange Act Rule 17a-3 provides that every broker shall make and keep current books and records relating to its business, including but not limited to ledgers, or other records, reflecting all assets and liabilities, income and expense and capital accounts. NASD Rule 3110 also requires that brokers keep accurate books and records.

As of April 2005, CMG's general ledger showed zero liabilities on the Firm's balance sheet. The Hearing Panel found that the mere absence of *any* amount for administrative expenses showed that CMG's records were inaccurate. We agree. Moreover, it is undisputed that CMG's checkbook did not take into account the fact that five of the Firm's checks, worth more than $8,700, had not cleared. Each of these errors would have caused the Firm's net capital computations and records containing these computations to be inaccurate. We therefore find that the Respondents violated Exchange Act Rule 17a-3, as well as NASD Rules 3110 and 2110.

J. Cause 11: Failure to Prepare Accurate Books and Records

NASD Rule 3110 generally provides that each member shall make and preserve accurate books and records. Exchange Act Rule 17a-4 specifically provides that every broker shall preserve for a period of not less than six years, all records required to be made, including, but not limited to, records containing information in support of amounts included in its annual audit report. In addition, Exchange Act Rule 17a-5(d) specifically provides that every broker-dealer shall file an annual report which shall be audited by an independent public accountant.

On December 31, 2004, Baldwin made what he called a $190,000 contribution of capital to CMG. On the same date, the notes of CMG's auditor show that CMG calculated that it had $240,503 in net capital. Because $185,000 was withdrawn one business day after the $190,000 deposit, the Firm's net capital should have been recalculated to exclude the withdrawn amount from CMG's net capital calculation, and the Firm should have amended its 2004 annual audit report to reflect this recalculation.[23] Consequently, we find that Baldwin and CMG failed to prepare accurate books and records, in violation of Exchange Act Rules 17a-4 and 17a-5, as well as NASD Rules 3110 and 2110.

K. Cause 12: Failure to Apply for Approval of a Change in Business Operations and Failure to Comply with Membership Agreement

NASD Rule 1017 provides that a member shall file an application for approval of changes to its ownership, control, or business operations. As a broker-dealer with a $5,000 minimum net capital requirement, CMG's membership agreement did not allow CMG to participate in firm commitment offerings of securities as an underwriter. Nevertheless, CMG

---

[23] It is well established that a temporary loan cannot be recognized as a capital contribution under the Net Capital Rule. *See Lomasney & Co.*, 44 S.E.C. 453, 454 (1970).

participated as an underwriter in the Genworth Offering on a firm commitment basis without seeking approval from FINRA. Consequently, we find that the Respondents violated NASD Rule 1017.

L. Cause 13: Deficient Communications with the Public

NASD Rule 2210 provides that all communications with the public must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. NASD Rule 2210 thus requires that communications from FINRA members to the public must not be misleading. *See Dep't of Enforcement v. Jordan*, Complaint No. 2005001919501, 2009 FINRA LEXIS 15, at *2 (FINRA NAC Aug. 21, 2009) (finding that research report prepared by respondent was misleading and therefore violated NASD Rule 2210 because respondent failed to disclose her financial interest). CMG created sales literature in the form of a flipbook that contained numerous inaccuracies, including a false representation that CMG Securities was a broker-dealer, as well as a member of FINRA, the Chicago Stock Exchange, and SIPC. This communication was misleading, and accordingly, we find that the Respondents violated NASD Rule 2210.

M. Cause 14: Failure to File Timely Annual Audit and FOCUS Reports

Exchange Act Rule 17a-5(a) provides that every broker shall file annually, a report which shall be audited by an independent public accountant and that shall be filed not more than 60 days after the date of the financial statement. NASD Rule 3110 generally provides that each member shall make and preserve books and records in conformity with all applicable laws, rules and regulation of FINRA as prescribed by the Exchange Act.

CMG's annual audit report for the year ending December 31, 2005, was due on March 1, 2006. CMG filed the report 145 days after this date. CMG's quarterly FOCUS Report for the end of the first quarter of 2007 was due on April 25, 2007. CMG filed this report 29 days after this date. We therefore find that the Respondents violated Exchange Act Rule 17a-5(a) and NASD Rules 3110 and 2110.

V. Sanctions

In the proceedings below, the Hearing Panel performed an analysis of all 14 causes and determined an appropriate individual sanction for each cause. After considering the number and extent of the Respondents' violations, however, the Hearing Panel determined to impose a "single, unitary sanction" on each respondent covering all 14 causes rather than imposing individual sanctions for each cause. Citing the need to protect the investing public, the Hearing Panel imposed the single sanction of: (1) an expulsion from FINRA membership on CMG; and (2) a bar in all capacities on Baldwin.

"SEC case law and [FINRA] practice strongly suggest that sanctions be assessed per cause." *Dep't of Enforcement v. Fox & Co. Invs., Inc.*, Complaint No. C3A030017, 2005 NASD Discip. LEXIS 5, at*37 (NASD NAC Feb. 24, 2005) (citing *Inv. Mgmt. Corp.*, 2003 NASD

Discip. LEXIS 47, at *27-28)). However, we have previously established that "where multiple, related violations arise as a result of a single underlying problem, a single set of sanctions may be more appropriate to achieve [FINRA's] remedial goals." *Id.* Here, we find that some, *but not all* of the 14 causes arose from a single underlying problem. Thus, we decline to impose a "single, unitary sanction" for all 14 causes. Instead, we impose individual sanctions for each cause, and where appropriate, aggregate sanctions for violations resulting from the same misconduct.[24]

We have considered the FINRA Sanction Guidelines ("Guidelines")[25] in determining an appropriate sanction for each of the 14 causes. In addition, we have taken into account the principal considerations applicable to all violations, as well as the potentially mitigating factors raised by the Respondents on appeal.[26] As a result, we expel CMG from FINRA membership and impose a bar in all capacities on Baldwin. Our determination of sanctions for the individual causes is set forth below.

A. Cause 1: Participating in Municipal Securities Transactions Without a Registered Municipal Securities Principal

For registration violations, the Guidelines recommend a fine ranging from $2,500 to $50,000, and, in egregious cases, a suspension of the firm for up to 30 business days and a suspension of an individual for up to two years or a bar.[27] The Guidelines contain two principal considerations that are specific to registration violations: (1) whether the respondent had filed a registration application; and (2) the nature and extent of the unregistered person's responsibilities.[28]

Here, Baldwin did not file an application to become registered as a municipal securities principal. The Firm, however, designated him on its Form G-40 as a municipal securities principal even though he never became registered. In addition, the nature and extent of Baldwin's responsibilities were significant, considering that he served as the Firm's President,

---

24 As noted earlier, the Hearing Panel assessed a single, unitary sanction for all 14 causes, but offered its recommendations for what would be appropriate sanctions to impose for each individual cause. With the exception of our sanctions determination for cause 4, which we vacated as to Baldwin, and the sanctions we imposed for the Respondents' financial and accounting violations, we have adopted the individual sanctions that the Hearing Panel indicated it would recommend if it had not imposed a single, unitary sanction.

25 *FINRA Sanction Guidelines* (2007), http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf [hereinafter "*Guidelines*"].

26 *Id.* at 6-7.

27 *Guidelines*, at 48.

28 *Id.*

CEO, and Chief Compliance Officer during the period of this registration violation. We find that Baldwin's misconduct was egregious, and we impose a $25,000 fine on the Respondents, jointly and severally, and bar Baldwin in his capacity as a principal. In addition, we find that a 30 business day suspension for CMG would be appropriate.[29]

B. Cause 2: Failure to Identify Issuers

For late filing of MSRB reports, the Guidelines recommend a fine ranging from $5,000 to $10,000, and recommend that adjudicators consider imposing a fine on a per violation basis.[30] In egregious cases, the Guidelines recommend suspending the firm from engaging in municipal securities underwriting for up to 30 business days, and suspending the responsible individual in any or all capacities for up to 30 business days.[31] The Guidelines contain six principal considerations that are specific to late filing violations: (1) whether the report is inaccurate, outdated or both; (2) whether respondent is active in the municipal underwriting business and generally makes political contributions; (3) whether respondent eventually filed the MSRB report, albeit late; (4) whether the violation involved failing to report political contributions or failing to report participation in an underwriting; (5) the extent to which the violative conduct deprived the investing public or other market participants of information regarding the issuer; and (6) with respect to false or misleading reports, whether the misconduct was intentional or reckless.[32]

Here, the Respondents eventually filed the reports, and there is no evidence that the reports were inaccurate, intentionally misleading or that the late filing deprived the public of information regarding the issuers. Moreover, the evidence suggests that CMG was not active in the municipal underwriting business. For example, CMG withdrew its MSRB registration several months before filing the reports. In addition, there is unchallenged testimony from Baldwin that no CMG employees ever made any political contributions to state officials. We do, however, find it aggravating that the Respondents' violation involved failing to report its participation in underwritings and that the filing delays were significant, ranging from 155 to 797 days late. Under these facts, we find that imposing the minimum fine of $5,000, for each of the four violations, jointly and severally, for a total of $20,000, is an appropriately remedial sanction to impose on the Respondents.

---

29 We do not find it mitigating that the Respondents withdrew CMB's MSRB registration after FINRA staff alerted them to their registration problem. Respondents were still in violation of MSRB's registration requirements for more than one year.

30 *Guidelines*, at 76.

31 *Id.*

32 *Id.*

C. Cause 3: Failure to Establish Written Supervisory Procedures to Ensure Compliance with MSRB Rules

For deficient supervisory procedures, the Guidelines recommend a fine ranging from $1,000 to $25,000, and, in egregious cases, consideration of a suspension of the responsible individual for up to one year and the firm for up to 30 business days.[33] The Guidelines contain two principal considerations that are specific to late filing violations: (1) whether the deficiencies allowed violative conduct to occur or to escape detection; and (2) whether the deficiencies made it difficult to determine the individual or individuals responsible for specific areas of supervision or compliance.[34]

Here, there were almost no procedures designed to keep the Firm compliant with MSRB rules. Tellingly, the Respondents violated three additional MSRB rules during the time that CMG's procedures were deficient. Moreover, the paucity of written procedures made it impossible to determine who was in charge of *any* areas of supervision or compliance. We find that the Respondents' misconduct was egregious, and impose a $25,000 fine, jointly and severally, on the Respondents and suspend Baldwin in his capacity as a principal for one year. In addition, we suspend CMG for 30 business days.

D. Cause 4: Failure to Comply with Continuing Education Requirements

For failure to comply with the regulatory element of the continuing education rules, the Guidelines recommend a fine for an individual ranging from $1,000 to $5,000, and for a firm, from $2,500 to $20,000.[35] In cases where the firm knowingly allowed a person to act in a registered capacity with a lapsed registration, consideration should be given to suspending the firm for up to two years or expelling the firm, and barring the responsible principal.[36] The Guidelines contain two relevant principal considerations that are specific to the violations in this case: (1) the nature and extent of responsibilities of the inactive person(s); and (2) when the violator is a firm, whether the firm knowingly allowed the individual to function while registration was inactive.[37]

Here, Baldwin was probably the most important employee at CMG. He had the greatest responsibilities, serving as CMG's President, CEO, and Chief Compliance Officer. Moreover, CMG (through Baldwin) was aware for one month that Baldwin was performing his duties

---

33 *Guidelines*, at 109.

34 *Id.*

35 *Guidelines*, at 45.

36 *Id.*

37 *Id.*

despite his inactive status. In consideration of these facts, we impose a $10,000 fine and two-month suspension on CMG.

E. Causes 5 and 6: Deficient AML Program

There are no specific Guidelines for violations of the AML Rules. Consequently, we will apply the Guidelines for deficient supervisory procedures for this violation.[38] For deficient supervisory procedures, the Guidelines recommend a fine ranging from $1,000 to $25,000, and, in egregious cases, consideration of a suspension of the responsible individual for up to one year and the firm for up to 30 business days.[39] The Guidelines contain two principal considerations that are specific to these violations: (1) whether deficiencies allowed violative conduct to occur or to escape detection, and (2) whether the deficiencies made it difficult to determine the individual or individuals responsible for specific areas of supervision or compliance.[40]

Enforcement neither provided nor was there any other evidence in the record that the deficiencies in CMG's AML Program allowed any violative conduct to escape detection. However, CMG's AML Program did not clearly designate which individuals were in charge of specific areas of supervision and compliance with the AML rules. For example, it was unclear from the FINRA contact system who served as CMG's AML primary compliance contact and there was no procedure for designating an AML compliance officer. We find that the Respondents' violations were serious, but not egregious. Consequently, we impose a $25,000 fine on the Respondents, jointly and severally.[41]

---

38 *See Guidelines*, at 1 (instructing adjudicators to look to analogous guidelines for violations that are not addressed specifically); *see also Domestic Secs., Inc.*, Complaint No. 2005001819101, 2008 FINRA Discip. LEXIS 44, at *20-21 (FINRA NAC Oct. 2, 2008) (applying Guidelines for deficient supervisory procedures in determining sanctions for violation of AML rules).

39 *Guidelines*, at 109.

40 *Id.*

41 We note that the Respondents' violations under causes 5 and 6 both arise from the same misconduct, an inadequate AML program. As a result, we impose a single sanction for the violations alleged in both causes. *See Dep't of Enforcement v. Respondent Firm 1*, Complaint No. C8A990071, 2001 NASD Discip. LEXIS 6, at *30-31 (NASD NAC Apr. 19, 2001) (imposing a unitary sanction for violations attributable to a common underlying cause).

F. Cause 7: Failure to Create and Maintain a Business Continuity Plan

There are no specific Guidelines for violations of FINRA's rules governing business continuity plans. We will apply the most analogous Guidelines covering the customer protection rule for this violation.[42] For violations of the customer protection rule, the Guidelines recommend a fine ranging from $1,000 to $50,000 and a suspension of up to 30 business days.[43] For this type of violation, the Guidelines ask adjudicators to consider the extent to which respondent exposed customer funds to potential risk or loss.[44]

Here, there is no evidence that the deficiencies exposed any customer funds to potential risk or loss. We find that a fine on the lower end is appropriate, and we therefore impose a $5,000 fine on the Respondents, jointly and severally.

G. Causes 8, 9, 10, 11 and 14: The Financial and Accounting Violations

For two and one-half years, Baldwin operated a firm that participated in numerous securities transactions without having a registered FINOP. Not surprisingly, the respondents committed significant financial and accounting violations during this period. For example, while operating without a FINOP, CMG, acting through Baldwin: (1) failed to maintain its minimum net capital requirement; and (2) failed to prepare accurate books and records by misclassifying a $190,000 deposit as an infusion of capital, understating its expenses, and failing to account for checks that had not cleared. Even after registering a FINOP, the attempts to cure past recordkeeping deficiencies led CMG to fail to file timely its: (1) annual audit report for the year ending December 31, 2005; and (2) quarterly FOCUS Report for the first quarter of 2007.

As we noted earlier, when a number of violations are the result of a single underlying cause, it is proper to impose a single sanction for these violations. *See Respondent Firm 1*, 2001 NASD Discip. LEXIS 6, at *30-31. Here, we review the Guidelines associated with each violation, but impose a single sanction for causes 8, 9, 10, 11, and 14 (the "financial and accounting violations"), because they all are the result of the Respondents' failure to register a qualified FINOP. A discussion of appropriate considerations for each individual cause related to the Respondents' financial and accounting violations follows.

---

42 *See Guidelines*, at 1.

43 *Id.* at 28.

44 *Id.*

*1. Cause 8: Engaging in Securities Transactions Without a Qualified FINOP*

For registration violations, the Guidelines recommend a fine ranging from $2,500 to $50,000, and, in egregious cases, a suspension of the firm for up to 30 business days and a suspension of an individual for up to two years or a bar.[45] The Guidelines contain two principal considerations that are specific to registration violations: (1) whether the respondent had filed a registration application; and (2) the nature of the unregistered person's responsibilities.[46] We find that each of these considerations is aggravating in this case. As noted above, Baldwin's responsibilities at CMG were extensive. Moreover, although Baldwin made an effort to qualify as a FINOP himself, he never obtained this designation. We further find it egregious that the Respondents allowed the Firm to operate without a registered FINOP for such an extended period and despite significant regulatory pressure from FINRA to resolve the problem.

*2. Cause 9: Net Capital Deficiency*

For net capital violations, the Guidelines recommend a fine ranging from $1,000 to $50,000, and a suspension of the firm and the responsible individual for up to 30 business days.[47] The Guidelines contain two principal considerations that are specific to net capital violations: (1) whether the firm continued in business while knowing of the deficiencies/inaccuracies or voluntarily ceased conducting business because of the deficiencies/inaccuracies; and (2) whether the respondent attempted to conceal deficiencies or inaccuracies by any means, including "parking" of inventory and inflating "mark-to-market" calculations. Here, the Respondents knowingly sought to allow CMG to operate with an inaccurately stated amount of net capital by providing the Firm with a temporary loan and categorizing it as an infusion of capital. Thus, there is some evidence that the Respondents attempted to conceal this inaccuracy. Finally, we find it egregious that the Respondents' misconduct subjected the Firm to a net capital deficiency of roughly $2.2 million.

*3. Cause 10 and Cause 11: Failure to Prepare an Accurate General Ledger, Trial Balances and Net Capital Computations; and Failure to Prepare Accurate Books and Records*

For recordkeeping violations, the Guidelines recommend a fine ranging from $1,000 to $10,000, and, in egregious cases, from $10,000 to $ 100,000. The Guidelines also recommend a suspension of the firm and the responsible principal for up to 30 business days or, in egregious cases, a suspension of up to two years or expulsion of the firm and a suspension of the responsible individual for up to two years or a bar.[48] For this type of violation, the Guidelines

---

45 *Id.* at 48.

46 *Id.*

47 *Id.* at 29.

48 *Id.* at 30.

direct adjudicators to consider the nature and materiality of inaccurate or missing information.[49] Here, we find that the inaccurate records and computations at issue in this case are critical because they are closely related to compliance with the Net Capital Rule. *See North Woodward Fin. Corp.*, Exchange Act Rel. No. 60605, 2009 SEC LEXIS 2796, at *26-27 (Aug. 14, 2009) (stating that the general ledger and trial balance "enable the broker-dealer to make the computations necessary to ascertain his compliance with the net capital rule"); *see also Lowell H. Listrom*, 50 S.E.C. 883, 888 (1992), *aff'd*, 975 F.2d 866 (8th Cir. 1992) (table format) (stating that the recordkeeping "rules are not technical but involve fundamental safeguards imposed for the protection of the investing public on those who wish to engage in the securities business"). Moreover, we find it aggravating that the Respondents did not include even the most basic expenses on the Firm's balance sheet, including material information like salaries, rent, and utilities. We find that the Respondents' recordkeeping violations were egregious and warrant a significant sanction.

*4. Cause 14: Failure to Timely File Annual Audit and FOCUS Reports*

For late filing of FOCUS Reports, the Guidelines recommend a fine ranging from $1,000 to $20,000 and, in egregious cases, a suspension of the firm for up to 20 business days and a suspension of the responsible individual for up to 10 business days.[50] The Guidelines contain two principal considerations that are specific to late FOCUS report violations: (1) the number of days late respondent filed reports; and (2) whether respondent filed late to delay reporting a recordkeeping, operational, or financial deficiency.[51] Here, we note that the annual audit report was filed 145 days late and the quarterly FOCUS report was filed 29 days late. There is no evidence, however, that the Respondents delayed the filings in order to avoid reporting a deficiency. Consequently, we find that Respondents' late filing of these reports was serious, but not egregious.

Our overall assessment of the violations caused by the Respondents' failure to register a qualified FINOP is that this misconduct was egregious and merits a significant sanction. The Respondents showed indifference toward a fundamental recordkeeping responsibilities of those who wish to engage in a securities business. In addition, the Respondents' failure to diligently pursue registration of a qualified FINOP led to a pattern of violations that continued for years. Finally, as noted above, the Respondents' breach of CMG's membership agreement exposed the Firm to $2.2 million of risk in a single transaction.

---

49 *Id.*

50 *Guidelines*, at 72. There are no specific Guidelines for late filing of an annual audit report. Consequently, we will apply the analogous Guideline for late filing of a FOCUS report for this violation. *See id.* at 1.

51 *Id.* at 72.

For the totality of the Respondents' violations under causes 8, 9, 10, 11 and 14, the Hearing Panel recommended: (1) a six-month suspension of CMG; and (2) a two-year and four-month suspension of Baldwin in all capacities. In addition, the Hearing Panel recommended a $75,000 fine, jointly and severally, on the Respondents. Because of the egregious nature of these violations, we find that the $75,000 fine and a six-month suspension imposed on CMG is too lenient, and we expel the Firm for its financial and accounting violations. We also find it appropriate to impose a bar on Baldwin in all capacities for his financial and accounting violations.[52]

H. Cause 12: Failure to Apply for Approval of a Change in Business Operations and Failure to Comply with Membership Agreement

For member agreement violations, the Guidelines recommend a fine ranging from $2,500 to $ 50,000.[53] In cases involving a serious breach of the agreement, the Guidelines recommend a suspension of the firm and the responsible individual for up to two years.[54] In egregious cases, the Guidelines recommend that consideration should be given to expelling the firm and/or barring the responsible individual.[55] The Guidelines contain three principal considerations that are specific to violations of membership agreements: (1) whether respondent breached a material provision of the agreement, (2) whether respondent breached a provision of the agreement that contained a restriction that was particular to the firm, and (3) whether the firm had applied for, was in the process of applying for, or had been denied a waiver of a restriction at the time of the misconduct.[56]

Here, the Respondents breached a material provision of the Firm's membership agreement. CMG was a $5,000 broker and violated one of the key provisions of its membership

---

52 We note that the suspension recommended by the Hearing Panel for Baldwin is greater than two years. The Guidelines recommend that suspensions not exceed two years because misconduct that merits a suspension of more than two years should probably warrant a bar. *See id.* at 11 (Technical Matters: Suspensions, bars and expulsions) (stating that the Guidelines "recommend suspensions that do not exceed two years [and that] . . . [t]his upper limit is recommended because of the NAC's sense that, absent extraordinary circumstances, any misconduct so serious as to merit a suspension of more than two years probably should warrant a bar (of an individual) or expulsion (of a member firm) from the securities industry"). We find that Baldwin's misconduct for these violations merits a bar, and we decline to adopt the Hearing Panel's recommendation of a two-year and four-month suspension.

53 *Guidelines*, at 47.

54 *Id.*

55 *Id.*

56 *Id.*

agreement that explicitly prohibited CMG from participating in any underwritings on a firm commitment basis. Although the restriction is one of general applicability to $5,000 brokers, we find that this restriction was material because it affected the Firm's net capital requirements. In addition, there is no evidence that the Respondents had applied for, were in the process of applying for, or had been denied a waiver of the restriction. Significantly, the Respondents' participation in the Genworth Offering made the Firm net capital deficient by more than $2.2 million. We find the Respondents' complete disregard for the plain language of CMG's membership agreement to be egregious, and we bar Baldwin in all capacities and expel CMG for this violation.

I. Cause 13: Deficient Communications with the Public

For deficient communications with the public, the Guidelines recommend a fine ranging from $1,000 to $20,000 and, in egregious cases, a suspension of the Firm for up to one year and a suspension of the responsible person for up to 60 days.[57] The Guidelines contain one principal consideration that is specific to a deficient communications violation: whether the violative communications with the public were circulated widely.[58]

Here, the improper sales literature was available online for at least one month, but there was no evidence of the breadth of any of the literature's circulation. We find that the Respondents' use of the deficient communications was serious, but not egregious. We further find that a $10,000 fine imposed on the Respondents, jointly and severally, is an appropriately remedial sanction for this violation.

J. Additional Aggravating Factors

For all 14 of the alleged causes of action, Enforcement initially asked for a $170,000 fine (jointly and severally), a seven-month suspension of the Firm, a two-year suspension of Baldwin in all capacities, and a bar against Baldwin from acting in a supervisory capacity. Considering the totality of the facts and circumstances of this case, however, we find that the Respondents' overall misconduct was egregious and that higher sanctions are needed to protect investors and remedy the Respondents' violations. The seriousness and diversity of the Respondents' misconduct, and their disregard for their regulatory responsibilities make it clear that the Respondents represent a tangible threat to the investing public. Moreover, the Respondents have a disciplinary history that demonstrates recidivism.[59]

---

57 *Id.* at 84.

58 *Id.*

59 We note that an important objective of the disciplinary process is to deter and prevent future misconduct by imposing progressively escalating sanctions on recidivists. *See Guidelines*, at 2 (General Principles Applicable to All Sanction Determinations, No. 2). Baldwin argues that the Respondents are not recidivists. The Respondents, however, have significant disciplinary histories, including recent findings of misconduct that further illustrate the Respondents'

[Footnote continued on next page]

We also find it aggravating that the Respondents' violations were numerous, they occurred over almost two years in the face of repeated notifications and inquiries from FINRA staff, and that the Respondents do not acknowledge or accept responsibility for any of the most significant violations, including the Firm's failure to operate without a FINOP and the Firm's violation of its membership agreement.[60]

In light of all of these considerations, we find that any sanction short of a bar of Baldwin and an expulsion of CMG would expose the investing public to an unacceptable risk.[61]

VI. Conclusion

We find that CMG and Baldwin: (1) engaged in securities-related activity without a qualified FINOP; (2) failed to maintain adequate net capital; (3) made inaccurate net capital calculations and failed to prepare an accurate general ledger and trial balances; (4) failed to timely file an annual audit report and FOCUS report; (5) failed to develop and implement an anti-money laundering compliance program pursuant to FINRA rules; (6) failed to develop and implement an anti-money laundering compliance program pursuant to MSRB rules; (7) violated the terms of CMG's membership agreement; (8) made improper communications to the public; (9) failed to create and maintain a business continuity plan; (10) engaged in a municipal securities business without a qualified municipal securities principal; (11) failed to maintain and

---

[cont'd]

inability to comply with the securities laws and disregard for FINRA's regulatory authority. Specifically, on January 30, 2009, the Commission affirmed the NAC's findings that the Respondents failed to provide requested information and failed to provide complete and timely responses to requests for information. For these violations, the Commission imposed a two-year suspension on Baldwin in all capacities, a two-year suspension on CMG, and a $25,000 fine, jointly and severally, on the Respondents. *See CMG Institutional Trading, LLC*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215 (Jan. 30, 2009).

60 *Guidelines*, at 6-7 (Principal Considerations in Determining Sanctions, Nos. 2, 8, 9 and 15).

61 Baldwin contends that the lack of customer harm should be considered a mitigating factor. Baldwin's contention has no merit. *See Dep't of Enforcement v. Mizenko*, Complaint No. C8B030012, 2004 NASD Discip. LEXIS 20, at *20 (NASD NAC Dec. 21, 2004) (stating that "there is no authority for the proposition that the absence of harm to customers is mitigating."), *aff'd*, Exchange Act Rel. No. 52600, 2005 SEC LEXIS 2655 (Oct. 13, 2005); *Dep't of Enforcement v. Dieffenbach*, Complaint No. C06020003, 2004 NASD Discip. LEXIS 10, at *40 (NASD NAC July 30, 2004), *aff'd in part, Michael A. Rooms*, Exchange Act Rel. No. 51467, 2005 SEC LEXIS 728 (Apr. 1, 2005), *aff'd, Rooms v. SEC*, 444 F.3d 1208 (10th Cir. 2006).

enforce adequate written supervisory procedures; (12) failed to file timely a list of issuers with the MSRB Board; and (13) failed to prepare accurate books and records.

In addition, we find that CMG failed to comply with continuing education requirements by permitting Baldwin to work in a capacity requiring registration.[62] CMG and Baldwin's misconduct constitutes violations of NASD Rules 1017, 1022, 1120, 2110, 2210, 3010, 3011, 3110, and 3510; Exchange Act Rules 15c3-1, 17a-3, 17a-4, and 17a-5; and MSRB Rules G-3, G-27, G-37, G-40, and G-41.

Accordingly, we expel CMG from FINRA membership and bar Baldwin in all capacities.[63] In addition, we affirm the Hearing Panel's assessment of hearing costs of $2,573.44 and we also assess appeal costs of $1,441.95. The bar and expulsion are effective immediately upon service of this decision.

On Behalf of the National Adjudicatory Council,

Marcia E. Asquith, Senior Vice President and Corporate Secretary

---

62 We have also considered and reject without discussion all other arguments advanced by the parties.

63 In light of the bar and expulsion, we do not impose any fines on the Respondents.