FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. RICKY RANDON MOORE (CRD No. 2574634), Respondent.	Disciplinary Proceeding No. 2013038770901 Hearing Officer – RES **HEARING PANEL DECISION** November 28, 2016

Respondent participated in a church bond offering without providing advance written notice to the firm through which he was registered. He also falsely answered his firm's Annual Compliance Questionnaire. These actions violated FINRA Rules prohibiting undisclosed outside business activities and requiring the observance of high commercial standards and just and equitable principles of trade. For these violations, Respondent is suspended from associating with any member firm in any and all capacities for four months and fined $30,000.

Appearances

For the Complainant: Kristy M. Tillman, Esq., Carolyn Craig, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Benette L. Zivley, Esq.

DECISION

I. Introduction

Respondent Ricky Moore ("Moore") was and is both a registered person and the minister of the Brazoria Church of Christ LLC in Brazoria, Texas (the "Church"). The Church issued bonds to finance the construction of a new Church building. The Department of Enforcement alleges that Moore participated in the Church bond offering without providing advance written notice to Commonwealth Financial Network ("Commonwealth"), the FINRA member firm through which he was registered. In the firm's Annual Compliance Questionnaire (the "Questionnaire"), Moore answered "No" to the question whether he had participated in raising

capital, equity, or debt for any public or private investment or venture outside of a firm-approved offering. Enforcement charges that Moore's participation in the Church bond offering was an outside business activity that he was required to disclose to Commonwealth and that he answered the Questionnaire falsely.

Moore denies that he engaged in an outside business activity or falsely answered the Questionnaire. He contends his actions in the Church bond offering were so tangential that they did not rise to the level of participating in the offering. He further contends his answer of "No" in the Questionnaire was truthful because he did not participate in raising capital, equity, or debt for a public or private investment or venture that was not approved by Commonwealth.

The Hearing Panel conducted a hearing in Dallas, Texas on August 16, 17, and 18, 2016.[1] Enforcement proved by a preponderance of the evidence that Moore violated FINRA Rules 3270 and 2010 by engaging in outside business activities without providing prior written notice to his firm, and violated FINRA Rule 2010 by falsely answering the Questionnaire.

II. Jurisdiction

Moore is currently registered with a FINRA member firm and was associated with a FINRA member firm at the time of his alleged misconduct. Thus, FINRA has jurisdiction over Moore under FINRA By-Laws Article V, Section 4.[2]

III. Findings Of Fact

A. Background

Moore was first employed in the securities industry in December 1994.[3] He holds Series 7, 8, 31, and 63 securities licenses.[4] In February 2009, he became registered with Commonwealth.[5] In his first year at the firm, his office was an office of supervisory jurisdiction where, he testified, his responsibilities included "[s]upervise advisor's account, e-mails, outside business activities."[6] He operated his Commonwealth-associated brokerage business under the name of The Oak Financial Group.[7] Since 2008, he has been the minister of the Church.[8] He was

[1] The hearing transcript is cited as "Tr." Enforcement's exhibits are cited as "CX." Moore's exhibits are cited as "RX." The parties filed joint exhibits, which are cited as "JX." The parties filed joint stipulations, which are cited as "Stip."

[2] Stip. ¶ 5.

[3] Stip. ¶ 1; Tr. 567.

[4] Stip. ¶ 2; Tr. 208.

[5] Stip. ¶ 3.

[6] Tr. 209. Moore's office with a previous broker-dealer was also an office of supervisory jurisdiction. Tr. 538.

[7] Tr. 524.

[8] Tr. 526.

and is an elder of the Church, along with two other elders.[9] The members of the Church appointed the elders.[10]

B. Moore's Approved Outside Business Activities Were Limited to Teaching and Preaching as a Pulpit Minister

When Moore became registered through Commonwealth, he requested and received the firm's permission to act as a pulpit minister for the Church and earn $30,000 in annual compensation.[11] In his Disclosure of Outside Business Activity form (the "Disclosure Form") submitted in November 2008, Moore stated his duties and obligations as pulpit minister would be teaching and preaching, he would not spend any of his time on this activity in regular business hours, and none of this activity would be conducted in a FINRA-registered office.[12] The activity would not involve Commonwealth customers, and Moore would not be involved in the Church's finances.[13] Commonwealth approved Moore's service as minister of the Church but cautioned him that "[s]hould there be any change in the nature of your involvement in this activity, prior written consent must be obtained from the Commonwealth Compliance Department."[14] Thus, if anything changed in the nature of Moore's Church activity, he was required to disclose it to Commonwealth.[15]

Commonwealth's Compliance Manual provided guidance on the required disclosure of outside business activities.[16] A registered person had to submit a Disclosure Form to the Compliance Department before engaging in an outside activity.[17] When deciding whether an outside activity had to be disclosed, the registered person was directed to err on the conservative side:

> Understanding that the definition of outside business activity … under the rule is very broad, and at times its interpretation is complex, the Firm recommends that a registered [Associated Person] err on the conservative side by disclosing any

[9] Tr. 316, 407, 417. Moore testified that the Church elders "oversee all the business of the local congregation." Tr. 568. According to one of the elders, the duties of an elder include "complete oversight of a local congregation." Tr. 377. The elders met once a month, more frequently if needed, and "all three of us talked about every issue of consequence." Tr. 571.

[10] Tr. 315.

[11] Stip. ¶ 6.

[12] Stip. ¶ 7; JX-2, at 2-3; Tr. 210-11.

[13] Stip. ¶ 8. As it turned out, several of the Church members were Moore's securities customers. Tr. 211-12.

[14] Stip. ¶ 9; JX-2, at 1. Similarly, the Disclosure Form stated that "[a]ny change in the facts or circumstances disclosed in a Disclosure of Outside Business Activity must be reported promptly to the Compliance department in writing." JX-2, at 2; *accord* Tr. 212.

[15] Tr. 213.

[16] CX-1. The earliest version of the Compliance Manual offered in evidence (in excerpted form) was the November 2011 revision.

[17] CX-1, at 2; Tr. 140.

> activity that would be considered outside the scope of the typical duties performed as a registered [Associated Person] of Commonwealth.[18]

If a registered person wanted guidance on the disclosure of outside business activities, he could: (1) re-read the Compliance Manual; (2) send an email to the dedicated inbox that the Compliance Department maintained; or (3) read the Disclosure Form, which had twenty questions addressing the subject.[19] The disclosure requirement applied to both new outside activities and changes to previously approved activities: "Registered [Associated Persons] are responsible for submitting the appropriate Disclosure of Outside Business Activity … form to the Compliance department for all new activities, or changes to previously acknowledged activities, **prior** to engaging in the activity."[20]

In May 2011, Moore received a letter from Commonwealth's Compliance Department about possible conflicts of interest arising from his duties as minister of the Church.[21] The letter read in part:

> In order to avoid the appearance of conflict of interest, if your duties as a Minister for the Brazoria Church of Christ include any decision-making authority or influence over the organization's investments or investment accounts, you are not permitted to simultaneously serve as Registered Representative or Investment Advisor Representative for the organization.[22]

Moore contends this letter superseded Commonwealth's earlier limitations on Moore's activities as pulpit minister and that, as long as he was not a registered representative for the Church, his activities as minister were no longer restricted.[23] But the weight of the evidence shows Moore was still obligated to update his Disclosure Form to include any additional Church activities he pursued beyond being a minister.[24] The Commonwealth Compliance Advisor who wrote the letter testified that, when FINRA Rule 3270 replaced NASD Rule 3030, "Commonwealth decided to send out new acknowledgement letters for any activities that any of our registered representatives had on file with us."[25] The Compliance Advisor sent "close to a hundred" similar letters to Commonwealth registered persons, and the project was spread across

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[18] CX-1, at 2; *see* Tr. 143-44.

[19] Tr. 154-55.

[20] CX-1, at 3 (emphasis original); *see* Tr. 141. Commonwealth revised the Compliance Manual in June 2012 and April 2013. The provisions requiring the disclosure of outside business activities remained the same. CX-3, at 1-2; CX-5, at 1-2.

[21] RX-38.

[22] *Id*.

[23] Tr. 766-67.

[24] Tr. 152.

[25] Tr. 149.

all the Compliance Advisors in his unit.[26] According to Commonwealth's Chief Executive Officer (the "CEO"), the letter was not "an all-inclusive answer or document that says what you can't do. It certainly lays out some conditions, but if there is other activity that wouldn't be allowed it may not be stated here."[27]

The letter to Moore concluded by saying: "Should there be any change in the nature of your involvement in this activity; prior written acknowledgement must be obtained from the Commonwealth Compliance Department."[28] Thus, a change in Moore's Church activity still required an update of his Disclosure Form.[29] If there were no updates, Commonwealth would continue to rely, erroneously, on Moore's original Disclosure Form.[30]

C. Moore Participated in the Church Bond Offering Before the December 2012 Annual Compliance Questionnaire

In February 2012, the Church began considering the possibility of issuing bonds to finance the construction of a new Church building.[31] To begin the process, Moore met with a registered representative employed by Security Church Finance ("SCF"), a broker-dealer specializing in the issuance and marketing of church bonds. Moore testified that, at the meeting, he and the registered representative "began looking at building a building and how we would pay for it."[32] After the meeting, the Oak Financial Group faxed the registered representative tables of financial information about the Church, including amounts of contributions and expenses on a monthly basis.[33] According to Moore, the information "was put together by [the Church's] treasurer but it was either faxed or e-mailed from my office."[34]

On Saturday, March 3, 2012, Moore and the other two elders met with the SCF registered representative to discuss issuing church bonds.[35] Moore testified that "[n]one of us had a clue

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[26] Tr. 164, 204.

[27] Tr. 73.

[28] RX-38.

[29] Tr. 201.

[30] Tr. 203-04.

[31] The congregation voted in favor of building a new building in 2008 or 2009. Tr. 500, 569. To build the building, the Church purchased a parcel of property "right in the middle of" Brazoria. Tr. 569.

[32] Tr. 218.

[33] CX-9. The office of the Oak Financial Group was and is a FINRA-registered office. Tr. 217.

[34] Tr. 216-17.

[35] Stip. ¶ 10; CX-10; Tr. 215, 218, 695. It is possible that this is the same meeting about which Moore testified and which is described in the paragraph immediately above. But the proposition that there were two separate meetings is supported by the following two facts: (1) Moore sounds quite definite that there was a meeting in which he and the SCF registered representative met by themselves; and (2) the Oak Financial Group faxed Church financial information to the registered representative on March 1, 2012—that is, before the March 3, 2012 meeting, which included the other two elders—and it is unlikely that Moore would have authorized faxing such information before meeting the registered representative personally.

what issuing bonds looked like and so [the registered representative] took us through kind of bond issuance 101, this is what it looks like."[36] He "brought a copy of a prospectus from another Church of Christ that they had done and so that was a primary piece of data … from that meeting."[37] According to one of the elders, they discussed the building project and,

> if we went the way of bonds, what would be involved in it, and basically it was just an informative meeting that we got to know [the registered representative] and sort of understand what he was going to help us with and different things. It was more informative for me.[38]

The Tuesday after the meeting, the registered representative sent an email to Moore stating: "I look forward to working with you and the entire congregation with achieving a successful bond issue."[39]

In June 2012, the Church took steps to incorporate as a nonprofit corporation. Although Moore contends he and the other two elders had begun incorporating the Church six months earlier,[40] the contemporaneous evidence shows the principal motivation for incorporation was to enable the Church to issue bonds. In fact, one of the elders testified that the subject of incorporation "came up during [the] meeting that we had when we were talking more or less concerning the bond issue and where we needed to organize in such a way to get an LLC started."[41] Moore and the elders told the registered representative the Church was not incorporated.[42]

Moore and the elders worked with an attorney to incorporate the Church.[43] The attorney's legal assistant sent SCF's registered representative an email attaching a draft Certificate of Formation to incorporate the Church. She told the registered representative: "Rick Moore has requested that I forward the attached Certificate of Formation for Brazoria Church of Christ."[44] The registered representative told Moore that the Certificate of Formation "needs to be signed for filing with the State."[45]

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[36] Tr. 574.

[37] Tr. 577.

[38] Tr. 325.

[39] CX-10.

[40] Tr. 219.

[41] Tr. 317.

[42] JX-3; CX-10.

[43] Tr. 220, 528. The attorney was Moore's "personal attorney and confidant for 40 years." Tr. 651.

[44] CX-16, at 1.

[45] CX-18, at 1; Tr. 222.

On June 26, 2012, Moore and the elders incorporated the Church and named Moore the president and a director of the incorporated entity.[46] Moore and the elders signed the Certificate of Formation, which identified the three of them as the organizers of the Church.[47] At Moore's direction, the Certificate of Formation designated the address of Moore's Commonwealth office as the address of the Church.[48] Notwithstanding the Church's address and Moore's positions as president and director, one of the elders testified that "when I signed this [Certificate of Formation] we did not want Rick Moore to be involved in any such way as far as dealing with the issuance of bonds and those kinds of things."[49]

On July 15, 2012, Moore and the elders signed a corporate resolution (the "Resolution") for the Church to issue and sell bonds. The Resolution authorized the Church to:

> issue and sell First and/or General (Second) Mortgage Bonds, in the maximum amount of $450,000 for the following purpose(s): to perform site work, to build a new church facility, to meet other related project costs, to pay financing costs of the project … .[50]

The Resolution authorized Moore and the elders to sign all necessary documents for the Church bond offering.[51] According to one elder, at the time of the Resolution "we were working out a deal with Security Church Finance to … get the process going to start the building, the resolution for the building."[52] The Resolution was part of SCF's required procedure to move forward with the bond offering.[53]

On Saturday, July 21, 2012, Moore and the elders met with the SCF registered representative in Moore's Commonwealth office to review the checklist of items needed to put

[46] Stip. ¶ 11; JX-4, at 2, 4, 5; CX-19, at 2.

[47] CX-19, at 4, 7; Tr. 221.

[48] CX-20, at 1; Tr. 224.

[49] Tr. 326. The elder understood Moore's participation in the Church bond offering "was a sensitive area and we wanted to shield Rick away from it as much as possible." Tr. 373. Moore testified that "[t]here was an intense effort by the members of my Church, by the members of my office, to completely keep me away from as much of this as humanly possible." Tr. 665. And, according to the SCF registered representative, both the Church and SCF "fully understood what the role and responsibilities were and that Rick would in no way have any role and responsibility in the issuance and sale of the bonds." Tr. 720. The evidence shows, however, that these apparent good intentions did not prevent Moore from in fact participating in the offering.

[50] Stip. ¶ 12; JX-5.

[51] JX-5; Tr. 228. The SCF registered representative emailed Moore the blank form of the Resolution and told Moore SCF was "excited and ready to begin the bond process. I look forward to working with you, [the other two elders], and the entire Brazoria Church of Christ family on this successful bond issue." CX-22, at 1.

[52] Tr. 330.

[53] Tr. 589.

the Church bond offering in place.[54] At that time, Moore and the elders signed a Consulting and Bond Program Agreement (the "Consulting Agreement") between the Church and SCF.[55] The other elders signed the Consulting Agreement as the principals of the Church, and Moore signed to attest to their signatures.[56]

The Consulting Agreement provided that SCF would determine the feasibility of a mortgage bond offering based on information provided by the Church.[57] If the Church qualified for the $400,000 amount of the proposed bond offering, SCF would provide its professional and technical services to prepare a best-efforts bond offering.[58] The Church agreed to pay SCF a non-refundable preparation fee of $13,900 "for its efforts in writing the prospectus, preparing, printing and mailing promotional materials, providing an online bond sale system with training, and providing ongoing support services."[59]

With reference to the Consulting Agreement, Moore testified that "[w]e paid [SCF] money to consult with us and tell us what a bond issuance would look like."[60] And, "[w]e were looking at two tracks, whether we borrow the money from a bank or whether we do a bond issuance."[61] But according to one elder, "we were going after a bond agreement … I did read this [Consulting Agreement] at the time and what we were trying to do, sir, at that particular time, was move the process forward."[62] Moore was involved in the discussions about whether the Church should borrow money from a bank or issue bonds. As the elder testified, "[t]here were conversations no doubt between the three elders."[63]

Moore was president of the Church for 34 days beginning with the Church's incorporation on June 26, 2012. He resigned on August 1, 2012.[64] In his resignation letter, he stated: "This resignation is not only from the position as president, but rather my resignation is

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[54] CX-23; Tr. 229, 706. One of the elders testified: "The reason why Mr. Moore sat in on these meetings is because he is an elder, he's part of the business affairs of the local work, not to be dealing with the bonds itself, but the local work." Tr. 336.

[55] Stip. ¶ 13; JX-6; CX-22; Tr. 225-26.

[56] JX-6, at 1, 4; Tr. 230.

[57] Stip. ¶ 14.

[58] Stip. ¶ 15. The Resolution provided for a bond offering of $450,000, whereas the Consulting Agreement provided for an offering of $400,000. The SCF registered representative told Moore the reason for the different amounts was "I typically encourage the church to authorize debt for a little more than what may [have] originally been needed." CX-22, at 1.

[59] JX-6, at 3.

[60] Tr. 231-32.

[61] Tr. 233; *see* Tr. 321 (AW) ("We had talked about banking, we had gone through and talked about the bonds, and we had discussed, well, which way do we really want to go?").

[62] Tr. 333.

[63] Tr. 378.

[64] RX-6; Tr. 253.

from the LLC board entirely."[65] Thus, Moore also resigned from his position as a director of the Church. One of the elders replaced Moore as the president. Moore testified that "[w]hen we made the decision to start getting serious about the church bond on July 26th, I resigned three days later."[66] It was clear Moore and the elders had started getting serious about the Church bonds because "[w]e wouldn't have spent $13,000 hiring [SCF] if it didn't look like a viable alternative."[67]

Although he had resigned as president and director, Moore was the SCF registered representative's point person for all the necessary items for the Church bond offering. Moore collected the documents and had one of his office assistants email them to the registered representative from Moore's Commonwealth office.[68] The registered representative initiated the process by emailing Moore a short list of "the following items … to be delivered this week," including a digital photograph of Moore for the marketing brochure (the "Marketing Brochure").[69]

On August 3, 2012, an SCF employee sent Moore an email in which the employee stated that she was "sending … all the forms that you will need to complete so that I can write all the documents for this proposed bond issue."[70] The packet she sent included a letter from the president and CEO of SCF addressed to Moore stating: "We are pleased that your church has chosen Security Church Finance, Inc. to assist you in issuing and selling bonds."[71] With regard to the packet, Moore testified that "I printed it out, carried it to the church building, handed it to [one of the elders], we ripped it into about four or five pieces and passed the pieces out to different people to get it done."[72] Moore was tasked with compiling the information requested in two pages of the packet and writing the minister's message.[73] Then, "when we put [the packet] back together before we sent it to Security Church Finance, I went through all of it."[74] On the same day he received the packet, Moore emailed the registered representative a short biography

[65] RX-6. As described in the text to come, even though Moore resigned from the Board, he continued to act in furtherance of the Church bond offering including, but not limited to: (1) sending Church documents and information to the SCF registered representative; (2) supervising the completion of forms and items for SCF to write a prospectus for the offering; (3) voting to increase the amount of the offering from $450,000 to $575,000; and (4) meeting with the elders and the registered representative.

[66] Tr. 260.

[67] Tr. 260-61.

[68] Tr. 235, 287, 293.

[69] CX-25, at 1; RX-5.

[70] CX-82, at 1. This employee was the person at SCF who "pulls together the information from the church that's needed for the prospectus, puts together the drafts of the prospectus and such." Tr. 697.

[71] CX-82, at 3.

[72] Tr. 579-80.

[73] Tr. 591.

[74] Tr. 583.

of himself to be included in the marketing materials.[75] According to Moore, SCF was "putting together a rough prospectus for us to see what it would look like."[76] The SCF registered representative turned to Moore to retitle the Church's real property in the Church's new corporate name.[77]

On August 27, 2012, Moore's assistant sent the SCF registered representative the Church's monthly profit and loss statements for 2010, 2011, and year-to-date 2012.[78] Through his assistant, Moore told the registered representative the monthly profit and loss statements for 2009 were also available. The registered representative replied: "Tell [Moore] I complied [sic] the other statements into the format we need and once I get the 2009 reports, I add those to what I have already completed."[79] The assistant emailed the 2009 statements from Moore's Commonwealth office. The registered representative testified that the purpose of the statements was "[t]o try to really determine on a loose basis what kind of parameter would be set as far as the church's borrowing capability."[80] Moore admits the statements helped the registered representative process information about the Church bonds.[81]

On September 27, 2012, Moore emailed the minister's message for the Marketing Brochure to the SCF registered representative.[82] When an SCF employee edited the message to include an invitation for potential investors to join the Church "both physically and with your investment in our church bonds that we will use to fund our new building," Moore immediately expressed concern about this language:

> The only issue I have with this is that I own a financial planning firm, and this is considered an unregistered private placement. I need to be careful with endorcing [sic] or promoting this personally. Anyone else in the group, or the group collectively would work fine to be represented as an endorcer.[83]

After making several attempts over the next six months to agree on the language of the minister's message, Moore and SCF gave up, and the other two elders signed the message.[84]

On October 18, 2012, Moore's assistant emailed the registered representative the Church's bank statements for 2010, 2011, and year-to-date 2012.[85] Moore testified that "[t]hese

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[75] CX-27.

[76] Tr. 236.

[77] CX-36, at 1.

[78] CX-29, at 1; CX-31, at 1.

[79] CX-35, at 1.

[80] Tr. 698.

[81] Tr. 244.

[82] CX-38, at 1.

[83] CX-39.

[84] CX-7, at 3.

were brought to [the assistant] and she knew she could do that, so she sent these to [the registered representative] when people brought them into the office."[86] According to Moore,

> [the registered representative] was interested in and I would say motivated in getting this rolling as quickly as possible … and the first thing they needed was the financials, how much money we had in the bank, how much money we were going to borrow, the total price of the church building, so the financials were a part of that, which were our monthly bank statements.[87]

The day after receiving the bank statements, the registered representative emailed Moore a blank twelve-page form entitled "Prospectus Information."[88] In his email, the registered representative told Moore: "Give me a call when you get a chance. I want to set up the date for a bond investment seminar at the church. It's time to begin the marketing efforts and get Indications of Interest in place."[89]

D. Moore Represented That He did not Participate in Raising Capital or Debt for an Investment or Venture Outside of a Commonwealth-Approved Offering

In December 2012, Moore submitted his Questionnaire.[90] The Questionnaire asked: "During the course of 2012 while affiliated with Commonwealth, have you participated in raising capital, equity or debt for any public or private investment or venture outside of a Commonwealth approved offering?"[91] Moore answered "No."[92] By this time, he had performed all of the activities described above in the Church bond offering. The Church bonds were not a Commonwealth-approved offering.[93]

E. Moore Participated in the Church Bond Offering After the December 2012 Annual Compliance Questionnaire

After his negative answer on the Questionnaire, Moore continued to be the point person for the information the SCF registered representative needed for the Church bond offering. On January 28, 2013, Moore forwarded to the registered representative the recorded deeds

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[85] CX-40, at 1.

[86] Tr. 247.

[87] Tr. 586.

[88] CX-41, at 2-13.

[89] CX-41, at 1.

[90] CX-8, at 1.

[91] CX-8, at 1.

[92] CX-8, at 1; Tr. 285.

[93] Tr. 534.

transferring title to the Church's real property to the incorporated entity.[94] The next day, Moore emailed the registered representative the By-Laws of the Church and the Unanimous Written Consent of the Board of Directors.[95] In his email, Moore told the registered representative: "Let me know if you need signed copies."[96]

On March 4, 2013, Moore forwarded to the registered representative the quote he received from the builder for the construction of the new Church building, which "came in 100,000 roughly higher than what we had anticipated."[97] After seeing the quote, the registered representative asked Moore whether he wanted to raise the Church bond offering amount above $450,000:

> The original Resolution Authorizing Bonded Indebtedness authorized up to $450k. Thus, do we stick with that or do you want to revote for up to a higher amount? If we raise the bond issue to $450k, you will need as much as $350k cash. Also, with a $450k bond issue, no new vote is needed but anything over that will require a new vote.
>
> Let me know your thoughts.[98]

Moore and the other two elders voted to increase the amount of the Church bond offering from $450,000 to $575,000.[99] Moore signed the Resolution increasing the amount as both an elder and as the presiding officer.[100] In March 2013, Moore and the elders "made the decision to go with the bonds" instead of a loan from a bank.[101] One of the elders testified that the decision was "something that we brought before the local membership and there was no objections to that."[102] The registered representative emailed Moore and the elders with "the list of outstanding items needed for the bond issue."[103]

On Saturday, April 6, 2013, Moore and the elders met with the registered representative in Moore's Commonwealth office.[104] One elder had requested the meeting so that he could learn more about the Church bonds.[105] With regard to the meeting, the elder testified that "I'd like

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[94] CX-45, at 1; *see* Tr. 251-52.

[95] CX-48, at 1, 3-4.

[96] CX-48, at 1.

[97] Tr. 598; CX-50, at 1.

[98] CX-50, at 1.

[99] Tr. 254, 256; JX-7.

[100] Stip. ¶ 16; JX-7.

[101] Tr. 256, 595-96.

[102] Tr. 369.

[103] RX-15, at 1.

[104] CX-56, at 1; Tr. 258-59, 355, 600.

[105] CX-56, at 2; RX-14, at 2.

Rick and [the other elder] there and discuss further the bonds because I want to make sure before we execute that I know as much about it as possible."[106]

The next day, Moore emailed the same elder draft language for a public letter announcing a Church-wide informational meeting about the bonds.[107] Moore's draft language stated:

> As some of you already know, the church in Brazoria is in the process of moving into a building project. The construction of the building should begin within 4 or 5 weeks, and will be located on HWY 36 in downtown Brazoria.
>
> We have decided to issue bonds, or in essence borrow from individuals instead of borrowing from a bank. This allows us to pay dividends from extremely good interest rates to individuals instead of the bank. We will be having an informational meeting at 7:30 pm (immediately after evening services) on Sunday, April 21, 2013 at our existing building at the corner of Florida and Erwin in Brazoria. We look forward to seeing you there, if you have interest.[108]

Moore testified that he provided this draft language because the elder "asked me for some ideas, so I sent him some ideas … This was on a Sunday. Immediately after coming home from church, I shot this together and sent it to him."[109] The elder revised Moore's draft language and emailed the revision to Moore with the request: "Please review and we can discuss."[110]

Moore also reviewed a draft prospectus for the Church bond offering (the "Prospectus"), including risk factors that SCF had added and changes to the bond maturity schedule, and told SCF that the draft "will work fine for us."[111] On April 15, 2013, the Church issued the Prospectus, which identified Moore as one of the three officers of the Church and described his occupation as "Minister serving the Issuer" and "Owner, The Oak Financial Group."[112] The Prospectus included the following disclosure language:

> [Moore], minister and elder of the Issuer (the Church), is the owner of The Oak Financial Group, a company who is a member with the Financial Industry Regulatory Authority; and as such, [Moore] will have no participation in the sale of the bonds.[113]

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[106] Tr. 355.

[107] Stip. ¶ 17; JX-8.

[108] JX-13, at 1.

[109] Tr. 262.

[110] CX-57, at 1; Tr. 262-63.

[111] Stip. ¶ 18; JX-9; Tr. 263-64.

[112] Stip. ¶ 19; JX-10, at 10; Tr. 267-68.

[113] JX-10A, at 24.

According to the Prospectus, the Church's address was the business address of Moore's Commonwealth office, and its telephone number was Moore's Commonwealth phone number.[114] The Prospectus said that one could obtain copies of the Prospectus from Moore's office.[115]

After the evening service on Sunday, April 21, 2013, the Church held an informational meeting about the bond offering.[116] The SCF registered representative made a presentation.[117] Although Moore did not speak in the presentation, he sat in a back room where he could hear it and be on hand if something occurred that he would have to deal with:

> [A Church elder] stood up and said that I could not have any part of it, that I would not be a part. He introduced [the registered representative]. I walked to the back and sat in a room in the back, but I wanted to hear what he had to say and see what kind of response. If there was something that was not pleasant or comfortable that I was going to have to deal with, I wanted to know it.[118]

The registered representative and the two elders passed out the four-page Marketing Brochure, which listed as the Church's address and telephone number Moore's Commonwealth address and phone number.[119]

On May 22, 2013, an SCF employee emailed to Moore, for signature by him and the other two elders, the documents needed to close the Church bond offering.[120] After some delay, Moore obtained the necessary signatures and returned the closing documents to SCF.[121] The next month, the CEO Emeritus of SCF emailed Moore a list of Church bonds still available for purchase.[122] Six of Moore's Commonwealth customers bought Church bonds in the offering.[123]

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[114] JX-10A, at 24.

[115] JX-10A, at 24.

[116] Tr. 269.

[117] Tr. 269.

[118] Tr. 270. One of the elders testified that "I remember [the registered representative] coming down front and I went down front and also [the other elder] come down front, and we picked up these papers and we went through the congregation and passed them out to the local members." Tr. 361. According to the other elder, Moore "introduced [the registered representative] and he didn't say a word … he went and sat down he ain't said a word about nothing. He let [the registered representative] do all the talking." Tr. 413.

[119] CX-7, at 1; Tr. 360-61, 398, 524.

[120] CX-70; Tr. 283.

[121] CX-75, at 1; Tr. 284.

[122] CX-81; Tr. 733.

[123] JX-11, at 1-3, 10, 28, 34-38; Tr. 271-72, 399, 411.

F. Moore did not Disclose to Commonwealth That He Participated in the Church Bond Offering

Moore did not provide prior written notice to Commonwealth that he was going to be and was the president and a director of the incorporated Church for 34 days.[124] He did not inform the Compliance Department in advance that he planned to participate in the Church bond offering.[125] Moore did not disclose in his annual audits with Commonwealth's Compliance Department that he was involved in the Church bonds.[126] Commonwealth first learned of his Church bond activities in September 2013 when its CEO received a call from a registered person informing him that Moore was involved in such activities.[127] In the review of Moore's business emails that followed, Commonwealth discovered messages referring to the Church bonds.[128] The firm would not have approved this activity if Moore had disclosed it.[129]

Commonwealth terminated Moore's registration with the firm effective September 30, 2013.[130] Commonwealth filed a Form U5 stating that Moore had been permitted to resign because of his "failure to update material information regarding an outside business activity and involvement in the issuance of bonds in relation to that activity without providing prior written notice to or receiving written approval from the firm."[131]

IV. Conclusions Of Law

Moore engaged in business activities outside the scope of his relationship with Commonwealth, without providing prior written notice, and he answered the Questionnaire falsely when he stated he had not participated in raising capital or debt for an investment or venture outside a Commonwealth-approved offering. As explained below, these actions violated FINRA Rules.

A. Moore's Outside Business Activities Violated FINRA Rules 3270 and 2010

The Complaint charges Moore with violating FINRA Rules 3270 and 2010 by engaging in outside business activities without giving Commonwealth prior written notice. Rule 3270 provides:

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[124] Tr. 146, 214.

[125] Tr. 158, 161.

[126] Tr. 674.

[127] Tr. 36-37.

[128] Stip. ¶ 22. The emails that Commonwealth discovered are collected in JX-13.

[129] Tr. 39.

[130] Stip. ¶¶ 23, 24; JX-14; Tr. 516.

[131] Stip. ¶¶ 4, 25; *accord* JX-14.

> No registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member.

A registered person must "disclose outside business activities at the time when steps are taken to commence a business activity unrelated to his relationship with his firm."[132] FINRA Rule 3270 "is intentionally broad, requiring registered persons 'to report *any* kind of business activity engaged in away from their firms.'"[133] The purpose of the Rule is to ensure member firms "receive prompt notification of all outside business activities of their associated persons so that the member's objections, if any, to such activities could be raised at a meaningful time."[134]

Moore was an employee of the Church in his position as minister and received a $30,000 annual salary.[135] His participation in the Church bond offering included the following:

- Moore and the other two elders met with the SCF registered representative on three occasions to discuss issuing and offering Church bonds.[136] Twice, the meetings were held in Moore's Commonwealth office, which gave the SCF registered representative access to the premises.

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[132] *Dep't of Enforcement v. Schneider*, No. C10030088, 2005 NASD Discip. LEXIS 6, at *13-14 (NAC Dec. 7, 2005); *accord Dep't of Enforcement v. Connors*, No. 2012033362101, 2016 FINRA Discip. LEXIS 1, at *24 (OHO Jan. 15, 2016) (same).

[133] *Dep't of Enforcement v. Connors*, 2016 FINRA Discip. LEXIS 1, at *24 (emphasis original) (quoting NASD Notice to Members 01-79, 2001 NASD LEXIS 85, at *7 (Dec. 2001)); *accord Dep't of Enforcement v. Akindemowo*, No. 2011029619301, 2015 FINRA Discip. LEXIS 58, at *39 (NAC Dec. 29, 2015) (FINRA Rule 3270 "extend[s] to all outside business activity"), *aff'd*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769 (Sept. 30, 2016); *Dep't of Enforcement v. White*, No. 2012033128703, 2015 FINRA Discip. LEXIS 48, at *50 (OHO June 30, 2015) (FINRA Rule 3270 "extends to all outside business activity").

[134] *Dep't of Enforcement v. Ballard*, No. 2010025181001, 2015 FINRA Discip. LEXIS 52, at *20-21 (NAC Dec. 17, 2015) (quoting *Dep't of Enforcement v. Houston*, No. 2006005318801, 2013 FINRA Discip. LEXIS 3, at *32 (NAC Feb. 22, 2013)), *application dismissed*, Exchange Act Release No. 77452, 2016 SEC LEXIS 1151 (Mar. 25, 2016); *accord Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at *45 (Sept. 24, 2015) ("prompt written disclosure of outside business activities allows member firms to raise any objection to the outside activities in a timely manner and to exercise appropriate supervision of the activities of registered persons"); *Dep't of Enforcement v. White*, 2015 FINRA Discip. LEXIS 48, at *50-51 (same).

[135] Moore testified he received a paycheck from the Church but "I signed the back of it and put it in the collection plate when they gave it to me" and that his compensation "never left the building." Tr. 613. This received-and-returned paycheck is still sufficient compensation for the purpose of FINRA Rule 3270. Moore was paid $30,000 every year, and he could spend it however he decided. It was his decision to contribute his compensation back to the Church.

[136] Stip. ¶ 10; CX-10; CX-23; CX-56; Tr. 215, 218, 229, 258-59, 355, 600, 695, 706.

- Moore used his Commonwealth office to gather financial and other information about the Church and email or fax that information to the SCF registered representative.[137]

- Moore and the elders incorporated the Church as a nonprofit corporation.[138]

- Moore served as the president and a director of the incorporated Church for 34 days.[139]

- Moore signed the Resolution authorizing the Church to issue, offer, and sell $450,000 worth of Church bonds.[140]

- Moore signed a second Resolution on behalf of the Church, increasing the maximum amount to be raised by the bond offering from $450,000 to $575,000.[141]

- Moore drafted language for a public letter to potential investors announcing an informational meeting about the Church bonds.[142]

- Moore reviewed the draft Prospectus for the bonds.[143]

- Moore was present at the beginning of the informational meeting about the Church bonds, and sat in the back room where he could hear in case something happened that he "was going to have to deal with."[144]

As the Church bond offering progressed from planning to execution, and as Moore's activities became more visible to more people, he paid lip service to the concept that he was recused from participating in the offering. But his actions speak louder than his words. He had particularized business experience that he adapted to supervise the $575,000 bond offering.[145] He

[137] CX-9; CX-27; CX-29; CX-31; CX-38; CX-40; CX-45; CX-82; Tr. 216-17, 235, 244, 247, 251-52, 287, 293.

[138] Stip. ¶ 11; JX-4; Tr. 220, 528.

[139] Stip. ¶ 11; JX-4; RX-6.

[140] Stip. ¶ 12; JX-5; Tr. 228.

[141] Stip. ¶ 16; JX-7; Tr. 254, 256.

[142] Stip. ¶ 17; JX-8; JX-13; Tr. 262.

[143] Stip. ¶ 18; JX-9; Tr. 262-63.

[144] Tr. 269-70.

[145] One of the elders has a Master's Degree in Business Administration and experience in the purchase of large properties in the oil and gas industry, but does not have experience with bond offerings or broker-dealers. Moore, on the other hand, *is* a broker-dealer and sells bonds as part of his business.

used his office and support personnel to gather and send documents and to host meetings.[146] He stepped into the breach and saw to it that the Church bond offering was successful.

Moore's decision not to give notice deprived Commonwealth of the ability to halt his Church activities or to initiate supervisory procedures. At the hearing, he seemed to understand he failed to fulfill his disclosure obligation:

- With regard to the Church bond offering, Moore testified: "[A]re there things that I should have disclosed, that's certainly a possibility."[147] One of those things was: "I served for 30 days, 32 or 33 days as the president before I resigned."[148]

- With regard to his appointment as president, Moore testified: "I probably should have notified Commonwealth about that and did not."[149]

- When asked whether he agreed that teaching and preaching did not cover meeting another broker-dealer about the Church bonds in his FINRA-registered office, Moore responded: "I suppose."[150]

- When asked whether he should have disclosed that his Commonwealth office was being used in office hours to facilitate a church bond offering, Moore responded that "I don't really view that as Commonwealth's office, but I suppose."[151]

- With regard to the bond offering, Moore testified that "without my input it probably would not have happened."[152] The bond offering had "to do with the use of our money, the use of the church's money, and so the fact that I did not say no or didn't stop it, then I would say I participated in it."[153] This participation "dealt with my job as an elder of the church and that is efficient use of the church's money."[154]

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[146] Tr. 375-76. Moore testified that one of the elders "was out of state constantly," the other was "out on oil rigs, he's never around his phone," and "[t]here was no other place that I could determine that this could be done except at my office." Tr. 635-36.

[147] Tr. 290.

[148] Tr. 291.

[149] Tr. 653.

[150] Tr. 292.

[151] Tr. 293.

[152] Tr. 659.

[153] Tr. 660.

[154] Tr. 680.

- When asked what he would do if he discovered one of the registered persons he supervised had been working with another broker-dealer on a not-for-profit project and had brought that broker-dealer into Moore's office for meetings, Moore responded: "It would certainly raise my hackles and I have the fortune of everybody that I supervise in my building."[155]

Moore defends his failure to disclose his outside activities by pointing out that he was the president and a director of the Church for only 34 days, and he had 30 days in which to update his Form U4 to disclose outside positions.[156] But the disclosure obligations for the Form U4 are different from that imposed by FINRA Rule 3270, which required that Moore provide Commonwealth with *advance* written notice of his appointment as president and director. Moore did not provide Commonwealth's Compliance Department with prior written notice that he was engaged in outside business activities.

In sum, Moore violated FINRA Rule 3270 by engaging in outside business activities without giving prior written notice to Commonwealth. He also violated FINRA Rule 2010 because a violation of FINRA Rule 3270, like other Rule violations, constitutes a failure to observe high commercial standards and just and equitable principles of trade.[157]

B. Moore's Answer on the Annual Compliance Questionnaire Violated FINRA Rule 2010

The Complaint charges Moore with violating FINRA Rule 2010 by giving a false answer on the Questionnaire. Rule 2010 provides: "A member in the conduct of its business shall observe high standards of commercial honor and just and equitable principles of trade."[158] The National Adjudicatory Council recently re-affirmed the purpose and scope of FINRA Rule 2010, holding once again that it applies to all business-related conduct of associated and registered persons:

> FINRA Rule 2010 is a broad and generalized ethical provision. FINRA's authority to pursue discipline for violations of FINRA Rule 2010 is sufficiently wide to encompass any unethical, business-related conduct, regardless of whether it involves a security … The rule therefore applies "when the misconduct reflects on [an] associated person's ability to comply

[155] Tr. 685.

[156] Tr. 777.

[157] *Dep't of Enforcement v. McGuire*, No. 20110273503, 2015 FINRA Discip. LEXIS 53, at *37 n.25 (NAC Dec. 17, 2015) ("A violation of FINRA's rules governing outside business activities also violates FINRA Rule 2010."); *Dep't of Enforcement v. Giblen*, No. 2011025957702, 2014 FINRA Discip. LEXIS 39, at *12 n.13 (NAC Dec. 10, 2014) (same); *Dep't of Enforcement v. Xagoraris*, Nos. 20080127674 & 20080133768, 2014 FINRA Discip. LEXIS 34, at *24 n.20 (NAC Aug. 1, 2014) (same).

[158] "Associated persons are subject to the duties and obligations of FINRA Rule 2010 pursuant to FINRA Rule 0140." *Dep't of Enforcement v. Giblen*, 2014 FINRA Discip. LEXIS 39, at *12 n.13.

> with the regulatory requirements of the securities business and to fulfill his fiduciary duties in handling other people's money."[159]

To prove a violation under FINRA Rule 2010, Enforcement need not show the respondent had a bad motive or *scienter*.[160]

Moore violated FINRA Rule 2010 when completing the Questionnaire, which required him to answer: "During the course of 2012 while affiliated with Commonwealth, have you participated in raising capital, equity or debt for any public or private investment or venture outside of a Commonwealth approved offering?"[161] Moore answered "No."[162] He testified this answer was correct because "I was not involved in the raising of capital at all, and in 2012, I was involved in helping [the Church] a little bit evaluate borrowing money from a bank or a bond issuance."[163] But this seriously understates his participation in the Church bond offering. By the time of the Questionnaire, Moore had: (1) gathered and sent financial and other information about the Church to SCF; (2) attended two meetings with SCF to discuss the Church bond offering, one of which was held in Moore's Commonwealth office; (3) incorporated the Church as a vehicle for issuing bonds; (4) served as the president and director of the incorporated Church for 34 days; (5) signed the Resolution authorizing the Church to issue and sell $450,000 worth of bonds; and (6) wrote the minister's message for the Marketing Brochure.[164] These activities constituted sufficient participation for Moore to answer "Yes" to the question on the Questionnaire.

In a case involving annual compliance questionnaires, the National Adjudicatory Council found conduct such as Moore's in violation of FINRA Rule 2010 and its predecessor, NASD Rule 2110:

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[159] *Dep't of Enforcement v. Grivas*, No. 2012032997201, 2015 FINRA Discip. LEXIS 16, at *22 (NAC July 16, 2015), *aff'd*, Exchange Act Release No. 77470 (Mar. 29, 2016); *accord Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996) (holding FINRA's disciplinary authority "is broad enough to encompass business-related conduct that is inconsistent with just and equitable principles of trade even if that activity does not involve a security"); *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *22 (Aug. 22, 2008) ("conduct that reflects negatively on an applicant's ability to comply with regulatory requirements fundamental to the securities industry is inconsistent with just and equitable principles of trade").

[160] *Dep't of Enforcement v. Golonka*, No. 2009017439601, 2013 FINRA Discip. LEXIS 5, at *24 (NAC Mar. 4, 2013) ("A violation of J&E Rules like Rule 2110 'need not be premised on a motive or scienter finding'") (quoting *Thomas W. Heath, III*, Exchange Act Release No. 59223, 2009 SEC LEXIS 14, at *15 (Jan. 9, 2009), *aff'd sub nom. Heath v. SEC*, 586 F.3d 122 (2d Cir. 2009)); *Dep't of Enforcement v. Jennings*, No. 2008013864401, 2013 FINRA Discip. LEXIS 18, at *54 n.142 (NAC Mar. 4, 2013) ("Rule 2110 focuses on the securities professional's conduct rather than on a subjective inquiry into the professional's intent or state of mind. Accordingly, a violation of the rule need not be premised on a motive or scienter finding"). NASD Rule 2110 was the predecessor to FINRA Rule 2010.

[161] CX-8, at 1.

[162] CX-8, at 1.

[163] Tr. 287.

[164] JX-4; CX-9; CX-10; CX-11; CX-12; CX-16; CX-18; CX-19; CX-38.

> A registered representative's failure to disclose material information to his firm violates NASD Rule 2110 and FINRA Rule 2010 and is misconduct that calls into question the registered representative's "ability to comply with regulatory requirements necessary for the proper functioning of the securities industry and the protection of the public."[165]

The question that Moore answered falsely is simple, straightforward, and unambiguous, and does not lend itself to misinterpretation.[166] If Moore was confused, he should have called Commonwealth's Compliance Department and asked whether the question covered his activities in the Church bond offering. The Compliance Department maintained a dedicated email inbox and a published telephone number for these kinds of inquiries.[167] The Compliance Advisor testified that calling or emailing the Compliance Department "is the step you should take in order to answer" the question about raising capital, equity, or debt.[168]

Moore testifies in defense that "we hadn't come anywhere close to making a decision" to pursue a Church bond offering instead of taking out a loan from a bank.[169] This argument misapprehends the purpose of the question. Commonwealth wanted to know about its registered persons' capital-raising activities so that it could supervise or put a stop to such activities before they exposed the firm to liability or loss. It would be an exercise in futility if the obligation to answer "Yes" were triggered only when the planning had finished and the capital-raising had begun.[170]

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[165] *Dep't of Enforcement v. Mielke*, No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at *40 (NAC July 18, 2014) (quoting *Dep't of Enforcement v. Davenport*, No. C05010017, 2003 NASD Discip. LEXIS 4, at *9-10 (NAC May 7, 2003)), *aff'd*, Exchange Act Release No. 75981, 2015 SEC LEXIS 34 (Sept. 24, 2015), *appeal docketed*, No. 05-1234 (11th Cir. Nov. 19, 2015); *accord John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *45 (Feb. 10, 2012) ("it is a basic duty of all securities professionals to respond truthfully and accurately to their firm's requests for information, and … the failure to do so can be inconsistent with just and equitable principles of trade"); *Dep't of Enforcement v. Braff*, No. 2007011937001, 2011 FINRA Discip. LEXIS 15, at *21 (NAC May 13, 2011) (respondent's false statement to his employer firm "called into question his ability to comply with regulatory requirements [and was] inconsistent with the high standards of commercial honor required of registered persons"), *aff'd*, Exchange Act Release No. 66467, 2012 SEC LEXIS 620 (Feb. 24, 2012).

[166] *See Dep't of Enforcement v. Elgart*, No. 2013035211801, 2016 FINRA Discip. LEXIS 30, at *25 (OHO June 3, 2016) (finding not credible respondent's claim that he misinterpreted a FINRA Personal Activity Questionnaire; "the wording of the … question is simple, straightforward, and unambiguous. It does not lend itself to [respondent's] claimed misinterpretation.").

[167] Tr. 154-55, 180.

[168] Tr. 183.

[169] Tr. 634.

[170] The argument misses the mark because Moore's answer also would have been a violation of FINRA Rule 2010 if the Church had taken a loan instead of initiating a bond offering. The question was: "During the course of 2012 while affiliated with Commonwealth, have you participated in raising capital, equity *or debt* for any public or private investment or venture outside of a Commonwealth approved offering?" CX-8, at 1 (emphasis added).

In sum, Moore violated FINRA Rule 2010 by making a false statement in his Questionnaire that he had not participated in raising capital, equity, or debt in an offering not approved by Commonwealth.

V. Sanctions

The Complaint has two causes of action: (1) engaging in outside business activities without prior written notice; and (2) contravening high commercial standards and just and equitable principles of trade by falsely answering the Questionnaire. The sanctions for each are addressed separately below.

A. Outside Business Activities

The Sanction Guideline for Outside Business Activities recommends adjudicators consider a monetary fine of $2,500 to $73,000 and a suspension, bar, or other sanctions.[171] When the outside business activities do not involve aggravating conduct, the adjudicators are advised to consider suspending the respondent for up to 30 business days. Outside business activities involving aggravating conduct warrant consideration of a longer suspension of up to one year. In egregious cases, including those involving a substantial volume of activity or significant injury to customers of the firm, the adjudicators should consider a longer suspension or a bar.[172]

There are five considerations specific to the Sanction Guideline for Outside Business Activities. The first is whether the outside activities involved customers of the firm.[173] The second is whether the outside activities resulted directly or indirectly in injury to those customers. The third is the duration of the outside activities, the number of customers, and the dollar volume of sales. The fourth is whether the respondent's marketing and sale of the product or service could have created the impression that the member firm had approved the product or service. The fifth is whether the respondent misled his firm about the existence of the outside activities or otherwise concealed the activities from the firm.[174]

Moore's violations are aggravated because the Church bond offering involved customers of Commonwealth.[175] Six of Moore's customers purchased the bonds. Granted, there is little or no evidence that Moore had a direct influence on his customers' decision to purchase the bonds,[176] but this lack of influence is not mitigating. Moore knew the bonds were being offered

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[171] FINRA Sanction Guidelines ("Guidelines") at 13 (2016), http://www.finra.org/industry/sanction-guidelines.

[172] *Id.*

[173] *Id.*

[174] *Id.*

[175] *Id.*

[176] *See* Tr. 640; *see also* Tr. 366 (AW) (testifying Moore did not have any influence regarding the witness's decision to purchase the Church bonds); Tr. 392 (JS) (Moore "never knew that I even purchased any bonds"); Tr. 454-55 (JA) (Moore did not make any type of recommendation or suggestion that the witness purchase the Church bonds); *cf.* Tr. 412 (RK) ("all [Moore] did was he just—He sent [the registered representative] over there to talk to us.").

to members of the Church and that a number of his parishioners were also his brokerage customers. It was foreseeable that at least some of them would respond to the offering by purchasing the bonds.

Moore's violations are not mitigated by the fact that his outside business activities did not result in financial loss to customers.[177] Commonwealth was injured because Moore's lack of disclosure improperly deprived the firm of its ability to supervise his outside activities. And it is aggravating that he misled Commonwealth about his outside activities and otherwise concealed them. Instead of making sure his expanded activities with the Church were okay with the firm, he falsely answered the Questionnaire.[178]

Moore's violations, on the other hand, are not aggravated by the duration of the outside activities, the number of customers, or the dollar volume of sales.[179] This specific consideration overlaps with one of the Principal Considerations, which is discussed below. Nor did Moore's participation in the Church bond offering create the impression that Commonwealth had approved the bonds. The Prospectus and other marketing materials did not mention Commonwealth.

The Principal Considerations of the Sanction Guidelines provide two aggravating factors that weigh against Moore. First, he engaged in numerous acts and/or a pattern of misconduct.[180] He attended meetings with SCF, gathered and sent to SCF financial information about the Church from his Commonwealth office, incorporated the Church so it could issue the bonds, served as the president and director of the Church for 34 days, wrote draft language for a public letter to potential investors announcing an informational meeting about the bonds, reviewed the Prospectus, and listened in on the informational meeting in an adjacent room. Many of these acts were needed for the success of the offering. Moore's activities extended in time from going to the first meeting with SCF in March 2012 to getting the bond offering closing documents signed and delivered to SCF in May 2013.

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[177] There was no evidence that the Church bond offering caused a financial loss to Commonwealth, the purchasers of the Church bonds, or the investing public in general. But "the violations at issue harmed the customers by depriving them of [Commonwealth's] supervision of their investments, regardless of whether the investors suffered financial harm." *Blair C. Mielke*, 2015 SEC LEXIS 3927, at *63; *accord Wanda P. Sears*, Exchange Act Release No. 58075, 2008 SEC LEXIS 1521, at *26 (July 1, 2008) (finding respondent's failure to disclose outside business activities "deprived customers of the oversight and supervision provided by [respondent's] employer firm").

[178] *Dep't of Enforcement v. Xagoraris*, 2014 FINRA Discip. LEXIS 34, at *34 ("we find it aggravating that Xagoraris concealed the existence of the outside activity by failing to disclose it on the Firm's compliance questionnaire"); *Wanda P. Sears*, 2008 SEC LEXIS 1521, at *23 (finding respondent's failure to disclose outside business activities aggravated because she "attempted to conceal her activities … by annually certifying that she had no undisclosed outside business activities").

[179] Guidelines at 13.

[180] Guidelines at 6.

Second, Moore's violations were the result of an intentional act.[181] He knew his outside business activities in the Church bond offering were not compliant with FINRA Rule 3270.[182] In announcing his purported recusal—to his congregation, the elders, potential investors, and his customers—he demonstrated his knowledge that there was a line between compliance and violation and that, at the very least, he was very close to that line. As a supervisor, at one time he had participated in terminating the employment of two registered persons because of outside business activities that they did not disclose.[183] He knew what activities were not allowed when he chose to go forward in the bond offering without giving Commonwealth advance notice.

There is no evidence the bond offering defrauded investors. But as far as Moore is concerned, he knew he was obligated to disclose his outside business activities in the offering. By trying to act unnoticed and without disclosure, he deprived Commonwealth of the ability to supervise his outside business activities. It is necessary that he be held accountable and sanctioned for not following FINRA Rules. Thus, Moore's FINRA Rule 3270 violation warrants a monetary fine of $25,000 and a three-month suspension.

B. False Answer on the Annual Compliance Questionnaire

With regard to the second cause of action in the Complaint, no Sanction Guideline applies to a registered person's false answer on his firm's annual compliance questionnaire in violation of FINRA Rule 2010. One analogy adjudicators have considered is Forgery and/or Falsification of Records, which advises a monetary fine of $5,000 to $146,000 and, in cases where mitigating factors exist, a suspension in all capacities for up to two years.[184] In egregious cases, the adjudicators should consider a bar.

The Sanction Guideline for Forgery and/or Falsification of Records provides two considerations specific to that violation. The first is the nature of the document forged or falsified. The second is whether the respondent had a good-faith, but mistaken, belief of express or implied authority. These factors weigh against Moore. First, an annual compliance questionnaire is an important document used by member firms to supervise their registered persons and maintain compliance with FINRA Rules and the securities laws. Second, Moore did not have a good-faith, but mistaken, belief of express or implied authority because no responsible registered person would believe he had authority to give a false answer on his annual compliance questionnaire and, in Moore's case, the false answer related to outside business activities for which he had no authority.

Another analogy is the Sanction Guideline for Recordkeeping Violations, which recommends a fine of $1,000 to $15,000 and a suspension in all capacities for up to thirty

[181] Guidelines at 7.

[182] *Dep't of Enforcement v. Giblen*, 2014 FINRA Discip. LEXIS 39, at *28 (finding respondent "knew what NASD Rule 3030 [FINRA Rule 3270's predecessor] required of him").

[183] Tr. 685.

[184] Guidelines at 37.

business days.[185] In egregious cases, the adjudicators should consider a fine of $10,000 to $146,000 and a suspension of up to two years or a bar. This Sanction Guideline provides one consideration specific to the violation: the nature and materiality of the inaccurate or missing information. The information about Moore's Church bond activities was material to Commonwealth and important to the firm's compliance and supervisory responsibilities. Commonwealth's CEO testified that the firm would not have approved of these activities if Moore had disclosed them.[186]

One of the Principal Considerations weighs against Moore with respect to his false answer on the Questionnaire—he attempted to conceal his violations and mislead Commonwealth.[187]

Moore's violation of FINRA Rule 2010 warrrants a $5,000 fine and a one-month suspension consecutive to his suspension for undisclosed outside business activities. An aggregate sanction of a four-month suspension and a $30,000 fine is reasonable and will serve the remedial purposes of the Guidelines. [188]

VI. Order

Respondent Ricky Moore did not provide prior written notice to his member firm concerning outside business activities in violation of FINRA Rules 3270 and 2010, and falsely answered his Annual Compliance Questionnaire in violation of FINRA Rule 2010. For these violations, he is fined $30,000 and suspended from associating with any FINRA member firm in any and all capacities for four months.[189] Moore also is ordered to pay the costs of the hearing in the amount of $7,131.31, consisting of an administrative fee of $750 and the cost of the transcript.

If this decision becomes FINRA's final disciplinary action in this proceeding, Moore's four-month suspension shall become effective on the opening of business on January 17, 2017.

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[185] Guidelines at 29. *See John Edward Mullins*, 2012 SEC LEXIS 464, at *83 (applying this Guideline to a false answer on an annual compliance questionnaire).

[186] Tr. 39.

[187] Guidelines at 6.

[188] *Id*., at 7. The Hearing Panel considered whether Commonwealth's termination of Moore's relationship with the firm was mitigating (Principal Consideration No. 14) and found it was not. Moore became associated with another FINRA member firm shortly after he and Commonwealth severed their association. Tr. 516. Also, any mitigating effect was outweighed by the aggravating factors. Similarly, although Moore acted on behalf of a non-profit Church, the lack of direct monetary gain (Principal Consideration No. 17) was not mitigating because Commonwealth's interest in supervising Moore's outside business activities extended to non-profit ventures.

[189] The Hearing Panel considered all arguments of the parties. The arguments are rejected or sustained to the extent they are inconsistent or in accord with the views expressed in this Decision.

The fine and costs shall be due on a date set by FINRA, but not less than thirty days after this decision becomes FINRA's final action.

For The Hearing Panel

_____
Richard E. Simpson
Hearing Officer

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