

BEFORE THE NATIONAL ADJUDICATORY COUNCIL  
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of

Department of Enforcement,

Complainant,

vs.

Merrimac Corporate Securities, Inc.  
Altamonte Springs, FL,

and

Robert G. Nash  
Altamonte Springs, FL,

Respondents.

DECISION

Complaint No. 2011027666902r

Dated: March 27, 2020

**On remand from the Securities and Exchange Commission for reconsideration of sanctions. Held, sanctions modified.**

**Appearances**

For the Complainant: Leo F. Orenstein, Esq., Alex P. Ginsberg, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Robert G. Nash: Pro Se

**Decision**

This matter is before us on remand from the Securities and Exchange Commission. In a National Adjudicatory Council (“NAC”) decision dated May 26, 2017 (the “NAC Decision”), we found that Robert G. Nash failed to maintain a reasonable supervisory system and adequate written supervisory procedures, in violation of NASD Rules 3010 and 2110, and FINRA Rule 2010. The NAC found that Nash’s supervisory violations involved three areas: (1) the deposit of penny stocks; (2) the review of investment-related websites operated by the firm’s president; and (3) the firm’s use of foreign finders. For Nash’s supervisory violations, the NAC imposed a unitary sanction of a \$25,000 fine, a one-year suspension in all principal capacities, and an order that Nash requalify as a general securities principal before again serving in that capacity.

The NAC also found that Nash provided false documents to FINRA, in violation of FINRA Rules 8210 and 2010. These violations related to the submission to FINRA of the falsified DSR forms described in Part I.B, without informing FINRA of the falsification. For these violations, the NAC imposed a \$25,000 fine and a one-year suspension in all principal capacities, to run concurrently with the suspension imposed for his supervisory violations.

Nash appealed the NAC Decision to the Commission. In an opinion dated July 17, 2019 (the “Commission Decision”), the Commission sustained the findings that Nash provided false documents to FINRA in violation of FINRA Rules 8210 and 2010, and sustained in part the findings that Nash violated NASD Rules 3010 and 2110 and FINRA Rule 2010.<sup>1</sup> The Commission sustained the NAC’s findings that Nash failed to maintain a supervisory system with respect to the firm’s penny stock deposits that was reasonably designed to comply with Section 5 of the Securities Act of 1933 (the “Securities Act”). It also affirmed the NAC’s findings that Nash failed to establish supervisory procedures with respect to foreign finders reasonably designed to achieve compliance with FINRA Rule 2040. The Commission set aside, however, the finding that Nash failed to establish a supervisory system reasonably designed to ensure appropriate review and supervision of investment-related websites as advertising. Because the NAC had imposed a unitary sanction for Nash’s supervisory violations, the Commission remanded for the NAC to determine the appropriate sanction for the supervisory violations it sustained.

On remand, the NAC requested briefs from the parties addressing the appropriate sanction for Nash’s supervisory violations.<sup>2</sup> The Department of Enforcement (“Enforcement”) submitted a brief arguing that the sanctions imposed in the NAC Decision were warranted based on the egregious nature of Nash’s supervisory failings and that the NAC should not reduce the sanctions notwithstanding the dismissal by the Commission of one basis for them. Nash did not submit a brief.<sup>3</sup>

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<sup>1</sup> The Commission affirmed the NAC’s findings that Nash violated FINRA Rules 8210 and 2010 by submitting falsified DSR forms to FINRA and sustained the sanctions imposed of a \$25,000 fine and a one-year suspension in all principal capacities (to run concurrently with the suspension for the supervisory violations imposed in this decision). Accordingly, these violations are not at issue on remand. The Commission also affirmed the NAC’s findings of various violations by respondent Merrimac Corporate Securities, Inc. (“Merrimac”), and these violations also are not at issue on remand.

<sup>2</sup> Nash served FINRA with a notice of appeal and petition for review that he purportedly filed in a county court in Florida. We notified Nash that this was not the appropriate court for review of a Commission decision, and that we would proceed with consideration of the remand.

<sup>3</sup> After he missed the first deadline for filing a brief, we allowed Nash an additional four weeks to file a brief, and advised him that the NAC would consider the remand notwithstanding his failure to file a brief.

After careful consideration, we have determined to modify the sanctions that we imposed upon Nash for his supervisory violations. We fine Nash \$22,500, suspend him in all principal and supervisory capacities for ten months, and order him to requalify by examination as a registered principal before again acting in that capacity.

I. Facts

The following facts, which were found by the Commission, are relevant to our consideration of sanctions for Nash's supervisory violations.

A. Nash

Nash became registered with Merrimac in 2008 as a general securities principal. During the relevant period, Nash served as Merrimac's Chief Compliance Officer ("CCO"). Merrimac's written supervisory procedures ("WSPs") specifically provided that Nash was responsible for supervising and reviewing: (1) office of supervisory jurisdiction ("OSJ") principals; (2) securities transactions; (3) customer complaints; (4) customer accounts; (5) commissions and markups; (6) branch office reviews and examinations; (7) private placements; and (8) outside business activities. Nash was also responsible for maintaining Merrimac's WSPs.

B. Supervision of Penny Stock Deposits

Merrimac's WSPs designated Nash as the supervisor responsible for the review of securities transactions, including the deposit of low-priced securities not listed on a national securities exchange (so-called "penny stocks"). When a Merrimac customer deposited a penny stock in his or her account, Merrimac used a form provided by its clearing firm (the "DSR form") to determine whether the deposited stock was qualified for resale either because the stock was registered or because it qualified for a valid exemption from registration. The DSR form required the customer to provide information about the source of the stock and to sign the form, thereby representing that the information provided was "true and correct." The DSR form was then signed by the customer's registered representative and forwarded to a Merrimac supervisor for review and approval.

John Dubrule was a registered representative in Merrimac's Orlando branch office. From February through September 2010, Dubrule's assistant, CS, falsified more than 30 DSR forms by photocopying Dubrule's and Nash's signatures on the forms. The falsification of these documents resulted in expediting the deposit and clearing process. CS's falsification came to light when she admitted her misconduct to Dubrule. Dubrule and CS subsequently had a meeting with Nash and Merrimac's president to discuss what had happened. After learning that CS had falsified DSR forms, Nash did not take any additional steps to investigate the scope and impact of CS's misconduct, did not make any written record of the incident, and, other than verbally warning CS, did not take any disciplinary action against CS.

CS's falsification of DSR forms resulted in over a billion shares of penny stocks being deposited into and liquidated from Merrimac customer accounts with no supervisory review. Moreover, as found in the NAC Decision, and sustained in the Commission Decision, CS's

falsification of DSR forms and the lack of supervision resulted in Merrimac facilitating the unregistered sale of 56.5 million shares of one penny stock without any available exemption from registration.

### C. Foreign Finders

On November 19, 2010, Merrimac entered into an agreement, the Foreign Finder Referral Agreement, with a Mexican entity in connection with Merrimac's offer of broker-dealer services to Mexican customers. Merrimac was paid transaction-based compensation under the agreement.

Nash was responsible for drafting Merrimac's WSPs and reviewing Merrimac's supervisory practices and procedures. When Merrimac entered into the foreign finder agreement, its WSPs contained no procedures for the supervision of foreign finders. Nash did not adopt any procedures until six months after Merrimac entered into the foreign finder agreement, when Merrimac adopted a one-page procedure. That procedure, however, neither identified who would supervise foreign finder activities nor how those activities would be supervised.

## II. Discussion of Sanctions

In assessing sanctions for Nash's supervisory violations, we have considered FINRA's Sanction Guidelines ("Guidelines"),<sup>4</sup> including the Principal Considerations in Determining Sanctions (the "Principal Considerations"). For the reasons set forth below, for his supervisory violations, we fine Nash \$22,500, suspend him in all principal and supervisory capacities for ten months, and order him to requalify by examination as a registered principal before again acting in that capacity.

We again look to the Guidelines for failure to supervise and deficient supervisory procedures. For individuals, the Guidelines for failure to supervise instruct us to consider a fine apart from any imposed on the firm and a suspension in all supervisory capacities of up to 30 business days.<sup>5</sup> In egregious cases, the Guidelines recommend considering a longer suspension of up to two years or a bar.<sup>6</sup> The Guidelines instruct us to consider three principal considerations: (1) whether the firm ignored "red flags" which should have resulted in additional supervisory scrutiny; (2) the nature, extent, size, and character of the underlying misconduct; and

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<sup>4</sup> See *FINRA Sanction Guidelines* (2013), hereinafter, "Guidelines." In this case, we apply the Sanction Guidelines applied in the original NAC Decision.

<sup>5</sup> *Id.* at 103.

<sup>6</sup> *Id.*

(3) the quality and degree of the supervisor's implementation of the firm's supervisory procedures.<sup>7</sup>

For deficient supervisory procedures, the Guidelines recommend a fine of \$1,000 to \$25,000.<sup>8</sup> In egregious cases, the Guidelines recommend suspending the responsible individual in any or all capacities for up to one year.<sup>9</sup> The Guidelines also direct us to consider: (1) whether the deficiencies allowed violative conduct; and (2) whether the deficiencies made it difficult to determine the individual responsible for specific areas of supervision and compliance.<sup>10</sup>

We conclude that Nash's violations with respect to penny stock deposits and foreign finders were egregious and necessitate the imposition of serious sanctions. Moreover, we find that a number of aggravating factors, and no mitigating factors, apply to Nash's misconduct.

Nash both failed to implement adequate procedures to detect CS's falsification of DSR forms and, when CS admitted her misconduct, Nash failed to conduct any investigation to determine the nature and extent of her misconduct. As the Commission Decision explains, Nash "was faced with evidence of misconduct, was directly responsible for investigating the misconduct, and chose instead not to investigate further." *Merrimac Corp. Sec.*, Exchange Act Release No. 10662, 2019 SEC LEXIS 1771, at \*73 (July 17, 2019). Nash neither documented the falsification of the DSR forms nor imposed any discipline on CS.

CS falsified 30 DSR forms over an extended period, during which Nash failed to detect her misconduct.<sup>11</sup> Moreover, Nash's lack of appropriate supervision of DSR forms led to other serious violative conduct, including the production of these falsified documents to FINRA and the sale of 56.5 million shares of unregistered securities by Merrimac in contravention of Section 5 of the Securities Act. Finally, Nash has not accepted any responsibility for his supervisory failings.<sup>12</sup>

With respect to foreign finder's fees, Nash did not adopt any procedures to supervise this new line of business until six months after Merrimac entered into the foreign finder's agreement. When he did implement a one-page procedure, it was deficient. The procedure neither identified whom at the firm would supervise foreign finders nor described how supervision would be

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 104.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Guidelines*, at 6 (Principal Considerations Nos. 8 and 9).

<sup>12</sup> *Id.* at 6 (Principal Consideration No. 2).

conducted. As found in the Commission Decision, “Nash failed in any meaningful way to develop the procedures that FINRA’s rules required and that he admitted he was responsible for developing.” *Merrimac Corp. Sec.*, 2019 SEC LEXIS 1771, at \*83. Under these circumstances, a significant sanction is warranted.

On remand, Enforcement argues that we should impose the same sanctions for Nash’s supervisory failures that were imposed in the NAC Decision. We are cognizant, however, that the Commission dismissed one of the bases for those sanctions and, accordingly, we find that a reduction of the fine and suspension imposed in the NAC Decision is appropriate. We also note that the supervisory violations that were affirmed by the Commission are serious and warrant significant sanctions. Accordingly, we find that a \$22,500 fine, a ten-month suspension in all principal and supervisory capacities, and a requirement that Nash requalify by examination as a registered principal before again acting in that capacity are appropriately remedial sanctions for Nash’s violations.

### III. Conclusion

As we stated in the NAC Decision, Nash has demonstrated a complete failure to appreciate the responsibilities of his supervisory role, and his misconduct led to other serious violative conduct. In light of these facts and circumstances, we impose upon Nash a \$22,500 fine, a ten-month suspension in all principal and supervisory capacities, and require him to requalify by examination as a general securities principal before again acting in that capacity. This suspension will run concurrently with the suspension imposed for Nash’s violations of FINRA Rule 8210, which were imposed in the NAC Decision and sustained by the Commission.<sup>13</sup>

On Behalf of the National Adjudicatory Council,

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Jennifer Piorko Mitchell,  
Vice President and Deputy Corporate Secretary

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<sup>13</sup> If this decision is not appealed and becomes FINRA’s final decision, Nash must pay the fines for his failures to supervise and FINRA Rule 8210 violations totaling \$47,500, and Nash’s principal and supervisory suspensions of one year for his FINRA Rule 8210 violations and ten months for his supervisory violations, will begin to run concurrently.