UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 65863 / December 1, 2011

Admin Proc. File No. 3-14252

In the Matter of the Application of RICHARD A. NEATON 3071 Rivershore Lane Port Charlotte, FL 33953 For Review of Disciplinary Action Taken by FINRA	ORDER DENYING MOTION FOR RECONSIDERATION

I.

On October 20, 2011, we issued an opinion (the "Opinion") sustaining the findings of violations and sanction imposed by the Financial Industry Regulatory Authority, Inc. ("FINRA") on Richard A. Neaton, formerly a registered representative of various member firms.[1] We found that Neaton violated NASD Conduct Rule 2110 and Membership Rule IM-1000-1 by willfully submitting Uniform Applications for Securities Industry Registration or Transfer ("Forms U4") that did not disclose, and willfully failing to update Forms U4 to disclose, disciplinary actions and sanctions imposed on him by a state bar disciplinary board.[2] We sustained FINRA's sanction determination and costs imposed. We also found that Neaton is subject to a statutory disqualification because his failures to disclose were willful.[3] On October 31, 2011, Neaton filed a Motion for Reconsideration of the Opinion (the "Motion").

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[1] *Richard A. Neaton*, Securities Exchange Act Rel. No. 65598 (Oct. 20, 2011), http://www.sec.gov/litigation/opinions/2011/34-65598.pdf.

[2] NASD Conduct Rule 2110 requires members to observe "high standards of commercial honor and just and equitable principles of trade." NASD Membership Rule IM-1000-1 prohibits the filing, in connection with membership or registration as a registered representative, of information so incomplete or inaccurate as to be misleading.

[3] Securities Exchange Act Section 3(a)(39), 15 U.S.C. § 78c(a)(39) (defining "statutory disqualification").

We consider the Motion under Rule 470 of the Commission's Rules of Practice.[4] The "exceptional remedy" of a motion for reconsideration is designed to correct manifest errors of law or fact, or to permit the presentation of newly discovered evidence.[5] Neaton may not use a motion for reconsideration to reiterate arguments previously made or to cite authority previously available,[6] nor may he advance arguments that he could have made previously but chose not to make.[7] Absent extraordinary circumstances, a motion for reconsideration is not an appropriate vehicle for the submission of new evidence,[8] and we will not accept such additional evidence unless "'the movant could not have known about or adduced [the evidence] before entry of the order subject to the motion for reconsideration.'"[9] Neaton's Motion does not meet this rigorous standard.

A. In general, Neaton's Motion reiterates arguments he already made and we specifically considered. For example, Neaton claims that the Commission erred in finding harm "because at the February 2009 hearing, counsel for FINRA conceded the absence of harm in his closing argument." Neaton does not identify, and we do not see, where in the hearing transcript FINRA

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[4] 17 C.F.R. § 201.470. The Comment to Rule 470 states that "[a] motion for reconsideration is intended to be an exceptional remedy." Exchange Act Rel. No. 35833 (Jun. 23, 1995), 59 SEC Docket 1546, 1588.

[5] *E.g.*, *Manuel P. Asensio*, Exchange Act Rel. No. 62645 (Aug. 4, 2010), 99 SEC Docket 30990, 30991 (denying reconsideration); *John Gardner Black*, Investment Advisers Act Rel. No. 3040 (Jun. 18, 2010), 98 SEC Docket 29486, 29488 (same); *Perpetual Sec., Inc.*, Exchange Act Rel. No. 56962 (Dec. 13, 2007), 92 SEC Docket 472, 473 (same).

[6] *E.g.*, *Asensio*, 99 SEC Docket at 30991; *Black*, 98 SEC Docket at 29488; *Perpetual*, 92 SEC Docket at 473.

[7] *See KPMG Peat Marwick LLP*, 55 S.E.C. 1, 3 n.7 (2001) (denying reconsideration; noting that "settled principles of federal court practice establish that a party may not seek rehearing of an appellate decision in order to advance an argument that it could have made previously but elected" not to (citing cases) and holding that a party is foreclosed from resurrecting, as part of a motion for reconsideration, an argument made and lost below and abandoned on review).

[8] *John Montelbano*, 56 S.E.C. 372, 378 (2003) (denying reconsideration).

[9] *Perpetual*, 92 SEC Docket at 473 n.4 (quoting *Feeley & Willcox Asset Mgmt. Corp.*, 56 S.E.C. 1264, 1269 n.18 (2003) (denying reconsideration)).

made such a concession. Even if FINRA had conceded the absence of harm, we conducted a *de novo* review. We concluded in the Opinion that

> we disagree with Neaton's assertion that "no one was harmed by [his] failure to amend [his] U4 in a timely manner." Neaton deprived Securian, Mutual, FINRA, and his customers of information on which to determine whether to hire him, and if so, whether he required heightened supervision, whether to do business with him, or whether to permit him to register.

Neaton also claims that it was error for the Commission to find that he stipulated to the Discipline Board's findings. The record contains three notices sent to Neaton from the Michigan State Bar dated June 5, 1995, August 26, 1996, and February 2, 2001, respectively, that summarize the misconduct that Neaton was found to have committed or to which he pleaded no contest. FINRA used these notices as the basis for citing the Discipline Board's findings. Neaton concedes that he stipulated that the Discipline Board issued the three notices. He argues, however, that the notices "are not the opinion or the findings of the hearing panel or the Discipline Board," and that "[t]he best evidence of the Discipline Board's findings are the orders and opinions in each case," including "the actual order" that reflected "a consent agreement and no contest plea." Moreover, he argues that FINRA found, based on the findings in one of the notices, that he submitted false affidavits to a court even though the Discipline Board made no such finding.

Neaton urges us to reconsider remanding the proceeding so that FINRA can consider evidence of what he claims are the actual findings of the Discipline Board. Neaton did not offer below or on appeal the documents that he claims accurately set forth the Discipline Board's findings or any further explanation as to why these documents should alter the conclusion that Neaton violated NASD Conduct Rule 2110 and Membership Rule IM-1000-1.[10] Remanding under these circumstances would undermine both the fairness and the efficiency of these proceedings and improperly circumvent the finality of our review of the disciplinary process.[11]

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[10] Reconsideration is properly denied when respondents cite arguments in a motion for reconsideration that could have been, but were not, developed in the original appeal briefs. *See KPMG LLP v. SEC*, 289 F.3d 109, 120 (D.C. Cir. 2002) (stating that "[a]n argument cannot be merely intimated or hinted at to be raised; it must be 'pressed' to be preserved").

[11] *See Feeley & Willcox Asset Mgmt. Corp.*, 56 S.E.C. at 1270 (declining reconsideration to adduce or incorporate new evidence that was available before the Commission's opinion issued, finding that "there are fairness as well as efficiency concerns that would be implicated were we to accept the material at this point"); *The Rockies Fund, Inc.*, Exchange Act Rel. No. 56344 (Aug. 31, 2007), 91 SEC Docket 1418, 1420 (finding that a motion for reconsideration that was "based on a reworking of arguments and facts previously

(continued...)

In his Motion, Neaton repeats other arguments that were rejected in the Opinion, including that (1) his job performance should be considered in reviewing FINRA's sanctions; (2) FINRA improperly determined that Dennis Harrelson, a witness who testified about a conversation he had with Neaton, was credible and that Neaton was not; and (3) the Hearing Panel wrongly struck affirmative defenses alleging that FINRA staff prevented him from settling this matter before the issuance of a complaint and failed to provide him notice that he was entitled to have counsel present at an on-the-record interview. We will not readdress those matters here.

B. Neaton claims that the Commission improperly determined that he failed to demonstrate that the violations would cease in the future. Neaton does not, however, point to any record evidence demonstrating manifest error in the Commission's conclusion. Neaton does not dispute the Commission's finding that he continued to respond "no" to Question 14(D)(1)(a) (asking whether he had been found to have made a false statement or omission or to have engaged in dishonest, unfair or unethical conduct) in his amended Form U4 filed in 2007. Instead, Neaton asserts that he committed a ministerial error, that he should not be held accountable for his failure to recognize that he should have made the proper disclosure, and that his firm prepared the document and directed him to sign. As the Opinion made clear, "securities industry registrants 'must take responsibility for compliance and cannot be excused for lack of knowledge, understanding or appreciation of these requirements.'"[12]

Neaton disputes the Commission's finding that he failed to disclose in his 2007 Form U4 the bases for the Discipline Board's several actions against him. He contends that "the [Disclosure Reporting Page ("DRP")] does not ask for the bases" and that he provided the following brief description of the allegations in Item 7 in the DRP: "Misrepresentation, Conversion, Misappropriation, and False Statement." Form U4 Section 14 instructs a registrant to "complete all details of all events or proceedings on [the] appropriate DRP(s)" if he or she answers "yes" to certain questions about the existence of any regulatory actions, among other actions or events. While we recognize that the amount of space provided in Item 7 in the DRP to describe the allegations is limited, Neaton clearly did not address "all details of all events or proceedings" related to the violations he committed. Moreover, he had the option of supplementing his answer in the space provided in Item 13 in the DRP, which permits a registrant to "provide a brief summary of the circumstances leading to an action, as well as the current status or disposition and/or findings."

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[11] (...continued)
considered and rejected by the Commission and the Court of Appeals" was "an inappropriate attempt to avoid the finality of the Commission's administrative process.").

[12] *Neaton*, *supra* note 1, at 10-11 & n.19 (citing *Guang Lu*, Exchange Act Rel. No. 51047 (Jan. 14, 2005), 84 SEC Docket 2639, *aff'd*, 179 F. App'x 702 (D.C. Cir. 2006)).

C. The Opinion states that FINRA fined Neaton $5,000 and barred him.[13] Upon further review of the record, we conclude that while the Hearing Panel imposed a $5,000 fine on Neaton, the National Adjudicatory Council ("NAC") did not.[14] As we have held, it is "the decision of the NAC, not the decision of the Hearing Panel, that is the final action of FINRA which is subject to Commission Review."[15] For the reasons stated in the Opinion, our finding that a bar is neither excessive nor oppressive and will adequately serve the public interest and protect investors remains unchanged in light of Neaton's violative conduct.[16]

Therefore, IT IS ORDERED that Richard A. Neaton's October 31, 2011 Motion for Reconsideration be, and it hereby is, denied.

By the Commission.

Elizabeth M. Murphy
Secretary

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[13] *Id*. at 17.

[14] *Dept. of Enforcement v. Richard A. Neaton*, Complaint No. 2007009082902 (Jan. 7, 2011), http://disciplinaryactions.finra.org/viewdocument.aspx?DocNB=12076, at 15.

[15] *Harry Friedman*, Exchange Act Rel. No. 64486 (May 13, 2011), http://www.sec.gov/litigation/opinions/2011/34-64486.pdf, at 10 n.21 (citing *Kevin M. Glodek*, Exchange Act Rel. No. 60937 (Nov. 4, 2009), 97 SEC Docket 22027, 22035 n.16).

[16] *Neaton*, *supra* note 1, at 17-20.