

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of

Department of Enforcement,

Complainant,

vs.

Linda C. Milberger
Orlando, Florida,

Respondent.

DECISION

Complaint No. 2015047303901

Dated: March 27, 2020

Respondent falsified customer wire request forms, provided false documents to her firm during an investigation, and provided a false document to FINRA in response to a request for information. Held, findings affirmed and sanctions modified.

Appearances

For the Complainant: Leo F. Orenstein, Esq., Brody W. Weichbrodt, Esq., John Baraniak, Esq.,
Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Linda C. Milberger, Pro Se

Decision

Linda C. Milberger appeals a November 12, 2018 Extended Hearing Panel (“Hearing Panel”) decision pursuant to FINRA Rule 9311. The Hearing Panel found that Milberger violated FINRA Rule 2010 by falsifying customer wire request forms and violated FINRA Rules 4511 and 2010 by providing falsified forms to her member firm during its investigation. The Hearing Panel also found that Milberger violated FINRA Rules 8210 and 2010 by providing a false document to FINRA in response to a request for information. For her misconduct, the Hearing Panel imposed two consecutive one-year suspensions in all capacities. After an independent review of the record, we affirm the Hearing Panel’s findings of liability and modify the sanctions it imposed.

I. Facts

A. Background

Milberger never has been registered in the securities industry.¹ She began working in the industry in 2005 as a sales assistant. In September 2010, Milberger began working for Kyle Harrington as a senior client services associate while both were associated with Matrix Capital Group, Inc. (“Matrix”). Harrington was registered as a general securities principal and representative and maintained a registered investment advisor, Harrington Capital Management, LLC (“HCM”). After Harrington was permitted to resign from Matrix in November 2011, Milberger followed Harrington and associated with National Securities Corporation (“National”). Milberger associated with National from July 2012 until November 2016, during which the misconduct at issue occurred. After Harrington was discharged from National in November 2016,² both Milberger and Harrington then associated with another firm. Milberger currently is not associated with a FINRA member. FINRA retains jurisdiction over Milberger pursuant to Article V, Section 4(a) of FINRA’s By-Laws.

B. Customer LD

In late 2008 or early 2009, LD became Harrington’s customer and opened several accounts with him. Each time Harrington changed firms, LD transferred her accounts to Harrington’s new firm. By July 2012, LD maintained several investment accounts with Harrington, including a trust account and a Simplified Employee Pension IRA (“SEP IRA”) custodied at Matrix. Harrington managed these accounts under an HCM Investment Advisory Agreement with LD.

At some point prior to August 14, 2012, Harrington directed Milberger to send a wire request authorization form to LD. Via instant messages, Harrington gave Milberger the information to include on the form, including that LD wanted to wire \$20,000 from LD’s trust account to HCM’s business checking account. When Milberger questioned Harrington, “I am wiring to HCM?” Harrington confirmed, “[Y]es. [E]xactly.”

Milberger prepared a wire request authorization form dated August 14, 2012, for LD’s signature and sent it to her the following day. Per Harrington’s instructions, the form listed LD as the “Beneficiary/Recipient,” but provided the HCM business checking account as the “Beneficiary Account Number.” Upon receiving the form, LD emailed Milberger asking her “[t]o confirm, this is a SEP [IRA] contribution?”³ Because there was insufficient cash in LD’s

¹ Milberger, as an associated person, is subject to FINRA’s jurisdiction. *See* FINRA’s By-Laws Article IV, Section 1; FINRA Rule 0140(a).

² Harrington was discharged by National following an “[i]nternal review regarding the appearance of conversion of client funds.”

³ The record does not reflect whether LD received a response to her question.

account to fund the \$20,000 wire transfer, on or about August 15, 2012, Harrington sold securities from LD's trust account to generate additional cash by exercising authority granted to him under his investment advisory agreement with LD.

On August 16, 2012, LD signed the form, had it notarized, and faxed it to Milberger. Milberger emailed the completed form to a vice president at Matrix and asked, "Can the cash portion leave tomorrow?" The Matrix vice president responded that Matrix required two separate wire requests: one for the cash and a separate one for the proceeds of the sale of securities.

The next day, on August 17, 2012, the Matrix vice president emailed Milberger the cash balance (\$7,247.18) in LD's account and the amount of the sales proceeds (\$12,707.40), noting that the cash could be wired that day, but Matrix would need "a separate wire request for that." Milberger responded that day, writing that she had LD "do 2 more [wire request forms] in case I did the first one wrong" and attaching the "1st wire." The "1st wire" reflected a wire amount of \$7,245. Other than the wire amounts, the original \$20,000 wire request form and "1st wire" request form were identical. LD's signature and the notary's signature were the same, both forms were dated August 14, 2012, and both forms had the same typographical error misspelling "San Francisco."

On August 20, 2012, the Matrix vice president returned the \$7,245 wire request form to Milberger because "[t]he bank account title and bank account did not match." Milberger then prepared a second altered wire request form. The second altered wire request form was dated August 20, 2012, in the amount of \$19,929.58 and identified the "Beneficiary/Recipient" as "Harrington Capital Management LLC" in a different font. The second altered wire request form otherwise was identical to the prior forms that Milberger submitted. On August 21, 2012, Milberger emailed the second altered wire request form to the Matrix vice president and represented that she "had [LD] do another wire request." A wire transfer was effected that day from LD's brokerage account to HCM's bank account in the amount of \$19,874.64.⁴

Approximately one month later, LD emailed Harrington about the wire transfer from her account. She wrote, "I'm assuming this went to the new company [National] for investment but wanted to double check." Harrington responded, "yes."

Harrington never invested the funds on LD's behalf and never returned to LD the funds wired from her account to HCM's bank account.⁵ There is no evidence that Milberger knew that Harrington intended to convert LD's funds.

⁴ The lower amount reflected a wire fee charged to LD's account.

⁵ On November 3, 2016, FINRA took investigative testimony from Harrington regarding the \$19,874.64 wire transfer. During his testimony, Harrington testified he believed that the payment from LD was for the rental of one of his vacation rental by owner (VRBO) properties. From November 4-6, 2016, Harrington contacted LD numerous times via telephone and text

C. National's Investigation of LD's Complaint

In November 2016, after receiving a call from FINRA that Harrington was being investigated, LD reviewed all of her accounts with Harrington. Shortly thereafter, LD complained to National regarding the 2012 wire transfer and other allegations regarding the suitability of her investments. On November 14, 2016, National sent Harrington and Milberger a request for documents related to LD's complaint. In response, Milberger provided National with (1) the second altered wire request form dated August 20, 2012, that identified the "Beneficiary/Recipient" as "Harrington Capital Management LLC;" and (2) another altered wire request form with LD's signature, but blanks for the date, amount, and beneficiary name. Milberger did not provide National with the original wire request form. Nor did Milberger inform National that she had altered the original wire request form signed and notarized by LD multiple times in order to complete the August 2012 wire.

D. FINRA's Investigation Regarding Harrington's Undisclosed Private Securities Transactions

FINRA's initial investigation of Harrington arose out of allegations in a customer arbitration that Harrington had engaged in undisclosed private securities transactions unrelated to his conversion from LD. While investigating these claims, FINRA sent Harrington numerous requests for information pursuant to FINRA Rule 8210. In response, both Milberger and Harrington provided FINRA false documents and testimony. We review the specific facts related to Milberger's misconduct.

1. FINRA Requests Harrington to Produce Bank Statements Pursuant to FINRA Rule 8210

While investigating whether Harrington had engaged in undisclosed private securities transactions, FINRA specifically inquired whether he had sold any of his personal holdings of Islet Sciences stock. Before taking Harrington's investigative on-the-record testimony ("OTR"), FINRA staff requested that Harrington produce certain bank statements for himself and HCM, including statements for his personal account with HSBC, for the period July 1, 2012, through the most recent statement at the time. Harrington informed Milberger of the request and enlisted her assistance in gathering responsive documents and information.

[cont'd]

message, asking LD to sign a letter saying she had rented a home from him. LD never rented any of Harrington's VRBO properties. In response to a November 9, 2016 FINRA Rule 8210 request for information asking him to explain the \$19,874.64 wire from LD to HCM on August 21, 2012, Harrington wrote that the wire from LD was payment for "financial planning & incentive fees" that she owed him from 2009 through 2012.

Harrington responded to the request through counsel on July 15, 2016. After FINRA staff noticed that the production was incomplete, staff sent Harrington a follow-up Rule 8210 request, and Harrington again asked Milberger to gather documents.

2. Harrington Directs Milberger to Alter a Bank Statement

In connection with the response, Milberger gathered documents in electronic form, including bank statements, from a previous production Harrington had made to National in the summer of 2014. Milberger, at Harrington's direction, removed AB's name as the originator of an August 21, 2012 wire transfer from the description on a HSBC bank statement. When Milberger asked Harrington whether it was appropriate to remove AB's name, he reassured her that "it will be fine," it was "no big deal," and that she should not "worry about it" because they were testing to see if a redaction could be done to protect a person's confidentiality. According to Milberger, based on Harrington's reassurances, she was comfortable removing AB's name using a redaction software program. After doing so, she sent the altered bank statement to Harrington's lawyer, knowing it would be produced to FINRA. Milberger did not inform the lawyer about the alteration.

On August 3, 2016, Harrington, through counsel, provided his supplemental document production to FINRA. Included in the response was Harrington's HSBC bank statement for the period August 16 through September 18, 2012, which reflected a deposit or other addition of \$100,000 on August 21, 2012. The entry for the deposit/addition read:

33RECD CHIP JPMORGAN CHASE BANK*ORG:NEW YORK NY
10065 - 8840*BNF : KYLE P HARRINGTON, HASTINGS HDS
N*STCHIPSEQ:0238125*TIME:1134*YRREF:OS1 OF 12/08/21*MMB
REF:234402285

After receiving the bank statement, the FINRA examiner compared it to the records National had produced to FINRA from its internal investigation. The bank statement produced by National included the originator of the wire transfer, AB:

33RECD CHIP JPMORGAN CHASE BANK*ORG:**AB**,NEW YORK
NY 10065 - 8840*BNF : KYLE P HARRINGTON, HASTINGS HDS
N*STCHIPSEQ:0238125*TIME:1134*YRREF:OS1 OF 12/08/21*MMB
REF:234402285.373

Upon comparing the bank statement received from Harrington's lawyer with the bank statement produced earlier by National, the examiner noticed the difference. The examiner also saw that "the remaining text had been essentially kind of merged together, so the transaction details were completely different."

3. Harrington and Milberger Give a False Explanation About the Bank Statement Alteration

Three months later, in November 2016, Harrington informed Milberger that his lawyer wanted to know why the bank statement had been “redacted.” On or about November 4, 2016, Milberger and Harrington together drafted a written explanation to FINRA. In the statement, ostensibly from Milberger, Milberger explained that she was testing redaction software in the event she had to redact names from VRBO contracts for privacy and confidentiality reasons. Milberger continued that she selected one file in the scope of FINRA’s inquiry—i.e., the relevant HSBC statement. And in her rush to provide the documents to Harrington’s attorney for the response to FINRA, Milberger inadvertently sent the altered version to him, rather than the original, unredacted bank statement.

On January 11, 2017, staff from FINRA’s Department of Enforcement (“Enforcement”) took Milberger’s OTR, during which she testified consistently with the written explanation. She testified that she had drafted the statement while on the phone with Harrington, that he expressed concerns about the confidentiality of the VRBO contracts, and that she randomly selected an account statement to test the redaction software. She further testified that Harrington was unaware that AB’s name had been deleted from the bank statement.

Almost a year later, Milberger recanted her testimony.

4. Milberger Recants Her Earlier Explanation of the Altered Bank Statement

On June 23, 2017, Enforcement filed the underlying action against Harrington and Milberger. Milberger stopped working for HCM in July 2017. Several months later, in December 2017, Enforcement conducted a voluntary interview with Milberger. During that discussion, Milberger recanted her earlier OTR testimony and told Enforcement that Harrington directed her to remove AB’s name from the bank statement. At the hearing in this matter, she reiterated what she had told Enforcement in December 2017. Milberger said that she made the deletion because Harrington asked her to do so, and she trusted him. She also explained that she wanted to protect Harrington’s children because she believed he was their sole means of support. At the hearing, Milberger said that, after being named as a respondent in this action and getting access to certain information and documents, she realized she was not protecting an innocent person. She eventually recanted her testimony because she “gave Mr. Harrington enough time to tell the truth, and he did not. So I needed to do so.”

II. Procedural History

Enforcement filed a seven-cause complaint on June 23, 2017, against Milberger and Harrington. Only three causes of action were alleged against Milberger. The second cause of action alleged that Milberger falsified wire request forms, in violation of FINRA Rule 2010. The fifth cause of action alleged that, by providing the falsified wire request forms to her firm during its investigation of the related customer complaint, Milberger violated FINRA Rules 4511 and 2010. The sixth cause of action alleged that Milberger provided an altered bank statement to

FINRA in response to a FINRA Rule 8210 request, in violation of FINRA Rules 8210 and 2010.⁶

After a seven-day hearing, the Hearing Panel issued its decision. The Hearing Panel found that Milberger and Harrington engaged in the misconduct as alleged. For falsifying the wire request forms and providing them to her member firm, the Hearing Panel suspended Milberger for one year in all capacities. For providing a false document to FINRA, the Hearing Panel imposed a separate one-year suspension in all capacities upon Milberger, to be served consecutively with the other suspension.⁷ Milberger timely appealed the decision. Harrington did not file an appeal, so only the allegations against Milberger are on review.

III. Discussion

For the reasons set forth below, we affirm the Hearing Panel's liability findings.

A. Milberger Falsified Multiple Wire Request Forms in Violation of FINRA Rule 2010

The Hearing Panel found that Milberger falsified two wire requests, thereby facilitating Harrington's conversion of LD's funds, in violation of FINRA Rule 2010. We affirm these findings.

⁶ The complaint also alleged that Harrington: converted LD's funds, in violation of FINRA Rule 2010 (first cause of action); failed to disclose private securities transactions, in violation of NASD Rule 3040 and FINRA Rule 2010 (third cause of action); made misstatements and provided falsified documents in connection with his firm's internal investigation, in violation of FINRA Rule 2010 (fourth cause of action); provided false documents and information to FINRA, in violation of FINRA Rules 8210 and 2010 by providing an altered bank statement, falsified VRBO agreements, a false written statement, and false investigative testimony (sixth cause of action); and attempted to conceal his conversion, in violation of FINRA 2010 (seventh cause of action).

⁷ The Hearing Panel barred Harrington and ordered him to pay \$19,974.64 in disgorgement for his conversion of LD's funds; imposed a separate bar upon Harrington and ordered him to pay \$71,000 in disgorgement to FINRA and \$105,000 in restitution to National for his failure to disclose private securities transactions and providing false statements and documents to his member firm; and imposed a third and final bar upon Harrington for providing false documents and information to FINRA. The Hearing Panel did not order restitution to LD because LD settled her arbitration with National regarding Harrington's misconduct, and although Harrington did not contribute to it, the record did not reflect who paid the settlement, the amount of the settlement, and what amount of the settlement was attributable to Harrington's conversion.

FINRA Rule 2010 requires associated persons to “observe high standards of commercial honor and just and equitable principles of trade.”⁸ Falsifying documents is inconsistent with just and equitable principles of trade. *See, e.g., Joseph R. Butler*, Exchange Act Release No. 77984, 2016 SEC LEXIS 1989, at *24 (June 2, 2016) (finding that applicant violated FINRA Rule 2010 by falsifying annuity beneficiary change request form); *Denise M. Olson*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629, at *5-7 (Sept. 3, 2015) (finding that applicant violated FINRA Rule 2010 by falsifying firm expense report); *Mitchell H. Fillet*, Exchange Act Release No. 75054, 2015 SEC LEXIS 2142, at *47-51 (May 27, 2015) (finding that applicant violated NASD Rules 3110 and 2110 by backdating customers’ variable annuity records). The NAC has previously held that falsifying a wire request violates just and equitable principles of trade and FINRA Rule 2010. *See Dep’t of Enforcement v. Tucker*, Complaint No. 2009016764901, 2013 FINRA Discip. LEXIS 45, at *9–13 (FINRA NAC Dec. 31, 2013) (finding that respondent violated FINRA Rule 2010 by falsifying a wire transfer form to give the impression that he was a manager to facilitate the transfer).

Milberger does not dispute that she altered LD’s original wire request form as found by the Hearing Panel. Milberger, however, attempts to excuse her misconduct by claiming that she believed that LD knew about the transfer, and she “placed the full routing and account number on the [wire request] form to ensure that LD was aware.” While it is true that Milberger listed the HCM business checking account number as the “Beneficiary Account Number” on the original wire request form that LD signed and notarized, Milberger also originally listed LD as the “Beneficiary/Recipient.” Indeed, Matrix was unwilling to effectuate the wire transfer because the bank account number and title did not match. Rather than take note of this red flag, Milberger subsequently altered LD’s wire request form again and listed “Harrington Capital Management LLC” as the “Beneficiary/Recipient.”

The Hearing Panel found that there was no evidence that Milberger sought to benefit herself, or Harrington, when she falsified the wire request forms, or that she knew that she was facilitating Harrington’s conversion. The Hearing Panel also found Milberger credible when she testified she believed she was acting consistently with her understanding of LD’s intentions.⁹ Absent substantial evidence to the contrary, Hearing Panel’s credibility determinations are entitled to our deference. *See Daniel D. Manoff*, 55 S.E.C. 1155, 1162 n.6 (2002) (“Credibility determinations by a fact-finder deserve special weight.”).

⁸ FINRA rules apply with equal force to all members and associated persons. *See* FINRA Rule 0140(a) (“Persons associated with a member shall have the same duties and obligations as a member under the Rules.”).

⁹ Milberger claims she believed at the time her actions were correct and ethical because LD was a long-time friend of Harrington and trusted him completely, and Harrington had assured her that LD was aware of the changes. Milberger believed she was following the “know your customer” rule to the best of her ability and acting in the customer’s best interests. According to Milberger, “as long as [the customers were] aware of the change and they accept the change and they know about it, I suppose I didn’t question it back then.”

But even if Milberger believed she was acting in the customer's interests, Milberger did not obtain LD's authorization to alter the wire request form. And Milberger altered the wire request forms after LD signed and notarized it, thereby giving the impression that LD had signed and notarized the altered wire request forms. In fact, LD never knew, saw, or affirmed any of the alterations that Milberger made. Milberger's actions were unethical and improper. We therefore conclude that Milberger violated FINRA Rule 2010 when she falsified the wire request forms.

B. Milberger Provided Falsified Documents to Her Member Firm During Its Investigation in Violation of FINRA Rules 4511 and 2010

The Hearing Panel found that Milberger provided falsified wire request forms to National during its investigation, thereby making National's books and record inaccurate, in violation of FINRA Rules 4511 and 2010. We affirm these findings.

FINRA Rule 4511(a) requires FINRA members to "make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules." Those applicable rules include Section 17(a) of the Securities Exchange Act of 1934, which requires broker-dealers to make and preserve certain books and records, and SEC Rule 17a-4(b)(4), which requires that a firm preserve records relating to communications concerning the broker-dealer's business, including documents related to customer transactions. A violation of FINRA Rule 4511 constitutes a violation of FINRA Rule 2010. *See, e.g., Fox & Co. Invs., Inc.*, 58 S.E.C. 873, 891-94 (2005) (finding that respondent's violation of the predecessor record keeping rule NASD Rule 3110 was also a violation of just and equitable principles of trade).

When National requested documents after receiving LD's complaint, Milberger provided National with the second altered wire request form that identified the "Beneficiary/Recipient" as "Harrington Capital Management LLC" and another altered wire request form with LD's signature, but the date, amount, and beneficiary name left blank. These documents were falsified, causing National's books and records to be inaccurate. Milberger argues that she did not believe that the wire request forms were inaccurate at the time she provided them to National. But scienter is not required to prove a books and records violation under Rule 4511(a). *See Joseph G. Chiulli*, 54 S.E.C. 515, 522 (2000) (holding that NASD Rule 3110, the predecessor to FINRA Rule 4511, has no scienter requirement). Moreover, the altered wire request forms were intrinsically inaccurate. Milberger knew she altered the wire request form after LD had signed and notarized it, and that LD did not sign and notarize the document as altered.

We conclude that Milberger violated FINRA Rules 4511 and 2010 when she caused National's books and records to be inaccurate.

C. Milberger Provided a Falsified Document to FINRA in Violation of FINRA Rules 8210 and 2010

The Hearing Panel found that Milberger provided a falsified bank statement to FINRA, in violation of FINRA Rules 8210 and 2010. We affirm these findings.

FINRA Rule 8210 requires FINRA members and associated persons to provide information orally or in writing in response to requests for information issued by FINRA staff with respect to any matter involved in an investigation. The duty of members and associated persons to cooperate with FINRA investigations and respond fully to FINRA Rule 8210 requests is unequivocal. *See Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at *54 (Sep. 24, 2015). It is well settled that providing false information to FINRA in response to a FINRA Rule 8210 request is a violation of FINRA Rules 8210 and 2010. *See Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *23-24 (Aug. 22, 2008).

“In those instances when FINRA staff does not direct a request for information to a specific associated person, an individual may nevertheless violate [FINRA] Rule 8210 when he is aware that the false information is being provided by the member firm to FINRA in response to a request for information issued pursuant to [FINRA] Rule 8210.” *Dep’t of Mkt. Regulation v. Naby*, Complaint No. 20120320803-01, 2017 FINRA Discip. LEXIS 27, at *17 (FINRA NAC July 24, 2017) (quoting *Dep’t of Enforcement v. Palmeri*, Complaint No. 2007010580702, 2013 FINRA Discip. LEXIS 2, at *11 n.6 (FINRA NAC Feb. 15, 2013)); *see also Michael A. Rooms*, 58 S.E.C. 220, 227 (2005) (“Liability under [Rule 8210] may possibly extend to associated persons of a firm who are aware of an 8210 request directed to the firm and seek to falsify or impede the firm’s response.”), *aff’d*, 444 F.3d 1208 (10th Cir. 2006).

Milberger does not dispute that she altered the bank statement by removing AB’s name, and that she knew that the statement would be provided to FINRA. She asserts that she trusted Harrington who assured her that sending an altered document to FINRA was “fine,” and that she never intended to hide any information. Milberger, however, does not need to intend to violate FINRA rules to be liable. *See Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *39 (Nov. 14, 2008) (“[S]cienter is not an element of a Rule 8210 violation.”), *aff’d*, 347 F. Appx. 692 (2d Cir. 2009). She violated FINRA Rules 8210 and 2010 because she knew the document she altered was falsified and she knew it would be provided to FINRA.

Milberger also attempts to excuse her misconduct by arguing that she provided the altered bank statement to Harrington’s attorney, and the attorney should have reviewed it. But Milberger cannot shift her responsibility for complying with FINRA rules to Harrington or his attorney. *See, e.g., Dep’t of Enforcement v. Merrimac Corp. Sec.*, Complaint No. 2011027666902, 2017 FINRA Discip. LEXIS 16, at *15-16 (FINRA NAC May 26, 2017), *aff’d in relevant part*, Exchange Act Release No. 86404, 2019 SEC LEXIS 1771 (July 17, 2019).

We conclude that Milberger violated FINRA Rules 8210 and 2010 by providing the altered bank statement to FINRA in response to a FINRA Rule 8210 request.

IV. Sanctions

The Hearing Panel suspended Milberger in all capacities for a total of two years. After an independent review of the record, we modify this sanction.

A. Falsifying Wire Request Forms and Providing Falsified Information to a Member Firm

We agree with the Hearing Panel that a unitary sanction is appropriate for Milberger’s falsification of the wire request forms and the recordkeeping violation caused by providing them to her firm because these violations are based on the same facts and course of conduct. *See FINRA Sanction Guidelines* 4 (Mar. 2019), [https://www.finra.org/sites/default/files/Sanctions Guidelines.pdf](https://www.finra.org/sites/default/files/Sanctions%20Guidelines.pdf) [hereinafter *Guidelines*] (General Principle No. 4); *Dep’t of Mkt. Regulation, v. Lane*, Complaint No. 20070082049, 2013 FINRA Discip. LEXIS 34, at *82 (FINRA NAC Dec. 26, 2013), *aff’d*, Exchange Act Release No. 74269, 2015 SEC LEXIS 558 (Feb. 13, 2015). In arriving at the unitary sanction, we, like the Hearing Panel, consider the applicable Sanction Guidelines (“Guidelines”)—forgery and/or falsification of records and recordkeeping—as well as the General Principles and Principal Considerations applicable to all violations.

The Guidelines for falsification of records recommend a fine of \$5,000 to \$155,000 when a respondent falsifies a document without authorization.¹⁰ In such a case, and in the absence of other violations or customer harm, the Guidelines recommend that the adjudicator consider suspending the respondent for a period of two months to two years.¹¹ The Guidelines provide that a bar is standard if the respondent falsified the document in furtherance of another violation.¹² The relevant considerations are the nature of the document falsified; whether the respondent had a good-faith, but mistaken, belief of express or implied authority; whether the customer possessed or saw the document before the customer’s signature was affixed to it, and the customer affirmed the signature; if the document pertained to a transaction, whether the transaction was agreed to by an authorized person; and whether the customer re-signed the document or ratified the signature.¹³

The Guidelines for a recordkeeping violation recommend a fine of \$1,000 to \$16,000 and a suspension in any or all capacities for a period of 10 business days to three months.¹⁴ When aggravating factors predominate, the Guidelines recommend adjudicators consider a fine up to \$155,000 and a suspension of up to two years or a bar.¹⁵ The relevant considerations are the nature and materiality of the inaccurate or missing information; whether the inaccurate

¹⁰ *Guidelines*, at 37.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.* at 29.

¹⁵ *Id.*

information was entered or omitted intentionally, recklessly, or as the result of negligence; and whether the violation allowed other misconduct to occur or to escape detection.¹⁶

We agree with the Hearing Panel that there are both aggravating and mitigating factors present. The documents that Milberger falsified—wire request forms—were inherently important.¹⁷ By falsifying the forms, Milberger facilitated Harrington’s conversion of LD’s funds, and LD was harmed.¹⁸ After signing and notarizing the original wire request form, LD never knew, saw, or affirmed the alterations that Milberger made.¹⁹ Importantly, LD never authorized the beneficiary of her wire transfer to be “Harrington Capital Management LLC.”²⁰ The changes enabled Harrington to avoid detection and convert a large amount of money from LD.²¹

On the other hand, while we find that Milberger intentionally altered the wire request forms, there is no evidence that Milberger knew she was facilitating a conversion of LD’s funds. Milberger did not benefit financially from her wrongdoing.²² The Hearing Panel found Milberger credible when she testified that she believed that LD had authorized the transfer of funds, that LD’s funds were being transferred for a legitimate purpose, and that Harrington had fully discussed with LD the circumstances of the transfer. The Hearing Panel also found that Milberger credibly demonstrated remorse and “truly regretted having falsified the wire request forms.” We defer to the Hearing Panel’s credibility determinations, which are supported by the record. *See Manoff*, 55 S.E.C. at 1161-62 & n.6.

We find that Milberger’s actions fell far below the standard of conduct for a non-registered person.²³ Balancing the aggravating and mitigating factors, we conclude that the one-year suspension imposed by the Hearing Panel is an appropriately remedial sanction for Milberger’s misconduct.

¹⁶ *Id.*

¹⁷ *See id.* at 29, 37.

¹⁸ *See id.*

¹⁹ *See id.* at 37.

²⁰ *See id.*

²¹ *See id.* at 7-8 (Principal Considerations in Determining Sanctions, Nos. 11, 17).

²² *See id.* at 8 (Principal Considerations in Determining Sanctions, No. 16).

²³ *See Guidelines*, at 8 (Principal Consideration in Determining Sanctions, No. 13).

B. Providing Falsified Bank Statement to FINRA

For providing the falsified bank statement to FINRA, the Hearing Panel suspended Milberger for one year in all capacities. The Guidelines for failing to respond truthfully to a FINRA Rule 8210 request recommend a fine of \$25,000 to \$77,000 and, when mitigation exists, a suspension of up to two years.²⁴ In addition to the Principal Considerations applicable to all violations,²⁵ the Guidelines instruct the adjudicator to consider the importance of the information requested as viewed from FINRA's perspective.²⁶

We first consider the importance of the information requested.²⁷ FINRA was investigating Harrington's undisclosed private securities transactions. By altering the bank statement, Milberger concealed the identity of the originator of the \$100,000 wire transfer and hindered FINRA's investigation. After altering the document, Milberger also falsely testified at her OTR about the circumstances of the alteration, which further aggravates her misconduct.²⁸ On appeal, Milberger asserts that FINRA had "access to the original unredacted document." Even if that were true at the time of the production of the altered document, that fact does not negate Milberger's responsibility and liability for producing the altered bank statement to FINRA. *See Dep't of Enforcement v. Eplboim*, Complaint No. 2011025674101, 2014 FINRA Discip. LEXIS 8, at *40 (FINRA NAC May 14, 2014) (dismissing respondent's argument that FINRA already had the necessary documents because associated persons have an "unequivocal obligation to produce the requested documents" themselves).

Notwithstanding the importance of the information and Milberger's concealment, there are mitigating factors. While Milberger initially concealed her misconduct, she later voluntarily recanted her OTR testimony. At the time of her wrongdoing, Milberger was non-registered person. Harrington, her supervisor, directed her to alter the document and to provide the altered bank statement to his attorney, and assured her that it was permissible to do so. Harrington, together with Milberger on the telephone, crafted Milberger's false written explanation about the alteration of the document. Milberger placed her trust in Harrington, who undoubtedly was a bad actor.²⁹ Months later, Milberger spoke truthfully about her actions, directly implicating Harrington and aiding FINRA's action against him. We find these unique facts support mitigation in this instance.

²⁴ *Id.* at 33.

²⁵ *Id.* at 7-8.

²⁶ *Id.* at 33.

²⁷ *See id.*

²⁸ *See id.* at 7 (Principal Consideration in Determining Sanctions, Nos. 8, 10).

²⁹ By her own admission, Milberger feels "foolish" for doing so and "no longer trust[s] most people." On appeal, Milberger notes that her employment prospects have been negatively

Milberger's actions are serious and warrant significant sanctions. That Enforcement did not discover additional alterations or rule violations other than the alleged misconduct does not mitigate the significance of her rule violations. Notwithstanding the seriousness of her actions, however, Milberger has acknowledged her misconduct and expressed sincere remorse.³⁰ According to the Hearing Panel, Milberger "appeared chastened and contrite" at the hearing, and they found it unlikely she would commit a similar violation in the future. We agree. We conclude that the one-year suspension in all capacities imposed by the Hearing Panel is an appropriately remedial sanction. *See Dep't of Enforcement v. Doni*, Complaint No. 2011027007901, 2017 FINRA Discip. LEXIS 46, at *46-47 (FINRA NAC Dec. 21, 2017) (assigning some mitigation for well-documented credibility findings by the Hearing Panel of respondent's expressions of remorse).

The Hearing Panel ordered Milberger to serve her suspensions consecutively. We disagree and impose the suspensions concurrently for the following reasons. Milberger believed that LD authorized the transfer of her funds and LD's funds were being transferred for a legitimate purpose. Milberger also was following the directive of her supervisor when she altered the HSBC bank statement and, together with Harrington, drafted the false statement to FINRA and gave false OTR testimony. Milberger's lack of intent to assist with Harrington's misconduct and her subordinate role weigh in favor of concurrent suspensions. So too does her eventual decision to tell the truth and admit that she had previously lied during her OTR, although we give this factor only limited weight. Milberger did not recant until after Enforcement filed the complaint in this matter, but she did so on her own and without prompting by Enforcement's counsel. We are cognizant of the fact that Milberger previously, and prior to her reversal, was represented by the same lawyer as Harrington, who was paid for by Harrington. By her own admission, Milberger did not understand the severity of the allegations until she began accessing certain documents related to this case. We conclude that the imposition of concurrent suspensions in this instance is appropriately tailored to address the misconduct at issue.

V. Conclusion

Milberger falsified two customer wire requests forms, provided false documents to her firm during its investigation, and provided a false document to FINRA in response to a request

[cont'd]

affected as a result of the Hearing Panel decision, but Harrington was able to begin another career despite being barred from the securities industry. Any detrimental effect on Milberger's employment situation as a result of her misconduct, however, is not mitigating. *See Dep't of Enforcement v. Pierce*, Complaint No. 2007010902501, 2013 FINRA Discip. LEXIS 25, at *100 n. 72 (FINRA NAC Oct. 1, 2013).

³⁰ *See Guidelines*, at 7 (Principal Consideration in Determining Sanctions, No. 2).

for information, in violation of FINRA Rules 4511, 8210, and 2010. For her misconduct, we suspend Milberger in all capacities for one year. We also order that Milberger pay hearing costs of \$5,226.61.³¹

On Behalf of the National Adjudicatory Council,

Jennifer Piorko Mitchell,
Vice President and Deputy Corporate Secretary

³¹ Pursuant to FINRA Rule 8320, any member that fails to pay any fine, costs, or other monetary sanction imposed in this decision, after seven days' notice in writing, will summarily be suspended or expelled from membership for non-payment. Similarly, the registration of any person associated with a member who fails to pay any fine, costs, or other monetary sanction, after seven days' notice in writing, will summarily be revoked for non-payment.