FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. PATRICK MATLOCK (CRD No. 5760255), Respondent.	Disciplinary Proceeding No. 2020067731001 Hearing Officer–RES **DEFAULT DECISION** January 3, 2023

Respondent is barred from associating with any FINRA member firm in any capacity for (1) misrepresenting material facts on a loan application and loan agreement he submitted to the Small Business Administration to obtain an Economic Injury Disaster Loan, and (2) providing a partial but incomplete response to six FINRA Rule 8210 requests. Respondent also engaged in an outside business activity without providing prior written notice to his employer firm or obtaining required firm approval.

Appearances

For Complainant: Bernard J. Cooney, Esq., David Monachino, Esq., Melissa Turitz, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For Respondent: No appearance

DECISION

I. Introduction

FINRA's Department of Enforcement filed a three-count Complaint against Respondent Patrick Matlock, formerly a registered representative. The first cause of action alleges that in March and May 2020, Respondent misrepresented material facts on a loan application and loan agreement he submitted to the Small Business Administration ("SBA") to obtain an Economic Injury Disaster Loan ("EIDL").[1] He falsely represented that he sought a loan for a sole proprietorship in New Jersey he had established in July 2013, the proprietorship had generated gross revenue of $120,000 in the 12-month period ending January 31, 2020, and it had one

[1] Complaint ("Compl.") ¶ 1.

employee. The proprietorship, however, did not exist at the time of the loan application.[2] Respondent reaffirmed the truth and accuracy of his representations when he executed the loan agreement necessary for a $59,000 EIDL loan. In addition, he falsely stated in the loan agreement that he would use the proceeds exclusively to alleviate economic injury caused by the COVID-19 pandemic. But, allegedly, Respondent did not use the proceeds for that purpose.[3]

The second cause of action alleges that Respondent engaged in an outside business activity ("OBA") without providing prior written notice to his employer firm, J.P. Morgan Securities LLC ("J.P. Morgan"). After applying for the EIDL loan, Respondent formed a limited liability company in the State of New Jersey to perform remodeling services for profit. He was the sole member and manager of the company. Yet Respondent allegedly did not provide notice to J.P. Morgan of this OBA while he was employed by the firm.[4]

The third cause of action alleges that Respondent made a partial but incomplete production of bank statements FINRA requested under FINRA Rule 8210. These bank statements were material to FINRA's investigation into whether the company Respondent had referred to in his EIDL loan application had any revenue in the year ending January 31, 2020, and to FINRA's investigation into whether Respondent had received compensation in connection with his undisclosed OBA.[5]

According to the Complaint, Respondent violated FINRA Rules 2010, 3270, and 8210.[6]

After Enforcement served Respondent with the Complaint and First Notice of Complaint, Respondent failed to file an Answer that complied with FINRA Rule 9215. Respondent then failed to appear at the Initial Pre-Hearing Conference ("IPHC"), both when it was first convened and again when it was rescheduled. At my direction, Enforcement filed a motion for entry of default decision ("Default Motion"). Enforcement's Default Motion is supported by the declaration of counsel Bernard J. Cooney, Esq. ("Cooney Decl.") and 14 supporting exhibits. Respondent did not file an opposition or otherwise respond to the Default Motion.

For the reasons stated below, I find Respondent in default, deem admitted all allegations in the Complaint, grant the Default Motion, and issue this Default Decision.

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[2] Compl. ¶ 2.

[3] Compl. ¶ 3.

[4] Compl. ¶ 4.

[5] Compl. ¶ 5.

[6] Compl. ¶¶ 3-5.

II. Findings of Fact and Conclusions of Law

A. Background

According to the Central Registration Depository ("CRD"), Respondent Patrick Matlock first registered with FINRA in April 2010.[7] From February to August 2020, Respondent was registered as a General Securities Representative through an association with J.P. Morgan.[8] On August 24, 2020, J.P. Morgan filed a Uniform Termination Notice for Securities Industry Registration (Form U5) disclosing that the firm had discharged Respondent because he had "appl[ied] for, and receiv[ed] funds from the Small Business Administration Economic Injury Disaster Loan [program] without owning or participating in a legitimate business."[9] Respondent is not now registered with FINRA or associated with a FINRA member firm.

B. Jurisdiction

FINRA has jurisdiction over this matter because the Complaint (1) was filed within two years after the effective date of termination of Respondent's registration through J.P. Morgan, and (2) charges Respondent with misconduct while he was registered or associated with a FINRA member firm, and with failing to respond to FINRA requests for information in the two-year period after he was no longer registered with a FINRA member firm.[10]

C. Origin of the Investigation

This disciplinary proceeding arose from an investigation FINRA began in September 2020, following its review of the Form U5 that J.P. Morgan had filed describing the reasons for Respondent's discharge from the firm.[11]

D. Respondent's Default

Respondent was properly served with the Complaint and Notice of Complaint in accordance with FINRA Rule 9134. On September 5, 2022, Respondent emailed the Office of Hearing Officers ("OHO") a document titled "Response" stating, among other things, that Respondent had not made material misrepresentations in his loan application. I issued an order finding that this document did not "meet the requirements for filing an Answer in a FINRA disciplinary proceeding." [12] I directed Respondent to "file an Answer that conforms to FINRA

[7] Compl. ¶ 6.

[8] Compl. ¶ 7.

[9] Compl. ¶ 8.

[10] Compl. ¶ 9.

[11] Cooney Decl. ¶ 4.

[12] Order Directing Respondent to File Answer Compliant With FINRA Rule 9215, at 1-2 (Sept. 12, 2022).

Rule 9215(b) on or before **September 26, 2022.**"[13] Respondent failed to file a Rule-compliant Answer.

I also issued an order setting the IPHC for September 26, 2022, at 10:00 a.m., Eastern Time, by videoconference call.[14] The order stated, "a failure to appear at the Conference, in person or through counsel or a representative, may be deemed a default."[15] When I convened the IPHC on the scheduled date and time, Respondent failed to appear. As Enforcement attorneys and the court reporter waited, the Case Administrator assigned to this case tried to reach the Respondent by telephone. When the call did not go through, the Case Administrator emailed Respondent to remind him of the IPHC. Respondent did not reply to the email. The Case Administrator called Respondent again and, when she stated she was calling from FINRA, the individual who answered the phone hung up.

To give Respondent another chance to participate in the proceeding, I rescheduled the IPHC for October 3, 2022, at 10:00 a.m., Eastern Time. Again, Respondent failed to appear.

I then issued an order directing Respondent to show cause why he should not be held in default and scheduled the show cause hearing for October 12, 2022, at 10:00 a.m., Eastern Time.[16] The order stated, "**Respondent is reminded that a failure to appear at the show cause hearing, in person or through counsel, may be deemed a default.**"[17] Respondent failed to appear. Respondent has not been in contact with OHO since October 13, 2022.[18]

Based on these facts, I find Respondent in default for failing to appear for the IPHC and the rescheduled IPHC after having received due notice. FINRA Rule 9269 authorizes the Hearing Officer to issue a default decision against a respondent who fails to appear at a pre-hearing conference of which the respondent has due notice.[19] Respondent had due notice of the IPHC and the rescheduled IPHC but failed to appear.[20] Thus, I find a default decision warranted.[21] Once I find a respondent in default, I am authorized by FINRA Rules 9215(f) and

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[13] *Id*. (emphasis original).

[14] Order Setting Initial Pre-Hearing Conference, at 1-2 (Sept. 12, 2022).

[15] *Id.* at 2.

[16] Order to Show Cause Why Respondent Patrick Matlock Should Not Be Held in Default and Setting Show Cause Hearing, at 1 (Oct. 3, 2022).

[17] *Id.* at 2 (emphasis original).

[18] The communication consisted of an email from Respondent to Enforcement attorneys and the Case Administrator. In his email, Respondent made a sarcastic "joke" denigrating the competence of the Enforcement attorneys.

[19] FINRA Rule 9269(a)(1).

[20] Respondent's due notice is a matter of record. The Office of Hearing Officers emailed to Respondent, at the same email address Respondent had used to file his non-Rule-compliant "Response" to the Complaint, orders scheduling the IPHC and the rescheduled IPHC. In the days before the IPHC, Respondent conferred with Enforcement and consented to a proposed case management schedule.

[21] Respondent is notified that he may move to set aside this Default Decision under FINRA Rule 9269(c) if he can show good cause.

9269(a)(2) to treat the allegations of the Complaint as admitted. As described below, I find that Respondent committed the violations charged in the Complaint and bar him from associating in any capacity with any FINRA member firm.

E. Respondent Misrepresented Material Facts in a Loan Application and Loan Agreement He Submitted to the Small Business Administration, in Violation of FINRA Rule 2010

1. Governing Law

In the first cause of action of the Complaint, Enforcement charges Respondent with violating FINRA Rule 2010 because he misrepresented material facts in a loan application and loan agreement he submitted to the SBA. FINRA 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."[22] FINRA Rule 2010 applies to all business-related misconduct even if it does not involve securities or a securities transaction.[23] FINRA Rule 2010 prohibits misconduct that reflects poorly on an associated person's ability to comply with the regulatory requirements of the securities business and to fulfill his fiduciary duty in handling other people's money.[24] These ethical standards go beyond legal requirements and depend on general rules of fair dealing, the reasonable expectations of the parties, marketplace practices, and the relationship between the parties.[25] The Rule does not require proof of scienter.[26] An associated person violates FINRA Rule 2010 where he obtains money by representing it will be used for a specific purpose, but uses that money for a different, unauthorized purpose.[27]

2. Facts Showing a Violation

In 2020, the federal government began the EIDL program to grant low interest loans to small businesses adversely impacted by the COVID-19 pandemic.[28] To be eligible for an EIDL loan, an applicant was required to have a business in operation on or before January 31, 2020.[29] The SBA determined the amount of the loan based, in part, on information the applicant

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[22] *Accord Dep't of Enforcement v. Taboada*, No. 2012034719701, 2017 FINRA Discip. LEXIS 29, at *29 (NAC July 24, 2017), *appeal dismissed*, Exchange Act Release No. 82970, 2018 SEC LEXIS 823 (Mar. 30, 2018).

[23] *Kimberly Springsteen-Abbott*, Exchange Act Release No. 88156, 2020 SEC LEXIS 2684, at *31 (Feb. 7, 2020) (internal quotations omitted), *petition dismissed in part, denied in part*, 989 F.3d 4 (D.C. Cir. 2021).

[24] *Keilen Dimone Wiley*, Exchange Act Release No. 76558, 2015 SEC LEXIS 4952, at *15 (Dec. 4, 2015).

[25] *Dep't of Enforcement v. Potter*, No. 2017052871401, 2021 FINRA Discip. LEXIS 8, at *35 (NAC May 27, 2021).

[26] *Dep't of Enforcement v. Kielczewski*, No. 2017054405401, 2021 FINRA Discip. LEXIS 22, at *25 (NAC Sept. 30, 2021), *appeal docketed*, No. 3-20636 (SEC Oct. 27, 2021).

[27] *Dep't of Enforcement v. Clarke*, 2016050938301, 2020 FINRA Discip. LEXIS 42, at *20-21 (NAC Sept. 17, 2020), *appeal docketed*, No. 3-20126 (SEC Oct. 19, 2020).

[28] Compl. ¶¶ 10-11.

[29] Compl. ¶ 11.

provided as to the amount of revenue the business generated in the 12-month period ending January 31, 2020, and the number of employees the business had as of that date.[30]

Respondent applied to the SBA for an EIDL loan on March 30, 2020. The loan application, which Respondent completed and certified under penalty of perjury to be "true and correct," contained several misrepresentations.[31] First, Respondent represented in the application that he sought an EIDL loan on behalf of a sole proprietorship in New Jersey that he had established in July 2013.[32] Second, Respondent stated this proprietorship had generated $120,000 in gross revenue in the 12-month period ending January 31, 2020.[33] Third, he stated the proprietorship had one employee as of January 31, 2020.[34] In fact, Respondent had not established the business for which he sought an EIDL loan when he submitted the loan application.[35] Thus, Respondent's statements to the SBA were false.

The SBA sent Respondent a loan agreement on May 26, 2020, stating it had authorized him to receive an EIDL loan of $59,000.[36] Respondent signed the loan agreement and certified the representations he had made in his loan application were "true, correct and complete" and "offered to induce SBA to make this Loan."[37] He certified he was "authorized to apply for and obtain a disaster loan . . . in connection with the effects of the COVID-19 emergency."[38] He represented he would use the loan proceeds exclusively to alleviate economic injury caused by the COVID-19 emergency.[39] Based on these representations, the SBA granted him a $59,000 EIDL loan, which it deposited directly into his personal bank account.[40] Yet Respondent did not use the loan proceeds for his purported business in New Jersey.[41] Instead, Respondent used the proceeds to purchase shares of common stock in an energy company.[42]

In sum, Respondent made material misrepresentations in a loan application and loan agreement he submitted to the SBA to obtain an EIDL loan to which he was not entitled. Each of Respondent's misrepresentations was material because there was a substantial likelihood the

[30] Compl. ¶ 12.

[31] Compl. ¶ 14.

[32] Compl. ¶ 15.

[33] Compl. ¶ 16.

[34] Compl. ¶ 17.

[35] Compl. ¶¶ 15-17.

[36] Compl. ¶ 20.

[37] Compl. ¶ 21.

[38] Compl. ¶ 23.

[39] Compl. ¶ 70.

[40] Compl. ¶ 25.

[41] Compl. ¶ 28.

[42] Compl. ¶ 27.

SBA would consider them important in deciding whether to grant Respondent a loan. I find that Respondent violated FINRA Rule 2010.

F. Respondent Engaged in an Outside Business Activity Without Providing Prior Notice to his Employer Firm, in Violation of FINRA Rules 3270 and 2010

1. Governing Law

In the second cause of action, Enforcement charges Respondent with violating FINRA Rules 3270 and 2010 by engaging in an undisclosed business activity outside the scope of his relationship with J.P. Morgan. FINRA Rule 3270 prohibits a registered person from holding certain positions or being compensated by an undisclosed OBA:

> 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. Passive investments and activities subject to the requirements of Rule 3280 shall be exempted from this requirement.[43]

FINRA Rule 3270 requires fulsome, prompt, and written disclosure of an OBA to the employer firm.[44] The Rule applies to all OBAs so that the firm can raise its objections, if any, at a meaningful time and exercise appropriate supervision.[45] The Rule is not limited to OBAs related to securities.[46] The registered person must give notice of an OBA when he takes steps to organize or market the business.[47] OBAs are of serious concern, and the careful monitoring of such activities carries important protections for member firms and investors.[48]

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[43] *Accord Kenny Akindemowo*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769, at *28-29 (Sept. 30, 2016).

[44] *Dep't of Enforcement v. Akindemowo*, No. 2011029619301, 2015 FINRA Discip. LEXIS 58, at *44 (NAC Dec. 29, 2015), *aff'd*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769 (Sept. 30, 2016).

[45] *Dep't of Enforcement v. Mathieson*, No. 2014040876001, 2018 FINRA Discip. LEXIS 9, at *15 (NAC Mar. 19, 2018); *accord Akindemowo*, 2016 SEC LEXIS 3769, at *31-32 ("[The respondent's] failure to provide the written notice required by the rule frustrated [the employer firm's] ability to assess the risks that his outside business activities may cause harm to potential investors and to manage those risks by taking appropriate action.").

[46] *Dep't of Enforcement v. Ghosh*, No. 2016051615301, 2021 FINRA Discip. LEXIS 32, at *31 (NAC Dec. 16, 2021); *Dep't of Enforcement v. Connors*, No. 2012033362101, 2017 FINRA Discip. LEXIS 2, at *15-16 (NAC Jan. 10, 2017).

[47] *Ghosh*, 2021 FINRA Discip. LEXIS 32, at *37.

[48] *Id.* at *51; *Connors*, 2017 FINRA Discip. LEXIS 2, at *32.

2. Facts Showing a Violation

Respondent formed a New Jersey limited liability company on May 26, 2020.[49] This company's certificate of formation, which Respondent signed, described the business as "[a] for profit company that provides remodeling services to private and public entities."[50] The certificate of formation identified Respondent as the sole member and manager of the company and its registered agent.[51] J.P. Morgan's written supervisory procedures required that registered representatives obtain approval from the firm before engaging in an OBA.[52] I find that Respondent's OBA—the marketing and sale of remodeling services—was outside the scope of his relationship with J.P. Morgan. He did not provide the firm with notice of his formation of and involvement with this company.[53] Respondent violated FINRA Rules 3270 and 2010 by engaging in an undisclosed OBA.

G. Respondent Failed to Produce Information and Documents Requested Under FINRA Rule 8210, in Violation of FINRA Rules 8210 and 2010

1. Governing Law

In the third cause of action, Enforcement charges Respondent with violating FINRA Rules 8210 and 2010 by failing to provide information and documents requested under FINRA Rule 8210. FINRA Rule 8210 requires an associated person to provide information and documents requested by FINRA:

> For the purpose of an investigation, complaint, examination, or proceeding authorized by the FINRA By-Laws or rules, an Adjudicator or FINRA staff shall have the right to . . . require a member, person associated with a member, or any other person subject to FINRA's jurisdiction to provide information orally, in writing, or electronically . . . with respect to any matter involved in the investigation, complaint, examination, or proceeding . . . No member or person shall fail to provide information or testimony or to permit an inspection and copying of books, records, or accounts pursuant to this Rule.[54]

FINRA's examination authority under FINRA Rule 8210 is unequivocal and unqualified.[55] FINRA Rule 8210 requires an associated person to provide full and prompt

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[49] Compl. ¶ 31.

[50] Compl. ¶ 32.

[51] *Id.*

[52] Compl. ¶ 34.

[53] Compl. ¶ 36.

[54] FINRA Rule 8210(a)(1) and (c).

[55] *Dep't of Enforcement v. DreamFunded Marketplace, LLC*, No. 2017053428201, 2021 FINRA Discip. LEXIS 24, at *64 (NAC Sept. 27, 2021), *appeal docketed*, No. 3-20639 (SEC Oct. 27, 2021).

cooperation to FINRA.[56] Because FINRA does not have subpoena power, the Rule provides FINRA the means to obtain information necessary to conduct investigations.[57] A person formerly associated with a FINRA member firm must respond to a FINRA Rule 8210 request issued within two years after the termination of his registration through that firm.[58] A violation of FINRA Rule 8210 also violates FINRA Rule 2010.[59]

2. Facts Showing a Violation

In connection with its investigation of Respondent's activities, FINRA staff sent a FINRA Rule 8210 request on January 25, 2021, directing him to provide information and documents.[60] FINRA requested that, for the period from October 2019 through January 2021, Respondent produce "complete account statements for all bank or brokerage accounts in which he maintained any beneficial ownership, had any control, or was an authorized signor."[61] In response, he sent a letter to FINRA identifying his bank accounts, including the personal checking account into which the SBA had deposited the $59,000 EIDL loan ("Account 1").[62] He also provided printouts reflecting the transaction activity in Account 1 for a four-month period. But Respondent did not produce his bank account statements or any other documents showing account activity in Account 1 between October 2019 through April 2020, and September 2020 through January 2021.[63]

On April 8, 2021, Respondent partially produced monthly bank statements for Account 1, covering the months of October 2019 through April 2020, and September 2020 through January 2021, but these statements were not complete because they were missing every other page.[64] For example, Respondent did not produce the first page of the September–October 2019 account statement and therefore did not produce any record of Account 1's transaction activity in that period.[65] In on-the-record testimony taken May 12, 2021, he acknowledged he had not produced

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[56] *DreamFunded Marketplace*, 2021 FINRA Discip. LEXIS 24, at *26.

[57] *Dep't of Enforcement v. Felix*, No. 2018058286901, 2021 FINRA Discip. LEXIS 7, at *14 (NAC May 26, 2021), *appeal docketed*, No. 3-20380 (SEC July 1, 2021).

[58] *Bradley C. Reifler*, Exchange Act Release No. 94026, 2022 SEC LEXIS 167, at *14 (Jan. 21, 2022).

[59] *Howard Brett Berger*, Exchange Act Release No. 58590, 2008 SEC LEXIS 3141, at *2 n.2 (Nov. 14, 2008) ("A violation of another NASD rule, such as Rule 8210, constitutes a violation of Conduct Rule 2110."), *petition for review denied,* 347 F. App'x 692 (2d Cir. 2009); *Dep't of Enforcement v. Meyers Assoc., L.P.*, No. 2010020954501, 2018 FINRA Discip. LEXIS 1, at *13 n.13 (NAC Jan. 4, 2018) ("A violation of any FINRA rule constitutes also a violation of FINRA Rule 2010."), *aff'd*, Exchange Act Release No. 86497, 2019 SEC LEXIS 1869 (July 26, 2019).

[60] Compl. ¶ 37.

[61] *Id.*

[62] Compl. ¶ 40.

[63] Compl. ¶ 41.

[64] Compl. ¶¶ 43-44.

[65] Compl. ¶ 45.

complete account statements to FINRA.[66] Yet Respondent never produced complete account statements.

FINRA sent Respondent five more FINRA Rule 8210 requests (the "second, third, fourth, fifth, and sixth requests"). The following facts pertain to these requests:

- FINRA issued the second FINRA Rule 8210 request because Respondent had completely failed to provide any information or documents in response to the first request.[67]

- FINRA issued the third request because Respondent had made only a partial but incomplete production of information and documents in response to the first and second requests.[68]

- FINRA issued the fourth request because the versions of bank statements that Respondent produced to FINRA in response to the first three requests were missing every other page of each statement.[69]

- To sum up Respondent's response to the second, third, and fourth requests: Respondent produced printouts of the transaction activity in Account 1 for a four-month period but for the other twelve-month period, he only produced every other page of the relevant bank account statements.[70]

- FINRA issued the fifth request to cover a time period earlier than that set forth in the first four requests.[71]

- Respondent sent a letter to FINRA in response to the fifth request, stating that he had already produced the responsive information.[72] FINRA sent a reply email informing Respondent that the fifth request covered an earlier time period than the first four requests.[73]

[66] Compl. ¶ 46.

[67] Compl. ¶¶ 38-39.

[68] Compl. ¶¶ 41-42.

[69] Compl. ¶¶ 44, 47.

[70] Compl. ¶¶ 41, 44-45.

[71] Compl. ¶¶ 54, 56.

[72] Compl. ¶ 55.

[73] Compl. ¶ 56.

- FINRA issued the sixth request because Respondent provided no information or documents in response to the fifth request.[74]

- Respondent never produced any information or documents in response to the fifth and sixth requests.[75]

I find that Respondent violated FINRA Rules 8210 and 2010 by providing a partial, but incomplete, response to six FINRA Rule 8210 requests. Respondent's failure to produce all the requested information and documents impeded FINRA's investigation and deprived it of material information. His noncompliance prevented FINRA from investigating whether he had made material misrepresentations to the federal government and engaged in undisclosed OBAs in violation of FINRA Rules.

III. Sanctions

According to FINRA's Sanction Guidelines, the purpose of the disciplinary process is to protect the investing public, support and improve overall business standards in the securities industry, and decrease the likelihood of recurrence of misconduct by the disciplined respondent.[76] The Guidelines contain General Principles Applicable to All Sanction Determinations, Principal Considerations in Determining Sanctions, and Guidelines applicable to specific violations.

A. Aggravating Factors

The Principal Considerations include aggravating factors that apply to more than one cause of action of the Complaint. Respondent did not accept responsibility for or acknowledge his misconduct to his employer firm or FINRA.[77] Respondent engaged in numerous acts and a pattern of misconduct over an extended period of time.[78] He tried to delay FINRA's investigation and to conceal information by failing to produce complete sets of his bank account

[74] Compl. ¶¶ 57-58.

[75] Compl. ¶¶ 57, 63.

[76] FINRA Sanction Guidelines ("Guidelines") at 2 (Sept. 2022) (General Principle No. 1), https://www.finra.org/industry/sanction-guidelines.

[77] Guidelines at 7 (Principal Consideration No. 2: Whether the respondent accepted responsibility for and acknowledged the misconduct to a regulator prior to detection and intervention by the regulator).

[78] *Id*. at 7 (Principal Consideration No. 8: Whether the respondent engaged in numerous acts and/or a pattern of misconduct); (Principal Consideration No. 9: Whether the respondent engaged in the misconduct over an extended period of time).

statements in response to FINRA Rule 8210 requests.[79] His misconduct was intentional and resulted in the potential for his monetary gain.[80]

B. Misrepresentations of Material Fact in a Loan Application and Loan Agreement, in Violation of FINRA Rule 2010 (First Cause of Action)

There is no Sanction Guideline applicable to a respondent's misrepresentations of material fact in a loan application and loan agreement in violation of FINRA Rule 2010. If the Guidelines do not specifically address the violation committed, the adjudicator should consider the most closely analogous Guideline.[81] I find the Guideline for Fraud, Misrepresentations, or Omissions of Material Fact[82] to be analogous to a respondent's misrepresentations of material fact in a loan application and loan agreement.

The Sanction Guideline for Fraud, Misrepresentations, or Omissions of Material Fact recommends a fine of $5,000 to $50,000 for negligent misconduct, and a fine of $10,000 to $100,000 for intentional or reckless misconduct. As for a suspension, bar, or other sanction, where the respondent's misconduct is negligent, the adjudicator should consider suspending the respondent for a period of one month to two years. When the respondent's misconduct is intentional or reckless, the adjudicator should strongly consider barring the respondent. Where mitigating factors predominate, the adjudicator should consider suspending the respondent for a period of six months to two years.

Aggravating factors are present in Respondent's misrepresentations of material fact in the loan application and loan agreement. First, it was extremely egregious for Respondent to communicate false information to the federal government to obtain a loan to which he was not entitled. He made multiple misrepresentations in the loan application and loan agreement.[83] His misrepresentations resulted from an intentional act.[84] Respondent's violation of FINRA Rule 2010 enabled him to obtain personal financial gain, in the form of the $59,000 EIDL loan.[85]

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[79] *Id*. at 8 (Principal Consideration No. 12: Whether the respondent attempted to delay FINRA's investigation or to conceal information from FINRA).

[80] *Id*. at 8 (Principal Consideration No. 13: Whether the respondent's misconduct was the result of an intentional act, recklessness, or negligence); (Principal Consideration No. 16: Whether the respondent's misconduct resulted in the potential for the respondent's monetary or other gain).

[81] *Wedbush Sec., Inc.*, Exchange Act Release No. 78568, 2016 SEC LEXIS 2794, at *44 (Aug. 12, 2016).

[82] Guidelines at 116.

[83] *Id*. at 7 (Principal Consideration No. 8: Whether the respondent engaged in numerous acts and/or a pattern of misconduct).

[84] *Id*. at 8 (Principal Consideration No. 13: Whether the respondent's misconduct was the result of an intentional act, recklessness or negligence).

[85] *Id*. at 8 (Principal Consideration No. 16: Whether the respondent's misconduct resulted in the potential for his monetary or other gain).

Considering the relevant facts and the analogous Sanction Guideline, for Respondent's misrepresentations of material fact in a loan application and loan agreement in violation of FINRA Rule 2010, I bar Respondent from associating with any FINRA member in any capacity. Only a bar will reflect the seriousness of an associated person's false representations to the federal government for financial gain.[86]

C. Outside Business Activity, in Violation of FINRA Rules 3270 and 2010 (Second Cause of Action)

The Sanction Guideline for Outside Business Activities recommends a fine of $2,500 to $20,000. As for a suspension, bar, or other sanction, the adjudicator should consider suspending the respondent for a period of 10 business days to three months. When the outside business activity involves aggravating factors, the adjudicator should consider a suspension of three months to one year. Where aggravating factors predominate, the adjudicator should consider a suspension of one to two years or a bar.

The considerations specific to this Guideline are:

- Whether the outside business activity involved customers of the firm.
- Whether the outside business activity resulted directly or indirectly in injury to other parties, including the investing public and, if so, the nature and extent of the injury.
- The duration of the outside business activity, the number of customers and the dollar volume of sales.
- Whether the respondent's marketing and sale of the product or service could have created the impression that the employer firm had approved the product or service.
- Whether the respondent misled the employer firm about the existence of the outside business activity or otherwise concealed the activity from the firm.
- The importance of the role played by the respondent in the outside business activity.[87]

Respondent's OBA consisted of a New Jersey limited liability company he formed in May 2020. Respondent knew that J.P. Morgan's written supervisory procedures required him to obtain approval from the firm before engaging in an OBA. Thus, his failure to disclose his OBA

[86] *Id*. at 9 ("Adjudicators generally should not impose a fine if an individual is barred and there is no customer loss.").

[87] *Id*.

was intentional.[88] Respondent played an important role in his company because he was its sole member, sole manager, and registered agent. It was *his* company.

Considering the relevant facts and the applicable Sanction Guideline, for Respondent's conduct of an undisclosed OBA, in violation of FINRA Rules 3270 and 2010, I would fine him $10,000 and suspend him in all capacities for six months. But given the bars imposed in this Default Decision, I consider an additional sanction for the second cause of action to be unnecessary and do not impose one.[89]

D. Failure to Provide Information and Documents, in Violation of FINRA Rules 8210 and 2010 (Third Cause of Action)

The Sanction Guideline for Providing a Partial but Incomplete Response to Requests Made Pursuant to FINRA Rule 8210 recommends a fine of $5,000 to $20,000.[90] A bar is standard unless the respondent can show the information he provided substantially complied with all aspects of the request.[91] When mitigation exists, the adjudicator should suspend the respondent for up to two years.[92] The considerations specific to this Guidelines are:

- The importance of the information as viewed from FINRA's perspective, and whether the information provided was relevant and responsive to the request.
- The number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response.
- The reasons offered by the respondent to justify the partial but incomplete response.[93]

The subjects about which Respondent provided a partial but incomplete response were important as viewed from FINRA's perspective. Respondent's bank records would have provided evidence of whether Respondent's representations to the SBA were true: whether his purported business had revenue in 2019, whether it had been established in 2013, and whether it had one employee. FINRA made six FINRA Rule 8210 requests, but still did not obtain all the

[88] Compl. ¶¶ 34-36; Guidelines at 8 (Principal Consideration No. 13: Whether the respondent's misconduct was the result of an intentional act, recklessness, or negligence).

[89] *See* Guidelines at 9 ("Adjudicators may exercise their discretion in applying FINRA's policy on the imposition and collection of monetary sanctions as necessary to achieve FINRA's regulatory purposes.").

[90] *Id*. at 93.

[91] *Id*.; *accord Felix*, 2021 FINRA Discip. LEXIS 7, at *34-35 (an individual who provides a partial but incomplete response to a FINRA Rule 8210 request can be permanently barred from associating with any FINRA member).

[92] Guidelines at 93.

[93] *Id*.

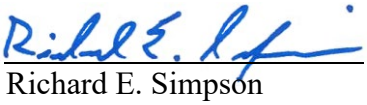
information and documents requested. Respondent has failed to show that his partial but incomplete response substantially complied with all aspects of the requests.

Considering the relevant facts and the applicable Sanction Guideline, for Respondent's partial but incomplete response in violation of FINRA Rules 8210 and 2010, I bar him from associating with any FINRA member firm in any capacity. I do not impose a fine.

IV. Order

With regard to the first cause of action of the Complaint, Respondent Patrick Matlock made misrepresentations of material fact in a loan application and loan agreement in violation of FINRA Rule 2010, and is barred from associating with any FINRA member firm in any capacity. As for the second cause of action, Respondent engaged in an OBA without providing advance written notice to his employer firm, in violation of FINRA Rules 3270 and 2010. Because of the bars imposed in this Default Decision, however, it is unnecessary to impose an additional sanction for Respondent's OBA violation. As for the third cause of action, Respondent made a partial but incomplete response to six FINRA Rule 8210 requests, in violation of FINRA Rules 8210 and 2010, and is barred from associating with any FINRA member firm in any capacity. The bars shall be effective immediately if this Default Decision becomes FINRA's final disciplinary action.

SO ORDERED.



Richard E. Simpson
Hearing Officer

Copies to:

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