

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of
Department of Enforcement,

Complainant,

vs.

Partho S. Ghosh
Princeton, NJ,

Respondent.

DECISION

Complaint No. 2016051615301

Dated: December 16, 2021

Registered representative engaged in outside business activities without providing prior written notice to his member firm. Held, findings affirmed, sanctions modified.

Appearances

For the Complainant: Megan Davis, Esq., Jessica Brach, Esq., Jackie Wells, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Partho S. Ghosh, Pro Se

Decision

Partho S. Ghosh appeals an Extended Hearing Panel decision issued on August 7, 2019. The Extended Hearing Panel found that Ghosh engaged in undisclosed outside business activities (or "OBAs"), in violation of FINRA Rules 3270 and 2010. For his misconduct, the Extended Hearing Panel fined Ghosh \$25,000, suspended him from association with any FINRA member in all capacities for six months, and ordered that he requalify by examination before reentering the securities industry in any registered capacity requiring qualification. After an independent review of the record, we affirm the Extended Hearing Panel's findings of violation, but we reduce the sanctions imposed.

I. Background

Ghosh entered the securities industry in 1989. During the period relevant to the conduct at issue, Ghosh was an insurance agent at New York Life Insurance Company (“NY Life Insurance”) and associated with NYLife Securities LLC (the “Firm”) (together, “New York Life”) as a general securities representative and an investment company and variable contracts products representative. On September 8, 2016, Ghosh voluntarily resigned from his employment at New York Life. Ghosh currently is not associated with a FINRA member firm.

II. Procedural History

On October 7, 2016, the Firm filed a Uniform Termination Notice for Securities Industry Registration (Form U5) reporting that “Ghosh resigned after he was advised that his sales strategy was not compatible with N[ew] Y[ork] Life’s policies.” FINRA thereafter commenced an investigation.

On September 27, 2018, the Department of Enforcement (“Enforcement”) filed a complaint alleging a single cause of action. The complaint alleged that Ghosh engaged in undisclosed outside business activities, in violation of FINRA Rules 3270 and 2010, when he formed and incorporated P.S. Ghosh, Inc. (“PSGI”), acted as its sole owner and director, and while registered with the Firm, attempted to generate business through PSGI by meeting with potential customers and providing them with marketing materials that he created.

On March 18, 2019, the Extended Hearing Panel commenced a five-day hearing. The Extended Hearing Panel heard testimony from Ghosh and several witnesses, including Ghosh’s supervisors and representatives of New York Life’s compliance department. The Extended Hearing Panel found that Ghosh engaged in the misconduct as alleged and imposed the sanctions stated above. This appeal followed.

III. Facts

A. Ghosh Joins New York Life and Agrees to Adhere to Its Written Policies and Procedures

In November 2015, Ghosh interviewed for an insurance agent and financial representative position at New York Life. That same month, Ghosh signed an Agent’s Contract agreeing to serve as an independent contractor, exclusively sell New York Life’s insurance policies and annuities, and conduct business in strict conformance with New York Life’s rules and policies.¹ Ghosh was assigned to New York Life’s Manhattan General Office, where Dominick Kortkamp was a managing partner and registered principal of the Firm. Chander Goel, a senior partner and registered principal of the Firm, also worked in the Manhattan General

¹ NY Life Insurance required its agents to also register with the Firm.

Office. Goel interviewed Ghosh and became his supervisor.² Kortkamp supervised Goel and two other senior partners.³

During the onboarding process, Ghosh acknowledged in his Agent's Contract that he received the Agent/Registered Representative's Handbook ("Handbook"), which was available on the New York Life's intranet agency portal.⁴ Ghosh also signed an Agent/Registered Representative Acknowledgment Page acknowledging that he read and understood the Handbook and agreed to observe and abide by New York Life's policies and any other applicable state or federal laws, rules, or regulations, including FINRA's rules.

B. New York Life's Policies and Procedures Governing Outside Business Activities

A detailed section in the Handbook titled "Outside Business Activities," with reference to FINRA Rule 3270, required that agents promptly provide written notice before engaging in any OBA. New York Life also required written approval before an agent could engage in an OBA.⁵ The Handbook contained a non-exclusive list of outside business activities requiring approval, including "[a]cting as a director, officer, partner, consultant, employee, a passive owner or board member of a for profit or non-profit organization; whether the position is paid or unpaid." Another example the Handbook provided was an agent's ownership interest in any business entity.

The Corporate Compliance Department oversaw compliance for New York Life. The OBA Unit, a division of the Corporate Compliance Department, processed, reviewed, and made determinations regarding OBAs. To seek approval of an outside business activity, New York Life required an agent to complete the Outside Business Activity Disclosure/Request Form ("OBA request form") and submit it through New York Life's intranet agency portal to the agent's managing partner—in this case, Kortkamp—who would then acknowledge and forward the OBA request form to the OBA Unit.

The OBA Unit determined whether to approve or deny an OBA. Key considerations in reviewing an OBA request included whether the proposed OBA would: (1) "interfere with or

² At the hearing, Goel testified that he thought Ghosh was "a great hire" and was excited to have Ghosh on his team. According to Goel, "everyone was blown away with his intelligence and the way he wanted to present things."

³ Kortkamp later became Ghosh's direct supervisor after New York Life terminated Goel on unrelated grounds on June 30, 2016.

⁴ The Handbook, as we do in this decision, referenced "agents" to include dual representatives of NY Life Insurance and the Firm.

⁵ FINRA Rule 3270 does not prohibit members from requiring prior consent as part of its procedures to manage the outside business activities of its registered persons. *See Order Granting Accelerated Approval of a Proposed Rule Change*, Exchange Act Release No. 62762, 2010 SEC LEXIS 2768, at *6 (Aug. 23, 2010).

compromise the [a]gent’s responsibilities to [New York Life] or its customers;” or (2) “be viewed by customers or the public as part of [New York Life’s] business based upon, among other factors, the nature the proposed activity and manner in which it will be offered.”

Upon making its determination, the OBA Unit would notify the managing partner and the agency standards consultant—in this case, Amy Gentile—of its decision.⁶ If the OBA Unit approved the outside business activity, the agent would then acknowledge the OBA Unit’s approval and agree to adhere to any conditions imposed. If the OBA Unit denied the outside business activity, the OBA request form would be returned to the managing partner for acknowledgment of the denial, and the agent would be notified of the denial by email. Before acknowledging the denial, the managing partner could appeal the OBA Unit’s decision.⁷

C. New York Life Denies Ghosh’s Request to Engage in an OBA

In early October 2015, before joining New York Life, Ghosh incorporated TransGlobal Capital Inc. (“Trans Global”), a company he formed and wholly owned. Trans Global’s business purpose was to provide corporate finance advisory services to financial technology (“FinTech”) companies regarding financing contingent liabilities. During the interview process at New York Life, Ghosh mentioned Trans Global and described its business model. At the hearing, Goel testified that Ghosh “talked about targeting [F]in[T]ech companies and the process of what he want[ed] to accomplish.” Based on Ghosh’s descriptions, and as a condition to approving his Agent’s Contract, New York Life required that Ghosh submit an OBA request form for approval before he could operate Trans Global.

⁶ Although Gentile was not part of the Corporate Compliance Department, she assisted the managing partner of the Manhattan General Office with enforcing New York Life’s policies and procedures, managing newly hired agents, and conducting training and annual supervisory reviews. When agents or partners at the Manhattan General Office had compliance-related questions, particularly with OBAs or “Doing Business As” (“DBA”) names, they would go to Gentile. Gentile’s role also was to inform the managing partner when there were any potential issues or red flags of prohibited activities.

⁷ Although Ghosh never filed a DBA request, New York Life also had written detailed policies and procedures for DBAs. New York Life required that an agent submit any registered business name established to conduct an insurance or financial services business to the DBA Unit of the Corporate Compliance Department for review and approval prior to use. Submissions of a proposed DBA required copies of an agent’s DBA letterhead and business card, a completed DBA Approval Request Form, and a printout of the agent’s contracting system update for the Uniform Application for Securities Industry Registration or Transfer (Form U4) amendment. Agents could use only New York Life titles and professional designations on letterhead and business cards when dealing with the public. Agents were permitted only to use New York Life-provided (or approved) DBA email addresses when carrying out their New York Life business activities. Agents were prohibited from independently establishing websites pertaining to their association with New York Life or soliciting business on the internet. All website content had to be approved by New York Life’s Sales Marketing Review Unit before it was published online.

To facilitate this process, on November 17, 2015, New York Life emailed Ghosh step-by-step instructions on how to submit an OBA request form through the intranet agency portal. Ghosh sent his OBA request in the manner prescribed by the company. On his OBA request form, Ghosh described Trans Global as “consulting,” the nature of its business as “[c]orporate [f]inance advisory,” his role and title as “[p]resident & CEO,” and his business activities as providing “[c]orporate finance advisory services to FinTech companies regarding financing of contingent liabilities.” Ghosh further provided Trans Global’s business address, stated that he was its sole owner, and that Trans Global’s activities were neither related to “insurance and/or financial products/services” nor would there be any “selling of insurance or securities products.” Ghosh also provided on the form that he did not expect to receive any compensation from the OBA.

The OBA Unit denied Ghosh’s OBA request and directed that he dissolve Trans Global before joining New York Life. The OBA Unit’s stated reason for the denial was as follows: “Acting in this capacity is a service that encompasses an individual’s primary role as an Agent/Registered Representative of New York Life and therefore the individual cannot charge an additional fee for this service.” The OBA Unit further directed that, “[p]articipation in this activity is prohibited and failure to comply with this decision is a violation of Company policy.”

Ghosh disagreed with the OBA denial and sought reconsideration. On November 19, 2015, Ghosh emailed Goel stating that the OBA Unit was “making assumptions which [were] wrong.” Ghosh asked Goel to “re-approach compliance” and clarify that Trans Global’s sole purpose was “to source prospects for [his] role as an Agent for New York Life” and therefore it did not conflict with his position at New York Life. Ghosh also stated that Trans Global would not charge any fees for his consulting services “[if] the client works exclusively with [him] for the purchase of a vehicle through New York Life.” Ghosh further explained that this condition for doing business with a prospective client “is purely based on a verbal understanding and therefore is not enforceable.”

Goel attempted to intercede with the OBA Unit on Ghosh’s behalf. As Goel testified, he was excited to get Ghosh on board and knew that Ghosh’s Agency Contract would not be approved “until the OBA stuff [was] taken care of.” On November 24, 2015, Goel emailed Ghosh stating that he was hoping the OBA would be approved by the next day. That, however, did not happen.

On December 1, 2015, Gentile emailed Goel informing him that she had spoken with David Long, a corporate vice president and registered principal of the Firm who oversaw the OBA and DBA Units of the Corporate Compliance Department. Gentile further stated that the request Ghosh submitted for Trans Global was “not an approved DBA” (even though Ghosh did not file a DBA request) and the “name Trans Global is not allowed as it alludes he is working international.”⁸

⁸ At the hearing, Long elaborated on the OBA Unit’s decision to deny Ghosh’s OBA request. Long testified that “corporate finance advisory” is not a business service normally conducted through New York Life. Long stated that these types of services “are generally affiliated with investment banking services. The only advisory [] or those type of services where

Additionally, Gentile directed that Ghosh “cease and desist” Trans Global and provide to New York Life’s contracting group evidence that he had dissolved the business. She further instructed that: (1) Ghosh could submit a general OBA request for brokering via various carriers; (2) he could, once on board, create a DBA using a different name than Trans Global (such as “Ghosh Insurance Services”) and submit it for approval along with letterhead and business cards; and (3) to provide investment advice, Ghosh needed to be eligible to affiliate as an investment adviser with Eagle.

On the same day, Goel forwarded Gentile’s email to Ghosh stating that, despite his best efforts, he “couldn’t pull it off.” Ghosh responded that he “had a game plan for the eventuality that the OBA would not be approved.” Ghosh added that he would have an accountant wind down Trans Global and “we’ll worry about setting up another OBA another time.” On November 30, 2015, Ghosh dissolved Trans Global and provided documentation to New York Life. Ghosh did not, however, complete any of the additional steps that Gentile suggested in her email. On December 14, 2015, New York Life approved Ghosh as a professional experienced agent at NY Life Insurance.⁹ As an agent, Ghosh was authorized to sell whole life, customized whole life, and lifetime annuity insurance products.

D. Ghosh Forms a New Company Identical to Trans Global, and Before Registering with the Firm, Conducts Undisclosed Business Activities

In mid-January 2016, approximately six weeks after he dissolved Trans Global, but before becoming a registered representative of the Firm, Ghosh formed and incorporated PSGI. Ghosh was PSGI’s sole owner and director. According to Ghosh’s testimony, PSGI operated under “exactly the same” business model as Trans Global. This time, however, Ghosh neither informed New York Life of PSGI nor submitted an OBA request form for New York Life’s approval.¹⁰

Ghosh performed start-up activities for PSGI. He leased a virtual office; created and maintained a website, “psghosh.com,” and email addresses, including “ceo@psghosh.com;” and printed PSGI business cards and letterhead. Ghosh told no one in the Corporate Compliance

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you’re charging a fee or providing investment advice . . . allowed [is] if you’re an investment advisor.” According to Long, while the agent could perform those services through New York Life’s investment adviser affiliate, Eagle Strategies, LLC (“Eagle”), the agent could not conduct the business through an OBA. Long also testified that outside consulting services were not allowed.

⁹ As of December 9, 2015, Ghosh also was a non-registered fingerprint associated person at the Firm.

¹⁰ Ghosh surmised that holding himself out to the public as a New York Life agent would hinder his efforts to generate business. At the hearing, he explained that he wanted potential customers “to have an open mind,” and “walking around with a N[ew] Y[ork] Life card that said agent closes people’s minds.” Ghosh further testified: “I [was] trying to create a new way of doing business with life insurance I needed a brand to keep their minds open.”

Department that he had incorporated PSGI. He did not seek or obtain approval from New York Life before establishing a PSGI website, office, business cards and letterhead, or using PSGI email addresses.

Ghosh also solicited business through PSGI. PSGI's marketing materials reflected that PSGI's services were not limited to marketing and selling New York Life Insurance products off the shelf. Rather, Ghosh, through PSGI, solicited prospects under a distinctive "proprietary structured finance solutions" brand that, in some cases, involved the use of other financial instruments.

For example, on February 4, 2016, PSGI hosted a "FinTech Cocktail Reception" at the Cornell Club in New York. A couple of days before the event, Ghosh emailed Goel (copying Kortkamp) from his PSGI address and attached an "open letter" that he drafted for the attendees of the reception. The letter stated in boldface, "P. S. Ghosh Inc." and "Corporate Finance Advisory," and included PSGI's address. In the letter, Ghosh explained that the purpose of the reception was for "members of the PSG Network" to meet and greet. Attendees would consist of "Angel Investors, Venture Capitalists, Incubators/Accelerators and members of the Boards of Directors of FinTech start-ups." Ghosh's letter further stated PSGI's purpose:

We are a corporate finance advisory boutique which creates innovative structured finance solutions for FinTech companies. Our business model is to leverage a global network of "partnerships" with blue-chip institutions which have successfully sailed through the shoals of time. For example, for trust design and management we are affiliated with a white shoe Trust company founded in 1853; for our financial guarantees we have a partnership with a AAA Balance Sheet NYC financial institution founded in 1842. This provides us with a deep bench on our team, consisting of Tax lawyers, Trust attorneys, CPAs, actuaries, PhDs in Physics, Investment Bankers and Ivy League MBAs. An example of one of our proprietary structured finance vehicles is the TFCF (Tax Free Cash Flow) Plan. This is a "synthetic" defined benefits pension plan which FinTech companies use to attract and retain the red hot programmers and talent in short supply.

Ghosh's "open letter" neither mentioned New York Life nor his position as an agent. In fact, in his email, Ghosh explained that "in my business model [New York Life] is brought in through the back door rather than the front door" and that he wanted to avoid "any [New York Life] name tags or marketing materials." The Cornell Club reception was sponsored, and paid for, by the South Asian market, a cultural division of New York Life. Both Goel and Kortkamp attended the PSGI event.

Around May 1, 2016, Ghosh created a slide presentation, entitled "FinTech Presentation," discussing PSGI's services. One slide explained that PSGI's value proposition was for Ghosh to use his "22+ years of experience and training on Wall Street and [in] financial services" and to "apply those general 'strategies' for the benefit of FinTech start-ups."

Another slide described PSGI's business model as: "Designs General Strategies across Asset Classes and then uses Partner Institutions, licensed in the respective Asset Class, for solicitation and execution of the particular financial instruments in question." Pictured below the description was a diagram. The diagram's center was labeled, "Combination of Financial

Vehicles + Financial Instruments.” The diagram also had smaller spokes with labels naming various financial instruments, such as “Life Insurance,” “Annuities,” and “Re-Insurance,” but also “Bonds,” “SPVs,” “Trusts,” “Equity,” and “OTC Derivative[s].”

The last slide of the presentation was Ghosh’s biography. The first sentence provided that Ghosh is “[a] veteran of Wall Street” and “has worked on the corporate financing of some of the world’s largest financial institutions.” The slide then described Ghosh’s “Wall Street career,” education, and professional achievements. The PSGI slide presentation neither mentioned New York Life nor Ghosh’s affiliation with New York Life.

In addition to the marketing materials described above, Ghosh solicited prospective clients using his PSGI email address and offered services beyond the NY Life Insurance products (e.g., whole life, customized whole life, and lifetime annuity) he was authorized to sell. For example, in April 2016, Ghosh sent multiple emails from his PSGI address that, among other things: (1) discussed structuring a vehicle for a real estate fund using either a “non-fiduciary” trustee or having “PSGI [] act as the Custodian of an Escrow account housed in a Broker-Dealer affiliate;” (2) asked that his attorney revise the real estate fund’s private placement memorandum to reflect his changes to the fund’s structure; and (3) circulated a draft term sheet to gauge investment interest in the fund. Ghosh did not seek or obtain approval from New York Life before engaging in these activities or using the PSGI marketing materials.

E. Gentile Discovers Ghosh’s PSGI Business Card

On May 16, 2016, while at the Manhattan General Office assisting with an internal audit by the Corporate Compliance Department, Gentile walked by Ghosh’s workspace. She looked at his desk and spotted a PSGI business card in plain view, appearing as follows:

<p>P.S. Ghosh, Inc. Corporate Finance Advisory Partho S. Ghosh <i>M.B.A. - Finance (Cornell), M. Phil. (Cambridge)</i> President & CEO</p>	<p>14 Wall Street 20th floor New York, NY 10005</p>
<p>Office phone direct line: (212) 618-1859 Email: CEO@psghosh.com</p>	

Gentile testified that Ghosh’s business card concerned her for several reasons. According to Gentile, “it looked like a DBA,” and she was unaware that a DBA had been approved for Ghosh. She did not know that Ghosh had incorporated under his name, that he was a chief executive officer (“CEO”) of PSGI, or what “corporate advisory” meant. Gentile also testified that, all designations had to be approved by New York Life, and she did not know what “M. Phil” meant or if Ghosh had submitted that designation for approval. Gentile stated that she also noticed the address on the business card was not New York Life’s.

While Gentile was looking at the business card, Ghosh approached her. After she showed him the card, Ghosh handed the card back to Gentile and told her that Goel was aware of it. At the hearing, Goel admitted that he knew about PSGI before Gentile found the business

card. Goel testified that Ghosh openly had handed out his PSGI business cards to people at NY Life Insurance, including him and Kortkamp, and kept a stack of the business cards on his desk. Goel further testified that he had “assumed” PSGI already was approved as an OBA.

That same day, Gentile showed the PSGI business card to Kortkamp. Gentile informed him that Ghosh was operating an OBA and a DBA and that Ghosh must submit an OBA request to the OBA Unit for approval. The next day, on May 17, 2016, Gentile emailed Goel informing him that Ghosh had an unapproved OBA and DBA and was using business cards identifying him as a CEO. Goel testified that, after receiving Gentile’s email, he told Kortkamp that they had a problem and that, “We need this thing approved. The guy is already working here five, six months so we need to get this resolved ASAP.”

F. Ghosh Becomes a Firm Representative and Continues to Engage in Undisclosed Business Activities through PSGI

On May 20, 2016, four days after Gentile discovered his PSGI business card, Ghosh registered with the Firm as a general securities representative and an investment company and variable contracts products representative. Effective that day, Ghosh signed a Registered Representative Agreement agreeing to, among other things: (1) sell only products approved by the Firm; (2) abide by all SEC, FINRA, and Firm rules and procedures, including the Handbook; (3) accept the supervision of the Firm and its designated supervisors; (4) use only Firm-approved advertising media and other materials for the sale of approved products; (5) solicit business only through Firm-approved mailings, advertisements, or other media; and (6) limit his business to Firm-approved products and transactions.

Between May 21 and 24, 2016, Ghosh, Kortkamp, Goel, and Gentile exchanged a series of emails regarding PSGI. On May 21, Ghosh emailed Goel explaining that he had told Gentile that “P.S. Ghosh Inc. was a DBA not an OBA” because PSGI “is a marketing name” that “does not generate any revenue or do business independent of” New York Life. Ghosh continued, “PSGI develops structured solutions, the pieces of which are subsequently given to a [New York Life] Agent.” Ghosh then asked Goel for guidance on the “best way to handle this” and stated that he “want[ed] to have little to do with [New York Life] compliance or standards bureaucrats.”

Later that day, Goel responded to Ghosh’s email. He reassured Ghosh that, “It will be taken care of[] on Monday, already spoke to [Gentile].” Goel also told Ghosh, “[Gentile] will work on getting your DBA/OBA approved.” That, however, did not happen. On May 24 at 4:40 p.m., Ghosh emailed Goel, stating that “Gentile never came back to me with the forms.” Ghosh asked whether he should “do it [him]self on the Portal,” noting that, on the intranet agency portal, the DBA application was different from the OBA application.

On May 24 at 5:24 p.m., Gentile emailed Ghosh (copying Kortkamp and Goel) stating that she understood he was “using DBA business cards” but did “not have an approved OBA or DBA.” Gentile directed Ghosh to cease using the business cards as he needed to first “submit and get approval for use.” She also included step-by-step instructions on how to get his “OBA and DBA submitted for approval.” The first step, Gentile wrote, was for Ghosh to submit an OBA request for PSGI. Gentile then provided a link to the intranet agency portal for further instructions. The second step was that Ghosh submit a “mockup” of his “DBA” business card and letterhead with his non-New York Life email address and submit them to the DBA Unit for

approval. Gentile attached the DBA submission form to her email. The third step instructed that Ghosh cease using his “M. Phil designation” on his PSGI business card because it was not approved by New York Life. Lastly, Gentile directed Ghosh to submit “everything by Wednesday, June 1st.”

On May 24 at 6:06 p.m., Kortkamp responded to Gentile’s email, copying Goel, and told Ghosh that Gentile would assist Ghosh and that “[w]e just need to make sure the OBA you have and the DBA you would like to operate as, is approved and filed.” Later that night, Ghosh responded to another email Gentile had sent regarding his Registered Representative Agreement (copying Kortkamp and Goel). He wrote that he was “expecting an email from [Gentile] regarding filing a DBA.” He also asked whether he should go to the “Portal and fill out the DBA form” and stated, “[a]s I mentioned when we met, the issue concerns a DBA not an OBA.” Ghosh also responded to Kortkamp’s email (copying Gentile and Goel) that evening. Ghosh explained that PSGI was based on input from the “kind of names” that “work for compliance for DBAs.” Ghosh further stated that PSGI is “used solely for [New York Life] business.” Ghosh wrote, “Therefore it is not an OBA by definition.” The next day, Kortkamp emailed Ghosh (copying Gentile and Goel) responding, “Yes I do recall and mentioned that during our review.”¹¹ Despite this exchange, Ghosh concedes that no one at New York Life ever told him he did not need to submit an OBA request for approval before operating PSGI.

Ghosh did not follow Gentile’s directives. He did not submit a request for OBA approval by June 1, 2016. Nor did Ghosh submit a mockup of his PSGI business card or letterhead for approval by the DBA Unit.¹² On June 1st, Ghosh instead submitted an annual supervisory questionnaire that the Firm required registered representatives to complete online. On the questionnaire, Ghosh certified that he understood and complied with New York Life’s requirement that he “obtain prior written approval from the [] OBA [U]nit before engaging in any OBA.” Ghosh also certified that he complied with the submission of sales marketing material for compliance review and the use of a company-provided, or an approved, email address to conduct business. In fact, Ghosh had not complied with these requirements before engaging in his PSGI activities.

Ghosh continued to conduct business through PSGI without providing notice to, or receiving approval from, the Firm. For example, in June 2016, Ghosh, through PSGI: (1) provided “strategy consulting” and designed “structured finance solutions” that combined life insurance with securities or real estate; (2) met with prospective clients or had sponsors host dinners seminars where he presented his proprietary SunRise or SunSet PIN portfolio;¹³ (3) held

¹¹ At the hearing, Kortkamp testified that he did not agree with Ghosh’s assessment that PSGI was not an OBA by definition, stating, “any entity that you want to become outside of NY Life, you have to get it pre[-]approved through the company.” He, however, did not make his view known at that time.

¹² Ghosh testified that he did stop using the PSGI business card after receiving Gentile’s May 24, 2016 email.

¹³ Ghosh constructed two portfolios using the New York Life’s illustration software for performing design and hypothetical (indicative) pricing analytics. Ghosh claimed he named his

himself out in his PSGI emails to prospective clients to be an “Investment Banker[],” and a “Fiduciary,” which he was not, and stated that he had “an RIA license with the SEC and US Treasury,” when he did not; (4) misrepresented NY Life Insurance in his emails and PSGI materials as a “capital provider” that, in conjunction with PSGI’s “Firm Pricing,” would issue prospects an “offering document” for a “private placement;” and (5) offered prospects who were not interested in his services a finder’s fee to “invite a contact in their network” to attend a PSGI dinner seminar.

On July 7, 2016, Gentile emailed Ghosh (copying Kortkamp) requesting confirmation that he was “no longer using [his PSGI] DBA for business” or using PSGI business cards or letterhead. In her email, Gentile also included literature on what is a DBA, including the steps necessary before a DBA could be used at New York Life. Gentile’s email, however, did not mention an OBA or filing the OBA request form. On July 11, 2016, Ghosh responded by forwarding an email that he had sent to Goel and explaining why PSGI is neither a DBA nor OBA. Ghosh wrote that PSGI did not represent that it solicited the sale or purchase of any insurance or security, as defined by the Securities Exchange Commission and the New York State Banking and Insurance Commission. He explained the structured finance solutions that PSGI offered, which included combining customized whole life insurance with a portfolio of securities from the “mezzanine tranche of corporate balance sheets, such that there is no duration risk.” Ghosh’s email further explained PSGI’s business model of having a prospective client attend three meetings and not mentioning his association with New York Life until the second or third meeting.¹⁴ Ghosh closed his July 11 email by stating that Goel agreed with him that it was unnecessary for him to go through the OBA or DBA approval process. But Ghosh stated that he was open to “any alternate interpretation or requirements” that Gentile or Kortkamp might have.

Kortkamp emailed Ghosh that same day responding, “This is ok, we just need a DBA and OBA signed.” Ghosh, however, did not submit an OBA or DBA request for New York Life’s approval until several weeks later. Meanwhile, Ghosh admitted that, instead of following Kortkamp’s direction, he continued to conduct business through PSGI without providing notice to, or receiving approval from, the Firm.¹⁵

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portfolios SunRise PIN (whole life) and SunSet PIN (fixed income) to make it easier to reference the parameters of the design.

¹⁴ According to Ghosh, the first meeting, “Diagnostics,” was the marketing portion to build a case for whole life insurance, convey advanced concepts related to customized whole life, and qualify prospective clients for suitability. The second meeting, “Design,” was his use of New York Life’s illustration software for performing design and hypothetical (indicative) pricing analytics. The third meeting, “Delivery,” was the placement of insurance (i.e., a NY Life Insurance policy that was issued and delivered to clients).

¹⁵ When the Hearing Officer asked at the hearing why he continued to conduct business through PSGI, Ghosh responded: “Because I had it with my management. They said we will take care of it. They are telling me go out and sell . . . I had questions, they were not answered. As long as my questions were not answered, I did it that way.”

G. New York Life Denies Ghosh's OBA Request for PSGI

On July 30, 2016—approximately two and a half months after he registered with the Firm—Ghosh submitted an OBA request for PSGI.¹⁶ On the OBA request form, Ghosh provided that PSGI began in January 2016. Providing the same business address as Trans Global, Ghosh described PSGI as “consulting,” the nature of its business as “[a]nalyzing data for general business consulting purposes,” his role and title as “[o]wner,” and his ownership percentage as “100” percent. Ghosh also provided that PSGI’s activities were unrelated to “insurance and/or financial products/services,” did not pertain to insurance, real estate, banking, securities, or commodities, and that he neither received nor expected to receive any compensation.¹⁷ On August 1, 2016, after reviewing the OBA request form, Kortkamp acknowledged it and transmitted the form to the OBA Unit.

When the OBA Unit asked for additional information on PSGI’s business activities, some of Ghosh’s responses were starkly different than his previous representations. For example, on August 11, 2016, in response to a request from the OBA Unit, Ghosh added more commentary in the “Comments” section of the OBA request form. Ghosh represented that PSGI designs structured finance solutions for FinTech start-ups that combine life insurance and securities. “[H]ence why I have a Series 7,” Ghosh wrote. Previously, however, Ghosh represented that PSGI’s activities were unrelated to insurance or financial products or services. Ghosh further explained that, through PSGI, he analyzed statistical data involving bond, equity, commodity, and foreign exchange markets. Yet previously, Ghosh provided that PSGI did not pertain to securities or commodities. Ghosh described PSGI’s business model, including his use of other New York Life agents to provide illustrations of insurance or annuity products using only New York Life marketing materials. Lastly, Ghosh provided the address for PSGI’s website.

Long testified that he reviewed Ghosh’s OBA request form, and the PSGI website, and several things concerned him. Regarding Ghosh’s description of PSGI’s activities, New York Life did not allow agents to customize life insurance and securities as a hybrid product. And providing investment advice and analyzing bond, equity, commodity, or foreign market data were not permissible services as an OBA. Regarding PSGI’s website, Long testified that:

- The content constituted sales and marketing material whose purpose was to solicit the sale of a product through New York Life and thus required approval through the sales marketing unit prior to its use.

¹⁶ Kortkamp testified that he had a discussion with Ghosh in mid-July 2016 before attending a New York Life dinner cruise and told him that he needed to submit his OBA submission for PSGI.

¹⁷ We find no evidence that Ghosh received compensation from his PSGI efforts or that he sold any securities to Firm customers. Ghosh admitted he received commissions on insurance sales transacted through NY Life Insurance, but the record is silent on his total commissions earned because of his PSGI activities during the relevant period.

- The content referenced proprietary structured finance solutions that would not be allowed as an OBA.
- The content included terms such as “indicative pricing” and “firm pricing” that typically were not used by New York Life and thus deemed potentially misleading.

On or about August 12, 2016, the OBA Unit denied Ghosh’s OBA request, stating: “New York Life prohibits its Agents from conducting activities related to business consulting while employed with New York Life.” The OBA Unit instructed: “Effective immediately,” Ghosh must “take the necessary steps to cease and desist from this OBA. For OBAs in which [he had] ownership in a legal entity, [he was] required to either dissolve or transfer complete ownership in the legal entity.” Moreover, “[i]n the case of a sole proprietorship or employment,” Ghosh had to “provide contracting with a letter stating that this business has been discontinued.” Finally, the OBA Unit warned, “Participation in this activity is prohibited and failure to comply with this decision is a violation of Company policy.”

H. Kortkamp Appeals the Denial of Ghosh’s OBA Request but Withdraws His Appeal After Further Revelations

On August 15, 2016, Kortkamp appealed the denial of Ghosh’s OBA request. On the OBA request form, Kortkamp stated that “this came up during the contracting process;” that Ghosh “had another corporation that we had him close. Then we didn’t like the name, and someone recommended we use ‘P.S. Ghosh Inc.’ and he did.” Kortkamp then asked, “What can we do that will [satisfy] our compliance rule, as well as have him operate in a way that he is being referred to high net worth companies/individuals?” Kortkamp also contacted the OBA Unit to see how Ghosh’s business could work with New York Life’s structure. After Kortkamp spoke with Long, however, Kortkamp told Ghosh that, to remain employed, he needed to “cease and desist business” under PSGI.

Meanwhile, Long, Gentile, and other staff of the Corporate Compliance Department further investigated and researched, among other things, PSGI’s business model and website. The result revealed troubling concerns, particularly regarding the website. On or about August 18, 2016, a New York Life employee informed Long that PSGI’s website listed three New York Life junior agents (JS, KM, and JH) as either a PSGI director or associate of “Transaction Execution” and included their PSGI email addresses. None of these agents, however, had an approved OBA or DBA. Evidence in the record demonstrates that JS, KM, and JH had assisted Ghosh in his PSGI business affairs. The employee also pointed out to Long that the PSGI website reflected a business address other than the company’s address of record. Long and Gentile thereafter told Kortkamp that Ghosh, on PSGI’s website: falsified credentials of JS, KM, and JH; listed other agents from the home office; misrepresented New York Life’s approved products; and manipulated New York Life’s sales process.

After reviewing the PSGI website and other information with Long and Gentile, on August 19, 2016, Kortkamp withdrew his appeal. Minutes later, Gentile emailed Kortkamp regarding Ghosh’s LinkedIn page. The LinkedIn page identified Ghosh as PSGI’s “President & CEO,” listed PSGI as his current employer and his industry as “Investment Banking.” But none of the New York Life entities were in the investment banking business. Ghosh’s LinkedIn page did not mention his affiliation with New York Life at all. That same day, Kortkamp emailed Ghosh

instructing him to immediately shut down the PSGI website because it contained material, titles, and representations “that have not been approved.” That evening, Ghosh removed from PSGI’s website all references to the three New York Life agents, but he did not shut down the website.

As of August 22, 2016, Ghosh’s LinkedIn page still reflected his title as president and CEO of PSGI. His LinkedIn page described PSGI as a “Corporate Finance Advisory Boutique which helps FinTech companies finance assets.” The page further stated, “We design and structure the capital solutions and procure the financing from an exclusive relationship with the AAA-rated balance sheet of a major New York City headquartered financial institution founded in 1842.” The content on the PSGI website and LinkedIn page were not approved by New York Life.

Despite Kortkamp’s withdrawal of his appeal, Ghosh continued to conduct PSGI business after the OBA denial. For example, on August 17, 2016, Ghosh emailed a prospective client from his PSGI email address. Describing the benefits of his “proprietary solution” SunRise PIN, Ghosh wrote, “If this were simply an Annuity, I’d pack my bags and move to Bali . . .”. Ghosh also falsely stated, “I have a Fiduciary Duty because I have a Series 65 License.”

I. Ghosh Resigns from New York Life

On September 8, 2016, approximately three and a half months after he registered with the Firm, Ghosh voluntarily resigned after being advised that his “sales strategy was not compatible with NY Life policies.” Just days beforehand, Ghosh had sent his resume to Goel, who was now working for another insurance company. Ghosh’s resume identified himself as a president and CEO of PSGI and contained a description of PSGI nearly identical to the one appearing on Ghosh’s LinkedIn page. Again, Ghosh’s resume did not mention his association with New York Life.

IV. Discussion

A. Ghosh Conducted Outside Business Activities in Violation of FINRA Rules 3270 and 2010

The Extended Hearing Panel found that Ghosh violated FINRA Rules 3270 and 2010 by engaging in outside business activities without providing prior written notice in the form specified by the Firm. We affirm these findings.

FINRA Rule 3270, which governs outside business activities, states that “[n]o 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.”

FINRA Rule 3270 applies to “all outside business activities, not just securities-related activities.” *Dep’t of Enf’t v. Weinstock*, Complaint No. 2010022601501, 2016 FINRA Discip. LEXIS 34, at *12 (FINRA NAC July 26, 2016); *see also NASD Notice to Members 01-79*, 2001 NASD LEXIS 85, at *2 (Dec. 2001) (emphasizing that registered persons “must report, in writing, any and all types of business that they plan to conduct away from their firms, whether or

not it involves a security”). A violation of FINRA Rule 3270 constitutes a violation of FINRA Rule 2010.¹⁸ *Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at *2 n.1 (Sept. 24, 2015).

A preponderance of the evidence shows that Ghosh (1) served as a “sole proprietor, officer, director” for PSGI; (2) conducted business activities through PSGI that were outside of the scope of his relationship with the Firm; and (3) failed to provide Firm prior written notice of his PSGI activities in the manner specified by the Firm, in violation of FINRA Rules 3270 and 2010.

1. Ghosh Served in Multiple Positions at PSGI Covered by Rule 3270

It is undisputed that, during his association with the Firm, Ghosh formed and incorporated PSGI and served as its owner, president, CEO, and director. Ghosh therefore served in roles away from the Firm that the notice requirement under Rule 3270 governed. *See Kenny Akindemowo*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769, at *31 (Sept. 30, 2016) (finding that respondent acted as an officer and director under FINRA Rule 3270 when he operated an outside business as its owner and chief investment officer); *see also Dep’t of Enf’t v. Seol*, Complaint No. 2014039839101, 2019 FINRA Discip. LEXIS 9, at *38 (FINRA NAC Mar. 5, 2019) (finding a FINRA Rule 3270 violation when respondent, among other activities, served as the CEO, chief financial officer, president, secretary, and director of a corporation he formed and incorporated).

2. Ghosh Conducted PSGI Business Activities Outside the Scope of His Relationship with the Firm

The evidence demonstrated that Ghosh engaged in business conduct through PSGI and his PSGI activities were outside the scope of his relationship with the Firm. For example, the parties stipulated that Ghosh created and maintained a separate, unapproved website, LinkedIn page, email addresses, business cards, and letterhead for PSGI. Ghosh marketed PSGI as a “corporate finance advisory boutique,” that “creates innovative structured finance solutions for F[in]Tech companies.” His business strategy included combining financial vehicles with a broad range of financial instruments including insurance and securities. Ghosh used unauthorized PSGI presentations and promotional materials to promote his “proprietary” business model of designing general strategies across asset classes and using “Partner Institutions” (i.e., his contract employer, New York Life) for the solicitation and execution of the financial instruments. He met with prospective clients at dinner seminars and hosted events using PSGI materials that were unapproved by the Firm.

Ghosh further admitted that he, through PSGI, analyzed statistical data involving bond, equity, commodity, and foreign exchange markets. Moreover, as evidenced by his email communications, Ghosh, through PSGI, advised in structuring a vehicle for a real estate fund,

¹⁸ FINRA Rule 2010 requires members in the conduct of their business to “observe high standards of commercial honor and just and equitable principles of trade.” FINRA Rule 2010 applies to Ghosh through FINRA Rule 0140(a), which provides that a person associated with a member shall have the same duties and obligations as a member.

attempted to serve as custodian for an escrow account, and circulated a draft term sheet to gauge potential investment interest. These activities were neither approved by New York Life nor limited to the company's whole life, customized whole life, and lifetime annuity products. On appeal, Ghosh claims that he intended to use PSGI as a vehicle for soliciting and obtaining business that he would direct to NY Life Insurance. None of his PSGI promotional efforts, however, were approved by, nor fell within the scope of his authorized responsibilities at, the Firm or NY Life Insurance. *Cf. KCD Fin., Inc.*, Complaint No. 2011025851501, 2016 FINRA Discip. LEXIS 38, at *31 (FINRA NAC Aug. 3, 2016) (finding that business activities are outside the scope of the firm's relationship when the firm never directed, approved, nor otherwise had any involvement with, the outside services), *aff'd*, Exchange Act Release No. 80340, 2017 SEC LEXIS 986 (Mar. 29, 2017). Ghosh's business activities, which were outside the scope of his relationship with the Firm, fall squarely under FINRA Rule 3270.

3. Ghosh Failed to Notify His Firm of His Outside Business Activities

Ghosh failed to report his PSGI activities to the Firm "in such form as specified by the member." The appropriate time for Ghosh to have provided such notice in compliance with FINRA Rule 3270 would have been when he registered with the Firm, and not several weeks later. While it is true that Ghosh's supervisors, Goel and Kortkamp, knew about PSGI before Ghosh requested approval from the OBA Unit, and we consider this mitigating for purposes of sanctions as discussed below, "the obligation to disclose [an outside business activity] lies with the registered person, not his supervisors." *Akindemowo*, 2016 SEC LEXIS 3769, at *31. As Ghosh admitted at the hearing, his supervisors' knowledge of PSGI did not "excuse" his failure to properly notify the Firm of his outside activities in compliance with the rule. *See Wanda P. Sears*, Exchange Act Release No. 58075, 2008 SEC LEXIS 1521, at *15 (July 1, 2008) (finding that constructive notice does not constitute the requisite written notice that the outside business activities rule demands).

By engaging in outside business activities without providing the requisite notice in the form specified by the Firm, we find that Ghosh violated FINRA Rules 3270 and 2010.

B. Ghosh's Defenses Are Unavailing

On appeal, Ghosh raises several arguments as to why his activities are not subject to FINRA Rule 3270. All of them, however, we find lack merit. First, Ghosh claims that, when he interviewed for the position, he made clear to Goel and Kortkamp that he would join New York Life on the condition that they get him approved for using a DBA for purposes of using whole life as a financing vehicle for business. Ghosh, however, provided no evidence that Goel or Kortkamp made such a promise to him—nor could they have. Only New York Life's Corporate Compliance Department, and not Goel or Kortkamp, had the authority to approve an agent's OBA or DBA request.

Ghosh next claims that PSGI was just a "DBA" marketing name for his role as an agent and that all his income derived from his sales of customized whole life and fixed income annuities of NY Life Insurance. PSGI was not only a DBA, and Ghosh's activities through PSGI were outside business activities. Regardless of his income or revenue source, Ghosh is required to report any kind of business activity conducted away from the Firm. Ghosh, through PSGI, endeavored to provide structured finance, business consulting, and corporate advisory services. He even assisted a real estate fund in structuring a financing vehicle to procure capital and

circulated a draft term sheet to potential investors. Pursuant to FINRA Rule 3270, Ghosh was required to provide prior written notice to the Firm before engaging in any of these activities. Ghosh did not do so. In fact, none of these activities, which went beyond selling only NY Life Insurance products, were endorsed or approved by the Firm. *See, e.g., Weinstock*, 2016 FINRA Discip. LEXIS 34, at *14-15 (rejecting respondent's argument that stimulating interest in a non-firm product was routine insurance marketing).

Even if Ghosh ultimately only sold NY Life Insurance products, FINRA Rule 3270 nonetheless required him to notify the Firm of his PSGI business activities.¹⁹ Ghosh acknowledged in his Agent's Contract and Agent/Registered Representative Acknowledgment Page that he would abide by New York Life's policies and procedures and FINRA's rules. He also acknowledged that he read and understood the Handbook, which required that all agents provide written notice *before* engaging in any outside business activity, which included but was not limited to, acting as an officer, director, or having an ownership interest in any business entity, regardless of whether the position was paid or unpaid. Yet, Ghosh failed to follow New York Life's procedures and FINRA's rules by holding himself out as the owner, president, and CEO of an undisclosed company through which he promoted and actively solicited business using unapproved presentations, emails, business cards, letterhead, and a website. *See Dep't of Enf't v. Schneider*, Complaint No. C10030088, 2005 NASD Discip. LEXIS 6, at *13-14 (NASD NAC Dec. 7, 2005) (holding that notice under the outside business activities rule was required at the time steps were taken to hold oneself out as an executive of an unrelated business that was marketed to potential customers).²⁰

We reject Ghosh's claim that his conduct is excluded from FINRA Rule 3270's notice requirement because he did not receive any compensation outside of his NY Life Insurance

¹⁹ In his reply brief, Ghosh argues that, like *Dep't of Enf't v. Sahai*, Complaint No. C9B020032, 2003 NASD Discip. LEXIS 29 (NASD OHO June 23, 2003), his use of PSGI letterhead and business cards were "nothing more than a part of the sales process for an [a]gent of New York Life." We distinguish the *Sahai* case, however, for a couple of reasons. Unlike *Sahai*, Ghosh did not use PSGI only as a trade name and not to conduct any independent business. *See id.* at *5. Moreover, unlike *Sahai*, Ghosh never provided advance written notice of his outside business activities through PSGI and obtain the Firm's written permission. *See id.* at *28-29. Thus, Ghosh's argument fails.

²⁰ Ghosh argues that "[t]he Hearing Officer tried to reconcile the fact that PSGI neither sought to nor generated any revenue by stating that [with reference to the *Schneider* case] a 'consulting services firm' which 'solicits business' for an affiliate of a member firm employer is an OBA." Ghosh, however, misses the point. It is true that the facts in *Schneider* are slightly different than this case. For example, *Schneider* formed an outside consulting business to generate hedge fund executions for his *employing* broker-dealer, rather than the firm's insurance *affiliate*. These distinctions, however, are form over substance. The Extended Hearing Panel concluded, and we agree, that, like *Schneider*, Ghosh instituted steps to "commence a business activity that was unrelated to his relationship with his Firm." *Id.* at *14 (citing *Micah C. Douglas*, 52 S.E.C. 1055, 1059 (1996) and *Dep't of Enf't v. Abbondante*, Complaint No. C10020090, slip op. at 12 (NASD NAC Apr. 5, 2005)). Therefore, notice under FINRA Rule 3270 of Ghosh's PSGI activities was required.

commissions. FINRA Rule 3270 applies even if Ghosh received no compensation from his PSGI activities. *See id.* at *15-17 (finding that potential liability under the outside business activity rule attaches regardless of whether the respondent received compensation from the outside activity).

In asserting that his PSGI business activities were limited to New York Life, Ghosh argues that his characterizations of PSGI as a “corporate advisory boutique” and “corporate finance advisory” did not necessarily mean something other than customized whole life and fixed income annuities. But Ghosh, and not New York Life, independently chose that terminology to describe and solicit PSGI’s services. In any event, Ghosh could not conduct any outside business without prior written notice to his Firm. “The written disclosure requirement allows member firms to assess the risks of outside business activities of associated persons and raise timely objections to such activities.” *Akindemowo*, 2016 SEC LEXIS 3769, at *31. Had Ghosh notified the Firm of his OBA sooner, as FINRA Rule 3270 required, he would have learned that the terminology he used as a securities professional to promote PSGI’s services could have potentially exposed the Firm to supervisory, regulatory, and reputational risks. For example, as Long testified, “outside consulting services” were not allowed by New York Life. Long further explained that, “corporate advisory services” are generally affiliated with investment banking services, a business activity that was not normally conducted through the Firm and thus would not have been permitted. According to Kortkamp’s testimony, agents were not allowed to reformat New York Life sales material in any way. And providing advice on potential investment opportunities was only permissible if Ghosh registered as an investment adviser representative at Eagle, which he did not.

Ghosh claims that neither Long nor Gentile had firsthand knowledge of Ghosh’s activities because they did not meet with him in person about his activities and had no understanding of the actual activities Ghosh performed. But an in-person meeting was neither required nor necessary for the Firm to approve his OBA request. To the extent Ghosh is suggesting that FINRA Rule 3270 did not apply because Long and Gentile *mischaracterized* PSGI as an OBA, we reject his contention. Per the Handbook, it was Ghosh’s—and not the Firm’s—responsibility to disclose all activities, fully and succinctly, that he intended to perform outside of his Registered Representative Agreement. *Dep’t of Enf’t v. Connors*, Complaint No. 2012033362101, 2017 FINRA Discip. LEXIS 2, at *39 (FINRA NAC Jan. 10, 2017) (“[A]n implicit and important requirement of FINRA Rule 3270 is that a representative’s notice of outside business activities must be *accurate*.”). Ghosh’s advance written notice then would have allowed the Firm “to determine whether the proposed outside business activity is properly characterized by the registered representative as an outside business activity.” *Order Granting Accelerated Approval of a Proposed Rule Change*, 2010 SEC LEXIS 2768, at *6. As Long testified, based on Ghosh’s own descriptions of PSGI, the OBA Unit conducted an analysis of the information Ghosh submitted on his OBA request form and determined that PSGI was an unapproved OBA. We find no error here.

Ghosh makes the procedural argument that a FINRA Hearing Panel “does not have the expertise to determine whether a Life Insurance Agent is conducting business activities within the[] scope [of] their affiliated Life Insurer.” But expertise in insurance agency practices is unnecessary here because the rule violation at issue concerned Ghosh’s obligation as a registered representative to act in accordance with the standards of the *securities* profession and provide written notice to the Firm before engaging in outside business activities. *See, e.g., Keilen Dimone Wiley*, Exchange Act Release No. 76558, 2015 SEC LEXIS 4952, at *12 (Dec. 4, 2015)

(holding that having expertise in insurance business practices is “irrelevant” in deciding the case because FINRA has brought the disciplinary action against the respondent for violating FINRA’s rules), *aff’d*, Wiley v. SEC, 663 F. App’x 353 (5th Cir. 2016). As an associated person of FINRA, Ghosh was obligated to comply with FINRA Rules 3270 and 2010. He failed in his obligation.

Ghosh further asserts that the Extended Hearing Panel erred in admitting evidence that was “irrelevant, immaterial, unduly repetitious and unduly prejudicial” about conduct not charged in the complaint that occurred before Ghosh registered with the Firm. For example, Ghosh argues that the Extended Hearing Panel’s continual references to New York Life’s policies and his alleged misrepresentations in email communications were unduly prejudicial. We recognize that Ghosh was not charged with violating the Firm’s policies or making misrepresentations in written communications to the public. FINRA Rule 9263(a), however, gives the Extended Hearing Panel broad discretion in determining whether to admit or exclude evidence. FINRA Rule 3270 requires “prior written notice . . . in such form as specified by the member.” Accordingly, the Firm’s written policies, and Ghosh’s adherence to them, were relevant in deciphering which activities were authorized by New York Life and the manner in which the Firm required that Ghosh provide the requisite Rule 3270 notice. Moreover, the Extended Hearing Panel’s decision made no liability findings about Ghosh’s failure to follow Firm procedures or his misrepresentations. Even if the Panel made such findings, “our de novo review would cure [the Extended Hearing Panel’s] prejudice if any had existed.” *Dep’t of Enf’t v. Padilla*, Complaint No. 2006005786501, 2012 FINRA Discip. LEXIS 46, at *34 (FINRA NAC Aug. 1, 2012).

V. Sanctions

The Extended Hearing Panel suspended Ghosh in all capacities for six months, fined him \$25,000, and ordered that he requalify by examination before reentering the securities industry in any registered capacity requiring qualification. Based on our independent review of the record, including weighing both aggravating and mitigating factors, we conclude that the suspension and fine the Extended Hearing Panel imposed are too high. As discussed below, we reduce the suspension to three months and impose a \$10,000 fine.

In assessing appropriate sanctions for Ghosh’s misconduct, we consulted FINRA’s Sanction Guidelines (“Guidelines”), including the Guideline applicable to the violation, the General Principles Applicable to All Sanction Determinations, and the Principal Considerations in Determining Sanctions.²¹ For engaging in undisclosed outside business activities, the Guidelines recommend a fine of \$2,500 to \$77,000.²² The Guidelines also recommend a suspension in any or all capacities for a period of 10 business days to three months, and when there are aggravating factors, a suspension of up to one year. Where aggravating factors

²¹ See *FINRA Sanction Guidelines* (2019), https://www.finra.org/sites/default/files/2020-10/2019_Sanctions_Guidelines.pdf [hereinafter *Guidelines*]. We applied the relevant Guidelines in effect at the time of Ghosh’s appeal to the NAC.

²² *Guidelines*, at 13.

predominate, the Guidelines recommend a longer suspension of up to two years or a bar.²³

The Guidelines also instruct us to evaluate six specific principal considerations for Rule 3270 violations, including: (1) whether the outside activity involved customers of the firm; (2) whether the outside activity resulted directly or indirectly in injury to other parties, including the investing public, and, if so, the nature and extent of the injury; (3) the duration of the outside activity, the number of customers and the dollar volume of sales; (4) whether the respondent's marketing and sale of the product or service could have created the impression that the employer (member firm) had approved the product or service; (5) whether the respondent misled his or her employer member firm about the existence of the outside activity or otherwise concealed the activity from the firm; and (6) the importance of the role played by the respondent in the outside business activity.²⁴

A. Aggravating Factors

Several factors serve to aggravate Ghosh's misconduct. First, Ghosh owned and operated PSGI as its president, CEO, and director, and thus played key roles in this outside business activity.²⁵

Second, Ghosh's noncompliance with FINRA Rule 3270's notice requirement was intentional.²⁶ Ghosh has had a lengthy career in the securities industry. Thus, he knew or should have known of his regulatory obligation as an associated person to disclose his PSGI activities to the Firm. Notably, Ghosh had just gone through New York Life's process of filing an OBA request for Trans Global, a company with "exactly the same" business model as PSGI. Thus, in addition to FINRA Rule 3270 itself, he was on notice of his requirement under the Firm's written policies and procedures (that he agreed to abide by) to disclose and seek approval of his PSGI activities. *See Weinstock*, 2016 FINRA Discip. LEXIS 34, at *49 (finding it an aggravating factor that respondent complied with seeking the firm's approval for a previous OBA, but "ignored the process" in the instant case); *see also Dep't of Enf't v. Giblen*, Complaint No. 2011025957702, 2014 FINRA Discip. LEXIS 39, at *28-29 (FINRA NAC Dec. 10, 2014) (finding that respondent's failure to disclose outside business activities was intentional given his industry experience, his awareness of his firm's policies, and his prior submission of a request to engage in other outside business activities). Ghosh instead chose to delay submitting an OBA or DBA request form for PSGI despite repeated instructions by New York Life management to do so.

Third, instead of filing an OBA request form for PSGI by the Firm's June 1st deadline, Ghosh falsely certified on his online annual supervisory questionnaire that he complied with New York Life's requirements to properly disclose and obtain approval before engaging in any OBA, using any sales marketing materials, or email accounts. We agree with the Extended

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 13 (Specific Consideration No. 6).

²⁶ *Id.* at 8 (Principal Consideration No. 13).

Hearing Panel that Ghosh's false statements on his questionnaire further obstructed the Firm's detection of his outside business activities.²⁷ *Weinstock*, 2016 FINRA Discip. LEXIS 34, at *48 (finding concealment of outside business activities on the firm's annual compliance form is an aggravating factor for purposes of sanctions).

Fourth, Ghosh's engagement in PSGI without prior written notice under FINRA Rule 3270 placed the Firm at undue risk.²⁸ Ghosh continuously operated an undisclosed OBA where he met with prospective clients to offer services not prescribed by NY Life Insurance or the Firm. He publicly misrepresented himself as an investment banker, an investment adviser representative, and fiduciary, when he was none of those designations at that time. He publicly misrepresented NY Life Insurance as a "capital provider" in conjunction with using other inappropriate and unapproved securities-related terminology such as "firm pricing," "offering document," and "private placement." He also enlisted the efforts of three NY Life Insurance junior agents to act on behalf of PSGI and mischaracterized their job titles on his unapproved website and continued to engage in PSGI activities even after his OBA request was denied. As Long testified, Ghosh's unapproved activities and misrepresentations to the public exposed the Firm to potential supervisory, regulatory, and reputational harm.²⁹

Fifth, while the evidence shows that the PSGI marketing communications never mentioned New York Life, Ghosh testified that PSGI's business model included mentioning his association with New York Life by the second or third meeting. That, along with Goel and Kortkamp's attendance at a PSGI event and outreach to potential clients by individuals who introduced themselves as NY Life Insurance agents, could have created the impression that the Firm sanctioned PSGI's services.³⁰ That said, however, we agree with the Extended Hearing

²⁷ *Id.* at 7 (Principal Consideration No. 10) and 13 (Specific Consideration No. 5).

²⁸ *Id.* at 7 (Principal Consideration No. 11) and 13 (Specific Consideration No. 2) (considering specifically whether the outside activity resulted directly or indirectly in injury to "other parties").

²⁹ In his brief, Ghosh argues that, because there were no Firm customers and his only source of income came from his sales of insurance products, the Firm could not be deprived of oversight or injured. We disagree. His argument ignores that fact that, during the misconduct at issue, he held himself out as an insurance agent *and* a registered securities professional. FINRA Rule 3270 "not only protects investors, but also protects securities firms from potential litigation as a result of the unrevealed, extramural activities of their associated persons." *Schneider*, 2005 NASD Discip. LEXIS 6, at *20. Ghosh's operation of an undisclosed (and unapproved) OBA for several weeks prevented the Firm from disapproving or exercising reasonable supervision over his outside business activities. *Cf. Seol*, 2019 FINRA Discip. LEXIS 9, at *48-50 (finding it aggravating that respondent's undisclosed outside business activities and false annual compliance questionnaires sidestepped the firm's supervision of his activities and deprived the firm the opportunity to protect itself).

³⁰ *Guidelines*, at 13 (Specific Consideration No. 4).

Panel that the record does not reflect whether any potential clients in fact were under the impression that the Firm had approved any products or services Ghosh sold through PSGI.

The record does not support other aggravating factors raised by the Extended Hearing Panel and thus we accord no weight to them. For example, the Extended Hearing Panel concluded that Ghosh blamed his managers for his regulatory noncompliance and failed to appreciate his misconduct. We do not view, however, Ghosh's claim that his manager told him he would "take care of" his OBA request, to not worry, and to go out and produce—which Goel testified was true—as an example of his attempt to shift blame to others for his noncompliance. Moreover, Ghosh testified that he was not "passing the buck" and admitted that the relevance of his managers knowing about PSGI was "not an excuse for [his] behavior."

Furthermore, contrary to Extended Hearing Panel's conclusion, we do not find a pattern of misconduct here. According to the Extended Hearing Panel, Ghosh's pattern of wrongdoing began with forming PSGI soon after New York Life denied his Trans Global OBA request. Thereafter, Ghosh began conducting business through PSGI in violation of the Firm's policies. But Enforcement did not charge Ghosh for any violation other than FINRA Rules 3270 and 2010, and he previously complied with New York Life's requirement that he file an OBA request for Trans Global. Furthermore, unlike the *Connors* case cited by the Extended Hearing Panel, Ghosh did *not* engage in "three different kinds of outside activities over many years" that "amounted to a pattern of misconduct over an extended period of time." 2017 FINRA Discip. LEXIS 2, at *39. While we agree that these factors are relevant to discern Ghosh's intention to comply with the rule, the misconduct at hand involved Ghosh's one-time failure to timely report his outside business activities pertaining to PSGI while registered with the Firm.

A. Mitigating Factors

We also weigh several mitigating factors presented in this case. First, Ghosh's Rule 3270 violation lasted for only two and a half months duration before he filed the OBA form, which is a relatively short period.³¹ Second, Ghosh's outside activities neither involved Firm customers nor the sale of securities.³²

Third, we consider that New York Life's management at times blurred the lines between whether PSGI constituted a DBA versus an OBA. For example, Goel testified: "My understanding of OBA and DBA was not clear to me at the time." After denying his OBA for Trans Global, Gentile told Ghosh in her December 1, 2015 email that he could create a DBA using a different name than Trans Global (such as "Ghosh Insurance Services"), which inferred that Ghosh's use of a corporate name similar to his own might have been acceptable to New York Life. Gentile also testified that, after finding Ghosh's business card on his desk during the internal audit, "it looked like a DBA." Gentile's May 24, 2016 email referred to Ghosh using DBA business cards and gave instructions on how to get his DBA and OBA approved. That same day, when Ghosh pushed back by explaining why PSGI was not an OBA, Kortkamp's

³¹ *Guidelines*, at 7 (Principal Consideration No. 9) and 13 (Specific Consideration No. 3).

³² *Id.* at 8 (Principal Consideration No. 17) and 13 (Specific Consideration Nos. 1, 3).

response to him was “Yes,” he did recall Ghosh’s explanation during his review. Gentile, on the other hand, never responded to Ghosh’s email or his separate email that day at 9:24 p.m. asking her whether he should go to the portal and fill out the DBA form. This evidence certainly does not excuse the fact that Ghosh did not notify the Firm of his PSGI activities by timely filing an OBA *or* DBA request. We nevertheless find it reasonable that, given his managers’ intermixed directives, Ghosh could have been confused about whether he could have operated PSGI as a DBA.

Fourth, we agree with the Extended Hearing Panel that Goel and Kortkamp, as registered principals of the Firm, knew about PSGI’s existence before Ghosh became registered and were not diligent in ensuring that Ghosh complied with his OBA reporting obligations. In some cases, they “encouraged” his PSGI-related activities and interceded on his behalf with the OBA Unit to get PSGI approved. For example, Goel and Kortkamp attended a PSGI event at the Cornell Club. They introduced Ghosh to, and supported the event’s sponsorship by, the South Asian market division of New York Life. On several occasions, Ghosh sent Goel emails from his PSGI email address to discuss his PSGI activities and handed out his PSGI business cards to New York Life staff.³³ Ghosh emailed Goel an “open letter” on PSGI letterhead that explained PSGI’s business purpose. Goel claimed at the hearing that he assumed that Ghosh had submitted an OBA request for PSGI that had been approved. Goel, however, took no steps to confirm his understanding. Kortkamp testified that he knew nothing about PSGI until Gentile told him that she discovered Ghosh’s business card. The Extended Hearing Panel, however, found that Kortkamp’s testimony was not credible, and the evidence supports the Panel’s determination.

Even after Gentile instructed Ghosh to submit the OBA request, Goel and Kortkamp sent conflicting signals. On the one hand, they told Ghosh that he had to comply with New York Life’s OBA approval process. But, on the other hand, they indicated that Ghosh’s OBA would be approved notwithstanding their lack of authority to do so. For example, on at least two separate occasions, Goel told Ghosh in emails that his OBA requests (for Trans Global and PSGI) would be approved. Goel and Kortkamp also overlooked Ghosh’s continued business endeavors through PSGI rather than insisting that he cease operations until an OBA request form was submitted and approved.³⁴

Based on the foregoing, our balancing of the aggravating and mitigating factors weighs in favor of reducing the sanctions the Extended Hearing Panel imposed. Outside business activities “are of serious concern, and the careful monitoring of such transactions and activities carries

³³ Goel also signed Ghosh’s own application for New York Life insurance, which stated that PSGI was his “Employer” and provided PSGI’s business address.

³⁴ While we find mitigating the extensive role Goel and Kortkamp played in furthering Ghosh’s misconduct, we reject Ghosh’s claim that, because his managers knew about his PSGI’s activities, he could not have “concealed” them from the Firm. As we discussed above, Goel and Kortkamp’s awareness of PSGI did not negate Ghosh’s requirement to provide his Firm prior full written notice of his PSGI business activities, and in this case, obtain written approval from New York Life before he engaged in them. *See Weinstock*, 2016 FINRA Discip. LEXIS 34, at *47-48.

important protections for member firms and investors.” *Dep’t of Enf’t v. De Vietien*, Complaint No. 2006007544401, 2010 FINRA Discip. LEXIS 45, at *41 (FINRA NAC Dec. 28, 2010). We, however, are also mindful that adjudicators should impose meaningful sanctions not to punish but remediate the specific case under consideration.³⁵ We find a suspension and fine at the lower range of the recommended Guidelines are appropriately remedial sanctions to deter Ghosh and others from engaging in similar misconduct. Accordingly, we suspend Ghosh for three months in all capacities and fine him \$10,000.³⁶

VI. Conclusion

Ghosh engaged in undisclosed outside business activities, in violation of FINRA Rules 3270 and 2010. For his misconduct, we suspend Ghosh from associating with any FINRA member in any capacity for three months and fine him \$10,000. We also affirm the Extended Hearing Panel’s order that Ghosh pay \$15,347.99 in hearing costs.³⁷

On Behalf of the National Adjudicatory Council,

Jennifer Piorko Mitchell,
Vice President and Deputy Corporate Secretary

³⁵ We therefore decline Ghosh’s plea for lesser sanctions based on the sanctions imposed in other FINRA cases. Instead, we follow well-established precedent that “[b]ecause the selection of an appropriate sanction depends on the facts and circumstances of each particular case, action taken in other proceedings is not determinative.” *Michael Frederick Siegel*, Exchange Act Release No. 58737, 2008 SEC LEXIS 2459, at *32 (Oct. 6, 2008).

³⁶ We further take judicial notice that Ghosh has not been registered in any capacity in the securities industry for more than five years. *See* FINRA Rule 1210.08. Accordingly, the Extended Hearing Panel’s order of requalification by examination is dismissed.

³⁷ Pursuant to FINRA Rule 8320, FINRA will revoke for non-payment the registration of any person associated with a member who fails to pay any fine, costs, or other monetary sanctions after seven days’ notice in writing.