BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Paolo Franca Iida Sao Palo, Brazil, Respondent.	DECISION Complaint No. 2012033351801 Dated: May 18, 2016

Respondent structured cash deposits to avoid federal reporting requirements. Held, sanctions modified.

Appearances

For the Complainant: Leo F. Orenstein, Esq., Perry C. Hubbard, Esq., and Robin W. Sardegna, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Adrienne M. Ward, Esq. and Irwin Weltz, Esq., Ellenhoff Grossman Schole LLP

Decision

A review subcommittee of the National Adjudicatory Council called this matter for discretionary review to consider the sanctions imposed on Paolo Franca Iida in a Hearing Panel decision issued on April 28, 2015. The Hearing Panel found that Iida violated FINRA Rule 2010 by structuring cash deposits to evade the federal reporting requirements of the Bank Secrecy Act ("BSA"). For this misconduct, the Hearing Panel suspended Iida in all capacities for two years. After an independent review of the record, we reduce the Hearing Panel's sanctions.

I. Introduction

The Currency and Foreign Transactions Reporting Act of 1970 (a statute commonly referred to as the "Bank Secrecy Act" or "BSA") requires U.S. financial institutions to assist U.S. government agencies in detecting and preventing money laundering.[1] Specifically, the

[1] The BSA is codified at 12 U.S.C. § 1829b; 12 U.S.C. §§ 1951-1959; 18 U.S.C. § 1956; 18 U.S.C. § 1957; 18 U.S.C. § 1960; and 31 U.S.C. §§ 5311-5332 and notes thereto, with implementing regulations at 31 C.F.R. Chapter X.

BSA requires financial institutions to keep records of cash purchases of negotiable instruments, file reports of cash transactions exceeding $10,000, and report suspicious activity that might signify money laundering, tax evasion, or other criminal activities. *See* 31 U.S.C. § 5313(a). The BSA mandates that U.S. financial institutions file currency transaction reports ("CTR") with the Department of Treasury's Financial Crimes Enforcement Network ("FinCEN") for each deposit, withdrawal, exchange of currency, or other payment or transfer, by, through, or to the financial institution which involves a transaction in currency of more than $10,000. *Id*.

The act of parceling what would otherwise be a large financial transaction into a series of smaller transactions to avoid scrutiny by regulators or law enforcement is commonly referred to as "structuring." Structuring occurs when a person "conducts or attempts to conduct one or more transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading the reporting requirements under . . . § 1010.311 . . . of this chapter." 1 C.F.R. § 1010.100(xx).

The BSA prohibits "structur[ing] or assist[ing] in structuring . . . any transaction with one or more domestic financial institutions" for the purpose of evading the reporting requirements of Section 5313(a). 31 U.S.C. § 5324(a)(3). Structuring represents conduct that is inconsistent with the high standards of commercial honor members of the securities industry are bound to observe and thus violates FINRA Rule 2010. *See Dep't of Enforcement v. Highland Financial, Ltd.*, Complaint No. 2011025591601, 2013 FINRA Discip. LEXIS 39, at *38 (FINRA OHO Sept. 27, 2013).

In this case, liability is uncontested. Iida concedes that he structured cash deposits to avoid filing CTRs. Therefore, we focus on the appropriateness of the sanction imposed. Iida maintains that the facts of this case militate against a severe sanction and seeks a six-month suspension, or less. Enforcement, on the other hand, believes Iida's misconduct is egregious and warrants a bar. In addition, Enforcement asks the NAC to make a bar the standard sanction for all structuring cases. After a careful review of the record and the parties' briefs, we modify the Hearing Panel's sanction and impose a one-year suspension.

II. Factual Background

A. Iida's Background

Iida is a Brazilian citizen who began working for HSBC Securities ("HSBC") in Brazil as an intern in 2005. In 2007, he moved to HSBC's New York City office and worked as a derivatives trader on an HSBC trading desk that traded on a Brazilian exchange.[2] English is Iida's second language – he predominantly spoke his native language (Portuguese) during the work day because he of his work on a Brazilian exchange and because his co-workers on the trading desk were also Brazilian. In addition, outside of work, he predominantly spoke Portuguese.

[2] While Iida was associated with HSBC, he was never registered with FINRA.

Financial and monetary aspects of life in Brazil differ significantly from the United States. Iida testified that due to the instability of Brazilian banks, Brazilians are less comfortable with maintaining cash in bank accounts and are accustomed to keeping very large amounts of cash at home and accessible at all times. He testified that many purchases in Brazil require cash. Iida also testified that, although he was living in New York in April 2012, he continued the Brazilian practice of keeping significant amounts of cash at home, on his person, and at his office.

B. Iida's Anti-Money Laundering Training

Iida stipulated that he completed HSBC's mandatory anti-money laundering ("AML") training in or around May 2007, March 2009, October 2010, and July 2011. While Iida stipulated that his most recent AML training in July 2011 included a module on the reporting of cash transactions in excess of $10,000, he did not recall specific details concerning the content of HSBC's training. Notwithstanding the AML training that he received at HSBC, Iida testified that, when he entered an HSBC Bank office in New York on April 19, 2012 to make the cash deposits at issue, he did not understand the significance of circumventing the requirements triggered by deposits in excess of $10,000.

C. Iida's April 2012 Bank Deposits

On April 19, 2012, Iida entered the HSBC Bank ("HSBC Bank") located in the lobby of the building in which he worked, intending to deposit approximately $50,000 in cash. He testified that, at the time, he was actually carrying approximately $70,000 cash.[3] Iida testified that he intended to purchase property in Brazil and that he needed large amounts of cash to be available in his Brazilian accounts to effectuate the purchase. When Iida approached the bank teller to make the deposit, she advised him that a deposit of that size would trigger the filing of a CTR. Iida became concerned that he would waste too much time completing a CTR, so he asked the teller how much he could deposit without triggering the filing requirement. The teller advised Iida that he could deposit up to $10,000 without triggering the filing of a CTR, so on that date, Iida deposited $10,000 into his personal savings account at HSBC Bank. He returned to the same HSBC Bank branch the following day and again on April 23 and 24, 2012. On each of those dates, he made cash deposits of $10,000. On April 25, 2012, he deposited $8,000 in cash, for total cash deposits of $48,000 over the five-day period.

D. HSBC's Investigation and Termination of Iida

Iida's cash deposits triggered an inquiry by HSBC Bank. On April 25, 2012, prior to Iida making the final $8,000 deposit, TP, an employee of HSBC Bank, contacted Iida by telephone while Iida was at work. She indicated that she was calling "in reference to a couple of transactions that have been made in [Iida's] account." She stated that there had been several, identical $10,000 deposits which raised concerns. Iida indicated that he was working, and he was in the middle of a trade, and TP stated that she would keep the conversation brief.

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[3] Iida testified that his friend, ES, loaned him $50,000 in cash that day, and Iida held approximately $20,000 to $25,000 of his own money in cash in his desk at HSBC. ES's testimony corroborated Iida's representations about the loan. *See* footnote 7.

During the call, Iida and TP often spoke over one another and cut each other off. When questioned, Iida admitted that he had made four $10,000 deposits and that initially he planned on depositing $50,000 all at once, "but then it was going to go to the Federal Reserve." He stated that he did not want to spend "two hours" filling out a form, so he decided to make several $10,000 deposits instead.[4] The following colloquy ensued:

> TP: It doesn't take two hours. It takes five minutes.
>
> Iida: Ah, okay. . . . I said okay. I'm going to deposit 10,000 each time –
>
> TP: [Interposing] It seems like your [sic] trying to avoid that –
>
> Iida: [Interposing] No, no –
>
> [Crosstalk]
>
> Iida: Just because – spend too much time.
>
> TP: Okay.
>
> Iida: So there's no problem. I can file for the Federal Reserve[.]
>
> TP: [Interposing] No, only because we generate a report and it generated your account, that you've been depositing a few times, 10,000. So it seems like your [sic] trying to avoid doing that –
>
> Iida: [Interposing] No, no, no –

Iida then stated that he intended to make one more deposit of $8,000:

> Iida: Actually there is the last shot for 8,000. That's it.
>
> TP: Okay. All right.
>
> Iida: And I'm going to make another deposit.
>
> TP: [Interposing] All right. I'll let them know.
>
> Iida: [I]t's okay, of 8,000, and I'm done. I'm not going to make any more deposits.
>
> TP: [Interposing] Okay. No problem. I'll let them know.

TP also asked Iida where the cash was coming from. Iida responded that most of the money was earned in the U.S., which he held at home, that he intended to wire it all to Brazil, and that he already had wired $45,000.[5]

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[4] At the hearing, Iida testified that the process of filing out similar paperwork in Brazil can take hours, and that he assumed that the CTR process in the U.S. would be similarly time-consuming.

[5] During March, April, and May 2012, Iida also made several wire transfers of funds from his HSBC Bank accounts in the United States to an HSBC Bank account that he

[Footnote continued on next page]

On June 4, 2012, EW, a senior vice president in the human resources department at HSBC, met with Iida in her office. The meeting was at the request of PW, an AML compliance officer with HSBC, who participated telephonically. EW testified that PW asked Iida about the series of deposits. Iida responded that different members of his family had been visiting the United States and that, when they purchased high-priced items, they used his credit card and reimbursed him with cash. EW also recalled that Iida mentioned that some of the money came from a roommate and related to a transaction involving the joint purchase of a car, but she could not recall details and could not recall how much money Iida contended came from which of the sources. Iida told them that he already had wired money to Brazil, and that he intended to wire the remainder to Brazil as well.

After speaking with Iida, EW and PW obtained the recording of Iida's telephone conversation with TP and discovered an apparent discrepancy between what he had told them about the source of the cash at the June 4 meeting and what he had told TP on April 25 during their telephone call.

On June 13, 2012, EW called Iida to her office again for another meeting. EW could not recall the particulars of this meeting, but remembered that she and PW again asked Iida where the money for his cash deposits came from, and he again stated that he had cash from family members who had used his credit card to make purchases when they visited the United States. EW scheduled a follow-up meeting for Iida to provide receipts to corroborate his claim. Iida met with EW a third time in EW's office on June 18, 2012. At that meeting, Iida gave EW a credit card statement showing items that Iida purchased for family members with his credit card. While EW could not recall all of the items, she testified that they included an expensive bag and a computer and that they added up to less than $48,000, although she could not recall how much less.

HSBC terminated Iida on June 20, 2012 for admitting that he avoided filing CTRs by making smaller deposits to circumvent the banking rules. Iida's work visa was revoked and he was forced to return to Brazil, where he is currently unemployed.[6]

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maintained in Brazil. Iida testified that he often transferred money to Brazil when the exchange rate was in his favor. On March 29, 2012, he transferred $25,000 from his HSBC Bank checking account to his HSBC Bank account in Brazil. On April 20, 2012, he transferred $45,000 from his HSBC Bank checking account to his HSBC Bank account in Brazil. On May 9, 2012, Iida transferred $15,000 from his HSBC Bank checking account to his HSBC Bank account in Brazil.

[6] Iida testified that because of the information contained on his Uniform Termination Notice for Securities Industry Registration ("Form U5"), he was unable to gain employment that would have allowed him to return to the U.S., which is where Iida had hoped to continue working and living. For a time, Iida worked at a bank in Brazil after his return; however, counsel for Iida represents that he is currently unemployed.

III. Procedural History

FINRA commenced its investigation after receiving a copy of Iida's Form U5. In May 2013, in response to a FINRA Rule 8210 request questioning the source of Iida's deposited funds, Iida represented that "[t]he source of the funds for Mr. Iida's deposits were [ES] and cash that he received from his family."

The Department of Enforcement ("Enforcement") filed a one-cause complaint against Iida on December 23, 2013, alleging that Iida violated FINRA Rule 2010 by engaging in structuring when he deposited $48,000 into his personal bank accounts at HSBC in five cash deposits of $10,000 or less, each for the purpose of causing the bank to fail to file a CTR.

Enforcement and Iida entered into a stipulation of facts, in which Iida admitted to his misconduct. A hearing was held on January 21, 2015. Iida, living in Brazil, participated by video conference. Along with his testimony, the Hearing Panel heard testimony from EW, ES, and a FINRA Investigator. At the hearing, Iida testified that the source of the money was a $50,000 loan he received from ES, a Brazilian friend who lived in the same building as Iida. ES agreed to lend Iida the money, interest-free, without documentation and without any explicit understanding as to when the loan would be repaid. On April 19, 2012, ES withdrew $50,000 cash from his checking account and then delivered the cash to Iida. That same day, Iida went to the bank carrying not just the $50,000 cash ES lent him, but also an additional $20,000 cash he happened to have in a desk drawer in his office. He intended to deposit $50,000 that day, but decided to deposit just $10,000 after learning from the teller that a deposit in a larger amount would have to be reported. While Iida's testimony was predominately consistent with ES's testimony at the hearing, Iida's testimony did however differ from his earlier statements to HSBC concerning the source of the funds.

The Hearing Panel issued its decision on April 28, 2015, finding that Iida engaged in the misconduct charged by Enforcement. The Hearing Panel found that Iida's misconduct was serious and imposed a two-year suspension. The Hearing Panel, while noting that language and cultural differences played a role in Iida's misunderstanding of the seriousness of the misconduct, found Iida's inconsistent statements concerning the source of the cash, as well as Iida's misconduct despite his AML training, aggravating. This call for review followed.

IV. Discussion

It is undisputed that Iida structured cash deposits to evade the currency reporting requirements. Iida stipulated that from April 19-25, 2012, he made four separate cash deposits in the amount of $10,000 and one cash deposit in the amount of $8,000, in an effort to avoid having to complete the CTRs. Therefore, we agree with the Hearing Panel that Iida engaged in conduct that was inconsistent with the high standards of commercial honor members of the securities industry are bound to observe, in violation of FINRA Rule 2010. *See Highland Financial, Ltd.*, 2013 FINRA Discip. LEXIS 39, at *38; *Dep't of Enforcement v. Trenham*, Complaint No. 2007007377801, 2010 FINRA Discip. LEXIS 15, at *9 (FINRA OHO Mar. 18, 2010); *Dep't of Enforcement v. Baker*, Complaint No. C8A010048, 2002 NASD Discip. LEXIS 40, at *21-22 (FINRA OHO Aug. 5, 2002).

V. Sanctions

The sole task before us is to review the sanction imposed by the Hearing Panel for Iida's misconduct. The Hearing Panel determined that a two-year suspension was appropriate. As he did before the Hearing Panel, Iida argues on appeal that the facts of this case militate against a severe sanction, and he asks for a six-month suspension, or less. Enforcement, on the other hand, requests a bar. Moreover, Enforcement asks us to make a bar the standard sanction for all structuring cases. After a careful review of the record and the parties' briefs, we modify the Hearing Panel's sanction and impose a one-year suspension.

The FINRA Sanction Guidelines ("Guidelines") do not specifically address structuring. Accordingly, we consider the nature of the violation and principal considerations governing all sanction determinations. While we agree with the Hearing Panel that structuring is a serious offense, we do not find that Iida's misconduct was egregious and conclude that there are several mitigating factors that warrant a less significant sanction.

As an initial matter, we agree with the Hearing Panel that the inconsistencies in Iida's statements during the investigation and at the hearing concerning the source of the deposited cash,[7] and the AML training he received at HSBC, serve to aggravate Iida's misconduct. In addition, we find the fact that Iida intentionally broke up his deposit to avoid having to fill out what he perceived as time-consuming paperwork additionally troubling.[8]

* * *

[7] Enforcement argues that Iida's claims that he structured his cash deposits simply to save time and that the loan from ES was for the purchase of property in Brazil, were not credible. Enforcement maintains that Iida's actions served only to avoid creating a paper trail, implying that Iida was engaged in something more nefarious with his structuring. However, the Hearing Panel made no such finding. Specifically, the Hearing Panel concluded that Iida's statements regarding common practice in Brazil, his tendency to carry and keep at home and in his office large amounts of cash, his receipt of an undocumented loan from ES, and his intention to transfer funds to Brazil to purchase property were corroborated by ES's testimony, which the Hearing Panel credible. The Hearing Panel's credibility determinations are entitled to our deference. *See Daniel D. Manoff*, 55 S.E.C. 1155, 1162 n.6 (2002) ("Credibility determinations by a fact-finder deserve special weight.") (Internal quotation omitted). We do not find substantial evidence in the record that warrants disturbing the Hearing Panel's credibility determinations.

[8] While the Hearing Panel agreed with Iida's assertion that the language barrier, coupled with his lack of understanding of U.S. laws, caused him to misapprehend the seriousness of his structuring violation, it correctly concluded that Iida's misapprehension is not a defense to the underlying misconduct. "Participants in the securities industry must take responsibility for compliance with regulatory requirements and cannot be excused for lack of knowledge, understanding, or appreciation of these requirements." *Thomas C. Kocherhans*, 52 S.E.C. 528, 531 (1995). In addition, we conclude that Iida's cultural and linguistic differences are not mitigating and do not lessen the severity of Iida's misconduct.

We now turn our attention to the mitigating factors and find that their presence instructs us to reduce the sanctions imposed by the Hearing Panel.

We conclude that this was not an extended scheme, but rather an isolated and aberrational event that occurred during one week in April 19, 2012. Iida did not engage in a pattern of misconduct over an extended period of time, nor did he engage in numerous violations.[9] We also find his expression of remorse mitigating. Iida took responsibility for his misconduct from the outset and testified that he has no one to blame but himself for his misconduct. Enforcement argues that these mitigating factors – the brief duration of his misconduct and his expression of remorse –should be given no mitigating weight. However, in light of the Commission's decision in *Denise M. Olson*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629, at *18, 20 (Sept. 3, 2015), and its precedential value (*see infra* at footnote 11), we afford them mitigating weight here (holding that the Commission has consistently sustained FINRA's decision to consider remorse mitigating, and concluding that respondent "should have received mitigating credit under Principal Considerations 8 and 9 for her single act of misconduct that was of short duration and did not involve a pattern of wrongdoing." (Internal quotations omitted)).

In addition, Iida made no attempt to conceal the deposits from HSBC or mislead, and was forthright about his plans during the structuring of his deposits, a further indication that he was unaware of the seriousness of his violation.[10] Iida made every deposit with a teller at the HSBC Bank downstairs from his workplace. During his phone call with TP, Iida informed her that he planned to make another deposit, to which she responded "Okay." Also informing our sanction analysis is that Iida's misconduct did not relate to any work function or involve customer or firm funds.

We also address, as directed by the Commission in *Olson*, what mitigating weight to assign Iida's termination from HSBC prior to FINRA detection. In *Olson*, the Commission found that FINRA erred when it declined to consider as mitigating that respondent's firm terminated her for the misconduct at issue prior to regulatory detection and concluded that respondent's termination was mitigating. The Commission reasoned that Principal Consideration No. 14 of the Guidelines specifically states that, in imposing sanctions, adjudicators must consider "[w]hether the member firm . . . disciplined the respondent for the same misconduct at issue prior to regulatory detection," concluding that termination is a form of discipline. *Olson*, 2015 SEC LEXIS 3629, at *18. Ultimately, the Commission determined that "mitigating effect from Olson's termination is no guarantee of changed behavior, and it is not enough to overcome its concern that Olson posed a continuing danger to investors and other securities industry participants (including would-be employers) in light of her conversion. *Id*. at 19. Similarly, we apportion only de minimis mitigating effect from Iida's

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[9] *FINRA Sanction Guidelines* 6-7 (2015) (Principal Considerations in Determining Sanctions, Nos. 8, 9).

[10] *Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 10).

termination, in light of Iida's AML training and inconsistent statements, which is ultimately insufficient to impact our ultimate sanction determination.[11]

Finally, Iida argues that the heavy price he has paid, including losing his work visa and his inability to find another job, should mitigate his misconduct. However, such collateral consequences are not mitigating because they result directly from his misconduct. *See Olson*, 2015 SEC LEXIS 3629, at *19 n. 29; *Kent M. Houston*, Exchange Act Release No. 71589A, 2014 SEC LEXIS 614, at *35-36 (Feb. 20, 2014) (finding that collateral consequences from respondent's misconduct were not mitigating factors); *Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *27 (Dec. 22, 2008) ("We also do not consider mitigating the economic disadvantages [respondent] alleges he suffered because they are a result of his misconduct.")

As the Guidelines make clear, the purpose of FINRA's disciplinary process is to protect the investing public, support and improve the overall business standards in the securities industry, and decrease the likelihood of recurrence of misconduct by the disciplined respondent.[12] We are tasked with imposing sanctions that are remedial, and not punitive. Moreover, sanctions should protect the public, not penalize brokers, and prevent the respondent from causing future harm to the public. We believe that, while structuring is very serious misconduct, the particular facts and circumstances of this case weigh against more significant sanctions. Therefore, we conclude that a suspension of one year is an appropriately remedial sanction.

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[11] In its brief, Enforcement respectfully argues that the Commission's decision in *Olson* misconstrues Principal Consideration No. 14 and disregards the NAC's prior decisions concerning termination prior to regulatory detection. Enforcement asks that the NAC find that Iida's termination is not mitigating, favoring NAC case law over the Commission precedent set in *Olson*. While we have found that Iida is entitled to no substantially measureable mitigation under Principal Consideration No. 14, we are nonetheless required to consider it mitigating. While Enforcement, and even the NAC, can respectfully note their disagreement with a Commission opinion, the NAC must accept as binding precedent those opinions. As we are bound to obey the precedent established by the Commission, we must do so here.

[12] *Guidelines*, at 2 (General Principles Applicable to All Sanction Determinations, No. 1).

VI. Conclusion

Iida violated FINRA Rule 2010 when he structured cash deposits to evade the federal reporting requirements. Accordingly, we suspend Iida in all capacities for one year. We affirm the Hearing Panel's order to pay $3,049.84 in costs.[13]

On Behalf of the National Adjudicatory Council,

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Marcia E. Asquith
Senior Vice President and Corporate Secretary

[13] Pursuant to FINRA Rule 8320, the registration of any person associated with a member who fails to pay any fine, costs, or other monetary sanction, after seven days' notice in writing, will summarily be revoked for non-payment.