

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

TREVOR MICHAEL SALIBA
(CRD No. 2692057),

SPERRY RANDALL YOUNGER
(CRD No. 2771029),

RICHARD DANIEL TABIZON
(CRD No. 2601208),

and

ARTHUR MANSOURIAN
(CRD No. 5252154),

Respondents.

Disciplinary Proceeding
No. 2013037522501

Hearing Officer–DMF

**EXTENDED HEARING PANEL
DECISION**

December 15, 2017

Respondent Saliba caused a FINRA member firm to violate a FINRA restriction by functioning in a principal capacity, and he provided false and incomplete information to FINRA regarding his activities at the firm. Respondent Younger gave false testimony to FINRA and failed to exercise reasonable supervision over Saliba in light of the FINRA restriction. Respondents Saliba, Tabizon, and Mansourian provided falsified firm records to FINRA examiners. Tabizon and Mansourian caused the firm to maintain inaccurate books and records. For these violations, each of the Respondents is barred from association with any FINRA member firm in any capacity.

Appearances

For the Complainant: David Monachino, Esq., Christina Stanland, Esq., Gino Ercolino, Esq., Richard Chin, Esq., and John Luburic, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For Respondents Saliba, Younger, and Mansourian: Alan M. Wolper, Esq., and Heidi VonderHeide, Esq., Ulmer & Berne, LLP.

For Respondent Tabizon: *pro se*.

DECISION

I. Introduction

A. Summary of the Case

In 2011, Respondent Trevor Michael Saliba purchased FINRA member firm MCA Securities, LLC (“MCA Securities”) through an entity that he owned, NMS Capital Group, LLC (“NMS Capital Group”). After completing the purchase, Saliba changed the name of the firm to NMS Capital Securities LLC (“the Firm” or “NMS Capital Securities”) and filed a Continuing Membership Application (“CMA”) with FINRA’s Membership Application Program (“MAP”) seeking approval of the ownership change. While its review of the CMA was pending, MAP imposed certain restrictions on the Firm, including a prohibition against Saliba serving in any principal or supervisory capacity. Ultimately, MAP denied the CMA, MAP’s denial was affirmed by FINRA’s National Adjudicatory Council (“NAC”), and the Firm withdrew from FINRA membership.

On March 24, 2016, FINRA’s Department of Enforcement filed an eight cause Complaint against Saliba; Sperry Randall Younger, who served as the Firm’s Chief Executive Officer (“CEO”) and its Chief Compliance Officer (“CCO”) during a portion of the CMA process; Richard Daniel Tabizon, who also served as the Firm’s CCO during a portion of the CMA process and as a Firm principal during the entire process; and Arthur Mansourian, who was registered with the Firm in a non-principal capacity during the CMA process. In substance, the Complaint alleged that (1) Saliba functioned as a principal during the CMA process, causing the Firm to violate the restrictions imposed by MAP; (2) Saliba made false statements and provided false documents and incomplete information to FINRA; (3) Younger gave false testimony to FINRA and failed to reasonably supervise Saliba to ensure the Firm’s compliance with the restrictions; and (4) Saliba, Tabizon, and Mansourian provided backdated firm compliance documents to FINRA examiners and caused the Firm to maintain incomplete and inaccurate books and records. Respondents filed Answers to the Complaint denying the charges and requested a hearing.

A hearing on the charges was held before a FINRA Extended Hearing Panel during the period September 18 through 23, 2017. The Panel heard testimony from 13 witnesses and received approximately 200 exhibits in evidence. For the reasons set forth in this Decision, the Panel concluded that Enforcement proved, by a preponderance of the evidence, that Respondents violated FINRA and NASD rules in most respects alleged in the Complaint. The Panel further concluded that, considering all the relevant circumstances, the appropriate sanctions for the violations were to bar all four Respondents from association with any FINRA member firm in any capacity.

B. Evidence and Credibility

In FINRA disciplinary proceedings, Enforcement bears the burden of proving its allegations by a preponderance of the evidence.¹ In this case, the Respondents testified either that they did not engage in the conduct alleged by Enforcement, or that, insofar as they did engage in the conduct, they did so in good faith, with no intention of violating FINRA or NASD rules. In contrast, Respondents argued, Enforcement relied on mere circumstantial evidence to support its allegations, or to counter their claims of good faith. And while Enforcement challenged the credibility of Respondents' testimony, Respondents contended that Enforcement did so because it lacked adequate direct evidence to support its allegations.

As set forth below, there was, in fact, direct, as well as circumstantial, evidence supporting Enforcement's allegations, but even if the evidence had been only circumstantial, the Supreme Court has noted that "[c]ircumstantial evidence is not only sufficient, but may also be more certain, satisfying and persuasive than direct evidence."² Regardless of the nature of the evidence adduced, the question for the Panel to resolve was whether, taken as a whole, a preponderance of the evidence supported Enforcement's allegations. In order to make that assessment, it was necessary for the Panel to consider the credibility of conflicting evidence to determine how much weight to assign to it.

In this case, the Panel unanimously agreed that none of the Respondents was a credible witness. In reaching that conclusion, the Panel considered not only the Respondents' demeanor during their testimony, but significant inconsistencies between (1) their testimony at the hearing and their testimony during their on-the-record ("OTR") testimony; (2) their hearing testimony and objective, contemporaneous documentary evidence; and (3) their hearing testimony and the testimony of other, more credible witnesses. In addition, the Panel considered the implausibility of many of Respondents' key assertions, in light of surrounding circumstances and the Panel's experience and common sense.³ As explained below, those factors weighed heavily against Respondents' credibility, and the Panel gave little weight to their exculpatory testimony in determining whether Enforcement had satisfied its burden of proof.

¹ See, e.g., *Dep't of Enforcement v. Claggett*, No. 2005000631501, 2007 FINRA Discip. LEXIS 2, at *25 (NAC Sept. 28, 2007).

² *Michalic v. Cleveland Tankers, Inc.*, 364 U.S. 325, 330 (1960).

³ See, e.g., *Jibril v. Gonzales*, 423 F.3d 1129, 1135 (9th Cir. 2005) ("[T]estimony that is 'implausible in light of the background evidence' . . . can support an adverse credibility finding.") (emphasis and citation omitted); *United States v. Guzman-Vargas*, 40 F. App'x 263, 266 (7th Cir. 2002) ("Based on its own experience and common sense, the district court made a credibility determination.").

II. Facts

A. Respondents

Respondent Saliba first became registered with a FINRA member firm in 1995. He is qualified as a Series 7 General Securities Representative (“GSR”) and, since November 2011, as a Series 24 General Securities Principal (“GSP”). In total, he has been registered with eight different FINRA member firms. Saliba registered with the Firm in September 2011 and from November 2011 through November 2014 he was the Chairman and 100% indirect owner of the Firm through NMS Capital Group. Saliba is currently registered through another FINRA member firm, NMS Capital Advisors, LLC, approximately 24% of which he owns indirectly through NMS Capital Group. At all relevant times Saliba was also the owner of a registered investment advisor, NMS Capital Asset Management LLC (the “RIA”), again through NMS Capital Group. Saliba has no prior disciplinary history.⁴

Respondent Younger first registered with a FINRA member firm in 1996. He has qualified as a GSR and as a GSP, as well as in other capacities. Younger became registered with the Firm in October 2012 and from then until March 2014 served as the Firm’s CEO. He also served as the Firm’s CCO from January 2013 through March 2014. The Firm filed a Uniform Termination Notice for Securities Industry Registration (Form U5) on April 9, 2014, indicating that Younger voluntarily terminated his association with the Firm on March 14, 2014. Younger was registered with numerous FINRA member firms before and after his association with the Firm, most recently with NMS Capital Advisors, the firm partly owned, indirectly, by Saliba. He has not been registered since September 2016. He has no prior disciplinary history.⁵

Respondent Tabizon first registered with a FINRA member firm in 1996. He has qualified as a GSR and as a GSP, as well as in other capacities. Tabizon began working for Saliba’s RIA in January 2011. He registered with the Firm in September 2011 and served as the Firm’s CCO from September 2011 until approximately January 2013, when Younger assumed that role. Tabizon remained registered as a GSR and as a GSP through the Firm and worked in the Firm’s operations area. The Firm filed a Form U5 on March 13, 2015, indicating that Tabizon voluntarily resigned from the Firm on March 11, 2015. Tabizon has not been registered since that date. Tabizon has no prior disciplinary record.⁶

Respondent Mansourian was first registered with a FINRA member firm in March 2007. He has qualified as a GSR and, after the events giving rise to this proceeding, as a GSP. He was registered with the Firm as a GSR from October 2012 until September 2015. He is currently

⁴ Joint Stipulations of Fact (“Stip.”) ¶¶ 4-7; Hearing Transcript (“Tr.”) 249-50, 1184-88; Complainant’s Exhibit (“CX-”) 1; Respondents’ Exhibit (“RX-”) 105.

⁵ Stip. ¶¶ 8-12; CX-50; Tr. 398-407. Younger remains subject to FINRA’s jurisdiction for purposes of this proceeding pursuant to Article V, Section 4 of FINRA’s By-Laws.

⁶ Stip. ¶¶ 13-15; CX-51; Tr. 1031-37. Like Younger, Tabizon remains subject to FINRA’s jurisdiction for purposes of this proceeding pursuant to Article V, Section 4 of FINRA’s By-Laws. Stip. ¶ 16.

registered as both a GSR and a GSP with NMS Capital Advisors, the firm partly owned, indirectly, by Saliba. Mansourian has no prior disciplinary record.⁷

B. Saliba's Purchase of the Firm

While operating his RIA, Saliba became involved in private placements and other investment banking transactions. To carry out those transactions, Saliba associated with a FINRA member firm through which the investment banking business was conducted. The member firm charged fees for its involvement and Saliba concluded that it would be financially advantageous for him to purchase a FINRA member firm through which to conduct his investment banking business.⁸

After searching for an available FINRA member firm to purchase, Saliba identified MCA Securities as a candidate. MCA Securities was wholly owned by two individuals in the Chicago area, CB and MW, who also owned an RIA and used MCA Securities to conduct a private placement investment banking business, much as Saliba planned to do. In September 2011, Saliba, through NMS Capital, entered into an agreement to purchase MCA Securities for \$55,000. The sale of MCA Securities to NMS Capital closed in November 2011. CB and MW remained registered with the Firm after that date, but apart from one private placement transaction were not involved in the Firm's operations.⁹

C. The CMA Process

The CMA process is set forth in NASD Rule 1017. Through the CMA process, MAP is required to determine whether a FINRA member firm contemplating new ownership would continue to satisfy the FINRA membership standards set forth in NASD Rule 1014. In order to allow MAP to make that determination, Rule 1017(b) provides that a CMA applicant must provide "a detailed description of the change in ownership, control, or business operations." Under NASD Rule 1017(e), MAP is authorized to request additional information from the CMA applicant or to reject a CMA if MAP determines that it is "not substantially complete." NASD Rule 1017(c)(1) provides that a proposed ownership change may be completed before the CMA process is concluded, but in such a case MAP may impose "new interim restrictions" on the applicant during the pendency of the CMA process. NASD Rule 1017(h) provides that, upon consideration of "the application, the membership interview, other information and documents provided by the Applicant or obtained by [MAP], the public interest, and the protection of investors," MAP must issue a written decision approving or disapproving the CMA. NASD Rule 1017(j) provides that an applicant may appeal MAP's decision to the NAC.

In October 2011, Saliba, with the assistance of a consultant, filed a CMA to obtain approval for NMS Capital's purchase of the Firm. When the Firm failed to timely respond to a

⁷ Stip. ¶¶ 17-18; CX-52; Tr. 886-89.

⁸ Tr. 1186-87, 1217.

⁹ CX-10; CX12; CX-13; CX-14; CX-54k; Tr. 736-51, 778-83.

request for information from MAP, the application lapsed with no final action by MAP. Saliba re-filed the CMA in July 2012, by which time the sale of the Firm had been completed.¹⁰

During its consideration of the re-filed CMA, MAP learned that the Securities and Exchange Commission (“SEC”) was investigating Saliba’s RIA and had issued a subpoena for documents to Saliba on behalf of the RIA.¹¹ On August 15, 2012, MAP sent a letter to Saliba, on behalf of the Firm, advising that MAP had imposed certain interim restrictions on the Firm (the “Interim Restrictions”), including a prohibition against the Firm allowing Saliba to serve in “any principal and/or supervisory capacity.” In the letter, MAP explained that it was imposing the Interim Restrictions because

[NASD] Rule 1014(a)(3)(C) permits [MAP] to consider whether “an Applicant or Associated Person is the subject of a pending, adjudicated, or settled regulatory action or investigation by the [SEC] ... a federal, state, or foreign regulatory agency or a self-regulatory organization” Considering the SEC investigation [of the RIA], [MAP] is in the process of seeking additional information in order to ascertain the Firm’s compliance with this and all Standards.

Saliba received the letter and was aware of the Interim Restrictions.¹²

¹⁰ Tr. 40-42; CX-54j; Stip. ¶¶ 19-20.

¹¹ Tr. 48-55; CX-54a; CX-54e. Saliba did not disclose the SEC investigation in the Firm’s CMA. CX-54j, at 4. Saliba testified that he did not disclose the investigation, in part, because he had been advised by a prominent SEC practitioner that “the subpoena was not an investigation under the definition of an investigation.” Rather, Saliba said, the attorney “explained that when you received a Wells notice, that’s when you were under an investigation.” Tr. 1202. Any such advice would have been patently incorrect. A March 8, 2011 letter from the SEC staff to Saliba as “Chairman, Managing Director, Chief Executive Officer and Chief Compliance Officer” of the RIA clearly stated in the first sentence: “The staff of the Securities and Exchange Commission *is conducting an investigation*” Attached to the letter was an SEC administrative subpoena, which stated in bold capitals “**FEDERAL LAW REQUIRES YOU TO COMPLY WITH THIS SUBPOENA**” and explained: “The Securities and Exchange Commission has issued a formal order *authorizing this investigation* under Section 209(a) of the Investment Advisors Act of 1940.” CX-54e (italics added). Lest there be any thought that Saliba’s attorney actually failed to appreciate that the SEC was conducting an investigation, the attorney’s March 31, 2011 response to the SEC’s letter and subpoena began: “Our law firm represents [the RIA] in the above-referenced *investigation*.” CX-54g (italics added). As a result, the Panel did not credit Saliba’s testimony regarding the advice he claimed to have received. While his testimony in that regard was inconsequential, because the Panel found it unnecessary to determine whether Saliba should have disclosed the SEC investigation in the Firm’s CMA, it illustrated Saliba’s penchant for embellishing his testimony with demonstrably false or patently incredible details. These details, which were larded throughout his testimony as discussed below, significantly undermined the credibility of Saliba’s testimony as a whole.

¹² Stip. ¶¶ 21-22; CX-54, at 2-3; CX-55; Tr. 56-61. In addition to prohibiting Saliba from acting in a principal or supervisory role, the Interim Restrictions prohibited the Firm from “[a]dding any new lines of businesses, offices or personnel” or from “[c]onducting a securities business on behalf of any affiliated entity directly or indirectly owned or controlled, in whole or in part, by [Saliba]” Although there was some testimony and debate at the hearing regarding the Firm’s compliance with these provisions, the only violation of the Interim Restrictions charged in the Complaint is that Saliba acted as a principal. Accordingly, the Panel did not evaluate the Firm’s compliance with the other Interim Restrictions.

In response, Saliba sought a meeting with MAP to request an easing of the Interim Restrictions and on September 25, 2012, Saliba and the CMA consultant met with MAP staff in New York, New York. On October 17, 2012, MAP sent a letter to Saliba, on behalf of the Firm, modifying the Interim Restrictions in certain respects. In particular, the letter advised the Firm that Saliba was

permitted to act in a limited capacity with respect to supporting the following financial functions of the Firm: invoice approval, payment of bills/corporate expenses, check writing, personal contributions of operating capital to the Firm, and oversight of corporate budgeting. Such supporting role would be subject to the oversight of the Firm's designated Financial and Operations Principal, [BD], as appropriate.

Apart from this modification, MAP did not amend or eliminate the restriction prohibiting Saliba from acting in a principal or supervisory capacity.¹³

MAP denied the CMA on June 21, 2013, after which MAP made a referral to Enforcement, which conducted an investigation of events surrounding the CMA that led to the filing of this proceeding. The Firm appealed MAP's denial of the CMA and on September 29, 2014, the NAC issued an opinion affirming MAP's denial of the CMA. Subsequently, the Firm withdrew from FINRA membership.¹⁴

D. Saliba's Involvement in the Management of the Firm

1. JM's Tenure as CEO of the Firm

Saliba appointed JM as CEO after he purchased the Firm. JM assumed the CEO position in 2011—before MAP imposed the Interim Restrictions in August 2012—and he remained the CEO until October 2012.¹⁵

JM has been in the securities industry for 40 years, with a particular focus on community banking. Since 1989, he has been registered with approximately eight FINRA member firms. JM met Saliba when JM was a consultant seeking to raise capital for a bank; JM subsequently became associated with Saliba's RIA, where he sought, unsuccessfully, to develop business in

¹³ Stip. ¶¶ 23-24; CX-55; CX-56; Tr. 61-67, 86-87.

¹⁴ Stip. ¶¶ 33-34, 37; CX-57; CX-58; Tr. 97, 181-92, 250.

¹⁵ Saliba testified that his role at the Firm did not change after the Interim Restrictions were imposed. Saliba did not qualify as a GSP until November 2011, during the process of purchasing the Firm, and he testified that, even apart from the Interim Restrictions, he did not intend to assume any principal or supervisory role at the Firm. Indeed, according to Saliba, even though he had qualified as a GSP, he believed he was not permitted to act in that capacity for a year after qualifying. Tr. 251, 1223-28.

the community banking arena. JM ended his association with the RIA before Saliba hired him to serve as CEO of the Firm.¹⁶

JM was paid \$1,500 per month for his services as CEO. Saliba testified that this amount was intended to compensate JM at the rate of \$50 per hour for the amount of time JM was expected to devote to his CEO duties, *i.e.*, approximately 30 hours a month. Although the Firm was located in Beverly Hills, California, where it shared office space with Saliba's other businesses, JM performed most of his CEO work from his home in Las Vegas, Nevada, and traveled to the Beverly Hills offices on occasion.¹⁷

JM testified that although he was CEO, Saliba ran the Firm. Saliba made all the important decisions for the Firm. JM testified he was not involved in hiring or firing employees, had no role in setting the strategic direction of the company or doing any future planning, and had no role in approving new engagements or clients for the Firm. JM denied that he supervised the Firm's private placement activities or Firm personnel, as the Firm represented to MAP during the CMA process. In particular, he denied having any knowledge of, or any duties and responsibilities with regard to, three of the Firm's investment banking transactions that Saliba told MAP JM had approved, as described in greater detail below. JM resigned as CEO on October 5, 2012, for "personal reasons."¹⁸

JM was a credible witness. He answered all questions directly, his answers appeared candid, and his testimony was internally consistent. In light of JM's credible testimony, the Panel found that Saliba was substantially involved in the management of the Firm while JM was CEO, including the period after the Interim Restrictions became effective.

2. Younger's Tenure as CEO of the Firm

Saliba's CMA consultant introduced Saliba to Respondent Younger. Saliba and Younger first met on the afternoon of September 25, 2012, in New York City after Saliba's meeting with MAP. Saliba and Younger did not discuss Younger becoming CEO of the Firm during the September 25 meeting, but when they met again for breakfast on the following day, Saliba orally offered Younger the CEO position. While Younger did not immediately accept the offer, after the breakfast meeting Saliba and Younger looked at office space in New York City for Younger to occupy if he became the Firm's CEO. On September 28, after returning to California, Saliba sent Younger a proposed "Independent Representative Agreement," dated October 1, 2012, under which Younger would become CEO of the Firm. Sometime between September 28 and October 8, 2012, Younger signed and returned the Agreement to Saliba. On October 5, 2012, JM

¹⁶ Tr. 313, 315-317; CX-53c.

¹⁷ Tr. 313-16, 1272-74; CX-53c.

¹⁸ Tr. 318-19, 326-27, 331-38; CX-9; CX-11; CX-128.

submitted a letter of resignation to the Firm. Younger became registered with the Firm and assumed the role of CEO on October 8, 2012.¹⁹

While JM had been paid \$1,500 per month for serving as CEO of the Firm, Younger received no salary whatsoever for serving in that role; rather, he was to be compensated based on any investment banking business that he brought to the Firm. Younger also became the Firm's CCO in January 2013, after Tabizon, who had been serving as the Firm's CCO, failed a required Series 79 qualifying examination; Younger also received no compensation for serving in that capacity. Younger held both the CEO and CCO positions until he left the Firm in March 2014.²⁰

The Independent Representative Agreement signed by Younger and Saliba, as Chairman of the Firm, provided that Younger reported to "the Board of Directors," which Saliba conceded consisted solely of himself as Chairman, and further provided that Younger had no authority to sign any documents binding the Firm, even with Board approval. While Younger did, nevertheless, sign some Firm agreements as CEO of the Firm, Saliba signed at least 15 investment banking agreements with third parties on behalf of the Firm during the period September 21, 2012, through May 1, 2013, while the Interim Restrictions were in effect. Saliba signed the agreements as the Firm's "Chairman," "CEO," "Senior Managing Director," or "Managing Director." Further, Saliba instructed another Firm principal that he could not sign an investment banking agreement that he had brought to the firm because only Saliba and Younger were permitted to sign Firm agreements.²¹

In addition to his role in the hiring of Younger as the Firm's CEO, Saliba was involved in the hiring of other Firm personnel after the Interim Restrictions became effective. The evidence indicated that he identified potential associated persons; interviewed candidates before they were offered positions; sent letters to prospective associated persons outlining the terms of their association with the Firm; and determined their compensation. Saliba, as Chairman, also signed Independent Representative Agreements with new associated persons on behalf of the Firm, including MC in January 2013 and KA in May 2013. Saliba also interviewed RL and PH, who

¹⁹ Tr. 407-14, 421-24, 512, 517-19; CX-50; CX-106; CX-107; CX-128.

²⁰ Tr. 1357, 1040-41; CX-107.

²¹ Stip. ¶¶ 25-26; CX-60 through CX-62; CX-63 through CX-69; CX-71 through CX-72a; CX-72d; CX-78; CX-106; CX-107; CX-137; CX-138; Tr. 431, 568-69, 667-68.

were hired as the Firm's Vice President and President, respectively, in November 2013. Saliba made the decision to hire Respondent Mansourian, as well as TC, a GSR at the Firm.²²

Upon consideration of the evidence adduced by Enforcement, the Panel found that Saliba was also substantially involved in the management of the Firm during the period when Younger was CEO.

E. The JM Memos and the Younger Memos

As explained above, MAP denied the Firm's CMA in June 2013 and the Firm appealed to the NAC. One reason cited by MAP for denying the CMA was MAP's belief that Saliba had been functioning in a principal capacity with the Firm, in violation of the Interim Restrictions. As support for this belief, MAP cited, among other things, eight investment banking agreements between the Firm and third parties that Saliba had executed on behalf of the Firm.²³

On August 22, 2013, while the Firm's CMA appeal was pending, Saliba and his counsel met with MAP to request that MAP reconsider the denial. Among other things, Saliba and his counsel argued that Saliba's involvement in the investment banking transactions did not violate the Interim Restrictions because Saliba's activities were supervised, and his signatures on the investment banking agreements were approved by JM, while he was CEO of the Firm, and by Younger, after he became CEO. MAP asked Saliba to provide written evidence that the CEOs had approved the agreements.²⁴

On August 30, 2013, in response to MAP's request, Saliba's counsel emailed three memoranda purportedly signed by JM (the "JM Memos") and eight memoranda purportedly signed by Younger (the "Younger Memos") as evidence that the CEOs had given supervisory approval for Saliba to sign the Firm's investment banking agreements. Each of the JM Memos was dated September 13 or September 14, 2012, and, in just a sentence or two, indicated that JM and Saliba had discussed a proposed investment banking transaction, and that, based on the

²² CX-105 through CX-107; CX-110; CX-113 through CX-116; Tr. 566-67, 1052, 1291-92. Enforcement also argued that Saliba functioned in a principal capacity by reviewing and signing his approval on Tabizon's outside brokerage account statements. Tabizon, who reviewed and approved the outside brokerage statements of other Firm personnel, could not review his own statements, and Saliba admitted signing off on Tabizon's statements. Tabizon, however, was registered with both the RIA and the Firm and both Saliba and Tabizon testified that Saliba reviewed and signed off on Tabizon's account statements only in his capacity as CEO of the RIA, not on behalf of the Firm. It was undisputed, however, that the Firm was also required to review the account statements and that no one other than Saliba performed any such review. Tabizon claimed that he simply forgot to have a separate review performed on behalf of the Firm. CX-93 through CX-99; CX-103, at 4; Tr. 807-10, 1083-85, 1295-97.

While Saliba's and Tabizon's testimony was not entirely credible, the Panel found it unnecessary to determine whether Saliba's review was on behalf of the Firm in light of the other evidence of his other participation in the management of the Firm while the Interim Restrictions were in place.

²³ CX-57; Tr. 184. As discussed above, Enforcement ultimately identified several additional agreements that Saliba signed on behalf of the Firm. MAP was unaware of those agreements. Tr. 212-13.

²⁴ Tr. 193-96.

discussion, JM was authorizing Saliba to execute an agreement committing the Firm to the transaction. The Younger Memos were more elaborate than the JM Memos. Each Younger Memo was a one-page form, captioned either “New Business Memo” or “New Opportunity Sheet,” that set forth information about the transaction, such as the name of the other party to the proposed agreement; a description of that party’s business; a description of the nature of the Firm’s proposed engagement with the other company; and the names of the Firm’s personnel involved in the transaction. Each Younger Memo also indicated Younger’s approval for the Firm to commit to the transaction. The dates on the Younger Memos ranged from November 2012 to May 2013.²⁵

1. The JM Memos

JM testified at the hearing that (1) he never authorized Saliba to sign an investment banking agreement on behalf of the Firm; (2) he did not create or sign the JM Memos and did not authorize anyone else to create or sign them on his behalf; and (3) he had no knowledge of the investment banking transactions referred to in the JM Memos and did not authorize Saliba to enter into those transactions on behalf of the Firm. Upon being asked at the end of his testimony whether he was certain that he had not signed the JM Memos, JM stated: “I am absolutely sure I didn’t write those documents, and I certainly didn’t sign those documents. I’m positive of that.”²⁶ In contrast, Tabizon, who served as the Firm’s CCO while JM was CEO, testified that he was familiar with JM’s signature and that the signatures on the Memos appeared genuine.²⁷

The Panel credited JM’s testimony that he did not prepare or sign the Memos and that he had no knowledge of the investment banking transactions referred to in the Memos; the Panel did not credit Tabizon’s testimony purporting to identify the signatures on the Memos as JM’s. In explaining how he knew that the signatures on the Memos were not his, JM testified: “[T]here’s extra humps in the M. There’s no dot on the I. That’s not the way I write [J]. That’s not the way I write the R. This is not my signature.”²⁸ There are several genuine signatures of JM in the record and the Panel’s comparison of those signatures with the signatures on the JM Memos confirmed JM’s testimony—the signatures on the JM Memos differed from JM’s genuine signatures precisely in the respects JM identified.²⁹ Accordingly, the Panel found that JM’s signatures were

²⁵ CX-8; CX-8a through CX-8k; Tr. 196-98.

²⁶ CX-8a; CX-8b; CX-8c; CX-9; CX-11; Tr. 328, 331-39, 391.

²⁷ Tr. 1059.

²⁸ Tr. 334-35.

²⁹ Compare CX-11, CX-128, RX-124, and RX-128 (genuine JM signatures) with CX-8a, CX-8b, and CX-8c (purported JM signatures on JM Memos). Tabizon’s willingness to mis-identify the forgeries as JM’s signature provides a basis for not crediting his testimony on other matters as well.

forged on the JM Memos, and that the JM Memos were not genuine Firm records reflecting JM's approval of the transactions referred to in the Memos.³⁰

It is undisputed that Saliba submitted the JM Memos to MAP (and subsequently to Enforcement) through counsel. In both his OTR testimony and his testimony at the hearing, Saliba stated that he personally searched for and found the JM Memos after MAP requested written evidence that his signatures on Firm agreements were authorized by the Firm's CEOs. But his testimony differed as to how and where he found the Memos. During his OTR, Saliba testified: "I don't recall if they were in the actual deal files or if there was a separate file . . . for some reason I'm remembering two of them were in the same deal file. So I don't remember which ones. But they were physically in the file."³¹

At the hearing, however, Saliba offered an entirely different story. Saliba testified he received oral approvals from JM for the investment banking transactions, and did not even know the JM Memos existed until he found them. Nevertheless, he testified, instead of contacting JM to ask whether written approvals existed, he personally searched through all the Firm's files looking for written approvals. In contrast to his OTR testimony, at the hearing Saliba testified he did not find any written approvals in the deal files and did not find any file containing all approvals. Yet, according to Saliba, he kept searching, and ultimately found the JM Memos in boxes that had been shipped from the closed office of NMS Capital Advisors, LLC, another FINRA member firm in which Saliba had purchased an interest, even though that firm had no involvement in the investment banking transactions referred to in the JM Memos. Saliba could not satisfactorily explain how the JM Memos could have come to be in those boxes, but asserted that the boxes contained other materials unrelated to NMS Capital Advisors, LLC, that appeared to have been tossed in the boxes after they arrived at the Firm.³²

The Panel did not credit Saliba's hearing testimony. First, his hearing testimony regarding the location of the JM Memos differed significantly from his OTR testimony. Second, his description of the scope of his purported search for written approvals that he claimed he did not even know existed was highly implausible. And third, for Saliba's elaborate tale to be true, some unknown person, for some unknown reason, would have had to place forged JM Memos in boxes that had no connection with the Firm's investment banking transactions, where they were unlikely to be found. Then, Saliba would have had to find the forged JM Memos, which he aptly referred to as "needles in a haystack," by happenstance as a result of an exhaustive and implausible search. The Panel found it far more probable that Saliba created, or had someone else create, the forged JM Memos and then knowingly provided the forged Memos to MAP in an

³⁰ Although Enforcement did not offer expert testimony regarding the signatures on the JM Memos, the rules of evidence do not apply in FINRA proceedings, and "even in federal litigation, where formal rules of evidence do apply, the trier of fact may determine on its own whether a defendant has committed forgery. There is no requirement that an expert must be used in such a case." *Dep't of Enforcement v. Masceri*, No. C8A040079, 2006 NASD Discip. LEXIS 29, at *23 (NAC Dec. 18, 2006).

³¹ CX-172, at 27-28.

³² Tr. 1253-59, 1365-68.

effort to persuade MAP to reconsider its denial of the CMA. The Panel concluded that Saliba knew or should have known that the JM Memos were not genuine Firm records when he submitted them to MAP and subsequently to Enforcement in response to a Rule 8210 Request.

2. The Younger Memos

On August 27, 2013, following the meeting at which MAP requested documentary evidence of the CEOs' approvals, Saliba sent Younger an email requesting copies of "whatever documents you have that 'paper' your approval" of *seven* specific investment banking transactions. A few hours later, Younger emailed to Saliba *seven* Younger Memos bearing his signature and dates contemporaneous with the Firm's agreements for the seven investment banking transactions that Saliba had identified. However, Saliba had omitted from his email request to Younger one of the transactions for which MAP had requested documentary evidence of CEO approval.³³

Saliba's counsel subsequently emailed *eight* Younger Memos to MAP as evidence of Younger's approval of *eight* Firm investment banking agreements signed by Saliba.³⁴ The eighth Memo purported to evidence Younger's approval of the investment banking transaction that Saliba had omitted from his email to Younger. It was readily apparent to the Panel from an examination of the Younger Memos that Younger's signature on the eighth Memo was traced or photocopied from Younger's signature on one of the other Memos, rather than being signed by Younger himself.³⁵

During his OTR, Younger testified that he created each of the Younger Memos, after which he saved the Memo on the computer he used for Firm work. Then he printed, signed, and dated the Memo; "digitized" (*i.e.*, scanned) the Memo; and emailed the digitized Memo to the Firm's Beverly Hills office, "probably" to Mansourian. He expected that the digitized Memo would be added to the electronic "deal file" that the Firm maintained for each transaction, or printed and saved in the Firm's paper files. Younger testified that he followed this procedure to document his approval of every investment banking transaction of the Firm while he was the Firm's CEO, including transactions that he originated himself. At the hearing, he again testified that he created an approval memo for every Firm transaction, but he hedged his OTR testimony somewhat, saying that, although it was "highly probable" he would have emailed the memos to

³³ CX-122, at 2; CX-123; Tr. 456-58.

³⁴ CX-8; CX-8d through CX-8k; Tr. 458-461.

³⁵ Compare Younger's signature on CX-8h (one of the Younger Memos that Younger emailed to Saliba) with his purported signature on CX-8f (the Younger Memo that was not included with Younger's email to Saliba). The signatures are absolutely identical, including their placement on the Memos' signature lines. In contrast, Younger's signatures on the other Younger Memos are similar to each other, but differ slightly, as would be expected from handwritten signatures. Younger acknowledged that the signatures on CX-8h and CX-8f appeared identical, but also claimed that he recalled signing both documents and that the signatures were not duplicated. Tr. 459-61. The Panel rejected Younger's testimony that he signed his signature in an identical manner, including the placement of the signatures on the signature lines, on the two documents as patently implausible.

the Firm's Beverly Hills offices, there were "[a]ny number of ways to get [the memos] to them." Younger acknowledged, however, that, regardless how he transmitted the memos, they should have been found in the Firm's files.³⁶

During its investigation, Enforcement issued Rule 8210 requests requiring production of the Younger Memos from Younger's computer as well as all electronic communications by which Younger transmitted the Younger Memos to anyone else at the Firm. The responses to the 8210 requests indicated that there were no records of the Younger Memos on Younger's computer, and that the Firm had no record of the Younger Memos being transmitted to anyone at the Firm, other than Younger's August 27, 2013 email to Saliba attaching the *seven* Younger Memos. The Firm neither produced nor cited any Firm records whatsoever relating to the *eighth* Younger Memo that Respondents' counsel submitted to MAP. Furthermore, apart from the Younger Memos, the Firm had no record of any document showing that Younger approved any other investment banking agreements while he was CEO of the Firm.³⁷

Based on the foregoing evidence, the Panel found that the Younger Memos were not genuine Firm records reflecting Younger's contemporaneous approvals of the investment banking transactions referred to in the Memos, and that Younger's statements under oath during his OTR that (a) he created and signed the Younger Memos contemporaneously with the dates on the Memos; (b) he created and signed similar approval documents for each of the Firm's investment banking transactions during his tenure as CEO of the Firm; and (c) he digitized and sent the Younger Memos and other approval documents to the Firm's Beverly Hills office for filing were all false.

In addition, the Panel rejected as not credible Younger's testimony that he signed the eighth Younger Memo on or about the date indicated on the Memo. Instead, based on (a) the omission of the eighth Younger Memo from the email that Younger sent to Saliba attaching the other seven Younger Memos; (b) the absence of any Firm record of the eighth Younger Memo; and (c) the identical purported signatures on the eighth Younger Memo and one of the other seven Younger Memos that Younger emailed to Saliba, the Panel found that the eighth Younger Memo was a forgery. For the same reasons, the Panel found it reasonable to infer that Saliba either created the eighth Younger Memo himself or had someone else create it. In any event, the Panel concluded that Saliba knew or should have known that the eighth Younger Memo was not a genuine Firm record when he submitted it to MAP and subsequently to Enforcement in response to a Rule 8210 request.

³⁶ CX-174, at 13-40; Tr. 473-74, 477.

³⁷ CX-20a; CX-29; CX-34; CX-35; CX-36; CX-37. Younger claimed he created and saved each of the memos approving the Firm's investment banking transactions to his computer and stated that he produced the computer in response to Enforcement's Rule 8210 requests, but he could not explain why no record of the memos was found on his computer. Tr. 491-92.

F. Saliba's Computers

1. Saliba's First Computer

In response to a Rule 8210 request, Saliba appeared for OTRs on June 19 and July 16, 2014. During his first OTR, Saliba was asked about his use of computers to perform his work at the Firm. Saliba responded that he had used only one computer for all of his Firm work since 2012, and that he used the computer not only for his Firm work, but for all the work he did for all his businesses. Initially, Saliba testified that the computer was currently located at his office. Enforcement then questioned Saliba at length about the JM Memos and the Younger Memos. After this questioning, while still conducting the OTR, Enforcement handed Saliba and Respondents' counsel a Rule 8210 request to Saliba and the Firm requiring them to produce "[a]ny and all computers and/or electronic storage devices used by [Saliba] for NMS Capital Securities business." Saliba and the Firm were required to make the production "immediately upon receipt of this letter," and Enforcement advised Saliba that Enforcement staff would be at his office that day to copy the hard drive on any computers produced in response to the Rule 8210 request. After receiving the request, Saliba changed his prior testimony, stating that he now recalled he had taken his work computer home and it was still at his home, rather than at his office. Earlier in his OTR, however, when asked about doing firm work on a computer at home, Saliba testified that while it was possible, "I live so close to my office [that if] I have to do anything, I would just go to my office."³⁸

Later the same day, Patrick Hendry, an Enforcement staff member who is knowledgeable about the forensic examination of computers, came to the Firm's Beverly Hills offices to accept Saliba's production of the responsive computer(s). Hendry testified that after he waited for some time, Saliba appeared at the offices and produced a single laptop computer (the "First Computer"). Hendry testified he made a forensic data capture of the entire hard drive of the First Computer, except for email files, using specially designed commercial forensic application software. Hendry subsequently provided a copy of his capture of the hard drive from the First Computer to Luke Cats, Enforcement's expert witness.³⁹

Cats testified that he examined the copied hard drive for the purpose of evaluating the usage of the First Computer. His evaluation compared the usage of the First Computer during a "baseline" period of April 25 through May 25, 2013, with the usage of the First Computer after that date. His analysis showed that the First Computer was used much more heavily during the baseline period than after that period. More significantly, his analysis showed that the First

³⁸ CX-19; CX-172, at 8-9, 14-30, 36-39. At his second OTR, Saliba reiterated that he used just one computer for all of his NMS entities. CX-173, at 9. *See also* CX-172, at 10 ("And as I said, I live literally six blocks from my office. So if I ever have to do something, I usually will just go to the office and do it."); CX-173, at 10 ("I bought [a Microsoft Surface computer] thinking I'd use it at the house and it's—it's easier just to go to the office and use my work computer.").

³⁹ Tr. 840-70. Hendry testified that he omitted email files from his data capture on instructions from Enforcement counsel, who were concerned about possibly capturing privileged communications. Tr. 848-49.

Computer was turned off, and was therefore incapable of being used or accessed, during the period July 23 through September 11, 2013.⁴⁰ Enforcement offered evidence, however, that Saliba composed and sent at least seven Firm emails during the period that the First Computer was turned off. The emails concerned proposed or existing Firm investment banking transactions and Saliba attached substantive documents he had prepared to most of the emails. In addition, during the period that the First Computer was turned off, Saliba sent the email to Younger requesting written approvals of the seven investment banking agreements and Younger emailed Saliba the seven Younger Memos.⁴¹

⁴⁰ CX-4; CX-5; CX-8; CX-122; CX-123; Tr. 952-1000. After the conclusion of Cats' testimony, Respondents' counsel objected to the admission of Cats' expert report in evidence on the ground that "the computer that is the subject of the examination that was conducted by Cats was seized by FINRA pursuant to an illegal 8210 request." Tr. 1003. The Hearing Officer denied the objection as untimely.

Neither Saliba nor Respondents' counsel objected to production of the First Computer when Enforcement delivered the Rule 8210 request during Saliba's first OTR or when Saliba delivered the First Computer to Hendry. Indeed, Saliba testified: "I had no problem turning over the [First Computer] . . ." Tr. 1307. When Enforcement gave Saliba and Respondents' counsel the Rule 8210 request, Enforcement also advised Saliba and Respondents' counsel that Enforcement would quarantine the copied data for two weeks to afford them an opportunity to identify any privileged information on the computers, so that Enforcement could protect that information from disclosure. CX-19, at 5. On July 3, 2014, Respondents' counsel sent Enforcement a letter claiming privilege for certain material on the First Computer and objecting to any effort by Enforcement to review information on the First Computer not related to the Firm's business, but not raising any other objection to the Rule 8210 request. CX-26.

In fact, Cats' report and testimony did not reference any materials stored on the First Computer but rather discussed only the operating system data regarding use of the First Computer. Respondents' counsel raised no objection to Cats' report by the May 15, 2017 deadline for objecting to proposed exhibits set forth in the Order Following Pre-Hearing Conference and Setting Pre-Hearing Schedule issued by the Hearing Officer on June 9, 2016. And Respondents' counsel raised no objection during Hendry's testimony regarding the acquisition of data from the First Computer pursuant to Rule 8210 or during Cats' testimony regarding his review of the operating system data and the opinions he drew from his review. Accordingly, Saliba waived any potential objection to the Rule 8210 request by failing to raise it in a timely manner.

In any event, Respondents' counsel's objection was without merit. He argued, in substance, that FINRA was precluded from requiring the production of the First Computer and from copying the data on the First Computer because the First Computer included personal information and information about Saliba's other companies as well as Firm data. FINRA member firms and their associated persons, however, are on notice that FINRA may request the production of Firm materials, whether stored electronically or on hard copy. A firm or an associated person who nevertheless elects to commingle personal or unrelated business materials with member firm materials, whether stored electronically or in hard copy, does so at its own risk.

⁴¹ CX-147; CX-148a through CX-148f. Among the documents Saliba attached to the emails identified as CX-147, CX-148a, CX-148c, and CX-148e were the following: "Due Diligence Review/Request for Outstanding Information," a three-page draft memorandum to another firm requesting information in anticipation of a proposed investment banking transaction; "Summary of Proposed Investment Banking and Advisory Services," a draft letter to another firm regarding a proposed investment banking transaction; "Group Task," breaking down a proposed investment banking transaction into three phases with detailed analyses of each phase; and "Letter of Authorization," a draft for the Firm to use with its "buy side sources." Each of the emails indicated that Saliba had personally drafted or substantially revised the attached document.

In light of the expert's opinions regarding the use of the First Computer, Enforcement contended that Saliba must have used another computer for his Firm work that he failed to disclose in his testimony and failed to produce in response to the Rule 8210 request. Enforcement argued it was appropriate to infer that Saliba failed to produce the other computer because it contained evidence that Saliba had created or had someone else create the JM Memos and the Younger Memos.

2. Saliba's Second Computer

It was undisputed that on May 10, 2013, Saliba, through NMS Capital, purchased a new Dell laptop computer (the "Second Computer"), and that Saliba did not produce the Second Computer in response to Enforcement's Rule 8210 request for "[a]ny and all computers and/or electronic storage devices used by [Saliba] for NMS Capital Securities business." Saliba contended that the Second Computer was not responsive to Enforcement's request because he did not use it for Firm business, but rather continued to use the First Computer as his business workstation even after purchasing the Second Computer. Enforcement, however, introduced substantial evidence indicating that Saliba used the Second Computer to replace the First Computer as his business workstation.

On May 24, Saliba exchanged emails with the contractor who provided computer support to Saliba's businesses regarding "transferring files to [Saliba's] replacement laptop." SB, who had worked with Saliba's NMS Capital and RIA businesses, as well as an insurance agency in which SB and Saliba were partners, testified that within a few weeks prior to June 6, 2013, he was in Saliba's office and noted that Saliba had a new laptop. Indeed, SB testified that "[t]here was a time when there was a couple of computers [in Saliba's office], and then I think he was transitioning stuff from his old computer, maybe to his new computer. I'm not exactly sure, but I did see for a time that there was [*sic*] two computers."⁴² The Panel found this evidence supported Enforcement's contention that Saliba used the Second Computer to replace the First Computer as his workstation.

In August 2013, Saliba and the computer support contractor exchanged emails about backing up Saliba's computer. On August 13, the support contractor advised Saliba that "[b]ackup has been successfully installed on your new workstation. I've opted to keep backups of your old workstation until we run into space issues—just in case there is something left behind that you need recovered. Backups will occur once daily at 6pm." Saliba replied promptly: "Any chance of changing to 9pm to ensure I am out of office?" The support contractor responded: "I'll

⁴² CX-140 through CX-144; Tr. 1018-21. Saliba argued that the Panel should not credit SB's testimony, asserting that SB had generally been out of the office during the period when SB said he saw Saliba with a new computer, and that SB was seeking revenge for Saliba having terminated SB's employment with NMS Capital and the RIA and having closed the insurance agency in which they had been partners. During his testimony SB acknowledged his hostility toward Saliba, but his testimony regarding Saliba's computers was consistent with the objective evidence regarding the Second Computer. While the Panel did not give substantial independent weight to SB's testimony, the Panel found SB more credible, over all, than Saliba, and considered SB's testimony as corroborative of the objective evidence indicating that Saliba used the Second Computer for Firm work.

be happy to adjust the time for you. Please let me know of a good time to remote in and change this. It will take less than 5 minutes.” Saliba replied, “Now is fine,” but the contractor advised that he was not available until 7:30 the following morning, to which Saliba agreed. On August 14, the contractor advised Saliba that time for the daily backup had been changed to 9 p.m.⁴³ As noted above, according to Enforcement’s expert, the First Computer was turned off during August 2013 and therefore could not have been accessed remotely or backed up during that period. The Panel found that this evidence also indicated that Saliba had replaced the First Computer with the Second Computer.⁴⁴

On August 29, 2013, the contractor sent Saliba an email advising him: “I got an alert that your backup has failed over the past couple of days. I would like to remote into your workstation for a couple of minutes when you have some time away from your machine to investigate and correct the issue. Please let me know a good time/date that works for you.” Saliba replied, “Now is fine.” The contractor soon responded that he had just gotten off a call and could remote in, and Saliba responded, “Ok.” Once again, the First Computer was turned off and could not have alerted the contractor regarding a failed backup. Therefore, the Panel found that this evidence also indicated that Saliba had replaced the First Computer with the Second Computer for his Firm work.⁴⁵

Saliba insisted that he only used the First Computer, not the Second Computer, for Firm work. Saliba testified that he gave the Second Computer to his wife, although he could not recall when. He claimed that his email exchanges with the contractor did not relate to his use of the Second Computer for Firm business but rather to his wife’s use of the Second Computer. He also suggested that the contractor’s reference to “transferring files to [Saliba’s] replacement computer” could have referred to his personal files, “could have been firm documents. I don’t recall.” And he testified that the contractor’s reference to “[b]ackup has been successfully installed on your new workstation” could have referred to some computer other than the Second Computer, but could not identify any computer to which the contractor’s reference could have applied. He testified that the contractor’s references to installing backup “on your new workstation” and keeping “backups of your old workstation until we run into space issues” were “semantics” and offered the incomprehensible explanation that “the work computer being the old one, and then there was an additional computer which they are referring to as the new one, not one that is being used and one that is not being used.”⁴⁶

With regard to the period when the First Computer was turned off, Saliba asserted that he had been occupied with personal matters and had traveled, so he was not in his office much. He testified: “So out of that seven-week period [when the First Computer was turned off], I can

⁴³ CX-145.

⁴⁴ Saliba indicated that there were only two computers at issue, the First Computer and the Second Computer. He denied that there was some third computer to which the contractor could have been referring. Tr. 621-23.

⁴⁵ CX-146; Tr. 1309.

⁴⁶ Tr. 261, 272, 277, 289, 297, 618-19, 626-27, 1306, 1309.

think of at least about four weeks of that, although not continuous, where I wasn't even in Los Angeles, so the computer was turned off." With regard to the emails that he sent during the period that the First Computer was turned off, Saliba said: "I must have used another computer," but he had no recollection of doing so.⁴⁷

Saliba offered no evidence whatsoever to corroborate his testimony that he gave the Second Computer to his wife, at a time he could not recall, or that his email exchanges with the contractor concerned his wife's use of the Second Computer, rather than his use of the Second Computer to replace the First Computer for his work. The Panel found that the wording of his email communications with the contractor made no sense as applied to a computer belonging to his wife, but was fully consistent with the Second Computer replacing the First Computer as Saliba's business workstation. Saliba's emails never indicated that the Second Computer was used by his wife, and the timing and wording of the email exchanges between Saliba and the contractor regarding re-setting the schedule for the daily backup and for accessing the computer to fix a backup issue suggest that Saliba was addressing his own scheduling preferences, not his wife's. And all the documentary evidence is consistent with SB's testimony that he saw Saliba using a new computer at work at or about the time that Saliba received the Second Computer.

The Panel found, therefore, that Saliba clearly used another computer for Firm work while the First Computer was turned off and that the evidence was sufficient to support a reasonable inference that he used the Second Computer to replace the First Computer for Firm work. Therefore, the Second Computer was responsive to Enforcement's Rule 8210 request, but Saliba did not produce it.

G. Backdated Compliance Documents Provided to FINRA

While the CMA was pending, FINRA Member Regulation conducted an unannounced examination of the Firm. On April 17, 2013, in connection with the examination, the Member Regulation examiners requested a variety of documents from the Firm, including the most recent Outside Business Activity ("OBA") and Private Security Transaction ("PST") compliance forms completed by the Firm's GSRs.⁴⁸

The Firm's Written Supervisory Procedures ("WSPs") in effect in April 2013 prohibited the use of non-Firm email platforms for business purposes. Nevertheless, on April 19, 2013, Tabizon sent an email from his private email account to Mansourian's private email account attaching several compliance forms, including the Firm's OBA and PST forms. The versions of the forms that Tabizon sent to Mansourian had only been adopted by the Firm during the prior month, replacing older versions of the forms.⁴⁹

⁴⁷ Tr. 1311-12, 1319.

⁴⁸ Stip. ¶ 46; Tr. 1060-61, 1380-81, 1387; CX-153.

⁴⁹ Stip. ¶¶ 47, 52; Tr. 1065-66, 1068-69; CX-155.

On the following day, Mansourian sent an email from his private email account to the private email accounts of several of the Firm's GSRs, none of whom worked in the Firm's Beverly Hills office. Mansourian's email attached the versions of the OBA and PST forms that Tabizon had sent to Mansourian the previous day, and the email instructed the recipients to complete the forms and "[w]hen asked for dates, please indicate dates in February 2013, such as February 1st, 4th, 5th, 8th," rather than the date they actually signed the forms. Further, the email instructed the recipients to "send back [the forms] to this [personal] e-mail address ONLY or fax to" a particular telephone number. The Firm did not maintain a log of faxes it received and the fax number in the email was a general number used by all of Saliba's companies at the Beverly Hills office.⁵⁰

The recipients of Mansourian's email responded with completed and signed OBA and PST forms, and most backdated their signatures on the forms to February 2013, as instructed in Mansourian's email. On April 25, 2013, Tabizon sent the backdated forms provided in response to Mansourian's email, as well as other OBA and PST forms, to the FINRA examiners as a partial response to the request for documents.⁵¹

Although none of the Respondents disputed the foregoing facts regarding the solicitation and submission of backdated compliance forms, there was substantial disagreement among Saliba, Tabizon, and Mansourian regarding the surrounding circumstances. Tabizon testified that when the Firm received the request from the examiners, he believed the Firm had the required forms in its files, but he could not find OBA or PST forms for some GSRs after receiving the request. Tabizon testified he had a discussion with Saliba and Younger regarding the missing forms, after which he instructed Mansourian to assist him in obtaining replacement OBAs and PSTs from the GSRs. Tabizon testified that he, Saliba, and Younger decided that Mansourian would ask the GSRs to re-sign the forms and date them in February 2013. As discussed below, Tabizon also claimed that he discussed the missing forms with a FINRA examiner and received her approval to "recreate" the missing forms.

Saliba, in contrast, testified that he did not recall any conversation about the missing forms involving Younger. He did recall that he walked into the office space shared by Tabizon and Mansourian after the Firm received the request from the examiners and that Tabizon "advised me that he was replacing or recreating the documents that he was missing that he knew he had, but just couldn't find." Saliba denied that he directed Mansourian to send the email soliciting backdated compliance forms and denied knowing that Mansourian sent it.⁵²

During his OTR on June 18, 2014, Mansourian testified repeatedly that Saliba directed him to solicit the backdated OBA and PST forms. For example, when asked why he requested that the recipients send their completed forms back to his personal email account, Mansourian

⁵⁰ Stip. ¶¶ 48-50; Tr. 1050-51, 1117; CX-156.

⁵¹ CX-160.

⁵² Tr. 1062-65, 1298-99.

testified: “Trevor Saliba just asked me to do it that way.” And when asked why Saliba told him to use his personal email, Mansourian testified: “He didn’t tell me. He just said, you know, ‘Use your account to just send this to them.’” And when asked what he did with the OBA and PST forms he received back from the GSRs, Mansourian testified: “I gave them to Trevor Saliba.” At the end of his OTR, after Enforcement staff had completed their questioning, Mansourian and his attorney consulted twice before Mansourian offered an unsolicited statement for the record: “I did the personal e-mails, basically, at the direction of Trevor Saliba and did so without asking detailed questions in the fear of losing my job.”⁵³

On August 28, 2014, Mansourian exercised his right to review the transcript of his OTR, and on September 8, 2014, Mansourian’s attorney (whose firm also represented Saliba, Younger, and Tabizon in the investigation) sent Enforcement a letter stating that in his review of the OTR transcript Mansourian had “identified certain responses that were either incomplete or incorrect, and wishes to amend his testimony” Among other things, Mansourian wanted to amend the testimony he gave during his OTR in which he stated that he was not suffering from any medical condition or using any medications that would interfere with his ability to testify truthfully and accurately. Mansourian wanted to amend that testimony to state that he was, in fact, suffering from a medical condition and was taking a medication for that condition, and that “[w]hen under stressful situations, I am unable to think clearly. Furthermore, I have come to notice it affects my memory.” Mansourian also sought to amend his testimony quoted above that “Trevor Saliba just asked me to do it that way,” stating, “I recall now it was Richard Tabizon who had told me to use my personal account to send the ‘very important’ email . . . and Trevor Saliba was present in the same room.” Mansourian did not, however, seek to amend his statement at the end of his OTR indicating that he sent the email from his private account soliciting the backdated forms at Saliba’s direction while in fear of losing his job.⁵⁴

At the hearing, Mansourian recanted his OTR testimony indicating that Saliba directed him to send the email soliciting the backdated forms.⁵⁵ Instead, he testified, it was Tabizon who

⁵³ CX-176, at 22, 28, 41.

⁵⁴ CX-177, at 1, 9.

⁵⁵ Mansourian’s assertion at the hearing that he gave false testimony during his OTR because of his medical condition and medications was not credible. Mansourian claimed that his condition made it hard for him to think clearly in stressful situations, but he acknowledged that it did not prevent him from telling the truth. Tr. 1181. Mansourian’s OTR testimony that Saliba directed him to solicit backdated OBA and PST forms through his personal email account was consistent throughout his OTR, and did not appear to reflect unclear thinking. He was represented by an attorney who never expressed any concerns about Mansourian’s ability to think clearly or to testify accurately, and Mansourian had two breaks and consulted with his attorney immediately before offering an unsolicited statement attributing his actions in soliciting backdated forms to Saliba.

The Panel also found that Mansourian’s hearing testimony lacked credibility in other respects. Initially, Mansourian responded to every question from Enforcement about the circumstances surrounding his email soliciting backdated OBA and PST forms by saying that he could not recall the events in light of the passage of time. His demeanor suggested that he was simply avoiding answering the questions. Then when asked about the text of the email he sent, he testified: “oh, yeah. I recall now what happened is Mr. Tabizon telling me . . . that he needs me to send an e-mail, to send it using my personal e-mail address, and then told me what he needed written in that e-mail.” After offering

directed him to send the email. Indeed, Mansourian testified at the hearing that Tabizon dictated the text of the email to him.⁵⁶ Tabizon, on the other hand, admitted that he asked Mansourian to help him obtain the backdated forms, but he denied that he dictated the text of the email to Mansourian, or directed him to send it from his personal email, or told Mansourian to tell the recipients to return the completed forms to Mansourian's personal email or to a fax number.⁵⁷

The Panel found it unnecessary to resolve all of the disputes regarding the circumstances surrounding the solicitation and submission of the backdated compliance forms. Regardless who specifically directed Mansourian, or the level of detail of those directions, Mansourian sent the email soliciting backdated forms that he knew the Firm would submit to the examiners. And regardless whether he discussed the solicitation of backdated forms with Saliba and Younger, or dictated the text of the email that Mansourian sent, Tabizon at least generally instructed Mansourian to solicit backdated compliance forms and he submitted those forms to the examiners on behalf of the Firm.

Finally, regardless whether he specifically instructed Mansourian to solicit the backdated forms, Saliba was at least generally aware that Tabizon and Mansourian were soliciting "recreated" compliance forms for the Firm to submit to the examiners. Moreover, Saliba took a direct role in the creation and submission of backdated forms. Saliba testified that he did not think that it was appropriate to backdate forms and that he, himself, had never backdated forms. But Saliba's OBA and PST forms, dated February 1, 2013, were included in the Firm's submission to the FINRA examiners on April 25, 2013, along with the backdated forms that

this exculpatory testimony, he again answered questions about the surrounding events by claiming an inability to recall events. The Panel found Mansourian's claim to recall only one detail of the events surrounding his email—that Tabizon told him to send it and gave him the text of the email—unconvincing and did not credit his testimony. Tr. 907-25.

Considering all these circumstances, the Panel found Mansourian's OTR testimony more reliable than his hearing testimony. Nevertheless, Mansourian was such an unreliable witness that the Panel did not find his OTR testimony sufficient, by itself, to find that Saliba directed Mansourian's actions in soliciting the backdated OBA and PST forms. As explained below, however, the Panel found sufficient additional evidence of Saliba's involvement to conclude that he took an active role in providing backdated compliance forms to FINRA examiners.

⁵⁶ Mansourian testified: "I remember this day very specifically . . . I sit at my desktop. [Tabizon] sits across and . . . he said, 'Art . . . let's send an email. . . . Send it from your personal e-mail, open to compose. This is what it should say. These are the forms that it should be. This is who it should go to.'" Mansourian testified that all this occurred on Friday, April 19, 2013, but he did not send his email until after 2:00 p.m. on the following day, Saturday, April 20. Mansourian could not explain why he waited until the next day to send the email if he composed and addressed the email Tabizon dictated to him. Tr. 1178-79; CX-156a. The Panel found that Mansourian's purported recollection of the details of Tabizon's instructions was not credible.

⁵⁷ Tr. 1070-73, 1123. The day after Tabizon testified, the attorneys who had represented all of the Respondents through the investigation and this proceeding withdrew from representing Tabizon asserting that they had a conflict of interest as a result of Tabizon's testimony that precluded them from continuing to represent all the Respondents. Tr. 1148-51. Tabizon did not attend the balance of the hearing, but he did submit a written closing argument, which the Panel considered.

Mansourian solicited. Saliba testified that he “definitely wasn’t backdating or signing a prior date” on his forms, but in fact the OBA and PST forms that Saliba signed and dated February 1, 2013, were in the same formats as the other backdated forms that the Firm sent to the examiners, formats that did not exist in February 2013. Saliba could not explain how he could have signed forms in February that did not exist until the following month, saying he “could have been working on a draft. I could have gotten—again I have no recollection of it.” In his closing argument, Saliba’s counsel essentially conceded that Saliba backdated his OBA and PST forms to February 1. Regardless of the concession, the Panel found the evidence sufficient to establish that Saliba signed and backdated OBA and PST forms that he knew the Firm would submit to FINRA examiners.⁵⁸

Although it was undisputed that the Firm submitted backdated compliance forms to the examiners, Respondents argued that they did so with the knowledge and acquiescence of one of the FINRA examiners. Tabizon testified that after he was unable to find OBA and PST forms for some of the Firm’s GSRs, he discussed the problem with one of the FINRA examiners who agreed that the Firm could create and submit “recreated” forms. When asked whether he told the examiner “that you were going to have [the forms] backdated to when they would have originally been created,” Tabizon responded: “I believe so, yes.” Tabizon acknowledged that there was no documentary evidence of his claimed exchange with the examiner regarding the OBA and PST forms, and he conceded that he did not disclose in his email transmitting OBA and PST forms to the examiners that most of the forms had been “recreated” and backdated.⁵⁹

The examiner who Tabizon claimed acquiesced in the submission of recreated, backdated forms is no longer employed by FINRA. But the supervisor who oversaw the examination testified that none of the assigned examiners told him that the Firm would be recreating and backdating compliance forms, and that the submission of backdated compliance forms is never acceptable to FINRA examiners. He testified that in his 17 years as a FINRA examiner, he was not aware of any instance in which a FINRA examiner allowed a FINRA member firm to submit backdated compliance forms in an examination.⁶⁰ The testimony is consistent with the experience of the industry panelists; examiners do not acquiesce in the backdating of compliance forms.

Other circumstances undermine the credibility of Tabizon’s claim. Because Mansourian sent the emails soliciting backdated forms from his personal email account, rather than his Firm email, and sent the forms to the recipients’ personal email addresses, rather than their Firm addresses, his emails were not captured in the Firm’s email archive, which was available to the examiners. And he directed the recipients to send the completed, backdated forms “ONLY” to his personal email address, or to fax them to a general fax number where their receipt would not be recorded in the Firm’s records. The Panel found it reasonable to infer from these actions that

⁵⁸ CX-160, at 34-35; Tr. 807, 1105, 1353-54, 1370-73, 1488-89.

⁵⁹ Tr. 1063-64, 1093-95, 1113-14; CX-160.

⁶⁰ Tr. 1379-84.

the goal was to conceal the solicitation and receipt of backdated compliance forms from the examiners. It would have been unnecessary to do that if, as Tabizon testified, the examiner had authorized the Firm to recreate and backdate the forms.

Considering all these circumstances, the Panel did not credit Tabizon's testimony that the FINRA examiner authorized the Firm to recreate and submit backdated compliance forms.

III. Conclusions

A. Saliba Acted as a Principal in Violation of the Interim Restrictions

The first cause of the Complaint alleged that Saliba acted as a principal of the Firm while the Interim Restrictions were in effect, causing the Firm to violate NASD Rule 1017(c)(1), which authorized MAP to impose the Interim Restrictions. The Complaint charged that by causing the Firm to violate Rule 1017(c)(1), Saliba violated FINRA Rule 2010, which requires FINRA member firms and their associated persons to "observe high standards of commercial honor and just and equitable principles of trade." Saliba denied that he acted in any principal capacity, but also asserted that, insofar as he did act as a principal, he was acting in good faith, and therefore did not violate Rule 2010.

NASD Rule 1021(b) defines "principals" as follows:

Persons associated with a member, enumerated in subparagraphs (1) through (5) hereafter, who are actively engaged in the management of the member's investment banking or securities business, including supervision, solicitation, conduct of business or the training of persons associated with a member for any of these functions are designated as principals. Such persons shall include:

- (1) Sole Proprietors
- (2) Officers
- (3) Partners
- (4) Managers of Offices of Supervisory Jurisdiction, and
- (5) Directors of Corporations.

The case law under Rule 1021(b) makes it plain that the definition of principal is to be applied flexibly. Rather than focusing on individual actions by an alleged principal, the NAC and the SEC have looked to the totality of the individual's activities in evaluating whether the individual was actively engaged in the management of a member firm. The SEC has explained: "In determining whether an individual is required to register as a principal we consider all of the relevant facts and circumstances, including the cumulation of individual acts that might not, on their own, show management."⁶¹ Indeed, although the Rule lists five categories of individuals who may be principals, the SEC has held: "Individuals who 'are actively engaged in the management of the member's investment banking or securities business, including supervision,

⁶¹ *Dennis Todd Lloyd Gordon*, Exchange Act Release No. 57655, 2008 SEC LEXIS 819, at *32 (Apr. 11, 2008).

solicitation, conduct of business or the training of persons associated with a member for any of these functions,' are principals, whatever their title may be.”⁶²

For example, the SEC found that an individual acted as a principal where he

took the lead in developing [the firm's] bond business ... was effectively the head of the bond group, as well as its public face ... repeatedly explained the anticipated business of [the firm's] bond group to third parties because he “knew about that more than [firm executives] did” ... successfully recruited three bond traders for [the firm, and] [o]nce the traders were on board, kept in close contact with them, talking to them “all the time” and functioning as an intermediary to bring their concerns to the attention of [the firm's] management.

The SEC observed that the individual's “leadership in this important area of [the firm's] business is persuasive evidence that he was acting as a principal.”⁶³

The SEC also found that an individual who “undertook responsibility for a wide range of issues related to the conduct of [the firm's] business and the tenure and conduct of its employees” was acting as a principal,⁶⁴ and that an individual who “provided financial support to the office, played a substantial role in the finances of the office, was actively involved in hiring, participated in meetings, and acted as the leader of the personnel initially opening the office” was acting as a principal.⁶⁵

The NAC has held that an individual who “expended considerable effort to hire principals for” a FINRA member firm; “controlled [the firm's] checking account and was the sole authorized signatory on the account”; and who “repeatedly held himself out as [the firm's] sole owner and chief executive officer” was acting in a principal capacity.⁶⁶ Similarly, the SEC held that “[c]ompleting and executing documents obligating the firm to participate in a securities underwriting are clearly among those duties to be performed by a ‘principal’ enumerated in NASD Membership and Registration Rule 1021(b).”⁶⁷

Applying the teachings of those cases here, it is apparent that Saliba functioned as a principal of the Firm in violation of the Interim Restrictions. He hired JM as the initial CEO, then decided to replace him with Younger. He negotiated and signed Younger's Independent Representative Agreement, which effectively provided that Saliba, as “the Board,” would

⁶² *Leslie A. Arouh*, Exchange Act Release No. 62898, 2010 SEC LEXIS 2977, at *28 (Sept. 13, 2010) (citing cases).

⁶³ *Arouh*, 2010 SEC LEXIS 2977, at *29.

⁶⁴ *Gordon*, 2008 SEC LEXIS 819, at *32.

⁶⁵ *Richard F. Kresge*, Exchange Act Release No. 55988, 2007 SEC LEXIS 1407, at *49-50 (June 29, 2007).

⁶⁶ *Dep't of Enforcement v. Harvest Cap. Invs., LLC*, No. 2005001305701, 2008 FINRA Discip. LEXIS 45, at *26-28 (NAC Oct. 6, 2008).

⁶⁷ *L.H. Alton & Co.*, 53 S.E.C. 1118, 1125-26 (1999).

supervise Younger. In addition to hiring JM and Younger, Saliba was significantly involved in the hiring of other Firm personnel, including setting their compensation. And Saliba negotiated and signed investment banking agreements on behalf of the Firm as the Firm's CEO, Chairman, and Senior Managing Director or Managing Director, effectively holding himself out to third parties as a principal of the Firm.

Saliba's deep involvement in the Firm's management is hardly surprising. Saliba owned the Firm, indirectly, and naturally was concerned about all aspects of the Firm's investment banking business. He testified that, in retrospect, his only mistakes were in hiring JM and Younger to serve as the Firm's CEOs. JM was recovering from a serious illness, was working from his home in Las Vegas, and was being paid at a rate that contemplated he would devote just 30 hours of work per month to the Firm's business at \$50 per hour. Saliba offered Younger the CEO position after knowing him for less than one day, and paid him nothing for serving as the Firm's CEO and CCO. Of course Saliba could not rely on those individuals to oversee and grow the Firm's investment banking business. They were figureheads who carried the CEO title while Saliba conducted the important business of the Firm.

Saliba contends that the CEOs supervised the investment banking transactions and made the final hiring decisions, and points to Firm emails purporting to substantiate his contentions. As explained above, the Panel found that the documents purporting to reflect the CEOs' supervision of the investment banking transactions were falsified. But even if the CEOs exercised some degree of oversight over Saliba's activities, that would not preclude a finding that Saliba acted as a principal. A principal is *anyone* who is "actively engaged in the management of the member's investment banking or securities business," even if his or her activities are supervised by another principal. Indeed, it is axiomatic that the activities of *every associated person*, even a CEO, must be supervised.⁶⁸ Thus, if the mere fact that associated persons' activities were supervised were enough to exclude them from the definition of principal, no one would fall within that definition.

By the conclusion of his testimony at the hearing, Saliba essentially conceded that the scope of his activities at the Firm made him a principal.⁶⁹ He contended, however, that he did not violate Rule 2010 because he did not engage in "unethical conduct," but rather acted in good faith, based on his understanding of what constituted principal activities.⁷⁰ It is well established that conduct by an associated person that causes a firm to violate a rule is a violation of Rule

⁶⁸ See FINRA Rule 3110(a)(5) ("A member's supervisory system shall provide, at a minimum, for the following: ... The assignment of each registered person to an appropriately registered representative(s) or principal(s) who shall be responsible for supervising that person's activities.").

⁶⁹ Saliba testified: "I was incorrect in my assumption of my principal activity and my hiring and signing engagement agreements. Even though I was always thinking I was doing things in the compounds [*sic*] of the rule, I know now that I was wrong." Tr. 1323.

⁷⁰ Respondents' Pre-Hearing Brief at 17, quoting *Dep't of Enforcement v. Skiba*, No. E8A2004072203, 2010 FINRA Discip. LEXIS 6, at *13 (NAC Apr. 23, 2010).

2010, without need for a finding that the conduct is also unethical or in bad faith.⁷¹ Here, Saliba's conduct in functioning as a principal caused the Firm to violate Rule 1017(c)(1), and therefore Saliba violated Rule 2010.

If such a finding were required, the Panel would find that Saliba's actions were unethical and in bad faith. Saliba was aware of the Interim Restrictions and had an ethical obligation to understand and conform to them.⁷² Saliba had qualified as a GSP in November 2011, and therefore should have been well aware of the broad definition of principal and realized that his activities fell within that definition. If he was uncertain what constituted acting as a principal, Saliba should have consulted Rule 1021(b) and—if he was still uncertain—the NAC's interpretations of Rule 1021(b), which are available on FINRA's website.

Saliba testified that he did not believe he was acting as a principal when he negotiated and signed investment banking agreements on behalf of the Firm because:

[W]hen I first got the interim restriction, the first thing I did was go to the FINRA manual and look up the definition of principal. While I knew I was an owner, I knew I was an officer, the only thing that remained was supervision. I was never supervising anyone so I made the determination that under the rules as outlined in the manual, I wasn't acting as a principal.

Saliba's counsel then asked, "why weren't you acting as a principal?" Saliba responded, "Oh, because I wasn't supervising anyone."⁷³

The Panel finds this testimony entirely lacking in credibility. If Saliba consulted the definition of principal, as quoted above, he could not reasonably have concluded that it was limited to supervision. Rather, the definition plainly encompasses all those "who are actively engaged in the management of the member's investment banking or securities business." While the definition makes it clear that management may *include* supervision, it would be unreasonable to read the definition as *limited* to supervision.

⁷¹ See, e.g., *Joseph Ricupero*, Exchange Act Release No. 62891, 2010 SEC LEXIS 2988, at *14 (Sept. 10, 2010) (finding Respondent violated NASD Rules 1017 and 2110 by causing his firm to violate those rules); *Jim Newcomb*, 55 S.E.C. 406, 407 (2001) (noting that the respondent's violation of NASD Rule 2110 was "based on the long-standing policy that a violation of another Commission or NASD rule or regulation constitutes a violation of Rule 2110"); *Dep't of Enforcement v. Shvarts*, No. CAF980029, 2000 NASD Discip. LEXIS 6, at *12-13 (NAC June 2, 2000) (explaining that a violation of a specific rule was also a violation of NASD Rule 2110 "without attention to the surrounding circumstances because members of the securities industry are expected and required to abide by the applicable rules and regulations").

⁷² Saliba sought to argue that the SEC investigation of the RIA did not justify MAP's imposition of the Interim Restrictions, but the Panel did not consider that issue. It was enough for purposes of this proceeding that MAP had express authority to impose the Interim Restrictions pursuant to Rule 1017(c)(1) and that there was a factual basis for MAP's actions. Saliba had a full opportunity to challenge the merits of the Interim Restrictions in his appeal of MAP's denial of the CMA. The NAC affirmed the denial and Saliba elected not to appeal NAC's ruling. Tr. 214.

⁷³ Tr. 1243-44.

If Saliba had made a reasonable effort to understand his obligations under the Interim Restrictions, he would have known that he was prohibited from taking an active role in the management of the Firm, and would have understood the scope of that prohibition. Because he did not make such an effort, his failure to comply with the Interim Restrictions was both unethical and in bad faith.

Accordingly, the Panel concluded that Saliba violated FINRA Rule 2010 by causing the Firm to violate the Interim Restrictions.

B. Saliba Provided False and Incomplete Information to FINRA

1. The JM Memos and the Younger Memos

The third cause of the Complaint alleged that Saliba provided false information to MAP in the form of the JM Memos, in violation of Rule 2010. The fifth cause of the Complaint alleged that Saliba provided both the JM and the Younger Memos to Enforcement in response to a Rule 8210 request when he knew or should have known that the JM Memos were falsified and/or not authorized by JM and that the Younger Memos were backdated, in violation of Rules 8210 and 2010.

It is undisputed that Saliba, through counsel, submitted the JM Memos to MAP in an effort to persuade MAP to reconsider its denial of the CMA, representing that they were Firm records that evidenced JM's prior approvals of investment banking agreements that were executed by Saliba on behalf of the Firm.⁷⁴ As explained above, the Panel found that the JM Memos were forged and that JM was unaware of and did not approve the Firm transactions referred to in the JM Memos. Further, although the evidence was not sufficient for the Panel to find that Saliba personally created, or caused the creation of, the JM Memos, the Panel rejected Saliba's explanation of the manner in which he obtained the JM Memos as not credible, and the Panel found that Saliba knew or should have known that the JM Memos were not genuine Firm records when he submitted them to MAP.

FINRA Rule 2010 requires that FINRA members and associated persons "observe high standards of commercial honor and just and equitable principles of trade." A respondent violates these principles when he engages in unethical conduct. This Rule applies to the obligation of members and associated persons to provide accurate information to FINRA. Hence, providing false documents to FINRA is "inconsistent with just and equitable principles of trade," and violates FINRA

⁷⁴ Saliba also submitted the Younger Memos to MAP, but, for unexplained reasons, the Complaint's allegations concerning the MAP submission are limited to the JM Memos.

Rule 2010. To establish this violation, the “most that is required is a finding of bad faith or unethical conduct.”⁷⁵

The Panel found that Saliba’s conduct in providing the falsified JM Memos to MAP was unethical and in bad faith. Accordingly, the Panel concluded that Saliba violated Rule 2010, as charged.

During its investigation, Enforcement requested pursuant to Rule 8210 that Saliba and the Firm provide “[a]ll documents evidencing executive management approval or authority to engage in investment banking deals.” In response, Saliba again provided the JM Memos and the Younger Memos.⁷⁶

FINRA Rule 8210 requires members and their associated persons to provide information and documents requested in FINRA investigations.” This Rule “provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations” and “is at the heart of the self-regulatory system for the securities industry.” An associated person’s obligation to comply with Rule 8210 information requests is unequivocal, as the Rule states that “[n]o member or person shall fail to provide information or testimony or to permit an inspection and copying of books, records, or accounts.”⁷⁷

“It is axiomatic that Procedural Rule 8210 prohibits an associated person from providing false or misleading information to [FINRA] in connection with an examination or investigation.”⁷⁸ For the reasons set forth above, the Panel concluded that Saliba knew or should have known that the JM Memos were not genuine Firm records when he submitted them in response to Enforcement’s Rule 8210 request. Accordingly, the Panel concluded that Saliba violated FINRA Rules 8210 and 2010 by submitting the JM Memos.⁷⁹

⁷⁵ *Dep’t of Enforcement v. Texas E&P Partners, Inc.*, No. 2014040501801, 2016 FINRA Discip. LEXIS 59, at *62 (OHO Dec. 13, 2016) (citing *Dep’t of Enforcement v. Pierce*, No. 2007010902501, 2013 FINRA Discip. LEXIS 25, at *58 (NAC Oct. 1, 2013)); *Brian L. Gibbons*, 52 S.E.C. 791, 795 (1996); *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *23-24 (Aug. 22, 2008).

⁷⁶ CX-6; CX-8; CX-8a through CX-8k.

⁷⁷ *Texas E&P Partners*, 2016 FINRA Discip. LEXIS 59, at *66-67 (quoting *North Woodward Fin. Corp.*, No. 2011028502101, 2016 FINRA Discip. LEXIS 35, at *9-10 (NAC July 19, 2016); *Richard J. Rouse*, 51 S.E.C. 581, 584 (1993); *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008); and FINRA Rule 8210(c)).

⁷⁸ *Dep’t of Enforcement v. Mascari*, No. C8A040079, 2006 NASD Discip. LEXIS 29, at *36 (NAC Dec. 18, 2006).

⁷⁹ “It is well settled that providing false information to FINRA in response to a FINRA Rule 8210 request is a violation of both FINRA Rule 8210 and FINRA Rule 2010.” *Dep’t of Market Regulation v. Naby*, No. 20120320803-01, 2017 FINRA Discip. LEXIS 27, at *16 (NAC July 24, 2017).

The Younger Memos present a somewhat different issue. Younger provided seven Younger Memos to Saliba after Saliba requested documentation for seven of the Firm's investment banking transactions. In light of the absence from Firm records, or on Younger's computer, of any other evidence of the Younger Memos, or any of the other written approvals that Younger testified he created for every Firm transaction, the Panel found that the Younger Memos were not genuine, contemporaneous approvals of the transactions. Enforcement offered no direct evidence, however, that Saliba knew or should have known that the seven Younger Memos that Younger sent to Saliba did not accurately reflect Younger's contemporaneous approval of the seven transactions. The Panel also found the circumstantial evidence regarding the seven Younger Memos insufficient to support a reasonable inference that Saliba knew or should have known that they were not genuine, contemporaneous Firm records when he submitted them to Enforcement.

Saliba, however, submitted the eighth Younger Memo to both MAP and Enforcement representing that it was a genuine Firm record evidencing Younger's approval of a Firm investment banking agreement that Saliba signed on behalf of the Firm. The eighth Younger Memo referred to a transaction that was not listed in Saliba's email to Younger requesting approval documentation, and it was not among the Younger Memos that Younger sent to Saliba in response. Further, the Firm had no record of the eighth Younger Memo. The Panel found that Younger's signature on the eighth Younger Memo was clearly copied from one of the other seven Younger Memos; and Saliba offered no explanation of how he obtained the eighth Younger Memo. Under these circumstances, the Panel found that the eighth Younger Memo was not a genuine Firm record and that Saliba knew or should have known it was not a genuine Firm record when he submitted it in response to Enforcement's Rule 8210 request. The Panel concluded that by submitting the eighth Younger Memo under those circumstances, Saliba violated FINRA Rules 8210 and 2010.

2. Saliba's Computer

The second cause of the Complaint alleged that Saliba failed to cooperate with FINRA and made misrepresentations to FINRA with regard to his use of computers for Firm work, in violation of FINRA Rules 8210 and 2010. More specifically, Enforcement alleged that Saliba testified falsely during his first OTR that he used only one computer for Firm business during the period 2012 through the date of his first OTR. Enforcement also alleged that Saliba failed to fully comply with Enforcement's Rule 8210 request for all computers Saliba used for Firm business during the relevant period.

As explained above, Enforcement's expert's analysis showed that the First Computer was turned off for seven weeks in the summer of 2013 during which time Saliba generated at least seven Firm emails and attachments regarding the Firm's investment banking transactions. In addition, during that seven-week period Saliba sent the email to Younger requesting documents reflecting Younger's approval of seven Firm investment banking agreements signed by Saliba, and Saliba received Younger's responsive email attaching the seven Younger Memos, and

provided them to MAP through his counsel.⁸⁰ Saliba could not have used the First Computer to create and receive those emails and attachments. Therefore, the Panel concluded that Saliba's testimony that he used only one computer for Firm business was false and that he failed to produce all the computers he used in response to Enforcement's Rule 8210 request. More specifically, the Panel found that it was reasonable to infer from the evidence that Saliba used the Second Computer for Firm work, at least during the period when the First Computer was turned off, and accordingly that the Second Computer was responsive to the Rule 8210 request, but Saliba failed to produce it.⁸¹

Saliba argued that the emails cited by Enforcement amounted to de minimis Firm work, and asserted that he must have simply forgotten about them when he testified and produced the First Computer in response to Enforcement's Rule 8210 request. The emails and their attachments, however, show that Saliba was deeply involved in the Firm's investment banking business while the First Computer was shut off, including drafting important substantive documents relating to investment banking transactions. And based on the email exchanges between Saliba and the computer support contractor, as well as the testimony of SB, discussed above, the Panel found it far more probable that Saliba performed that work on the Second Computer than on some mystery device that he could not recall.⁸²

Accordingly, the Panel concluded that Enforcement proved by a preponderance of the evidence that Saliba gave false testimony during his first OTR regarding his use of computers for Firm business and that Saliba failed to produce all of the computers he used for Firm business in response to Enforcement's Rule 8210 request, in violation of FINRA Rules 8210 and 2010.

⁸⁰ The JM Memos and the eighth Younger Memo also first appeared during the period when the First Computer was turned off, as attachments to Respondents' counsel's submission to MAP on August 30, 2013. If Saliba used the Second Computer to create those documents it would explain why he did not produce the Second Computer to Enforcement.

⁸¹ Saliba offered some testimony suggesting that by the time Enforcement requested the production of computers on which he had done Firm work, his wife had "recycled" the Second Computer. Tr. 283. Even if that were the case, Saliba would have been required to disclose that the Second Computer was responsive, but was no longer available to produce, and explain why it was not available, which he did not do. *See, e.g., Rooney A. Sahai*, Exchange Act Release No. 55046, 2007 SEC LEXIS 13, at *13 (Jan. 5, 2007) ("We have long said that if a respondent is unable to provide the information requested, there remains a duty to explain that inability.")

⁸² Saliba might conceivably have composed the emails he sent while the First Computer was turned off on a device such as a smartphone or a tablet, although he did not claim to have done that, but the attachments to several of the emails were lengthy and complex. The Panel concluded that Saliba, who testified that he found it easier to travel to his office and use his work computer than to use a Microsoft Surface computer at home, would not have composed the attachments on such a device. In any event, if Saliba used such a device to compose work emails and documents such as the attachments, he was required to produce it in response to Enforcement's Rule 8210 request and failed to do so.

C. Younger Gave False Testimony to FINRA and Failed to Supervise Saliba

1. Younger's OTR Testimony Was False

The fourth cause of the Complaint alleged that during his OTR, Younger falsely testified that he created a memorandum reflecting his approval for every investment banking transaction that the Firm entered into during his tenure as CEO, after which he printed the memorandum, signed it, "digitized" it, and emailed it to the Firm's Beverly Hills office. The fourth cause also alleged that Younger falsely testified that he created the Younger Memos contemporaneously with the dates reflected on the Memos.

"FINRA Rule 8210, among other things, requires associated persons to testify under oath with respect to any matter involved in an investigation or proceeding. A person associated with a member who provides false or misleading information to FINRA during the course of an investigation violates FINRA Rule 8210."⁸³ It is undisputed that Younger testified during his OTR that he created a written approval for each Firm investment banking transaction, printed and signed it, digitized it, and sent it to the Firm's Beverly Hills office for filing electronically in "the deal room" or in the Firm's hard copy files, as alleged in the fourth cause. It is further undisputed that Younger testified during his OTR that he created each of the seven Younger Memos that were attached to his August 27, 2013 email to Saliba at or around the dates shown on the Memos, which were contemporaneous with the dates of the transactions purportedly approved in the Memos. The Panel concluded that all of this testimony was false.⁸⁴

The Firm could produce no record of any written approval from Younger for any investment banking transaction, other than the seven Younger Memos. And the only record of the seven Younger Memos that the Firm could identify was the email from Younger to Saliba attaching them. The Firm could produce no record whatsoever of the eighth Younger Memo. At the hearing, Younger could offer no explanation for the complete absence of any Firm records regarding the written approvals he claimed to have created, including the Younger Memos.

The Panel found that Younger's testimony regarding his purported written approvals of all Firm transactions was not credible. If Younger had created such written approvals and sent digitized copies to the Firm's Beverly Hills offices for filing, as Younger testified, the Firm would have been able to produce some record of at least some of the approvals from the electronic files that the Firm maintained for each transaction, from the Firm's hard copy files, or from Younger's computer. The Panel found that the Firm's inability to produce any written approvals supported a reasonable inference that the approvals never existed. Accordingly, the Panel concluded that Younger's testimony that he prepared such approvals and sent them to the Firm's Beverly Hills offices was false, and that by giving such false testimony, Younger violated Rules 8210 and 2010.

⁸³ *Dep't of Enforcement v. Wiley*, No. 2011028061001, 2015 FINRA Discip. LEXIS 21, at *16-17 (NAC Feb. 27, 2015) (footnote omitted).

⁸⁴ CX-174.

Saliba sent Younger an email requesting documentation evidencing Younger's approvals of seven Firm transactions identified in the email. A few hours later, Younger responded with an email attaching the seven Younger Memos purportedly approving those Firm transactions, with each Memo bearing Younger's signature and a date contemporaneous to the transaction referred to in the Memo. Yet the Firm could produce no other record of those Younger Memos from its electronic files, or from its hard copy files, or from Younger's computer. The Panel found that those circumstances supported a reasonable inference that the seven Younger Memos did not exist until Saliba requested them; it was not credible that Younger was able to locate existing written approvals for all of the transactions identified in Saliba's email when the Firm had no record of those or any other written Younger approvals of Firm transactions. The Panel found it more probable that Younger, or some other person with Younger's knowledge, created the Younger Memos on or about the date of Saliba's email and that Younger signed the Younger Memos at that time, giving them false dates contemporaneous with the transactions. Accordingly, the Panel concluded that Younger's testimony that he prepared and dated the seven Younger Memos at or about the dates shown on the Memos was false, and that by giving such false testimony, Younger violated Rules 8210 and 2010.

2. Younger Failed to Exercise Reasonable Supervision

The eighth cause of the Complaint alleged that as the Firm's CEO and CCO, Younger failed to reasonably supervise Saliba in light of the Interim Restrictions and failed to take reasonable steps to ensure that the Firm complied with the Interim Restrictions. Enforcement alleged that Younger thereby violated NASD Rules 3010(a) and (b) and FINRA Rule 2010.

Younger admitted that he was Saliba's supervisor during the time that he served as the Firm's CEO, and that during that time he was aware of the Interim Restrictions.⁸⁵ During the relevant period, Younger's supervisory responsibilities were governed by NASD Rule 3010.⁸⁶ The NAC has explained:

NASD Rule 3010 has been applied to require that supervisors exercise "reasonable" supervision. ... "The standard of 'reasonable' supervision is determined based on the particular circumstances of each case." ... The "presence of procedures alone is not enough. Without sufficient implementation, guidelines and strictures do not assure compliance." In addition to requiring an adequate supervisory system, "[t]he duty of supervision includes the responsibility to investigate 'red flags' that suggest that misconduct may be occurring and to act

⁸⁵ Tr. 433-34.

⁸⁶ NASD Rule 3010 was supplanted by FINRA Rule 3110 effective December 1, 2014, after the relevant time period for this proceeding.

upon the results of such investigation.” ... “Once indications of irregularity arise, supervisors must respond appropriately.”⁸⁷

The Firm’s WSPs in effect while Younger was CEO and CCO of the Firm did not address how the Firm would comply with the Interim Restrictions. Younger was the only person at the Firm who had authority to order revisions to the WSPs and he did not establish any new policies or procedures at the Firm as a result of the Interim Restrictions. Younger also did not place Saliba under heightened supervision.⁸⁸

Younger testified that he supervised Saliba’s compliance with the Interim Restrictions by reviewing Saliba’s Firm emails and asserted that he and Saliba also “verbally communicated as often as necessary.”⁸⁹ But Younger did not adequately explain how he used his email reviews or conversations with Saliba to ensure that Saliba was not acting as a principal.⁹⁰ Perhaps this was because, like Saliba, Younger did not familiarize himself with the definition of “principal” in the rules.

During his OTR, Younger testified that he understood that “principal” was “a broad based definition,” but also stated that he understood acting as a principal to mean “[s]upervision for the most part.” When asked whether he had “any understanding of whether outside of supervision Mr. Saliba would have been prevented from other acts,” Younger responded: “I had no reason to believe that, no.” If Younger did not understand the Interim Restrictions’ prohibition against Saliba functioning as a principal, he could not properly supervise Saliba, and indeed he admitted that, in spite of the prohibition against Saliba serving in any principal capacity, he allowed Saliba to sign contracts, engagement agreements, and representative agreements on behalf of the Firm because he approved the transactions before Saliba signed the agreements. As explained above, however, even if Younger approved the transactions (as to which there is no supporting evidence), that would be insufficient to preclude Saliba’s actions from being those of a principal because they reflected his participation in the management of the Firm.⁹¹

The Panel concluded that Younger failed to exercise reasonable supervision over Saliba to ensure that he complied with the Interim Restrictions, and therefore violated NASD Rules 3010(a) and (b) and FINRA Rule 2010.

⁸⁷ *Dep’t of Enforcement v. Rooney*, No. 2009019042402, 2015 FINRA Discip. LEXIS 19, at *60-61 (NAC July 23, 2015) (quoting *Ronald Pellegrino*, Exchange Act Release No. 59125, 2008 SEC LEXIS 2843, at *33 (Dec. 19, 2008)).

⁸⁸ CX-46; Tr. 439-44, 525.

⁸⁹ Tr. 528.

⁹⁰ For example, when asked how his conversations with Saliba allowed him to confirm that Saliba was adhering to the Interim Restrictions, Younger responded incomprehensibly: “Well, for instance, if we were talking about deals and approvals, I believe that, you know, communicating with everyone over there would make sure that everything was being adhered to as one general way.” Tr. 522.

⁹¹ Tr. 445, 528; CX-174, at 67.

D. Saliba, Tabizon, and Mansourian Falsified Firm Compliance Records and Submitted Them to FINRA

The sixth cause of the Complaint alleged that Saliba, Tabizon, and Mansourian were responsible for the submission of backdated OBA and PST compliance forms to FINRA examiners, and thereby violated FINRA Rule 2010.

Mansourian solicited backdated OBA and PST forms, knowing that they would be submitted to FINRA examiners. In doing so, he sent emails from his personal email account to the personal email accounts of Firm GSRs, and he directed the GSRs to return the backdated forms to his personal email account or to a general fax number. Mansourian asserted that he was simply following directions given by Tabizon (or Saliba in his OTR) and that he had no understanding that soliciting backdated forms for submission to FINRA examiners was improper, even though he had been registered in the securities industry for several years by that time, or that his use of his personal email for Firm business was prohibited under the Firm's WSPs.

The Panel found that it should have been obvious to Mansourian that falsifying the dates of compliance forms that he knew would be submitted to FINRA was wrong. As a registered associated person, he must have understood the importance of compliance documentation such as the OBA and PST forms and the need to be forthright with regulators. And he was required to be familiar with the Firm's WSPs, and therefore should have known that he was prohibited from using his personal email for Firm business. Insofar as he was instructed by Saliba or Tabizon to send the emails, Mansourian had an ethical obligation to recognize that the instructions were improper and to reject them, even if it cost him his job. The Panel found that in soliciting the backdated OBA and PST forms, Mansourian's conduct was unethical and in bad faith, and that Mansourian failed to "observe high standards of commercial honor and just and equitable principles of trade" as required by FINRA Rule 2010.

Tabizon admitted that he directed Mansourian to solicit the backdated OBA and PST forms and he submitted the forms to the FINRA examiners without disclosing that they had been backdated. The Panel rejected as not credible Tabizon's claim that one of the FINRA examiners knew of and acquiesced in the Firm's submission of backdated compliance forms. The submission of falsified Firm records to FINRA examiners is a violation of Rule 2010.

At a minimum, Saliba was aware that Tabizon was obtaining backdated compliance forms and he provided his own backdated forms to Tabizon, knowing that the forms would be submitted to the FINRA examiners. The Panel found that Saliba's conduct in that regard also violated Rule 2010.

E. Tabizon and Mansourian Caused the Firm to Fail to Maintain Accurate Books and Records

The seventh cause of the Complaint alleged that Saliba caused the Firm to maintain inaccurate books and records in the form of the JM Memos and the Younger Memos and that, by

using their personal email accounts in connection with obtaining the backdated OBA and PST compliance forms, Tabizon and Mansourian caused the Firm to fail to maintain and preserve business records. Enforcement alleged that Saliba, Tabizon, and Mansourian thereby violated FINRA Rules 4511 and 2010.

FINRA Rule 4511 requires FINRA member firms to “make and preserve books and records as required under the FINRA rules, the [Securities Exchange Act of 1934 (“Exchange Act”)] and the applicable Exchange Act rules.” “Sections 17(a) of the Exchange Act and Rule 17a-4 require that brokers or dealers make and keep current various records relating to its [*sic*] business and preserve those records for specified periods of time. Rule 17a-4(b)(4) requires broker-dealers to preserve for three years originals of all communications received and copies of all communications sent relating to their business as such.”⁹²

The Panel found that Enforcement failed to prove that Saliba caused the Firm to maintain the falsified JM Memos and Younger Memos as Firm records. In fact, as discussed above, the strongest evidence that the JM Memos and the Younger Memos were falsified is the absence of them in any Firm records. And while it is true that Saliba produced them to MAP and Enforcement with the false representation that they were genuine Firm records, the Panel addressed that production by finding Saliba’s conduct violated Rules 8210 and 2010.

Tabizon did, however, use his personal email account to send blank OBA and PST forms to Mansourian’s personal email account, and Mansourian used his personal email account to send emails to the Firm’s GSRs’ personal email accounts soliciting backdated forms. The use of personal email accounts, in violation of the Firm’s WSPs, prevented the emails from being captured by the Firm’s email archive, which caused the Firm’s business records to be incomplete. Therefore, the Panel concluded that Tabizon and Mansourian violated FINRA Rules 4511 and 2010 as charged.

IV. Sanctions

As sanctions for Respondents’ violations, Enforcement requested that the Panel bar each of the Respondents from associating with any FINRA member firm in any capacity. Enforcement did not request any monetary sanctions if Respondents were barred.

In determining what sanctions were appropriate in this case, the Panel consulted FINRA’s Sanction Guidelines (“Guidelines”),⁹³ and evaluated the conduct of each Respondent individually. Although the Panel found multiple violations by each Respondent, the Panel concluded that it was appropriate to impose a single sanction for each Respondent, rather than

⁹² *Loop Capital Markets, LLC*, Exchange Act Release No. 81898, 2017 SEC LEXIS 3338, at *5 (Oct. 19, 2017).

⁹³ FINRA Sanction Guidelines (2017), <http://www.finra.org/industry/sanction-guidelines>.

separate sanctions for each violation, because of the interrelated nature of the underlying misconduct.⁹⁴

A. Saliba

No Sanction Guidelines specifically address Saliba's misconduct in causing the Firm to violate the Interim Restrictions imposed by MAP, but the Guidelines for "Member Agreement Violations" provided a helpful analogy. Those Guidelines recommend suspending an individual responsible for such violations in any or all capacities for up to two years, and in egregious cases consideration of a bar. In addition to the principal considerations applicable to all violations, the Guidelines list the following principal considerations in determining sanctions for member agreement violations: (1) whether the respondent breached a material provision of the agreement; (2) whether the respondent breached a restriction that was particular to the firm; and (3) whether the firm had applied for, was in the process of applying for, or had been denied a waiver of a restriction at the time of the misconduct.⁹⁵ The Panel found that the first two considerations applied here, and that they were aggravating, because the Interim Restriction prohibiting Saliba from functioning as a principal was material to MAP's consideration of the Firm's CMA and because the Interim Restriction was particular to the Firm, and was intended to address a specific concern regarding Saliba's participation in managing the Firm.

The Panel found that Saliba gave false testimony (regarding his use of computers for Firm business), provided false documentation (the JM Memos, the eighth Younger Memo, and the backdated compliance forms), and made an incomplete production (the failure to produce all computers he used for Firm business) to FINRA. The Sanction Guidelines for "Failure to Respond, Failure to Respond Truthfully or in a Timely Manner, or Providing a Partial or Incomplete Response to Requests Made Pursuant to FINRA Rule 8210" do not specify the appropriate sanctions for providing false testimony or documents, but the case law establishes that a bar is appropriate for such violations in the absence of mitigating circumstances.⁹⁶ For incomplete responses, the Guidelines provide: "Where the individual provided a partial but

⁹⁴ See *Dep't of Enforcement v. Fox & Co. Invs., Inc.*, No. C3A030017, 2005 NASD Discip. LEXIS 5, at *37 (NAC Feb. 24, 2005) ("[W]here multiple, related violations arise as a result of a single underlying problem, a single set of sanctions may be more appropriate to achieve [FINRA's] remedial goals.") (citation omitted), *aff'd*, 58 S.E.C. 873 (2005).

⁹⁵ Guidelines at 44.

⁹⁶ See, e.g., *Ortiz*, 2008 SEC LEXIS 2401, at *32-33 (quoting *Michael A. Rooms*, 58 S.E.C. 220, 229 (2005)):

Just as refusing to respond at all to requests for information undermines NASD's ability to conduct investigations, supplying false information to [FINRA] during an investigation ... "mislead[s] [FINRA] and can conceal wrongdoing" and thereby "subvert[s]" [FINRA's] ability to perform its regulatory function and protect the public interest. Because of the risk of harm to investors and the markets posed by such misconduct, we conclude that the failure to provide truthful responses to requests for information renders the violator presumptively unfit for employment in the securities industry. Where, as here, there are no factors mitigating the risk of future harm, a bar is an appropriate remedy.

incomplete response, a bar is standard unless the person can demonstrate that the information provided substantially complied with all aspects of the request.” In addition to the general considerations, the Guidelines list as a specific consideration in setting sanctions for incomplete responses the importance of the information requested that was not provided as viewed from FINRA’s perspective, and whether the information provided was relevant and responsive to the request. Saliba’s failure to provide all the computers he used for Firm work was potentially critical to Enforcement’s investigation because of the possibility that the computer(s) that Saliba did not produce contained data that would have demonstrated that Saliba created, or caused the creation of, the falsified JM Memos and Younger Memos.⁹⁷

The Panel also found several of the general considerations listed in the Guidelines were relevant and aggravating with respect to all of Saliba’s violations. First, Saliba has accepted no responsibility whatsoever for his actions; second, Saliba’s actions reveal a pattern of misconduct over an extended period; third, Saliba attempted to conceal his misconduct and mislead FINRA regulators, and to that end provided false and incomplete information; and fourth, Saliba’s violation of the Interim Restrictions was attributable to at least recklessness in failing to understand and comply with the prohibition against acting as a principal, and his provision of false and incomplete information to FINRA was intentional.⁹⁸ All these factors are aggravating; the Panel found no mitigating circumstances.

Taking all these circumstances into consideration, the Panel concluded that the appropriate sanction was to bar Saliba from association with any FINRA member firm in any capacity. In light of the bar, and considering Enforcement’s recommendation that no monetary sanctions be imposed if Saliba was barred, the Panel did not impose any fine or other monetary sanction for Saliba’s violations.

B. Younger

The Panel found that Younger provided false testimony to FINRA in his OTR and failed to reasonably supervise Saliba to ensure his compliance with the Interim Restrictions. As explained with regard to Saliba’s violations, the case law indicates that a bar is the appropriate sanction for false testimony, absent mitigating circumstances.

For failure to supervise, the Guidelines recommend in egregious cases consideration of a suspension of up to two years or a bar. In addition to the general considerations, the Guidelines list specific considerations in setting sanctions for a failure to supervise: (1) whether the respondent ignored “red flag” warnings that should have resulted in additional supervisory scrutiny; (2) the nature, extent, size, and character of the underlying misconduct; and (3) the quality and degree of the supervisor’s implementation of the firm’s supervisory procedures and controls.⁹⁹ The Panel found that (1) Saliba’s activities, including his involvement in hiring

⁹⁷ Guidelines at 33.

⁹⁸ Guidelines at 7-8.

⁹⁹ Guidelines at 104.

Younger and other Firm personnel and negotiating and signing investment banking agreements on behalf of the Firm in capacities that indicated he was a principal, were red flags that should have led Younger to exercise greater supervisory scrutiny; (2) Saliba was extensively involved in all areas of Firm management over an extended period; and (3) Younger failed to establish and implement any procedures and controls to ensure that the Firm would comply with the Interim Restrictions. All those circumstances were aggravating factors. In addition, the Panel found that (1) Younger failed to acknowledge any responsibility for his actions; (2) assisted Saliba in attempting to conceal his violations of the Interim Restrictions by falsifying the Younger Memos; and (3) intentionally provided false information to FINRA, all of which are also aggravating factors. The Panel found no mitigating factors applicable to Younger's violations.

Taking all these circumstances into account, the Panel concluded that the appropriate sanction was to bar Younger from association with any FINRA member firm in any capacity. As with Saliba, in light of the bar and considering Enforcement's recommendation that no monetary sanctions be imposed if Younger was barred, the Panel did not impose any fine or other monetary sanction for Younger's violations.

C. Tabizon

The Panel found that Tabizon provided falsified Firm records to FINRA examiners and caused the Firm to maintain inaccurate books and records, in the form of the backdated compliance forms. As explained with regard to Saliba's violations, the case law indicates that a bar is the appropriate sanction for providing false information to FINRA, absent mitigating circumstances.

For "Record Keeping" violations, the Guidelines recommend, where aggravating circumstances predominate, consideration of a suspension of up to two years or a bar. In addition to the general considerations, the Guidelines list specific considerations: (1) the nature and materiality of the inaccurate information; (2) the nature of the records at issue; (3) whether the inaccurate records were attributable to intentional, reckless, or negligent conduct; (4) whether the inaccurate records occurred over an extended period of time or involved a pattern or patterns of misconduct; and (5) whether the inaccurate records allowed other misconduct to occur or to escape detection.¹⁰⁰

The Panel found that Tabizon's use of his personal email to send the compliance forms to Mansourian's personal email was intentional, to avoid having the email saved in the Firm's email records where it would be available to FINRA examiners. The Panel rejected as not credible Tabizon's claim that he sent the email from his personal account because he was home at the time and sent it to Mansourian's personal account by accident. Tabizon's claim is highly implausible considering Mansourian's subsequent use of his personal email to send the forms to the personal emails of Firm GSRs, with the instruction to return the backdated forms to Mansourian's personal email. In those circumstances, the Panel found Tabizon's use of his and

¹⁰⁰ Guidelines at 29.

Mansourian's personal email accounts was intentional. Further, the Panel found that Tabizon's use of his personal email was to assist in concealing the backdating of the Firm's compliance forms from FINRA's examiners. As explained above, the Panel rejected Tabizon's claim that an examiner knew of and approved the Firm's solicitation and submission of backdated forms.

The Panel also found several aggravating general considerations. Tabizon accepted no responsibility for his actions; his actions were intentional; and his actions in submitting backdated forms were intended to mislead FINRA examiners. The Panel found no mitigating circumstances applicable to Tabizon's violations.

Taking all these circumstances into account, the Panel concluded that the appropriate sanction was to bar Tabizon from association with any FINRA member firm in any capacity. As with Saliba and Younger, in light of the bar and considering Enforcement's recommendation that no monetary sanctions be imposed if Tabizon was barred, the Panel did not impose any fine or other monetary sanction for Tabizon's violations.

D. Mansourian

The Panel found that Mansourian solicited falsified compliance forms knowing that those forms would be submitted to FINRA examiners and caused the Firm to maintain inaccurate records through his use of private email accounts and solicitation of backdated compliance forms. As explained with respect to the other Respondents' violations, the appropriate sanction for participating in the submission of falsified documents to FINRA is a bar, absent mitigating circumstances, while the appropriate sanction for causing the Firm to maintain inaccurate records, where aggravating circumstances predominate, is a suspension of up to two years or a bar.

Many of the same aggravating circumstances that applied to the other Respondents applied to Mansourian as well. Like the other Respondents, he accepted no responsibility for his actions, asserting that he had merely followed the directions of his supervisors. In addition, Mansourian's lack of candor was particularly disturbing. Mansourian's explanation for disavowing his OTR testimony, in which he attributed his actions to Saliba, was not credible. His insistence that he recalled virtually nothing about the events that led to him sending the email soliciting backdated compliance forms coupled with his sudden purported recollection of Tabizon supposedly dictating the text of his email and the manner in which it was sent was also not believable.

The Panel did not credit Mansourian's testimony that he acted at the direction of Tabizon; indeed, for reasons explained above, the Panel did not find any of Mansourian's self-serving OTR or hearing testimony credible. Rather, the Panel found that Mansourian treated FINRA's

investigative and hearing processes with a disdain that, together with the nature of his violations, strongly suggests he is unwilling or unable to conform his conduct to regulatory requirements.¹⁰¹

Taking all these circumstances into account, the Panel concluded that the appropriate sanction was to bar Mansourian from association with any FINRA member firm in any capacity. As with the other Respondents, in light of the bar and considering Enforcement's recommendation that no monetary sanctions be imposed if Mansourian was barred, the Panel did not impose any fine or other monetary sanction for Mansourian's violations.

V. Order

The Extended Hearing Panel concludes that (1) Respondent Saliba caused the Firm to violate Interim Restrictions imposed by MAP, in violation of FINRA Rule 2010, and provided false testimony and documentation and incomplete information to FINRA, in violation of FINRA Rules 8210 and 2010; (2) Respondent Younger gave false testimony to FINRA, in violation of FINRA Rules 8210 and 2010, and failed to reasonably supervise Saliba, in violation of NASD Rules 3010(a) and (b) and FINRA Rule 2010; (3) Respondent Tabizon provided falsified Firm documentation to FINRA, in violation of FINRA Rule 2010, and caused the Firm to maintain inaccurate books and records, in violation of FINRA Rules 4511 and 2010; and (4) Respondent Mansourian participated in the creation and submission of falsified Firm records to FINRA, in violation of FINRA Rule 2010, and caused the Firm to maintain inaccurate books and records, in violation of FINRA Rules 4511 and 2010.

For their violations, each Respondent is barred from association with any FINRA member firm in any capacity. No monetary sanctions are imposed against any of the Respondents, but Respondents, jointly and severally, are ordered to pay hearing costs of \$12,184.82, which includes a \$750 administrative fee and \$11,434.82 for the cost of the hearing transcripts. If this decision becomes FINRA's final disciplinary action, the bars will take immediate effect.¹⁰²



David M. FitzGerald
Hearing Officer
For the Extended Hearing Panel

¹⁰¹ The Panel was troubled by Mansourian's testimony that he has qualified as a principal and is currently working for a FINRA member firm of which Saliba is the CEO, supervising approximately six registered representatives. Mansourian's refusal to acknowledge that his conduct was improper and his apparent disdain for FINRA's disciplinary process indicate that he should not be supervising other registered individuals.¹⁰¹

¹⁰² The Extended Hearing Panel has considered and rejects without discussion all other arguments of the parties.

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