

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOHN LOWRY  
(CRD No. 4336146),

and

KIM MONCHIK  
(CRD No. 2528972),

Respondents.

Disciplinary Proceeding  
No. 2022075597101

Hearing Officer–BDC

**EXTENDED HEARING PANEL  
DECISION**

March 27, 2026

**Kim Monchik and John Lowry are each fined \$20,000 and suspended in all capacities for two years for violating FINRA Rules 8210 and 2010 by failing to respond timely to requests for documents and information issued pursuant to FINRA Rule 8210. Lowry is also fined \$30,000 and suspended for two years in all principal capacities for violating FINRA Rules 3110(a) and 2010 by failing to supervise and failing to maintain a reasonable supervisory system to ensure compliance with FINRA Rule 8210.**

*Appearances*

For Complainant: Brody Weichbrodt, Esq., Savvas Foukas, Esq., John R. Baraniak, Jr., Esq.,  
Department of Enforcement, Financial Industry Regulatory Authority

For Respondent John Lowry: Richard Babnick, Esq., Michael Ference, Esq., John Elliott, Esq.,  
Sichenzia Ross Ference Carmel LLP

For Respondent Kim Monchik: Barry Bordetsky, Esq., Law Offices of Barry M. Bordetsky

## DECISION

### I. Introduction

FINRA's Department of Enforcement filed a Complaint against Respondents John Lowry and Kim Monchik. The Complaint consists of three causes of action. In the first cause of action, the Complaint alleges that, between June 2021 and October 2023 ("Relevant Period"), Monchik failed to respond timely to three initial requests for documents and information issued to Spartan Capital Securities, LLC ("Spartan" or the "Firm") under FINRA Rule 8210, and did not fully respond until after FINRA issued four follow-up Rule 8210 requests and initiated three expedited proceedings against the Firm under FINRA Rule 9552 to compel compliance.<sup>1</sup> According to the Complaint, by failing to timely respond to the requests for documents and information, Monchik violated FINRA Rules 8210 and 2010.<sup>2</sup>

The second cause of action alleges that, between May 2022 and October 2023, Lowry and Monchik failed to respond timely to two initial requests for documents and information issued to Lowry under FINRA Rule 8210, and did not fully respond until after FINRA issued two follow-up Rule 8210 requests and initiated two expedited proceedings under FINRA Rule 9552 to compel compliance.<sup>3</sup> As a result, the Complaint alleges, Lowry and Monchik violated FINRA Rules 8210 and 2010.<sup>4</sup>

In the third cause of action, the Complaint alleges that, from June 2021 through August 2023, Lowry failed to maintain a reasonable system for Spartan's compliance with FINRA Rule 8210.<sup>5</sup> Cause three also alleges that, between May 2022 and October 2023, Lowry failed to supervise Monchik's responses to Rule 8210 requests issued to Lowry.<sup>6</sup> As a result, the Complaint alleges, Lowry violated FINRA Rules 3110(a) and 2010.<sup>7</sup>

Lowry and Monchik each filed Answers disputing the allegations and asserting various affirmative defenses. Both Respondents requested a hearing. In her Answer, Monchik contends she did not violate Rules 8210 and 2010 as alleged in the Complaint because FINRA did not direct the Rule 8210 requests to her individually.<sup>8</sup> Rather, all of the requests at issue in the Complaint were directed either to Spartan or to Lowry individually. In his Answer, Lowry contends he worked diligently to respond to the requests issued to him, and he reasonably

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<sup>1</sup> Complaint ("Compl.") ¶¶ 1, 122, 123.

<sup>2</sup> Compl. ¶¶ 1, 124.

<sup>3</sup> Compl. ¶¶ 1, 126.

<sup>4</sup> Compl. ¶¶ 1, 128.

<sup>5</sup> Compl. ¶ 2.

<sup>6</sup> Compl. ¶ 2.

<sup>7</sup> Compl. ¶¶ 2, 139.

<sup>8</sup> Monchik Answer, First Affirmative Defense.

delegated responsibility for the handling of Spartan’s responses to Rule 8210 requests to Spartan’s compliance department.<sup>9</sup>

The parties participated in a hearing before an Extended Hearing Panel (“Hearing Panel”). After considering the hearing testimony, the admitted exhibits, and the briefs filed by the parties, the Hearing Panel concludes, as explained below, that: (1) Monchik violated FINRA Rules 8210 and 2010 by failing to respond timely to requests for documents and information issued to Spartan under Rule 8210; (2) Lowry and Monchik violated FINRA Rules 8210 and 2010 by failing to respond timely to requests for information and documents issued to Lowry under Rule 8210; and (3) Lowry violated FINRA Rules 3110(a) and 2010 by failing to supervise and failing to maintain a reasonable supervisory system to ensure Spartan complied with Rule 8210 by timely responding to requests for documents and information. Based on these conclusions, the Hearing Panel suspends Monchik for two years in all capacities and fines her \$20,000. The Hearing Panel also suspends Lowry for two years in all capacities, suspends him for two years in all principal capacities, and fines him a total of \$50,000.

## **II. Findings of Fact**

### **A. John Lowry**

Lowry entered the securities industry in 2000 and first registered with FINRA as a General Securities Representative (“GSR”) through his association with a member firm in 2001.<sup>10</sup> In 2005, Lowry registered with FINRA as a General Securities Principal (“GSP”) while associated with another member firm.<sup>11</sup> Lowry has been associated with Spartan since 2008.<sup>12</sup> Through his association with Spartan, Lowry is registered with FINRA as a GSR, GSP, Investment Banking Representative, Investment Banking Principal, and Operations Professional and is therefore subject to FINRA’s jurisdiction.<sup>13</sup>

Between 2007 and 2014, Lowry was the co-Chief Executive Officer (“CEO”) of Spartan and, since 2014, the sole CEO.<sup>14</sup> Since 2009, Lowry has also been the indirect owner of Spartan through his 100% ownership of Spartan Capital Holdings, LLC.<sup>15</sup>

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<sup>9</sup> Lowry Answer, First, Second, and Fourth Affirmative Defenses.

<sup>10</sup> Joint Stipulations (“Stip.”) ¶ 1.

<sup>11</sup> Stip. ¶ 1.

<sup>12</sup> Stip. ¶ 1.

<sup>13</sup> Stip. ¶ 2.

<sup>14</sup> Stip. ¶ 3.

<sup>15</sup> Stip. ¶ 3; Hearing Transcript (“Tr.”) 137, 159–60.

## **B. Kim Monchik**

Monchik entered the securities industry and first registered with FINRA as a GSR and GSP through her association with another member firm in 2000.<sup>16</sup> She has been associated with Spartan since 2008.<sup>17</sup> Through her association with Spartan, Monchik is registered with FINRA as a GSR, GSP, Securities Trader, Investment Banking Representative, Investment Banking Principal, and Operations Professional and is therefore subject to FINRA's jurisdiction.<sup>18</sup>

Since 2015, Monchik has been the Chief Administrative Officer ("CAO") of Spartan and has reported directly to Lowry.<sup>19</sup> From July 2020 to December 2021, Monchik also was the Firm's interim Chief Compliance Officer ("CCO").<sup>20</sup> During the Relevant Period, the Firm's Uniform Application for Broker-Dealer Registration (Form BD) listed Monchik as the Firm's contact employee.<sup>21</sup>

## **C. Spartan's Supervisory Structure**

Monchik has supervised the Firm's compliance department since 2015, either directly as the interim CCO, or indirectly as the CAO.<sup>22</sup> From July 2020 through November 2021, when Monchik was the Firm's interim CCO, Spartan's compliance department consisted of Monchik, Anthony Monaco, the former CCO at Spartan, and Maureen Toale, who focused on registration and disclosure matters.<sup>23</sup> Spartan hired Randy Hechler as a compliance professional in November 2021 and a new CCO, Amelia Chin, in December 2021.<sup>24</sup>

The Firm also had several Financial and Operations Principals ("FINOP") during the Relevant Period. From 2017 until September 2021, Lee MacLeod was Spartan's FINOP.<sup>25</sup> Following his departure, Spartan contracted with Accounting and Compliance International ("ACI") to provide a new FINOP, Robert Peters, who served in the role until February 2022.<sup>26</sup>

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<sup>16</sup> Stip. ¶ 4.

<sup>17</sup> Stip. ¶ 4.

<sup>18</sup> Stip. ¶ 5.

<sup>19</sup> Stip. ¶ 6; Tr. 86.

<sup>20</sup> Stip. ¶ 6.

<sup>21</sup> Stip. ¶ 7; Joint Exhibit ("JX-") 1; Tr. 325–26.

<sup>22</sup> Stip. ¶ 150; Tr. 313–14.

<sup>23</sup> Tr. 327–28.

<sup>24</sup> Tr. 328–29.

<sup>25</sup> Tr. 333.

<sup>26</sup> Stip. ¶ 10; Tr. 333–34.

The Firm then hired Marshall Maddox as the FINOP, who served in that role from March to April 2022.<sup>27</sup> Michael Hewitt was the Firm’s FINOP from April 2022 to April 2023.<sup>28</sup>

During the Relevant Period, Spartan’s compliance department was responsible for regulatory requests issued to the Firm by FINRA.<sup>29</sup> Spartan’s Written Supervisory Procedures (“WSPs”) that were in effect during the Relevant Period state that, when the Firm receives a request, “Compliance should be contacted immediately.”<sup>30</sup> No specific individual in the compliance department is identified in the WSPs. The WSPs also state that, given Spartan’s obligation to provide “a prompt response to regulators’ requests for information,” Spartan must begin the record retrieval process “immediately or as soon as possible after receipt of the request.”<sup>31</sup> Spartan’s WSPs provided no further guidance on the process for responding to Rule 8210 requests or tracking the Firm’s responses to requests.<sup>32</sup>

Lowry relied on the Firm’s compliance department to handle Spartan’s responses to regulatory requests during the Relevant Period, and he did not supervise the preparation of Spartan’s responses to those requests.<sup>33</sup> Lowry was not involved in the Firm’s responses to regulatory requests unless asked by the compliance department.<sup>34</sup> Even if FINRA issued second and third Rule 8210 requests to the Firm because it had not fully responded to a first request, Lowry was not notified.<sup>35</sup> He only expected to be notified about a Rule 8210 request if FINRA issued a notice of suspension to the Firm under Rule 9552 for failing to timely and fully respond.<sup>36</sup> Similarly, Lowry had little to no involvement in responding to Rule 8210 requests issued to him directly, and he relied on Monchik to respond to those requests.<sup>37</sup>

#### **D. Spartan Participates in FINRA’s Coordinated Regulatory Response Program**

In 2020, FINRA launched its Coordinated Regulatory Response Program (“CRRP”). Andrew McElduff, a supervisor at FINRA at that time, testified that one of the goals of the program is to assist firms that have multiple open exams and investigations with FINRA and to coordinate among the different FINRA departments to reduce or eliminate redundancies and

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<sup>27</sup> Stip. ¶ 11; Tr. 333–34.

<sup>28</sup> Stip. ¶ 12.

<sup>29</sup> Stip. ¶ 149.

<sup>30</sup> Complainant’s Exhibit (“CX-\_\_”) 9.

<sup>31</sup> CX-9.

<sup>32</sup> Tr. 352–53.

<sup>33</sup> Tr. 94.

<sup>34</sup> Tr. 94–95, 99–100.

<sup>35</sup> Tr. 115–16, 118.

<sup>36</sup> Tr. 118–19.

<sup>37</sup> Tr. 100–01.

duplicative work.<sup>38</sup> FINRA selected Spartan to participate in the CRRP in 2020 because, at the time, the Firm had many ongoing and lingering open exams and investigations with FINRA and the Firm was having difficulty timely responding to the numerous information requests it was receiving from FINRA.<sup>39</sup> McElduff was the CRRP lead for Spartan and routinely interacted with Monchik and the Firm’s counsel about open regulatory requests.<sup>40</sup>

#### **E. Lowry Forms the Atlas Funds and Iapetus Holdings**

In 2020, Lowry formed the Atlas Funds and Iapetus Holdings (“Iapetus”).<sup>41</sup> The Atlas Funds are a series of investment funds that purportedly purchases shares in private companies expected to conduct initial public offerings (“pre-IPO Companies”).<sup>42</sup> The Atlas Funds purchase the shares primarily from the pre-IPO Companies or from third-party investment funds that own the pre-IPO Company shares.<sup>43</sup> Lowry is the sole owner and Managing Member of the Atlas Funds.<sup>44</sup> Monchik serves as the Vice President and assists in all operations of the Atlas Funds, including conducting due diligence on the pre-IPO Company shares purchased by the funds.<sup>45</sup> Spartan is the placement agent for Atlas Funds and sells interests in the funds to its customers.<sup>46</sup> The Atlas Funds are a Firm-approved outside business activity of Lowry and Monchik.<sup>47</sup>

Lowry also owns Iapetus. Lowry formed the company to purchase and secure shares of pre-IPO Companies, which it then sells to the Atlas Funds.<sup>48</sup> Iapetus receives markups on the sales of shares from Iapetus to Atlas Funds.<sup>49</sup>

#### **F. FINRA Investigates the Firm’s Sale of Interests in the Atlas Funds**

In or around January 2021, FINRA began investigating Spartan’s sales of membership interests in the Atlas Funds after learning of their existence during another examination.<sup>50</sup> As of that time, Spartan had not filed with FINRA the offering documents for the funds and other

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<sup>38</sup> Tr. 933–34.

<sup>39</sup> Tr. 930, 935–37.

<sup>40</sup> Tr. 930, 943–45.

<sup>41</sup> Tr. 76–79.

<sup>42</sup> Tr. 76–79.

<sup>43</sup> Tr. 76–78 (Lowry); Tr. 510 (Monchik).

<sup>44</sup> Tr. 76 (Lowry); Tr. 510–11 (Monchik).

<sup>45</sup> Tr. 81–82.

<sup>46</sup> Tr. 76–77, 79.

<sup>47</sup> Tr. 511.

<sup>48</sup> Tr. 79.

<sup>49</sup> Tr. 562.

<sup>50</sup> Tr. 1171–72.

information, as required under FINRA Rule 5123,<sup>51</sup> so FINRA knew very little about the Atlas Funds when it began its investigation.<sup>52</sup>

## **1. FINRA Issues Requests for Documents and Information to Spartan in 2021**

### **a. March and April 2021 Requests**

In March and April 2021, as part of the Atlas Funds investigation, FINRA staff requested documents and information from Spartan, but not under Rule 8210.<sup>53</sup> FINRA issued the requests through FINRA's Request Manager, an online portal used by FINRA to issue document and information requests and by firms to respond to requests.<sup>54</sup> The first request letter, dated March 19, 2021, sought documents and information related to the formation and marketing of the Atlas Funds, investors in the Atlas Funds, bank accounts for the Atlas Funds, Spartan registered representatives who sold interests in the Atlas Funds, and other documents and information.<sup>55</sup> The second request, dated April 6, 2021, sought information about the Atlas Funds' brokerage accounts, Spartan's due diligence related to the Atlas Fund offerings, and information about Iapetus and its relationship with Lowry, including whether Lowry had disclosed it as an outside business activity and whether it had been approved by the Firm.<sup>56</sup>

According to Monchik, most of the documents requested by FINRA in March and April 2021 were part of Spartan's books and records.<sup>57</sup> That said, Spartan needed additional time to respond. At Monchik's request, FINRA staff granted Spartan extensions of time to respond to both requests, first until May 3, and then until May 19.<sup>58</sup>

Around this time, Kevin Macfadden, an examiner in FINRA's Member Supervision Department, became involved in the Atlas Funds investigation based on his experience with

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<sup>51</sup> FINRA Rule 5123 sets forth filing requirements for member firms that sell shares in certain private placement offerings.

<sup>52</sup> Tr. 1172.

<sup>53</sup> Stip. ¶ 13; JX-6, at 5–11.

<sup>54</sup> See Tr. 1159–60.

<sup>55</sup> JX-6, at 8–10.

<sup>56</sup> JX-6, at 5–6.

<sup>57</sup> Tr. 514–15, 524–25.

<sup>58</sup> JX-96, at 1; JX-97, at 1. The Firm's responses to the March 2021 and April 2021 requests originally were due on April 9 and April 23, respectively. See JX-6, at 5, 8.

private placements and pre-IPO investment funds.<sup>59</sup> He later became the lead investigator on the matter and drafted the Rule 8210 requests issued in the investigation.<sup>60</sup>

On June 1, 2021, Monchik produced to FINRA through Request Manager some documents responsive to the March and April 2021 requests, including investor subscription agreements (item 8 of the March 2021 request), bank statements (item 12 of the March 2021 request), WSPs (item 6 of the March 2021 request), and certificates of formation and operating agreements for Atlas Fund entities (item 1 of the April 2021 request).<sup>61</sup> But Monchik did not produce the vast majority of the information and documents requested in the March and April 2021 requests.<sup>62</sup>

### **b. FINRA Issues First Rule 8210 Request**

On June 3, 2021, FINRA issued a request for documents and information under Rule 8210 to Spartan (“First June 2021 Spartan Request”).<sup>63</sup> The request letter set forth the items that had not been produced in response to the March and April 2021 requests and included copies of the March and April 2021 requests.<sup>64</sup> Specifically, FINRA stated that Spartan failed to respond or fully respond to 15 of 19 items from the March 2021 request and five of six items from the April 2021 request.<sup>65</sup> FINRA directed the First June 2021 Spartan Request to Monchik in her capacity as Spartan’s CAO, and she was responsible for responding to the request.<sup>66</sup> Spartan’s response was due by June 17, 2021. A few days before the deadline, Monchik represented to FINRA that she would “be responding prior to the [] deadline,”<sup>67</sup> but neither Monchik nor anyone else at the Firm provided any responsive documents on or before June 17.<sup>68</sup>

On June 21 and 23, a few days after the deadline, Monchik, on behalf of Spartan, submitted a partial but incomplete response.<sup>69</sup> She produced documents responsive to most of the remaining open items from the March 2021 request but no other documents responsive to the April 2021 request.<sup>70</sup> In her written response letter, she claimed that documents responsive to

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<sup>59</sup> Tr. 1162–63.

<sup>60</sup> Tr. 1162, 1164.

<sup>61</sup> JX-96, at 1–2; JX-97, at 1; JX-6, at 5, 8–9.

<sup>62</sup> See JX-6.

<sup>63</sup> Stip. ¶ 13; JX-6.

<sup>64</sup> Stip. ¶ 13; JX-6.

<sup>65</sup> JX-6, at 1.

<sup>66</sup> JX-6, at 1; Tr. 537.

<sup>67</sup> JX-7, at 6–7.

<sup>68</sup> See JX-96; JX-97.

<sup>69</sup> JX-96; JX-97.

<sup>70</sup> JX-96, at 2; JX-97, at 1.

items 11 (the list of bank accounts maintained by Atlas Funds) and 18 (evidence that shares in pre-IPO companies were purchased) of the March 2021 request were “attached.”<sup>71</sup> But, in fact, she produced nothing in response to item 11 or item 18 at that time.<sup>72</sup> In addition, while she produced a general ledger for the Atlas Funds in response to item 10 of the March 2021 request, she did not provide the password required to open the document so FINRA was unable to determine whether the Firm provided the information FINRA requested.<sup>73</sup>

On June 23, Monchik informed FINRA by email that she had uploaded additional documents through Request Manager but had a few more to provide.<sup>74</sup> She also stated that she had added comments related to a few items in Request Manager.<sup>75</sup> In the Request Manager comment dated June 21, Monchik informed FINRA that the “Response to item 11 [was] included in item 2.”<sup>76</sup> Monchik also represented in her June 23 email that the Firm’s response to the remaining outstanding requests should be completed by the morning of June 24.<sup>77</sup>

FINRA responded to Monchik on June 23 and outlined the deficiencies in the Firm’s response.<sup>78</sup> FINRA advised Monchik that she had not responded to item 18 of the March 2021 request or items 2 through 6 of the April 2021 request.<sup>79</sup> As for item 11 of the March 2021 request (list of bank accounts), FINRA told Monchik that it had reviewed the Firm’s document production and the information requested in item 11 was not included in the Firm’s response to item 2, as Monchik claimed.<sup>80</sup> The next day, June 24, Monchik emailed FINRA and advised that she was waiting on information from counsel and that “the request will be completed by tomorrow.”<sup>81</sup> But Spartan produced no additional documents on June 25, nor did Monchik advise

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<sup>71</sup> JX-5, at 2. The letter is dated May 14, 2021, but was not provided to FINRA until June 21. JX-96, at 2. By indicating the documents were attached, it appears Monchik was referring in some instances to documents produced via Request Manager.

<sup>72</sup> JX-96, at 2; JX-7, at 3–4.

<sup>73</sup> JX-7, at 1–2.

<sup>74</sup> JX-7, at 2–3.

<sup>75</sup> JX-7, at 2–3.

<sup>76</sup> JX-96, at 2.

<sup>77</sup> JX-7, at 2–3.

<sup>78</sup> JX-7, at 1–2.

<sup>79</sup> JX-7, at 1–2.

<sup>80</sup> JX-7, at 1–2. Respondents now contend the list of Atlas Fund bank accounts that Enforcement alleged was missing was actually produced to FINRA back on June 1, 2021 with the Atlas Fund bank statements (item 12 of the March 2021 request). Lowry Post-Hearing Brief (“Lowry Br.”) at 6; Monchik Post-Hearing Brief (“Monchik Br.”) at 8–9; *see also* JX-96, at 2. According to Respondents, Monchik’s comment in Request Manager had a typographical error, and the “2” referred to item “12.” Monchik did not testify about this typographical error. Rather, Lowry and Monchik provided this explanation for the first time during the post-hearing briefing. Ultimately, the record is inconclusive as to when the Firm first provided a response to item 11.

<sup>81</sup> JX-7, at 1.

FINRA at that time that she was having trouble obtaining any documents responsive to FINRA's requests.<sup>82</sup>

### c. FINRA Issues Second Rule 8210 Request

FINRA issued a second Rule 8210 request to Spartan on June 25, 2021 ("Second June 2021 Spartan Request") listing the outstanding items from the March and April 2021 requests.<sup>83</sup> FINRA again addressed the letter to Monchik in her capacity as the Firm's CAO, and she was responsible for responding.<sup>84</sup> Spartan's response to the request was due by July 13, 2021.<sup>85</sup> Neither Monchik nor anyone else at the Firm responded by the deadline or requested an extension.<sup>86</sup>

On July 27, two weeks after the deadline, Monchik responded to item 11 of the March 2021 request by providing the list of Atlas Funds bank accounts.<sup>87</sup> The next day, she provided a written response to the April 2021 request and some documents responsive to item 3 of that request letter (research "pitchbooks" that were part of the due diligence files) and written responses to items 4 and 5, but she did not provide any documents responsive to item 6 of the April 2021 request (list of Lowry's approved private securities transactions).<sup>88</sup> Monchik noted in her response letter that the Firm did not maintain a list of approved private securities transactions.<sup>89</sup> In addition, she still did not provide documents responsive to item 18 of the March 2021 request, which sought evidence of all shares purchased in connection with each series of the Atlas Funds.<sup>90</sup>

On August 11, McElduff arranged a call with Monchik and FINRA exam staff to review the outstanding items. McElduff testified he did this because he was in a more senior position

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<sup>82</sup> Tr. 556–57, 564.

<sup>83</sup> Stip. ¶ 20; JX-9.

<sup>84</sup> JX-9; Tr. 360, 537.

<sup>85</sup> JX-9; Stip. ¶ 24.

<sup>86</sup> Tr. 1197–98.

<sup>87</sup> JX-96, at 2. As noted *supra* at note 80, in their post-hearing briefs, Respondents contend Monchik produced the list of bank accounts on June 1. Respondents contend that Monchik "resubmitted the list that had been in the folder for item 12" to placate FINRA. Monchik Br. at 15 n.7; Lowry Br. at 11 n.5.

<sup>88</sup> JX-11; JX-97, at 1–2.

<sup>89</sup> JX-11, at 3.

<sup>90</sup> JX-9, at 1, 12; JX-96, at 2; JX-97, at 1–2 (showing pitchbooks for three of the six offerings for which FINRA was seeking due diligence files). Respondents argue that some documents evidencing the purchase of shares (item 18) were included as part of Spartans' due diligence submission. Monchik Br. at 10; Lowry Br. at 7. Even assuming that is true, there is no evidence in the record that Monchik ever advised FINRA that documents responsive to item 18 were included with the due diligence submission. And in any event, Monchik clearly had not provided all documents responsive to item 18 because additional responsive documents were produced after FINRA initiated an expedited proceeding against the Firm. *See* JX-16, at 1–2.

than the exam staff handling the Atlas Funds investigation and he wanted to “level set” as to what items remained open from the outstanding Rule 8210 requests.<sup>91</sup> McElduff followed up that same day with an email to Monchik setting forth what remained outstanding from the March 2021 request (missing information from general ledger produced in response to item 10 and documents responsive to item 18), and the April 2021 request (incomplete due diligence files in response to item 3 and a list of approved private securities transactions for Lowry in response to item 6).<sup>92</sup> In his email, McElduff, on behalf of the exam staff, also requested additional follow-up information that he had not requested previously, including evidence the Firm received advice of counsel in connection with information sought in item 14 of the March 2021 request and articles of incorporation for Iapetus.<sup>93</sup> Neither Monchik nor anyone else at the Firm submitted any additional responsive documents or information in the days following the August 11 call and email.<sup>94</sup>

#### **d. FINRA Issues Third Rule 8210 Request**

On August 23, 2021, FINRA sent a third request to Spartan under FINRA Rule 8210 (“August 2021 Spartan Request”) listing the outstanding items that Spartan had not produced.<sup>95</sup> As for the March 2021 request, FINRA identified the information missing from Spartan’s response to item 10 (general ledger and payout report) and stated that no documents had been provided in response to item 18 (evidence that shares were purchased).<sup>96</sup> FINRA also noted that the response to item 3 of the April 2021 request was incomplete and that Spartan had not provided information related to item 6 of the April 2021 request (Lowry’s private securities transactions).<sup>97</sup> FINRA directed the August 2021 Spartan Request to Monchik in her capacity as the Firm’s CAO and noted it was the “3<sup>rd</sup> & FINAL ATTEMPT” to obtain the information.<sup>98</sup> Spartan’s response to the August 2021 Spartan Request was due no later than September 7, 2021, and FINRA advised the Firm that there would be “no additional extensions granted to this request.”<sup>99</sup>

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<sup>91</sup> Tr. 963–64.

<sup>92</sup> JX-12; Tr. 587–92; Tr. 962–64. McElduff testified that the email he sent was actually drafted by the exam staff handling the matter. *See* Tr. 963–64.

<sup>93</sup> JX-12.

<sup>94</sup> Tr. 1206; JX-96, at 2; JX-97, at 2.

<sup>95</sup> Stip. ¶ 27; JX-13.

<sup>96</sup> JX-13, at 1–2.

<sup>97</sup> JX-13, at 2–3. Since the Firm previously responded that it does not maintain a list of Lowry’s approved private securities transactions (item 6 of the April 2021 request), FINRA narrowed the request and asked for evidence of the approvals for his private securities transactions. JX-13, at 3; *see also* Tr. 1205–06.

<sup>98</sup> JX-13.

<sup>99</sup> JX-13, at 3.

Despite the warning, neither Monchik nor anyone else at Spartan responded to the request by the September 7 deadline.<sup>100</sup> Two days later, on September 9, Monchik emailed FINRA staff and asked if there was “anything we can do” to obtain an extension.<sup>101</sup> She testified that FINRA was frustrated at the time because she had produced non-responsive or duplicative material in response to some requests.<sup>102</sup> Following a telephone call with FINRA on September 10 to discuss the outstanding items, Monchik emailed FINRA staff on September 13 and apologized for providing incomplete or non-responsive information and suggested a re-submission of all responsive documents and information.<sup>103</sup> FINRA staff agreed to accept a re-submission of previous productions, this time including the outstanding items, but advised Monchik that this was “not an extension being granted by FINRA but rather the [F]irm satisfying the previously requested and currently overdue items.”<sup>104</sup> FINRA also advised Monchik that they “[l]ook forward to the rolling production this week with all items provided by Monday [September 20].”<sup>105</sup> But that did not happen.<sup>106</sup> On September 27, Monchik uploaded to Request Manager another partial response to item 10 of the March 2021 request and item 3 of the April 2021 request.<sup>107</sup>

#### **e. FINRA Issues a Notice of Suspension Under Rule 9552**

Because Spartan had not fully complied with the First and Second June 2021 and August 2021 Spartan Requests, on October 4, 2021, FINRA issued a notice of suspension under FINRA Rule 9552 informing the Firm that it would be suspended on October 28, 2021, unless it fully complied with the outstanding requests.<sup>108</sup> Specifically, FINRA advised Spartan that it still needed to fully respond to items 10 (commission payout information missing from the general ledger produced by the Firm) and 18 (no response provided) of the March 2021 request, and items 3 (missing and incomplete due diligence files) and 6 (Lowry’s approved private securities transactions) of the April 2021 request.<sup>109</sup>

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<sup>100</sup> Tr. 1211–12.

<sup>101</sup> JX-14, at 5.

<sup>102</sup> Tr. 1802–03.

<sup>103</sup> JX-14, at 3; Tr. 1801–03.

<sup>104</sup> JX-14, at 3.

<sup>105</sup> JX-14, at 3.

<sup>106</sup> Respondents’ Exhibit (“RX-” ) 23. Counsel for the Firm advised FINRA on September 20, 2021 that Monchik was sick and would be unable to produce the documents as originally planned. RX-23, at 1.

<sup>107</sup> JX-98, at 2.

<sup>108</sup> JX-15. Under Rule 9552(a), “If a member, person associated with a member or person subject to FINRA’s jurisdiction fails to provide any information . . . FINRA staff may provide written notice to such member or person specifying the nature of the failure and stating that the failure to take corrective action within 21 days after service of the notice will result in suspension of membership or of association of the person with any member.”

<sup>109</sup> JX-15, at 1.

On October 27, 2021, one day before the suspension took effect, Spartan requested a hearing with FINRA’s Office of Hearing Officers, which stayed the suspension.<sup>110</sup> In its request for a hearing, Spartan represented that it had produced to FINRA on October 27 additional documents responsive to the outstanding requests, including a spreadsheet showing commission payouts not previously provided in response to item 10 of the March 2021 request, confirmation letters evidencing Atlas Fund’s purchases of shares in response to item 18 of the March 2021 request, and due diligence files in response to item 3 of the April 2021 request.<sup>111</sup>

As for item 6 of the April 2021 request, which sought information about Lowry’s approved private securities transactions, Spartan, through counsel, responded “[w]ritten response provided and submitted via FINRA Gateway.”<sup>112</sup> But no list of Lowry’s private securities transactions was provided at that time.<sup>113</sup> In fact, the Firm previously told FINRA that it does not maintain such a list and its counsel claimed that Rule 8210 does not require a member firm to create new documents in order to respond to a request.<sup>114</sup> Yet this is information Monchik had when FINRA sent the April 2021 request to the Firm.<sup>115</sup>

Spartan also represented in its hearing request that, with its latest submission on October 27, it “ha[d] now fully responded to [FINRA’s] previous requests.”<sup>116</sup> Even so, a few items remained outstanding, including the information related to Lowry’s private securities transactions (item 6 of the April 2021 request). On November 26, 2021, Spartan produced additional transaction confirmation letters, confirmed for the first time that it had produced all due diligence files in its possession, and provided a list of all of Lowry’s approved private securities transactions.<sup>117</sup> FINRA then dismissed the expedited proceeding.<sup>118</sup>

Macfadden testified that the documents and information FINRA was seeking should have been readily available to the Firm and easily produced to FINRA.<sup>119</sup> He also testified that the

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<sup>110</sup> JX-16. Rule 9552(e) provides that “[a] member or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559.”

<sup>111</sup> JX-16, at 1–2.

<sup>112</sup> JX-16, at 2.

<sup>113</sup> *See* Tr. 1227.

<sup>114</sup> JX-11, at 3; *see also* JX-19, at 2–3.

<sup>115</sup> Tr. 614–16.

<sup>116</sup> JX-16, at 2.

<sup>117</sup> JX-19. In the Firm’s response, it explained that “[b]ecause the securities purchased by the [Atlas Funds] are private, non-publicly registered securities, many of the types of documents which would normally be included in a typical ‘due diligence’ file, do not exist, as there is not much publicly available information for such issuers.” *See also* Tr. 1225 (Macfadden testifying that he first learned that Spartan had produced all due diligence files in its possession when he received the Firm’s November 26, 2021 response).

<sup>118</sup> Stip. ¶ 41.

<sup>119</sup> Tr. 1173–75.

information requested was important to FINRA’s investigation because he needed to determine who was raising funds from investors, the amount raised, and what securities were purchased in order to ensure the Firm was complying with FINRA rules.<sup>120</sup>

Following the notice of suspension issued to Spartan in October 2021, Lowry had no discussions with anyone in the Firm’s compliance department about how to prevent future delays in responding to Rule 8210 requests.<sup>121</sup> He also failed to direct anyone in the Firm’s compliance department to make any process changes to prevent future delays in responding to Rule 8210 requests.<sup>122</sup> Monchik testified that the Firm allocated additional resources to responding to regulatory requests after receiving the October 2021 notice of suspension but she was unable to provide any specific measures taken other than “work[ing] with counsel and tr[ying] to comply with whatever was missing.”<sup>123</sup> Notably, she had testified at her on-the-record interview in September 2022 that the Firm did not allocate any additional resources to responding to regulatory requests after receiving the October 2021 notice of suspension.<sup>124</sup>

Lowry testified that, during the Relevant Period, the only improvement to the process for responding to Rule 8210 requests that he directed was the hiring of additional compliance staff.<sup>125</sup> However, when pressed at the hearing, he conceded that the new hires were not in response to the Firm’s delays in responding to Rule 8210 requests.<sup>126</sup> While Spartan hired Chin as its new CCO in December 2021, that had nothing to do with the notice of suspension, as the Firm had been seeking to hire a new CCO for more than a year.<sup>127</sup> Furthermore, after the Firm hired Chin, Lowry did not direct her to make any changes to Spartan’s processes and procedures for handling Rule 8210 requests.<sup>128</sup> The only process change Chin implemented was the use of an Excel spreadsheet to track regulatory requests.<sup>129</sup> But the spreadsheet did not identify who at Spartan was responsible for particular requests.<sup>130</sup>

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<sup>120</sup> Tr. 1172–73, 1175.

<sup>121</sup> Tr. 123–24.

<sup>122</sup> Tr. 126–28.

<sup>123</sup> Tr. 604–05.

<sup>124</sup> Tr. 606–08.

<sup>125</sup> Tr. 233–34.

<sup>126</sup> Tr. 234–35.

<sup>127</sup> Tr. 87–88.

<sup>128</sup> Tr. 128, 132–33.

<sup>129</sup> Tr. 365–66; *see* JX-3A.

<sup>130</sup> Tr. 380–81; JX-3A.

## 2. FINRA Issues Rule 8210 Requests to Lowry in 2022 in Connection with the Atlas Funds Investigation

### a. First Rule 8210 Request to Lowry

FINRA's investigation of the Atlas Funds continued in 2022. On May 6, 2022, FINRA issued a Rule 8210 request for documents and information to Lowry ("May 2022 Lowry Request").<sup>131</sup> FINRA addressed the May 2022 Lowry Request to counsel for Lowry, and Monchik received a copy of the letter.<sup>132</sup> Lowry delegated responsibility for responding to the request to Monchik, and she accepted that responsibility.<sup>133</sup> Lowry's response was due by May 20, 2022.<sup>134</sup>

The request letter contained 23 categories of documents related to the Atlas Funds, including new account forms and bank statements for several Atlas-related accounts, general ledgers prepared by the Atlas Funds' administrator, PKF O'Connor Davies, LLP ("PKF"), engagement agreements with PKF, tax returns, a blotter of all investors in the Atlas Funds, copies of offering documents provided to investors, and transaction-related documents for various Atlas Fund offerings.<sup>135</sup> Because a few requests sought documents in the possession of third parties, including TD Bank (account-related forms and statements (items 1 and 2)) and PKF (general ledgers and financial statements (items 4, 6, and 8)), Monchik reached out to those entities. In early May 2022, Monchik sought account-related forms (item 1) from TD Bank but the bank ultimately refused to provide the documents claiming they were confidential records of the bank.<sup>136</sup> On May 25, 2022, after the May 20 deadline for responding to the May 2022 Lowry Request, Monchik sought copies of account statements from TD Bank (item 2) and requested that the bank "put a rush on the request."<sup>137</sup> Lowry testified that he and Monchik also contacted PKF about the general ledgers and financial statements PKF was preparing.<sup>138</sup>

By the May 20 deadline, neither Lowry nor anyone else on his behalf had responded to FINRA's request.<sup>139</sup> A few days after the deadline, Lowry's counsel requested a three-week extension.<sup>140</sup> Lowry's counsel informed FINRA that Lowry's mother had recently passed away and Lowry had not been in the office for a few weeks. FINRA granted the extension and set a

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<sup>131</sup> Stip. ¶ 42; JX-22.

<sup>132</sup> Stip. ¶ 43; JX-22.

<sup>133</sup> Stip. ¶ 45; Tr. 623.

<sup>134</sup> Stip. ¶ 46; JX-22.

<sup>135</sup> JX-22, at 1–3.

<sup>136</sup> JX-38, at 5–6, 10.

<sup>137</sup> JX-25, at 2–3.

<sup>138</sup> Tr. 172–74; *see also* JX-26, at 2–3.

<sup>139</sup> JX-23, at 2.

<sup>140</sup> JX-23, at 1.

new deadline of June 13, 2022.<sup>141</sup> But neither Lowry nor anyone on Lowry’s behalf responded in any way to the request by the June 13 extended deadline.<sup>142</sup>

### **b. Second Rule 8210 Request to Lowry**

Because Lowry failed to respond to the May 2022 Lowry Request, FINRA sent him a second Rule 8210 request on June 15, 2022 (“June 2022 Lowry Request”) and included a copy of the May 6 Lowry Request.<sup>143</sup> FINRA addressed the June 2022 Lowry Request to counsel for Lowry, and Monchik received a copy.<sup>144</sup> Once again, Lowry delegated responsibility for responding to the request to Monchik and she took responsibility for responding to the request.<sup>145</sup> Lowry’s response was due by June 29, 2022.<sup>146</sup> On that date, Lowry’s counsel told FINRA staff that “[a] formal Rule 8210 response on behalf of Mr. Lowry” would be uploaded to Request Manager that evening and stated that Lowry was awaiting certain materials from PKF that would impact two or three of Lowry’s responses.<sup>147</sup> But no formal response to the Rule 8210 request was provided that day, and only some of Lowry’s tax returns, a brokerage statement for Iapetus, and an agreement between Atlas Funds and its accounting firm were produced on June 30.<sup>148</sup>

FINRA emailed Lowry’s counsel on June 30 and advised him that Lowry had not provided a written response and had not produced the majority of the requested documents.<sup>149</sup> Lowry’s counsel responded that he believed Monchik would be uploading additional responsive documents to Request Manager that morning.<sup>150</sup> But neither Monchik nor anyone else at the Firm provided any further response until July 5, when Monchik, on behalf of Lowry, provided FINRA with a written response to the request along with bank statements responsive to item 2 of the request.<sup>151</sup> Monchik uploaded many more responsive documents on July 7 and 13, 2022,<sup>152</sup> but according to FINRA several requests remained incomplete.<sup>153</sup> Lowry did not supervise

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<sup>141</sup> JX-23, at 1.

<sup>142</sup> Tr. 1254.

<sup>143</sup> Stip. ¶ 48; JX-24.

<sup>144</sup> Stip. ¶ 49; JX-24.

<sup>145</sup> Tr. 627.

<sup>146</sup> JX-24, at 1.

<sup>147</sup> JX-28, at 2.

<sup>148</sup> JX-101, at 3.

<sup>149</sup> JX-27, at 1.

<sup>150</sup> JX-27, at 1.

<sup>151</sup> JX-26. The letter is dated June 29, 2022, but was uploaded to Request Manager on July 5, 2022. *See* JX-101, at 3.

<sup>152</sup> JX-101, at 3–5.

<sup>153</sup> *See* JX-31, at 1–2.

Monchik's work in responding to the request or confirm she produced the information FINRA requested.<sup>154</sup>

**c. FINRA Issues a Notice of Suspension Under FINRA Rule 9552**

On July 14, 2022, FINRA issued a notice of suspension to Lowry under FINRA Rule 9552 informing him that he would be suspended on August 8, 2022, unless he fully complied with the requests.<sup>155</sup> FINRA outlined several items from the May 2022 and June 2022 Lowry Requests for which Lowry still had not produced all responsive documents. FINRA stated that Lowry had not responded to FINRA's requests for:

- bank account forms (item 1);
- general ledgers for the Atlas Funds (items 4, 6, and 8);
- engagement agreements with the accounting firm for the Atlas Funds (item 5);
- investment confirmation letters (item 9);
- Atlas Funds and Iapetus tax returns (item 11);
- welcome letters and subscription agreements (items 13 and 14);
- share purchase verifications (item 15);
- bank statements for several Atlas Fund offerings (item 17); and
- documents and information related to securities transactions (items 20–23).<sup>156</sup>

FINRA also stated that other responses were incomplete, including missing bank and brokerage account statements for Spartan,<sup>157</sup> Atlas Funds, and Iapetus, and missing personal tax returns.<sup>158</sup>

On August 5, 2022, just three days before Lowry was to be suspended, counsel for Lowry requested a hearing with the Office of Hearing Officers.<sup>159</sup> In the hearing request, counsel for Lowry represented to Enforcement and the Office of Hearing Officers that “a supplemental response with additional documents and information is [] being uploaded today on August 5,

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<sup>154</sup> Tr. 161, 171–72, 175.

<sup>155</sup> JX-31.

<sup>156</sup> JX-31, at 1–2.

<sup>157</sup> JX-31, at 1–2, 5–7. Respondents contend that the representation in the suspension notice that certain brokerage account statements were missing was false because those statements were never actually generated as there was no activity in the accounts in those months. Monchik Br. at 18; Lowry Br. at 16.

<sup>158</sup> JX-31, at 1–2.

<sup>159</sup> CX-17.

2022 through the Gateway.”<sup>160</sup> But no documents were produced to FINRA on that date.<sup>161</sup> Indeed, Lowry did not provide any additional responsive documents until August 30, when he provided tax-related documents and a letter from PKF indicating to FINRA for the first time that it would not be completing the general ledgers and other documents it was preparing for the Atlas Funds until October 31, 2022.<sup>162</sup> Monchik then uploaded additional documents responsive to other request items on August 31, including tax returns, bank and brokerage account statements, and a blotter showing the investors in the Atlas Funds.<sup>163</sup>

Monchik testified that, while the Request Manager information related to the May and June 2022 Lowry Requests did not show any other document productions by Lowry between July 13 and August 30, she may have uploaded documents responsive to these requests to a different Request Manager request.<sup>164</sup> But Respondents provided no evidence at the hearing that documents responsive to the May and June 2022 Lowry Requests were uploaded to a different open matter in Request Manager or produced to FINRA through any other means.<sup>165</sup>

On September 1, Monchik uploaded a significant number of additional documents responsive to many of the outstanding items from the May and June 2022 Lowry Requests.<sup>166</sup> She also provided a written response to FINRA addressing the outstanding items, noting that she had uploaded to Request Manager documents responsive to many items, and representing that she had requested other responsive documents from TD Bank (account forms) and PKF (general ledgers).<sup>167</sup>

The next day, September 2, FINRA emailed counsel for Lowry and identified several outstanding items, including missing subscription agreements (item 14), missing bank account

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<sup>160</sup> CX-17, at 2.

<sup>161</sup> See JX-101; Tr. 645–46. Lowry testified he was surprised that no documents were uploaded on August 5, 2022. Tr. 183–84. Monchik testified she participated in a FINRA hearing in August 2022, which impacted her ability to provide responsive documents. Tr. 1853. As a result, Lowry retained counsel to assist. Tr. 1854.

<sup>162</sup> JX-32. Lowry acknowledged that, while Monchik was tasked with compiling and producing the responsive documents, he was responsible if she failed to do so. Tr. 183.

<sup>163</sup> JX-101, at 5.

<sup>164</sup> Tr. 645–46.

<sup>165</sup> Counsel for Lowry also claimed that Monchik submitted documents responsive to the May 2022 and June 2022 Lowry Requests through a file share link. JX-32, at 1. And in an email from Lowry’s counsel that accompanied Monchik’s September 1 response letter, Lowry’s counsel included documents responsive to items 20 and 21. Regarding item 21, counsel for Lowry noted that, while information responsive to item 21 was not previously uploaded through Request Manager, Monchik believed it had previously been “provided in the missing docshare production.” JX-34, at 1. However, in both the June 29 and September 1 written responses that Monchik provided to FINRA on Lowry’s behalf, she claimed that the documents had been uploaded to Request Manager. JX-26, at 5; JX-34, at 14. And there is no reference to documents having been sent via Docshare and no evidence in the record that any documents responsive to the May and June 2022 Lowry Requests were provided via Docshare.

<sup>166</sup> JX-101, at 5–6.

<sup>167</sup> JX-34, at 8–14.

statements for Atlas Funds (item 17), and stock certificates and stock transfer agreements (item 23).<sup>168</sup> Lowry produced a number of additional responsive documents between September 2 and September 4 to address the deficiencies identified by FINRA, and the expedited proceeding was dismissed.<sup>169</sup>

Respondents represented to FINRA that some of the requested documents were not timely produced because they had to be obtained from third parties, including account verification forms from TD Bank and general ledgers from PKF.<sup>170</sup> While Lowry ultimately received bank forms from TD Bank and produced those documents to FINRA in September 2022, PKF never completed the general ledgers and thus they were not produced to FINRA.<sup>171</sup> The Hearing Panel finds that Monchik made good-faith efforts to obtain the TD Bank account information and that the general ledgers and other financial documents that PKF was preparing were unavailable.<sup>172</sup> But many other documents that FINRA requested, including bank and brokerage statements, engagement agreements, and transaction-related information related to Atlas Funds, which were in Lowry's possession when FINRA issued the requests, were not timely produced.

### **3. FINRA Issues Rule 8210 Requests to Spartan and Lowry in 2023 in Connection with the Atlas Funds Investigation**

#### **a. First Rule 8210 Requests in 2023**

FINRA's Atlas Funds investigation continued into 2023. On January 18, 2023, FINRA issued a request for documents and information under FINRA Rule 8210 to Spartan ("January 2023 Spartan Request").<sup>173</sup> In this letter, FINRA requested various email communications, communications with investors in the Atlas Funds, brokerage account statements for the Atlas Funds and Iapetus Holdings, due diligence files for certain Atlas Fund offerings, and the identification of all individuals at Spartan who approved each of the Atlas Fund offerings.<sup>174</sup> FINRA directed the request to Spartan, care of its counsel, and Monchik was designated to respond to the request.<sup>175</sup>

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<sup>168</sup> JX-35, at 1–2.

<sup>169</sup> JX-101, at 7–9; JX-46. Monchik ultimately was able to obtain from TD Bank account verification forms, which she provided to FINRA to satisfy item 1 in the 2022 Lowry Requests. Tr. 667; JX-44.

<sup>170</sup> JX-26, at 1–3.

<sup>171</sup> While PKF represented to Spartan that the general ledgers would be completed by October 31, 2022, they still had not been completed as of the October 2025 hearing. Tr. 194.

<sup>172</sup> JX-38, at 11–12; Tr. 1856–58.

<sup>173</sup> JX-48; Stip. ¶ 69.

<sup>174</sup> JX-48.

<sup>175</sup> JX-48; Tr. 675–78.

On that same day, FINRA also sent a request under Rule 8210 to Lowry through his counsel (“January 2023 Lowry Request”).<sup>176</sup> FINRA sought information and documents related to invoices and payments made to PKF, subscription agreements, investor communications, bank statements, and Lowry’s tax returns. In addition, in items 15 through 30, FINRA requested the following documents and information for 16 Atlas Fund offerings:

- (1) the contract between the Atlas Funds and the seller of the pre-IPO shares;
- (2) the date money was transferred to the seller from the Atlas Funds;
- (3) the account from which the money was transferred to the seller;
- (4) any and all due diligence on the purchase of the pre-IPO shares, including evidence that the seller possessed the pre-IPO shares;
- (5) a list of investors in the offering, including the amount of each investment and the date the investor transferred funds to Atlas Funds for the investment;
- (6) all documents, research, and information used to price the offering; and
- (7) all documents, research, and information used to determine the markup on the offering.<sup>177</sup>

Lowry delegated the responsibility for responding to the request to Monchik, and she accepted that responsibility.<sup>178</sup> Lowry testified that most of the documents and information FINRA sought through this request were readily accessible and could have been produced by Monchik without much difficulty.<sup>179</sup> Lowry did not supervise Monchik’s work in responding to this request.<sup>180</sup>

Through these requests issued to Spartan and Lowry, FINRA sought information related to new offerings, as well as information it needed to assess the adequacy of disclosures Spartan and the Atlas Funds made to investors.<sup>181</sup>

Both the Firm’s and Lowry’s responses initially were due by February 1, 2023, but the Firm and Lowry requested more time to respond and FINRA extended the deadline for each response to February 15, 2023, “with the understanding that no further extensions [would] be

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<sup>176</sup> JX-49; Stip. ¶ 90.

<sup>177</sup> JX-49, at 3–7.

<sup>178</sup> Stip. ¶ 93; Tr. 684–85.

<sup>179</sup> Tr. 201–09.

<sup>180</sup> Tr. 200.

<sup>181</sup> Tr. 1301–05, 1308–14.

granted for any portion of the requests.”<sup>182</sup> Despite that warning, on February 15, counsel for Lowry and Spartan requested further extensions and proposed that Spartan and Lowry begin a “rolling production of materials and responses starting on . . . February 21<sup>st</sup>.”<sup>183</sup> FINRA granted the extensions but requested that Lowry and Spartan provide a proposed schedule for completion of the responses to the January 18 Lowry and Spartan Requests.<sup>184</sup>

On February 16, Monchik produced certain bank statements for the Atlas Funds in response to the January 2023 Spartan Request and brokerage account statements for Atlas Funds and Iapetus in response to the January 2023 Lowry Request.<sup>185</sup> On February 22, 2023, counsel for Lowry and Spartan informed FINRA that he needed to confirm with the Firm but they were “targeting to complete the production by February 28.”<sup>186</sup> Neither Lowry nor Spartan produced any additional documents by February 28.<sup>187</sup> Monchik testified that she was unable to produce additional documents responsive to the January 2023 Spartan and Lowry Requests because she was working on responses to other Rule 8210 requests and reviewing the emails responsive to the first four items in the January 2023 Spartan Request.<sup>188</sup> But she never requested an extension and she did not inform FINRA that she would be unable to respond by February 28.<sup>189</sup>

#### **b. Second Rule 8210 Requests in 2023**

Because the Firm and Lowry failed to respond fully to the January 2023 Spartan and Lowry Requests, on February 28, 2023, FINRA sent second requests to Spartan (“February 2023 Spartan Request”) and Lowry (“February 2023 Lowry Request”) under FINRA Rule 8210.<sup>190</sup> The responses were due by March 14, 2023.<sup>191</sup> According to Monchik, she tried to upload Spartan’s email production on March 14 but the size of the production exceeded FINRA Request Manager’s capabilities.<sup>192</sup> On March 15, Monchik partially responded to the February 2023 Lowry Request by producing, among other documents, invoices from PKF for services rendered

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<sup>182</sup> JX-51, at 1; Stip. ¶¶ 72–74, 94–96.

<sup>183</sup> JX-51, at 1.

<sup>184</sup> JX-52, at 2.

<sup>185</sup> JX-102, at 1; CX-40, at 2.

<sup>186</sup> JX-52, at 1. Other than this representation, neither Monchik nor counsel provided the timeline for completing the rolling production that FINRA requested, and they did not request an additional extension of time to respond. Tr. 1338–39.

<sup>187</sup> Tr. 1336–37 (Macfadden); Tr. 694–95 (Monchik).

<sup>188</sup> Tr. 1903–06.

<sup>189</sup> Tr. 1339.

<sup>190</sup> JX-53; JX-54; Stip. ¶¶ 76, 98.

<sup>191</sup> JX-53; JX-54; Stip. ¶¶ 79, 102.

<sup>192</sup> JX-57, at 7.

to the Atlas Funds, and Lowry's tax returns.<sup>193</sup> She subsequently produced the emails responsive to the February 2023 Spartan Request on March 20 via hard drive, but she produced no additional responsive documents.<sup>194</sup>

FINRA staff informed Monchik on March 20 that "there are many other requests outstanding" and that FINRA still had "not received the written responses from either Mr. Lowry or the [F]irm."<sup>195</sup> Counsel for Spartan and Lowry responded on March 22 that they would be making supplemental productions and providing written responses by March 27.<sup>196</sup> But that did not happen.<sup>197</sup> On March 28 and again on March 30, FINRA followed up with counsel for the Firm and Lowry about the timeline for their respective document productions.<sup>198</sup> On March 30, counsel represented to FINRA that additional documents would be uploaded by March 31, but again no additional documents were produced.<sup>199</sup>

During the hearing, Monchik admitted that she represented to FINRA that she would produce documents by a certain date but then failed to produce them. She explained that she was "overly ambitious believing [she] would be able to get to it" and that other issues, including other regulatory requests, prevented her from producing the documents.<sup>200</sup>

In an email to FINRA on April 7, Monchik apologized for the delay and stated that she would be uploading additional documents the same day and would follow up with formal response letters.<sup>201</sup> But she uploaded no documents to FINRA Request Manager on April 7.<sup>202</sup> On April 10, 2023, nearly two and a half months after the original deadline, Monchik provided a written response to the January 2023 Spartan Request and additional documents in response to the January 2023 Lowry Request.<sup>203</sup> Two days later on April 12, Monchik produced additional documents responsive to the January 2023 Spartan Request and provided a written response to the Lowry Request along with additional documents responsive to the Lowry Request.<sup>204</sup> Lowry

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<sup>193</sup> CX-40, at 2.

<sup>194</sup> JX-57, at 1; CX-40; JX-102.

<sup>195</sup> JX-57, at 1.

<sup>196</sup> JX-61, at 16–17.

<sup>197</sup> CX-40, at 2; JX-102, at 1.

<sup>198</sup> JX-61, at 15–16.

<sup>199</sup> JX-61, at 14–15; CX-40, at 2; JX-102, at 1.

<sup>200</sup> Tr. 1911–12.

<sup>201</sup> JX-56, at 2.

<sup>202</sup> See CX-40, at 2; JX-102, at 1.

<sup>203</sup> CX-40, at 2; JX-56, at 15–18. The letter has a date of March 16, 2023 and a "supplemented" date of April 7. JX-56, at 15. Monchik testified her practice is to date the response when she begins drafting it. Tr. 558–59.

<sup>204</sup> JX-102, at 1–2; JX-61, at 26–32. This letter is dated March 16, 2023 and has a "supplemented" date of April 12, 2023. JX-61, at 26.

did not verify Monchik’s representations that she had uploaded various documents responsive to the Lowry Request.<sup>205</sup>

FINRA advised Monchik on April 17 that there were “still substantial gaps in the production” of documents in response to the requests to Spartan and Lowry, including written responses to items 15 through 30 of the Lowry Requests.<sup>206</sup> FINRA explained that, while some responsive documents and information were produced, including electronic folders corresponding to items 15 through 30 of the Lowry Requests and customer confirmation letters, many folders were empty.<sup>207</sup> For example, Monchik produced an Excel spreadsheet purporting to contain information responsive to items 15 through 30 of the Lowry Request, but the tabs responsive to items 20 through 30 were blank.<sup>208</sup> Much of the information requested in items 15 through 30 consisted of basic documents and information that Lowry testified could have been obtained without much difficulty.<sup>209</sup> Monchik produced additional documents and information in response to the Lowry Requests between April 18 and May 10, but she produced no other documents in response to the Spartan Requests.<sup>210</sup>

On May 2, 2023, FINRA advised Monchik that many items requested in the Lowry and Spartan Requests “still lack[ed] responses.”<sup>211</sup> The next day, Monchik acknowledged that the production “appears to be missing some items” and represented that she would upload additional responsive documents.<sup>212</sup> On May 7 and 10, Monchik uploaded documents responsive to items 20 through 30 of the Lowry Requests.<sup>213</sup>

On May 23, FINRA informed Monchik and counsel that there were “numerous other deficiencies” in both Spartan’s and Lowry’s responses and that many folders uploaded in response to the Lowry Requests were empty.<sup>214</sup> But there is no evidence in the record that Monchik responded to FINRA’s email, and neither Monchik nor anyone else produced any additional documents.<sup>215</sup>

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<sup>205</sup> Tr. 221–23.

<sup>206</sup> JX-62, at 8.

<sup>207</sup> JX-62, at 1–6.

<sup>208</sup> RX-32; Tr. 1370–74.

<sup>209</sup> Tr. 207–10.

<sup>210</sup> CX-40, at 3–4; JX-102, at 2.

<sup>211</sup> JX-62, at 3.

<sup>212</sup> JX-62, at 1–2.

<sup>213</sup> CX-40, at 4.

<sup>214</sup> JX-62, at 1.

<sup>215</sup> Tr. 1394; CX-40, at 4; JX-102, at 2.

### c. FINRA Issues a Notice of Suspension Under FINRA Rule 9552

On August 1, 2023, FINRA issued notices of suspension to Spartan and Lowry based on their failure to timely respond to the January 2023 and February 2023 Spartan and Lowry Requests.<sup>216</sup> The notices stated that the Firm and Lowry would be suspended on August 25, 2023, unless they took corrective action.<sup>217</sup>

As for the Spartan Requests, Monchik had provided most of the documents and information as of August 1. FINRA explained that the Firm had not produced certain due diligence files (item 9) and that some brokerage account statements were missing (items 6 and 8).<sup>218</sup> On August 7, 2023, the Firm produced a few more due diligence files but represented that all of the account statements generated for the requested accounts were produced previously and that certain monthly statements FINRA believed were missing had never been generated because there was no activity in the accounts in those months.<sup>219</sup> FINRA then withdrew the expedited proceeding against Spartan.<sup>220</sup>

The notice of suspension issued to Lowry outlined several deficiencies in his response. For example, FINRA had requested detailed information and documents relating to 16 Atlas Fund offerings, including investor lists, documents related to the pricing of the offering, and documents and information pertaining to the purchase of pre-IPO shares by the funds.<sup>221</sup> FINRA explained in the notice of suspension that Lowry had provided none of the requested information for seven offerings and that specific categories of documents were missing for other offerings.<sup>222</sup> On August 24, the day before his suspension went into effect, Lowry requested a hearing, which stayed the suspension.<sup>223</sup>

On September 9, Monchik, on behalf of Lowry, produced additional documents and information in response to the outstanding requests from the January and February 2023 Lowry Requests.<sup>224</sup> This included PKF invoices (item 1), confirmation letters (item 6), account

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<sup>216</sup> JX-63; JX-64.

<sup>217</sup> JX-63, at 1; JX-64, at 1.

<sup>218</sup> JX-64.

<sup>219</sup> JX-65, at 5–7. In the Firm’s written response that Monchik provided on April 10, 2023, she noted that she uploaded the “generated brokerage statements.” JX-56, at 16–17. Respondents contend Macfadden would have known that account statements he claimed were missing were never generated because there was no activity if he had reviewed all the statements produced by the Firm. Lowry Br. at 20; Monchik Br. at 22. Macfadden testified that the Firm’s April 10 response was ambiguous, which is why he believed there may be additional responsive bank statements. Tr. 1351–52.

<sup>220</sup> JX-95.

<sup>221</sup> JX-63, at 1–2.

<sup>222</sup> JX-63, at 1–2.

<sup>223</sup> CX-20.

<sup>224</sup> See CX-40, at 4; JX-67; JX-68.

statements (item 10), and documents responsive to items 15 through 19 of the Lowry Request.<sup>225</sup> Then, between September 19 and 25, Monchik produced spreadsheets and other documents responsive to items 15 through 30.<sup>226</sup>

Lowry was not personally involved in producing the requested documents and information and relied on Monchik to produce the documents.<sup>227</sup> He testified that most of the information was easily accessible and he did not know why the documents had not been produced previously to FINRA.<sup>228</sup>

On September 28, 2023, FINRA sent a letter to Lowry outlining the items it believed remained incomplete.<sup>229</sup> For some items, like items 21(b) and 22(b) seeking dates money was transferred from the Atlas Funds to the seller of the shares, FINRA explained that Lowry provided no information.<sup>230</sup> FINRA explained that other items were incomplete or, if the information was provided, it was not clear where in Lowry's production the documents were located.<sup>231</sup> Between September 30 and October 13, Lowry provided additional responsive information and documents and updated previously produced documents, including spreadsheets containing information about the various Atlas Fund offerings.<sup>232</sup> The expedited proceeding against Lowry was dismissed on October 17, 2023, the day before the hearing.<sup>233</sup>

#### **G. FINRA Conducts Examination Focusing on Spartan's Net Capital Compliance**

In late 2021, FINRA's Member Supervision Department identified potential issues related to Spartan's financial operations and opened an examination ("Net Capital Exam").<sup>234</sup> The focus of the exam was on the Firm's net capital and, specifically, the impact of certain non-cash

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<sup>225</sup> JX-67.

<sup>226</sup> JX-68; CX 40, at 4–5.

<sup>227</sup> Tr. 222–26.

<sup>228</sup> Tr. 201–09; 227–30.

<sup>229</sup> JX-69.

<sup>230</sup> JX-69, at 2.

<sup>231</sup> JX-69.

<sup>232</sup> See JX-70; JX-71; JX-72.

<sup>233</sup> Respondents argue the Hearing Panel should strike from the record CX-4A and CX-5, which relate to the 2023 requests issued to Lowry and Spartan in the Atlas Funds investigation, because they reference exhibits that were not admitted during the hearing. Monchik Br. at 23; Lowry Br. at 21–22. While the Hearing Panel did not cite or rely on CX-4A or CX-5 in this decision, there is no requirement that the underlying source documents for summary exhibits be admitted into evidence so long as the source documents were provided to the opposing party in discovery or as part of the exchange of pre-hearing submissions. See January 29, 2025 Case Management and Scheduling Order, at 12.

<sup>234</sup> Tr. 758.

compensation the Firm received and two capital distributions on the Firm's net capital.<sup>235</sup> Thomas Pyun was FINRA's lead examiner on the Net Capital Exam.<sup>236</sup>

### 1. FINRA Issues First Rule 8210 Request

On February 2, 2022, in connection with the Net Capital Exam and pursuant to FINRA Rule 8210, FINRA requested six categories of documents and information from Spartan ("February 2022 Spartan Net Cap Request"):

- (1) information regarding non-cash compensation paid to the Firm and to associated persons of the Firm, agreements between the Firm and its registered representatives receiving the non-cash compensation, agreements with underwriters for each security issued to the Firm as non-cash compensation, and journal entries reflecting the receipt and distribution of the non-cash compensation;
- (2) supporting documentation for a \$20 million distribution;
- (3) supporting documentation for net capital calculations following a \$1.5 million withdrawal;
- (4) supporting documentation related to the Firm's SIS and SSOI filings<sup>237</sup> for certain Firm reported positions in June 2021;
- (5) transfer agent statements for the Alzamend Neuro TA account for three months in 2021; and
- (6) ownership information and articles of incorporation for Spartan Capital Holdings, LLC.<sup>238</sup>

FINRA addressed the February 2022 Spartan Net Cap Request to Monchik as the Firm's CAO, and she was responsible for responding to the request.<sup>239</sup> According to Pyun, most of what FINRA sought through the February 2022 Spartan Net Cap Request were historical documents and information that the Firm should have generated in 2021.<sup>240</sup>

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<sup>235</sup> Tr. 762–63.

<sup>236</sup> Tr. 758.

<sup>237</sup> See Tr. 765 (Pyun testifying that SIS is the Supplemental Inventory Schedule). SSOI is the Supplemental Statement of Income, a financial and operations form filed by FINRA member firms. See FINRA.org, Filings and Reporting, <https://www.finra.org/filing-reporting/regulatory-filing-systems/supplemental-statement-income-ssoi>.

<sup>238</sup> JX-74; Stip. ¶ 122.

<sup>239</sup> JX-74; Stip. ¶ 125; Tr. 342.

<sup>240</sup> Tr. 763–67.

Around the time FINRA issued the February 2022 Spartan Net Cap Request, the Firm's FINOP resigned.<sup>241</sup> As a result, Monchik testified that she had to manage the completion of the Firm's 2021 audited financial statements ("2021 Audit"), which were supposed to be filed with FINRA in the first quarter of 2022.<sup>242</sup> The Firm's auditors were struggling to complete the 2021 Audit because they needed information from the Firm's former FINOP.<sup>243</sup>

On February 16, Monchik requested, and FINRA granted, an extension to respond to the February 2022 Spartan Net Cap Request until March 2, 2022, but neither Monchik nor anyone else at Spartan responded to the request by that date or requested another extension.<sup>244</sup> Monchik testified that, because of Spartan's numerous ongoing matters with FINRA, McElduff advised her that there was no need to request an extension.<sup>245</sup> Rather, the staff would simply issue a second Rule 8210 request.<sup>246</sup> McElduff was not asked about this directly during the hearing, but the evidence shows he repeatedly told Monchik that she needed to communicate directly with the exam staff about open items, due dates, and requests for extensions of time to respond to requests.<sup>247</sup>

## 2. FINRA Issues Second Rule 8210 Request

When Monchik failed to respond to the February 2022 Spartan Net Cap Request, FINRA sent a second request to Spartan under FINRA Rule 8210 on March 3, 2022 ("March 2022 Spartan Net Cap Request") and included a copy of the February 2022 Spartan Net Cap Request.<sup>248</sup> FINRA addressed the letter to Monchik and the response was due by March 17, 2022.<sup>249</sup> The day before the deadline, Monchik asked Pyun for "a few days' extension" on the response and acknowledged that "it ha[d] been pending a while."<sup>250</sup> Pyun granted an extension until March 23.<sup>251</sup> Monchik did not report to FINRA at that time any issues with obtaining documents responsive to the Spartan Net Cap Requests due to the recent loss of the Firm's FINOP, nor did she mention anything about the 2021 Audit impacting her ability to respond to

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<sup>241</sup> Tr. 1762–63.

<sup>242</sup> Tr. 1762–63.

<sup>243</sup> Tr. 1763.

<sup>244</sup> Stip. ¶ 127; JX-76, at 13–14; Tr. 429–30.

<sup>245</sup> Tr. 430.

<sup>246</sup> Tr. 430.

<sup>247</sup> JX-8, at 1; JX-78, at 2; Tr. 956–57, 982–83.

<sup>248</sup> JX-77; Stip. ¶ 128.

<sup>249</sup> JX-77; Stip. ¶ 132.

<sup>250</sup> JX 79, at 1.

<sup>251</sup> JX-79, at 1.

the request.<sup>252</sup> Monchik did not produce any documents responsive to the request by the March 23 deadline.<sup>253</sup>

In an email dated March 21, 2022, Monchik asked McElduff, and not Pyun, for another extension of time “until after the audit if we can.”<sup>254</sup> On March 23, McElduff responded that he needed “an affirmative date for a response,” and stated that the audit was due by March 31, 2022.<sup>255</sup> Two days later, McElduff asked Monchik to “flip [him] a date” for the Firm’s response, noting, “Extension requested until after the audit is submitted, audit is due 3/31. I need to update on my side what the revised date will be.”<sup>256</sup> There is nothing in the record indicating that Monchik responded to McElduff’s request.

McElduff testified about this email exchange and stated he was seeking from Monchik an affirmative date for the Firm’s response based on the March 31 deadline for filing the 2021 Audit.<sup>257</sup> Although there is no evidence that a firm deadline was ever set at that point, upon review of the email exchanges and McElduff’s testimony, the Hearing Panel finds that Monchik reasonably believed FINRA had granted her an extension to respond until a date after the then-deadline of March 31 for the filing of the 2021 Audit.

Monchik testified that McElduff repeatedly told her she could wait to respond to the February and March 2022 Spartan Net Cap Requests until after the Firm’s 2021 Audit was completed.<sup>258</sup> But McElduff denied giving an open-ended extension until after the 2021 Audit was ultimately completed and filed.<sup>259</sup> And the record does not support Monchik’s claim. Indeed, none of her emails to Pyun about extensions up to that point mentioned the 2021 Audit or McElduff’s purported agreement that she did not need to respond to the requests until after the Firm filed its 2021 Audit.<sup>260</sup>

Thus, on April 4, Pyun contacted Monchik and requested the status of Spartan’s response to the Spartan Net Cap Requests, which he noted was overdue.<sup>261</sup> In a reply email, Monchik apologized for the delay and stated that she had been “communicating through Andrew

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<sup>252</sup> JX-76, at 5–6; Tr. 434–35.

<sup>253</sup> Tr. 441.

<sup>254</sup> JX-78, at 2–3. There is no evidence that Monchik requested an extension from Pyun.

<sup>255</sup> JX-78, at 1–2.

<sup>256</sup> JX-78, at 1. A few days later, on March 29, 2022, Spartan’s FINOP, Maddox, requested an extension of time to file the 2021 Audit. The next day, FINRA granted an extension until April 14, 2022 to file the 2021 Audit. Stip. ¶ 135.

<sup>257</sup> Tr. 986–88.

<sup>258</sup> Tr. 400–03, 1762–63.

<sup>259</sup> Tr. 990–91, 996–98, 1008–09.

<sup>260</sup> See JX-76.

<sup>261</sup> JX-76, at 5.

[McElduff] . . . and I think the agreement with Andrew was to respond to the 8210 request subsequent to the filing of the [Firm's] audited financials. We had a FINOP change causing the need for an extension which would be 4/14/22.”<sup>262</sup>

Pyun testified that he was surprised by Monchik's representation that McElduff had extended the deadline for responding to the Rule 8210 request since only FINRA staff assigned to the investigation should grant extensions.<sup>263</sup> Pyun also testified that shortly after receiving Monchik's April 4 email he contacted McElduff, who told Pyun he did not grant Monchik an extension.<sup>264</sup> Pyun stated that, other than Monchik's April 4 email showing that McElduff had agreed to extend the deadline, Monchik never advised him that Spartan would be unable to respond to the Rule 8210 request until after the 2021 Audit was completed or that the change in FINOPs prevented the Firm from responding to the request.<sup>265</sup> In any event, Pyun ultimately granted the extension on the Rule 8210 request and informed Monchik to respond by April 14 at the “latest.”<sup>266</sup> Monchik did not respond to Pyun's email.<sup>267</sup> Pyun testified he set the deadline for April 14 because that is the date the Firm requested and not because FINRA had extended the deadline for the 2021 Audit to April 14.<sup>268</sup>

The day before the April 14 extended deadline for responding to the Rule 8210 request, Pyun emailed Monchik and asked whether she could meet the deadline.<sup>269</sup> Pyun testified at the hearing that he did this because, at that point, the request was more than two months overdue and he wanted to ensure that she was going to respond to the request so he could keep the investigation moving.<sup>270</sup> Monchik did not respond to the email, and neither she nor anyone else at the Firm responded to the Rule 8210 request by April 14 or requested an extension.<sup>271</sup> On April 26, Pyun contacted Monchik again asking about the status of the Firm's response to the outstanding Rule 8210 requests.<sup>272</sup> Monchik responded several days later on May 2 stating that

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<sup>262</sup> JX-76, at 4. FINRA's Risk Monitoring Department had granted Spartan another extension until April 14, 2022 to file the 2021 Audit with FINRA. Stip. ¶ 135; JX-81.

<sup>263</sup> Tr. 791.

<sup>264</sup> Tr. 791.

<sup>265</sup> Tr. 791.

<sup>266</sup> JX-82, at 1; Tr. 793.

<sup>267</sup> Tr. 793.

<sup>268</sup> Tr. 847.

<sup>269</sup> CX-28, at 1.

<sup>270</sup> Tr. 793–94.

<sup>271</sup> Tr. 793, 795.

<sup>272</sup> JX-76, at 3–4.

the “[Rule] 8210 [requests] will be responded to by Monday [May 9].”<sup>273</sup> Monchik said nothing about the audit.<sup>274</sup> FINRA did not receive a response on or before May 9.<sup>275</sup>

On May 11, Pyun emailed Monchik again asking about the Firm’s response to the outstanding Rule 8210 requests.<sup>276</sup> On that same date, McElduff emailed Monchik and Spartan’s counsel requesting an update on several matters, including the status of the Firm’s response to the requests issued in connection with the Net Capital Exam.<sup>277</sup> On May 12, Monchik responded to McElduff and stated, with respect to the Net Capital Exam, that “[s]upporting documents were uploaded, pending written response.”<sup>278</sup> But in fact, no documents responsive to the Rule 8210 requests issued in connection with the Net Capital Exam were uploaded to Request Manager.<sup>279</sup>

On May 23, Pyun emailed Monchik again asking when FINRA could expect a response to the Rule 8210 requests and other outstanding items.<sup>280</sup> Monchik responded that she would “get back to [him] by morning with some responses and timing on the remaining,” but she never did.<sup>281</sup> She also mentioned nothing about the 2021 Audit, which ultimately was filed with FINRA on June 7, 2022.<sup>282</sup>

### **3. FINRA Issues a Notice of Suspension Under FINRA Rule 9552**

Because of Spartan’s failure to respond in any manner to the February 2022 and March 2022 Spartan Requests, on June 14, 2022, FINRA issued a notice of suspension under FINRA Rule 9552 informing the Firm that it would be suspended on July 8, 2022, unless it fully complied with the Requests.<sup>283</sup> On July 7, 2022, one day before the suspension was to take

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<sup>273</sup> JX-76, at 2–3. On April 11, 2022, Maddox requested another extension of time to file the 2021 Audit. FINRA granted the extension and the new deadline was April 29, 2022. Stip. ¶ 137.

<sup>274</sup> JX-76, at 2–3; Tr. 1974–75.

<sup>275</sup> Tr. 796.

<sup>276</sup> CX-30, at 1. There is no evidence in the record indicating that Monchik responded to Pyun’s email.

<sup>277</sup> CX-31, at 2–3.

<sup>278</sup> CX-31, at 1–2.

<sup>279</sup> Tr. 799; JX-99, at 1–2; JX-100. During the hearing, Monchik acknowledged that no responsive documents were uploaded through Request Manager, but she suggested responsive documents may have been provided through other means. Tr. 468–72. But she provided no evidence that the Firm produced any documents responsive to the February and March 2022 Spartan Net Cap Requests as of May 12. Later in the hearing, she conceded she did not produce any documents responsive to the requests until after FINRA issued a notice of suspension to the Firm on June 14, 2022. Tr. 1943–44.

<sup>280</sup> JX-76, at 2.

<sup>281</sup> JX-76, at 1; Tr. 800–01.

<sup>282</sup> Stip. ¶ 138.

<sup>283</sup> JX-89.

effect, Spartan requested a hearing, which stayed the suspension.<sup>284</sup> Neither the request for hearing nor Monchik's Rule 8210 response letter attached to the hearing request mentioned anything about FINRA's purported agreement to extend the response date until after the 2021 Audit was filed.<sup>285</sup>

On July 7, the same day as the hearing request, Monchik submitted a written response letter and produced most of the documents FINRA requested, but a few items remained outstanding.<sup>286</sup> For example, in response to item 1, the Firm provided no information about non-cash compensation for 2021, failed to identify the transfer agents for issuers identified by the Firm, and failed to identify each associated person who received non-cash compensation and the dates of receipt of the non-cash compensation.<sup>287</sup> The Firm also did not provide certain book entry information for one transaction in response to item 5.<sup>288</sup> The Firm responded that, as for some of the alleged deficiencies, it appeared that FINRA was requesting follow-up information or supplemental information not requested in the Rule 8210 requests.<sup>289</sup> But the Firm did not elaborate on what it considered to be a supplemental request.

On August 8, 2022, Spartan's counsel provided additional documents, including a spreadsheet detailing non-cash compensation earned by the Firm in 2021, stock purchase agreements, agreements with the Firm's registered representatives in connection with stock issued to them as non-cash compensation, and information about transfer agents for each of the issuers identified by the Firm.<sup>290</sup> The documents produced on August 8 completed Spartan's response to the February 2022 and March 2022 Spartan Net Cap Requests and the expedited proceeding was dismissed.<sup>291</sup>

Although this was the second Rule 9552 proceeding initiated against the Firm in less than a year, Lowry did not discuss with Monchik potential changes to the Firm's processes for responding to Rule 8210 requests and the Firm instituted no changes to address the issue.<sup>292</sup>

Respondents contend that the delay in responding to the February 2022 and March 2022 Spartan Net Cap Requests was caused, in part, by the loss of the Firm's FINOP, Peters, in or around February 2022. The loss of Peters also purportedly caused the inability of Spartan's auditor to complete Spartan's 2021 Audit, which required Monchik to step in to assist and thus

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<sup>284</sup> CX-34.

<sup>285</sup> CX-34, at 3–10.

<sup>286</sup> JX-90; JX-92.

<sup>287</sup> JX-92, at 2.

<sup>288</sup> JX-92, at 2.

<sup>289</sup> JX-92, at 1.

<sup>290</sup> JX-94.

<sup>291</sup> JX-93; JX-94; JX-95; Stip. ¶ 147.

<sup>292</sup> Tr. 154–55.

further delayed Spartan’s ability to respond to the 2022 Spartan Net Cap Requests.<sup>293</sup> According to Pyun, however, the majority of the information and documents he requested were records that should have been in the Firm’s possession at the time of the requests and the 2021 Audit should not have impacted the Firm’s ability to respond to his requests.<sup>294</sup> And Lowry conceded that many items requested by FINRA were not in the possession of Peters and therefore could have been produced earlier.<sup>295</sup> For example, agreements with underwriters (item 1c) and agreements with registered representatives receiving non-cash compensation (item 1b) were documents held by Spartan, and not by the FINOP.<sup>296</sup> Similarly, information about the ownership of Spartan’s holding company (item 6) was not information that Spartan needed to obtain from the FINOP.<sup>297</sup>

Monchik also testified that information about non-cash compensation paid to registered representatives and agreements with underwriters (item 1) and supporting documentation for net capital calculations related to distributions and withdrawals (items 2 and 3) were easily accessible and available at the time of the February 2022 and March 2022 Spartan Net Cap Requests.<sup>298</sup> And she testified that supporting documentation for the Firm’s net capital calculations (item 2) was not information she needed to get from Peters to respond to the Rule 8210 requests.<sup>299</sup>

## **H. Credibility Findings**

### **1. Monchik and Lowry**

The Hearing Panel finds that Monchik and Lowry testified credibly on some issues but were not credible on critical issues bearing on their liability. In particular, Monchik’s testimony about her delayed responses to the requests issued in the Net Capital Exam was not supported by other evidence in the record and was directly contradicted by McElduff’s and Pyun’s testimony, which the Hearing Panel credited for the reasons explained below.

Monchik testified that she did not respond to the requests by the due dates because McElduff told her she did not need to respond until after the 2021 Audit was filed. But that conflicts with the testimony of McElduff, who stated that no such open-ended extension was given to Monchik.<sup>300</sup> And it is inconsistent with the testimony of Pyun who confirmed with

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<sup>293</sup> Tr. 1762–63.

<sup>294</sup> Tr. 791–92.

<sup>295</sup> Tr. 135–37, 153–54.

<sup>296</sup> Tr. 135–36.

<sup>297</sup> Tr. 136–37.

<sup>298</sup> Tr. 389–92.

<sup>299</sup> Tr. 479–86.

<sup>300</sup> Tr. 986–88, 990–91, 996–98, 1008–09. Monchik’s testimony also is inconsistent with McElduff’s emails telling Monchik that any extensions had to be provided by the staff handling the particular matter. *See, e.g.*, JX-8, at 1, 8; JX-78, at 2.

McElduff that there was no such extension.<sup>301</sup> Her testimony is also contradicted by several contemporaneous emails in which McElduff and Pyun informed Monchik that the response to the requests was long overdue. After Monchik failed to meet the extended deadline of April 14, 2022, both Pyun and McElduff repeatedly followed up with Monchik over the next several weeks asking for the status of the response and she never said that she did not have to respond until after the 2021 Audit was filed.<sup>302</sup>

Lowry's testimony was largely credible, but he also provided testimony on issues related to his supervision that was not credible. For example, Lowry testified he directed improvements to Spartan's process for responding to Rule 8210 requests by hiring more compliance staff.<sup>303</sup> But he later conceded that the hiring of additional compliance staff was unrelated to the delays in responding to FINRA's regulatory requests.<sup>304</sup>

## 2. FINRA's Witnesses

The Hearing Panel finds that FINRA's witnesses—Macfadden, Pyun, and McElduff—were credible. Each witness responded directly to the questions posed and their testimony was supported by the documentary evidence admitted during the hearing. Regarding the Net Capital Exam, McElduff and Pyun corroborated each other's testimony regarding the extension Monchik claimed FINRA granted in connection with the February 2022 and March 2022 Spartan Net Cap Requests. And the contemporaneous email exchanges are consistent with their testimony that they did not grant Monchik an extension until after the Firm filed the 2021 Audit.

Respondents take strong issue with Macfadden's testimony, arguing that he repeatedly lied during the hearing about his review of materials produced by Respondents.<sup>305</sup> For example, Macfadden testified during his direct exam that he reviewed "all productions" Monchik made in response to the Rule 8210 requests issued in the Atlas Funds investigation, including emails, to ensure that what he had requested was produced.<sup>306</sup> And when asked on direct examination about a June 2021 document production, he stated he "reviewed each and every document" to determine whether the Firm fully responded to FINRA's requests.<sup>307</sup> Then, when asked about specific categories of documents during his cross-examination, including investor documents, he

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<sup>301</sup> Tr. 791, 2040–41.

<sup>302</sup> JX-76, at 3–4; JX-85, at 3; CX-30, at 1; CX-31, at 3; CX-32, at 1; JX-76, at 1–2.

<sup>303</sup> See Tr. 126, 154–55.

<sup>304</sup> Tr. 233–35.

<sup>305</sup> Lowry Br. at 31–32; Monchik Br. at 30–31.

<sup>306</sup> See, e.g., Tr. 1259; see also Tr. 1182, 1327, 1329–30.

<sup>307</sup> Tr. 1182.

stated he may not have “looked at every single investor document.”<sup>308</sup> He also testified he used filters and other methods to search the emails and did not read every email produced.<sup>309</sup>

While Macfadden clarified his earlier testimony about the scope of his review of document productions during his cross examination, he did so while responding to questions about specific categories of documents. Regarding a few specific document categories, he testified he may not have reviewed every document. But that is not evidence that Macfadden lied. The Hearing Panel finds that Macfadden’s testimony overall was credible and consistent.

Respondents also contend Macfadden provided false information to Enforcement when he made referrals to initiate suspension proceedings.<sup>310</sup> As an example, they refer to the notice of suspension issued to Lowry in 2022 where Enforcement claimed he did not respond “in any manner” to the requests for TD Bank documents and financial documents prepared by PKF.<sup>311</sup> Respondents contend this was false because Lowry had in fact responded that he had requested the documents from TD Bank and PKF.

Macfadden testified he made referrals to Enforcement to initiate expedited proceedings against Lowry and provided the information about the deficient responses, but he did not draft the actual language in the notice of suspension Enforcement issued.<sup>312</sup> And he testified that, while he understood Lowry provided written responses, he made the referral because he had not produced the underlying documents FINRA had requested.<sup>313</sup> There is no evidence that Macfadden intentionally provided false information to Enforcement.

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<sup>308</sup> Tr. 1448.

<sup>309</sup> Tr. 1594–95.

<sup>310</sup> Lowry Br. at 31–32; Monchik Br. at 30–31.

<sup>311</sup> See JX-31, at 1.

<sup>312</sup> Tr. 1562–64.

<sup>313</sup> Tr. 1563–64, 1568–69.

### III. Conclusions of Law

#### A. Monchik Failed to Timely Respond to Requests for Documents and Information in Violation of FINRA Rules 8210 and 2010 (First and Second Causes of Action)

##### 1. Legal Standard

FINRA Rule 8210 requires persons subject to FINRA’s jurisdiction to provide information to FINRA upon request for the purpose of an investigation, complaint, examination, or proceeding.<sup>314</sup> Rule 8210(a)(2) authorizes FINRA to “inspect and copy the books, records, and accounts” of members and persons subject to its jurisdiction “with respect to any matter involved in [an] investigation . . . that is in such . . . person’s possession, custody, or control.” A violation of Rule 8210 also constitutes a violation of Rule 2010, which requires associated persons to “observe high standards of commercial honor and just and equitable principles of trade.”<sup>315</sup>

FINRA Rule 8210 “is at the heart of the self-regulatory system for the securities industry.”<sup>316</sup> It “provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations.”<sup>317</sup> The rule “is unequivocal and grants FINRA broad authority to obtain information concerning an associated person’s securities-related business ventures.”<sup>318</sup> A violation of FINRA Rule 8210 occurs when an associated person or firm fails to provide full and prompt cooperation to FINRA in response to a request for information.<sup>319</sup> Associated persons cannot fulfill their obligation to provide information by giving cursory and untimely explanations about the unavailability of documents.<sup>320</sup> Rather, they

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<sup>314</sup> FINRA Rule 8210(a), (c).

<sup>315</sup> See *Dep’t of Enforcement v. Vedovino*, No. 2015048362402, 2019 FINRA Discip. LEXIS 20, at \*20–21 (NAC May 15, 2019) (“Failure to comply with FINRA Rule 8210 constitutes conduct inconsistent with just and equitable principles of trade and violates FINRA Rule 2010.”).

<sup>316</sup> *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at \*13 (Nov. 14, 2008), *petition for review denied*, 347 F. App’x 692 (2d Cir. 2009).

<sup>317</sup> *Id.* (quoting *Richard J. Rouse*, Exchange Act Release No. 32658, 1993 SEC LEXIS 1831, at \*7 (July 19, 1993)).

<sup>318</sup> *Dep’t of Enforcement v. Gallagher*, No. 2008011701203, 2012 FINRA Discip. LEXIS 61, at \*12 (NAC Dec. 12, 2012); see also *CMG Inst’l Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at \*15 (Jan. 30, 2009); *Dep’t of Enforcement v. Larson*, No. 2014039174202, 2020 FINRA Discip. LEXIS 44, \*92 (NAC Sept. 21, 2020).

<sup>319</sup> *Dep’t of Enforcement v. Kanarek*, No. FPI220008, 2023 FINRA Discip. LEXIS 9, at \*9 (NAC Apr. 19, 2023); *Dep’t of Enforcement v. DiPaola*, No. 2018057274302, 2023 FINRA Discip. LEXIS 4, at \*34–35 (NAC Mar. 23, 2023), *appeal docketed*, No. 3-21402, 2023 SEC LEXIS 1275 (May 17, 2023); *Larson*, 2020 FINRA Discip. LEXIS 44, at \*92.

<sup>320</sup> *CMG Inst’l Trading, LLC*, 2009 SEC LEXIS 215, at \*23.

have an obligation to provide a detailed explanation of their efforts to obtain the information requested and any problems they encountered in obtaining the information.<sup>321</sup>

## 2. Monchik Was Responsible for Responding to Rule 8210 Requests Issued to Spartan and Lowry

In cause one of the Complaint, Enforcement charged Monchik with violating FINRA Rules 8210 and 2010 by failing to respond timely to three initial requests for documents and information and four follow-up requests issued to Spartan under Rule 8210. In cause two, Enforcement charged Monchik with violating FINRA Rules 8210 and 2010 by failing to timely respond to two initial requests for documents and information and two follow-up requests issued to Lowry under FINRA Rule 8210.

While FINRA did not issue any of the Rule 8210 requests to Monchik individually, Monchik acknowledged that she was responsible for responding to the requests issued to Spartan and Lowry.<sup>322</sup> In addition, the evidence shows Lowry delegated to Monchik the responsibility for responding to the requests directed to Lowry and she accepted that responsibility.<sup>323</sup> Thus, the Hearing Panel finds that she was responsible for responding to all of the Rule 8210 requests at issue.

The National Adjudicatory Council (“NAC”) has made clear that an associated person responsible for providing information and documents in response to a request from FINRA can be held liable under Rule 8210 for failing to do so, even when the request was directed to a member firm or another associated person.<sup>324</sup> In *Department of Enforcement v. Larson*, FINRA issued several information requests under Rule 8210 to Larson’s firm. FINRA addressed the first request to the firm’s president and executive representative.<sup>325</sup> The firm’s president then forwarded the initial request to Larson, who the firm designated as the person responsible for responding to information requests issued to the firm.<sup>326</sup> When Larson failed to respond timely and completely to the information requests, FINRA charged him with violating FINRA Rule 8210, even though the requests were not directed to him.<sup>327</sup> In affirming the Hearing Panel’s decision finding that Larson violated Rule 8210, the NAC held that “as the individual who

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<sup>321</sup> *Id.*

<sup>322</sup> Tr. 342, 537, 598, 623–25, 627–28, 1863–64, 1903–04.

<sup>323</sup> Stip. ¶¶ 45, 93; Tr. 623, 684–85.

<sup>324</sup> See, e.g., *Larson*, 2020 FINRA Discip. LEXIS 44, at \*92–96; see also *Dep’t of Enforcement v. Harvest Cap. Invs., LLC*, No. 2005001305701, 2008 FINRA Discip. LEXIS 45, at \*39 (NAC Oct. 6, 2008) (“[T]he record shows that Cotto, on behalf of Harvest Capital, failed to respond fully and completely to four of the five written requests . . .”).

<sup>325</sup> *Larson*, 2020 FINRA Discip. LEXIS 44, at \*80.

<sup>326</sup> *Id.* at \*81. The subsequent requests at issue were directed to the firm and Larson responded to the requests on behalf of the firm, though he did not provide complete responses. *Id.* at \*93.

<sup>327</sup> *Id.* at \*8.

oversaw each of his firm's responses, drafted each of those responses, and attested to their responsiveness, he is squarely liable under FINRA Rule 8210 for their deficiencies."<sup>328</sup>

Respondents argue that liability under Rule 8210 for failing to timely respond to requests issued to the Firm and Lowry may extend to Monchik only if she acted with the intent to deceive FINRA or impede its investigation.<sup>329</sup> Respondents primarily rely on the SEC's decision in *Michael A. Rooms*.<sup>330</sup> In that case, NASD (now FINRA) directed several Rule 8210 requests to a member firm's president, and not to the respondent, Michael Rooms.<sup>331</sup> Rooms provided false and misleading information to the firm's president, who then provided that information to NASD in response to a Rule 8210 request. NASD charged Rooms with violating Rule 8210 for attempting to obstruct its investigation by providing misleading information. The SEC found that, because NASD did not direct the request to Rooms and the record did not establish that Rooms was aware of the Rule 8210 request directed to the firm's president when he produced the misleading information to the firm, Rooms could not be liable under Rule 8210.<sup>332</sup> The SEC held, however, that liability under Rule 8210 may extend to associated persons who are "aware of an 8210 request directed to the firm and seek to falsify or impede the firm's response."<sup>333</sup>

Respondents' reliance on *Rooms* is misplaced. First, unlike Rooms, Monchik is charged with violating Rule 8210 based on her failure to respond timely to FINRA's requests, and not for providing false or misleading information to FINRA. Second, the Securities and Exchange Commission's ("SEC") decision in *Rooms* hinged on Rooms' lack of knowledge of the Rule 8210 request when he provided false information to his firm. Here, it is not disputed that Monchik was aware of all of the Rule 8210 requests issued to Spartan and Lowry that are the subject to the Complaint and that she was responsible for compiling the responsive documents and preparing the responses to the Rule 8210 requests.<sup>334</sup> And contrary to Respondents' argument that, under *Rooms*, FINRA must prove that Monchik acted with intent to impede FINRA's investigation, the SEC and the NAC have made clear that scienter is not an element of a Rule 8210 violation.<sup>335</sup>

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<sup>328</sup> *Id.* at \*95; *see also Harvest Cap. Invs., LLC*, 2008 FINRA Discip. LEXIS 45, at \*39.

<sup>329</sup> Lowry Br. at 34–36; Monchik Br. at 36–38.

<sup>330</sup> *Michael A. Rooms*, Exchange Act Release No. 51467, 2005 SEC LEXIS 728 (Apr. 1, 2005), *aff'd*, 444 F.3d 1208 (10th Cir. 2006).

<sup>331</sup> FINRA's predecessor organization, the National Association of Securities Dealers ("NASD"), issued the requests under NASD Rule 8210, which is now FINRA Rule 8210.

<sup>332</sup> *Id.* at \*11. Rooms was found liable under NASD Rule 2110, which is now FINRA Rule 2010, based on the same misconduct. *Id.* at \*12–14.

<sup>333</sup> *Id.*

<sup>334</sup> *See supra* note 322.

<sup>335</sup> *See, e.g., David Kristian Evansen*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080, at \*11 (July 27, 2015); *Richard Rouse*, Exchange Act Release No. 32658, 1993 SEC LEXIS 1831 (July 19, 1993), at \*10–11; *see also Dep't of Enforcement v. Merrimac Corp. Sec., Inc.*, No. 2011027666902, 2017 FINRA Discip. LEXIS 16, at

### **3. Monchik Repeatedly Failed to Respond Timely to Rule 8210 Requests in the Atlas Funds Investigation**

Between June 2021 and February 2023, FINRA issued two series of requests for documents and information to Spartan and two series of requests to Lowry in connection with its investigation into the Atlas Funds. The Hearing Panel concludes that, in each instance, Monchik failed to respond timely to the requests.

#### **a. First Series of Requests Issued to Spartan in 2021**

On June 3, 2021, FINRA issued its first request for documents and information under Rule 8210 to Spartan in the Atlas Funds investigation. FINRA issued this request because Monchik had failed to produce the majority of the documents requested in two previous requests in March and April 2021, which FINRA did not issue under Rule 8210. Monchik did not respond in any manner to the June 2021 Spartan Request until a few days after the deadline and then only produced some responsive documents.<sup>336</sup> FINRA issued a second request on June 25, 2021, but Monchik did not respond by the July 13, 2021 deadline set forth in the request letter, nor did she seek an extension from FINRA.<sup>337</sup>

Two weeks after the deadline, Monchik began producing documents responsive to the outstanding requests. She responded to a majority of the outstanding items in July and August 2021, but a few items remained outstanding. FINRA then issued a third request in August to obtain responses to the four remaining items. When she failed to fully respond by producing all of the remaining responsive documents, FINRA issued a notice of suspension to compel compliance.<sup>338</sup> Monchik ultimately completed Spartan's response to the first series of Spartan Requests in November 2021, about five months after FINRA issued the initial Rule 8210 request to Spartan and after FINRA initiated a suspension proceeding.

Throughout the process of responding to this first series of requests issued to Spartan in the Atlas Funds Investigation, Monchik repeatedly told FINRA that she would produce responsive documents by specific dates but then failed to do so. For example, a few days before the June 17 deadline for responding to the June 2021 Spartan Request, Monchik told FINRA that she would be responding before the deadline but did not produce any responsive documents until several days after the deadline.<sup>339</sup> On June 21, Monchik falsely represented to FINRA that she

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\*12–13 (NAC May 26, 2017), *aff'd in part*, Exchange Act Release No. 86404, 2019 SEC LEXIS 1771 (July 17, 2019).

<sup>336</sup> JX-96; JX-97.

<sup>337</sup> Tr. 1197–98.

<sup>338</sup> JX-15.

<sup>339</sup> JX-7, at 7; Tr. 1195.

uploaded responsive documents to Request Manager.<sup>340</sup> She then told FINRA the Firm’s response would be completed by the morning of June 24, and then by June 25, but Monchik did not produce any additional responsive documents on those dates.<sup>341</sup>

### **b. First Series of Requests Issued to Lowry in 2022**

On May 6, 2022, FINRA issued its first Rule 8210 request to Lowry in the Atlas Funds investigation. Monchik did not respond in any manner by the May 20, 2022 deadline. After the deadline passed, Lowry’s counsel requested and was granted a three-week extension to June 13 to respond to the request.<sup>342</sup> But neither Lowry nor Monchik responded by the deadline or sought another extension.<sup>343</sup> FINRA then issued the June 2022 Lowry Request with a deadline of June 29, 2022. A day after that deadline, Monchik began producing responsive documents.

During the first two weeks of July, Monchik responded to many of the outstanding requests but several others remained incomplete. FINRA then issued a notice of suspension to Lowry to compel production of the remaining documents responsive to the May 2022 and June 2022 Lowry Requests.<sup>344</sup> In early September, nearly four months after the initial request to Lowry and after FINRA initiated a suspension proceeding, Monchik produced the remaining documents responsive to the May 2022 and June 2022 Lowry Requests.

Some documents requested by FINRA that were not timely produced had to be obtained from third parties, including account verification forms from TD Bank. Others, like the general ledgers from PKF, were never completed and thus were not produced to FINRA. But many other documents that FINRA requested were in Lowry’s possession when FINRA issued the requests but still were not timely produced.

### **c. Second Series of Requests Issued to Lowry and Spartan in 2023**

On January 18, 2023, FINRA issued requests for information and documents to Lowry and Spartan in the Atlas Funds investigation with a deadline of February 1, 2023 to respond. FINRA gave Respondents extensions of time to respond and counsel for Respondents represented they were “targeting to complete production by February 28.”<sup>345</sup> But Respondents

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<sup>340</sup> Compare JX-5, at 2, with JX-96, at 2. As noted *supra* at note 71, JX-5 is dated May 14, 2021 but was not provided to FINRA until June 21.

<sup>341</sup> JX-7, at 1–3.

<sup>342</sup> Lowry’s mother passed away in May 2022 and Lowry had been out of the office in May 2022. See JX-23, at 1.

<sup>343</sup> Tr. 1254.

<sup>344</sup> JX-31.

<sup>345</sup> JX-52, at 1.

only produced some bank and brokerage account statements by that date and did not request an extension beyond February 28.<sup>346</sup>

FINRA issued second requests to the Firm and Lowry on February 28, 2023 with a deadline of March 14. By March 20, Respondents had produced some documents responsive to both requests but did not provide written responses. FINRA followed up with Respondents repeatedly in March and early April, but Respondents produced no additional documents and did not provide written responses to FINRA's requests. Then, on April 10 and April 12, Monchik finally produced responsive documents and written responses to the Rule 8210 requests. But some of the electronic files she uploaded were empty or missing responsive information.<sup>347</sup>

Although FINRA had issued two requests to Spartan and Lowry under Rule 8210, Monchik still had not fully responded to the requests by the end of April 2023.<sup>348</sup> FINRA followed up with Monchik in early May and she uploaded additional documents responsive to the Lowry and Spartan Requests, but many deficiencies remained with the Lowry Request. On May 23, 2023, FINRA once again followed up with Monchik about the deficiencies, but she did not respond or produce any additional responsive documents.<sup>349</sup>

Over two months later, on August 1, 2023, FINRA issued notices of suspension to Spartan and Lowry to compel them to produce the remaining responsive documents.<sup>350</sup> Monchik produced a few more due diligence documents on August 7 in response to the Spartan Request and the expedited proceeding against the Firm was dismissed about seven months after FINRA issued the first request.<sup>351</sup> Then, between September 9 and October 13, Monchik produced the remaining documents responsive to the January 2023 Lowry Request and the expedited proceeding against him was dismissed nearly nine months after FINRA issued the request.

#### **d. Respondents' Defenses**

Respondents do not dispute that Monchik failed to timely and fully respond to the Rule 8210 requests issued in the Atlas Funds investigation. Indeed, Monchik conceded during the hearing that there were several instances in which she failed to timely respond to FINRA's requests.<sup>352</sup> Instead, they provide various explanations and excuses for Monchik's failures.

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<sup>346</sup> Tr. 1336–37, 1339.

<sup>347</sup> See JX-62, at 1–6.

<sup>348</sup> JX-62, at 3.

<sup>349</sup> JX-62, at 1; Tr. 1394.

<sup>350</sup> JX-63; JX-64.

<sup>351</sup> The Hearing Panel finds the Monchik had substantially complied with the January 18 and February 28 Spartan Requests by May 2023.

<sup>352</sup> Tr. 1791–92.

First, Respondents contend that some documents FINRA claimed had not been produced had, in fact, been timely produced or did not exist. For example, FINRA claimed in its notice of suspension to Lowry in 2022 that he did not produce all requested brokerage statements for the Atlas Funds and Iapetus.<sup>353</sup> But according to Respondents, the statements FINRA alleged were missing did not exist because there was no activity in those accounts during the months identified by FINRA and thus no account statements were generated.<sup>354</sup> Respondents also cite as an example the list of Atlas Funds bank accounts responsive to item 11 of the March 2021 request, which Monchik purportedly included with the Firm's production of bank statements on June 1, 2021, before FINRA issued the June 2021 Spartan Request.<sup>355</sup>

While there were instances when FINRA incorrectly identified documents as missing or not produced, that does not excuse Respondents' failure to timely respond to numerous other requests. Monchik was obligated under Rule 8210 to respond timely *and completely*.<sup>356</sup> She did not do that. Indeed, the record shows there were many categories of documents in Lowry's or the Firm's possession when FINRA issued the requests that were not timely produced by Monchik.

Respondents also contend Monchik's failures to respond timely to FINRA's requests should be excused because she worked diligently to respond to all of the Rule 8210 requests at issue. They claim she was overwhelmed with over 180 open request items.<sup>357</sup> The record shows Monchik indeed worked long hours during the Relevant Period. And while Monchik in many instances produced a substantial number of documents to FINRA by the time it issued the notices of suspension to Spartan and Lowry, the record still shows that Monchik repeatedly failed to respond timely and fully to FINRA's requests. In fact, the evidence shows that often Monchik either ignored deadlines<sup>358</sup> or represented that responses were forthcoming when they were not.<sup>359</sup>

Monchik also testified that, at times, she had technical problems uploading documents to Request Manager, which led to untimely responses beyond her control.<sup>360</sup> For example, she testified she tried to upload files in May 2021 in response to a FINRA request in connection with the Atlas Fund investigation but could not because of an issue with FINRA's Request Manager.<sup>361</sup> She provided FINRA staff at that time with a screenshot from Request Manager

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<sup>353</sup> JX-31, at 2.

<sup>354</sup> Monchik Br. at 18; Tr. 1574–77.

<sup>355</sup> As noted *supra* at note 80, the record ultimately is inconclusive as to when that list of bank accounts was first provided to FINRA.

<sup>356</sup> See, e.g., *Kanarek*, 2023 FINRA Discip. LEXIS 9, at \*9; *Larson*, 2020 FINRA Discip. LEXIS 44, at \*92.

<sup>357</sup> Monchik Br. at 7–8; Lowry Br. at 5.

<sup>358</sup> See Tr. 429–30, 580–84; JX-24, at 1; JX-76, at 1–2.

<sup>359</sup> JX-7, at 1, 6–7; JX-5, at 2; Tr. 556–57, 1911–12.

<sup>360</sup> Tr. 1768–69.

<sup>361</sup> Tr. 1774–75.

showing a problem with the upload process.<sup>362</sup> But that occurred before the first Rule 8210 request at issue and therefore is not relevant here.

In another instance involving her response to the 2022 Lowry Requests, electronic files responsive to one of the requests were corrupted.<sup>363</sup> She emailed FINRA and included a screenshot from Request Manager noting there was a technical issue with the upload.<sup>364</sup> Then in 2023, Monchik had trouble uploading email files to Request Manager because of their size.<sup>365</sup> She ultimately produced them via a hard drive five days later.<sup>366</sup>

The Hearing Panel agrees that there were instances when Monchik experienced technical issues uploading responsive documents, which caused delays in responding. But again, these were isolated incidents, impacting only a few requests at issue.

The Hearing Panel concludes that Enforcement proved by a preponderance of the evidence that Monchik failed to fully respond timely to each of the Rule 8210 requests issued to Spartan and Lowry in connection with the Atlas Funds investigation.

#### **4. Monchik Failed to Respond Timely to Rule 8210 Requests Issued in the Net Capital Exam**

In the February 2022 Spartan Net Cap Request, FINRA sought documents and information in connection with its Net Capital Exam. When Monchik failed to respond in any way by the extended deadline of March 2, 2022, FINRA issued a second request with a deadline of March 17, 2022. Pyun granted another extension until March 23, but Monchik did not respond by that deadline.

Respondents acknowledge that Monchik did not respond to the February 2022 and March 2022 Spartan Net Cap Requests by the deadlines set forth in the letters. But they contend FINRA granted an open-ended extension of time to respond until after the Firm filed its 2021 Audit with FINRA. The record does not support Respondents' argument.

During the time that FINRA's requests were pending, Monchik communicated with both Pyun and McElduff about the requests issued in the Net Capital Exam. On March 21, 2022, she asked McElduff for an "extension until after audit if we can."<sup>367</sup> At that point, the audit was due

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<sup>362</sup> RX-25, at 1.

<sup>363</sup> Tr. 1848–50.

<sup>364</sup> JX-29, at 3–4.

<sup>365</sup> JX-62, at 31–32.

<sup>366</sup> JX-62, at 26–27.

<sup>367</sup> JX-78, at 3. McElduff previously advised Monchik to contact Pyun regarding extension requests. *See* JX-78, at 2; Tr. 982–83.

by March 31.<sup>368</sup> McElduff did not expressly grant Monchik an extension but requested that she provide a date after March 31 by which she would respond to the outstanding requests.<sup>369</sup> McElduff asked Monchik again for a date on March 25.<sup>370</sup> Although she never provided a date, the Hearing Panel finds that Monchik reasonably believed in late March that she had an extension until shortly after March 31, 2022.

On April 4, 2022, Pyun requested an update on the status of the Firm's response. Monchik told Pyun for the first time that she had an agreement with McElduff to respond to the Rule 8210 request after 2021 Audit was filed with FINRA. By that point, FINRA had extended the deadline for filing the 2021 Audit to April 14, 2022. Although Pyun confirmed with McElduff that he had not provided an extension to Monchik until after Firm filed the 2021 Audit, Pyun nevertheless granted Monchik an extension until April 14 at the "latest."<sup>371</sup>

There is no evidence in the record that Pyun or anyone else at FINRA granted any additional extensions of time beyond April 14, 2022. McElduff repeatedly testified he never gave Monchik an open-ended extension to respond until after the 2021 Audit was filed.<sup>372</sup> But Monchik did not respond in any way to the February 2022 and March 2022 Spartan Requests until July 2022, nearly three months after the extended deadline.<sup>373</sup>

Respondents' argument that FINRA granted Spartan an extension to respond to the February 2022 and March 2022 Spartan Net Cap Requests until after the Firm filed the 2021 Audit is not credible and is not supported by the record. The only reference in the record to an open-ended extension until after the 2021 Audit was filed is Monchik's own self-serving testimony and her email to Pyun referencing a purported agreement with McElduff. But McElduff denied granting any such extension.<sup>374</sup> And when Pyun repeatedly followed up with Monchik in April and May 2022 about the status of the Firm's response, Monchik never again mentioned anything about an extension until after the 2021 Audit was filed and she never produced an email or other written communication granting any such extension.<sup>375</sup> Rather, she claimed that responsive documents either had been uploaded to Request Manager or that she would provide an update by the next day.<sup>376</sup>

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<sup>368</sup> As described above in Section II.G, the 2021 Audit deadline was a constantly moving target.

<sup>369</sup> JX-78, at 1–2.

<sup>370</sup> JX-78, at 1.

<sup>371</sup> JX-82, at 1.

<sup>372</sup> Tr. 990–91, 996–97, 1008–09.

<sup>373</sup> JX-90; JX-92.

<sup>374</sup> Tr. 990–91.

<sup>375</sup> See CX-28, at 1; JX-76, at 3–4; CX-30, at 1.

<sup>376</sup> JX-76, at 2–3; CX-31, at 1–2.

Respondents' argument also is belied by Pyun's hearing testimony and his actions in 2022. Pyun testified that, other than Monchik's email indicating that McElduff had agreed to extend the deadline, Monchik never advised him that Spartan would be unable to respond to the Rule 8210 request until after the 2021 Audit was completed.<sup>377</sup> The record simply does not support Monchik's claim.

Respondents contend Pyun admitted that Spartan's response to FINRA's request was not due until after the 2021 Audit was filed.<sup>378</sup> They point to his testimony on cross-examination, when Pyun was asked about the expedited proceeding initiated in June 2022:

Q: Rather, because you [Pyun] knew that the request wasn't due until after the examination [Audit] had occurred, you referred it to Enforcement after the audit had been filed, isn't that so?

A: Right. So, benefit of the doubt was given because of the annual audit. Waited a week after even the audit was filed, but still there weren't any submissions. So we proceeded with the 9552.<sup>379</sup>

The Hearing Panel disagrees with Respondent's interpretation of Pyun's testimony. Pyun did not admit FINRA granted an extension until after the 2021 Audit was filed, whenever that might have occurred. Rather, he was acknowledging that he made the referral to Enforcement after the 2021 Audit was filed, which is consistent with Pyun's previous testimony that he did not grant any extensions after the April 14, 2022 extension.<sup>380</sup> Moreover, if Pyun believed an extension had been granted until whenever the 2021 Audit ultimately was filed, the Hearing Panel finds it unlikely that he would have repeatedly reached out to Monchik in April and May about the status of the Firm's response.<sup>381</sup> And Monchik never mentioned the purported extension in any email communications with Pyun after April 14, 2022.<sup>382</sup>

For these reasons, the Hearing Panel concludes that Monchik violated FINRA Rules 8210 and 2010 by failing to respond timely to the February 2022 and March 2022 Spartan Net Cap Requests.

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<sup>377</sup> Tr. 791.

<sup>378</sup> Lowry Br. at 25–26; Monchik Br. at 26.

<sup>379</sup> Tr. 855.

<sup>380</sup> Tr. 794–95, 800.

<sup>381</sup> JX-76, at 1–4; Tr. 793–95, 800.

<sup>382</sup> See JX-76, at 1–3.

**B. Lowry Failed to Timely Respond to Requests for Documents and Information in Violation of FINRA Rules 8210 and 2010 (Second Cause of Action)**

In cause two of the Complaint, Enforcement charges Lowry with violating FINRA Rules 8210 and 2010 by failing to timely respond to two requests for documents and information and two follow-up requests issued to him under FINRA Rule 8210 in connection with the Atlas Funds investigation.

The person to whom FINRA directs a Rule 8210 request has a “duty to respond [personally] or supervise others diligently with adequate follow-up.”<sup>383</sup> The recipient of a Rule 8210 request cannot shift responsibility to provide a complete and timely response to someone else, whether an attorney or otherwise.<sup>384</sup> And two individuals can be found liable under Rule 8210 even when the request was directed to only one of the individuals.<sup>385</sup>

The Hearing Panel’s legal conclusions relating to the FINRA Rule 8210 and 2010 charges in cause two against Lowry stem from its factual findings and legal conclusions regarding the same charges against Monchik. As discussed above, Monchik, on behalf of Lowry, failed to respond timely to two series of requests issued to Lowry in the Atlas Investigation. While Lowry delegated to Monchik the responsibility for responding to the requests,<sup>386</sup> he did not diligently supervise or follow up with her to ensure she responded to the requests in a timely manner—even as months passed without her completing the responses. And even after FINRA was forced to initiate suspension proceedings because Monchik had not fully responded to information requests directed to Lowry, he continued to rely on Monchik to respond to his Rule 8210 requests relating to the Atlas Funds, and he did so with no supervision or follow-up.

For the reasons discussed in Section III.A. above, the Hearing Panel concludes that Lowry violated FINRA Rules 8210 and 2010 by failing to timely respond to two series of requests issued to him in connection with the Atlas Funds investigation.

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<sup>383</sup> *Merrimac Corp. Sec., Inc.*, 2019 SEC LEXIS 1771, at \*11 n. 27 (quoting *Richard Rouse*, 1993 SEC LEXIS 1831, at \*10).

<sup>384</sup> *Dennis Pearson*, Exchange Act Release No. 54913, 2006 SEC LEXIS 2871, at \*14 (Dec. 11, 2006) (ruling that “an associated person cannot satisfy his obligation to respond to an information request by simply referring the matter to a lawyer, particularly where, as here, the member or person fails to act to ensure that the lawyer had provided the requested information”); *Michael Borth*, Exchange Act Release No., 31602, 1992 SEC LEXIS 3248, at \*10 (Dec. 16, 1992) (ruling that a recipient of a Rule 8210 request cannot “abdicate his duty [to respond] by relying on others, including attorneys, to perform it.”).

<sup>385</sup> See, e.g., *Dep’t of Enforcement v. Harrington and Milberger*, No. 2015047303901, 2018 FINRA Discip. LEXIS 31, at \*109 (OHO Nov. 12, 2018) (finding that both Harrington and Milberger violated FINRA Rule 8210 in connection with a request directed to Harrington), *modified sub nom. Dep’t of Enforcement v. Milberger*, 2020 FINRA Discip. LEXIS 24 (NAC Mar. 27, 2020).

<sup>386</sup> See Stip. ¶¶ 45, 51, 93, 101.

**C. Lowry Failed to Supervise and Failed to Maintain a Reasonable Supervisory System at Spartan in Violation of FINRA Rules 3110(a) and 2010 (Third Cause of Action)**

**1. Legal Standard**

FINRA Rule 3110(a) requires that member firms “establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.” A firm’s CEO ultimately is “responsible for the firm’s compliance with all applicable requirements unless and until he or she reasonably delegates a particular function to another person in the firm,” and neither knows nor has reason to know that such person’s performance is deficient.<sup>387</sup> When a person with supervisory responsibilities delegates those responsibilities to others, that person bears the “additional duty to follow up and review that delegated authority to ensure it is being properly exercised.”<sup>388</sup> And when a firm’s senior executive becomes aware of red flags, he or she has a duty to investigate and address them appropriately.<sup>389</sup>

As Spartan’s CEO, Lowry delegated to the Firm’s compliance department the responsibility for complying with regulatory requests issued by FINRA under Rule 8210.<sup>390</sup> After delegating that responsibility, as CEO, Lowry had the additional duty to review that delegated authority and ensure it was being properly exercised.<sup>391</sup>

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<sup>387</sup> See *Richard Kresge*, Exchange Act Release No. 55988, 2007 SEC LEXIS 1407, at \*28–29 (June 29, 2007); see also *Michael Markowski v. SEC*, 34 F.3d 99, 104 (2d Cir. 1994); *Dep’t of Enforcement v. Wilson-Davis & Co.*, No. 2012032731802r, 2025 FINRA Discip. LEXIS 15, at \*13 n.4 (NAC July 10, 2025), *appeal docketed*, No. 3-22506 (SEC Aug. 7, 2025); *Dep’t of Enforcement v. Taddonio*, No. 2015044823501, 2019 FINRA Discip. LEXIS 3, at \*71–72 (NAC Jan. 29, 2019), *aff’d*, Exchange Act Release No. 97325, 2023 SEC LEXIS 980 (Apr. 19, 2023).

<sup>388</sup> *Wilson-Davis & Co.*, 2025 FINRA Discip. LEXIS 15, at \*13 n.4; *Dep’t of Enforcement v. Wedbush Sec., Inc.*, No. 20070094044, 2014 FINRA Discip. LEXIS 40, at \*30 (NAC Dec. 11, 2014), *aff’d*, Exchange Act Release No. 78568, 2016 SEC LEXIS 2794 (Aug. 12, 2016).

<sup>389</sup> See *Edward Beyn*, Exchange Act Release No. 97325, 2023 SEC LEXIS 980, at \*20 (Apr. 19, 2023), *petition for review denied*, Nos. 23-6526, 23-6653, 2025 U.S. App. LEXIS 81 (2d Cir. Jan. 3, 2025); *Dennis Kaminski*, Exchange Act Release No. 65347, 2011 SEC LEXIS 3225, at \*25–26 (Sept. 16, 2011); see also *Kresge*, 2007 SEC LEXIS 1407, at \*27–33.

<sup>390</sup> Stip. ¶ 149. During the Relevant Period, Monchik and later Chin served as the Firm’s CCO and were therefore responsible for responding to regulatory requests.

<sup>391</sup> See *Wilson-Davis & Co.*, 2025 FINRA Discip. LEXIS 15, at \*13 n.4.

## 2. Lowry Ignored Red Flag Warnings of Noncompliance with FINRA Rule 8210

Lowry acknowledges that, as Spartan’s CEO, he was responsible for investigating and addressing red flags of noncompliance, even if he delegated responsibility for Spartan’s compliance with Rule 8210.<sup>392</sup> The Hearing Panel finds that Lowry failed to do so.

There were several red flags suggesting that the Firm’s compliance department was not responding timely and completely to FINRA’s regulatory requests during the Relevant Period. FINRA issued a notice of suspension to Spartan in October 2021, after the Firm failed to respond timely to an initial Rule 8210 request and two follow-up requests issued in the Atlas Funds investigation. Lowry was notified of the notice of suspension.<sup>393</sup> He concedes the suspension notice was a “red flag” but argues that he responded by hiring Chin and another compliance professional, Randy Hechler.<sup>394</sup>

But while Spartan hired Chin as its new CCO in December 2021, that had nothing to do with the October 2021 notice of suspension, as the Firm had been seeking to hire a new CCO since July 2020, when Monchik stepped in as interim CCO.<sup>395</sup> And even after Spartan hired Chin, Lowry did not direct her or anyone else in the Firm’s compliance department to make any process changes to prevent future delays in responding to Rule 8210 requests.<sup>396</sup> Monchik also testified the Firm did not allocate any additional resources to responding to regulatory requests after receiving the notice of suspension in October 2021.<sup>397</sup> In fact, she testified it was the lack of people and resources that caused the Firm to fail to meet deadlines for responses to FINRA’s Rule 8210 requests.<sup>398</sup>

In June 2022, FINRA issued another notice of suspension to the Firm based on its failure to respond timely to information requests issued in the Net Capital Exam. Despite a second suspension notice in eight months, Lowry did not have any discussions with Monchik or Chin about improving the process for responding to regulatory requests and no changes were made to the Firm’s processes.<sup>399</sup> Lowry argues the notice of suspension did not result from any actions or inactions by the Firm’s compliance department but was due to Monchik’s “reasonable understanding” that she did not need to respond until after the Firm filed its 2021 Audit with

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<sup>392</sup> Lowry Br. at 39–40; Lowry Post-Hearing Reply Brief at 10.

<sup>393</sup> Tr. 120.

<sup>394</sup> Lowry Br. at 40. When asked whether the hiring of Hechler had anything to do with the October 2021 notice of suspension, Lowry testified that the Firm re-hired Hechler to bolster the Firm’s compliance department. Tr. 124–25.

<sup>395</sup> Tr. 87–88.

<sup>396</sup> Tr. 126–28.

<sup>397</sup> Tr. 606–08.

<sup>398</sup> *See* Tr. 1791–92.

<sup>399</sup> Tr. 154–55.

FINRA.<sup>400</sup> But as addressed above, the Hearing Panel finds that Monchik’s belief was not reasonable and is not supported by the record.

Between July 2022 and August 2023, FINRA issued two notices of suspension to Lowry personally and one notice of suspension to the Firm based on their failure to respond timely to FINRA’s regulatory requests.<sup>401</sup> But again, Lowry took no action.<sup>402</sup> He testified the Firm hired additional compliance staff during that time period, including a replacement for Chin after she left the Firm in 2024, but then conceded that those hires had nothing to do with the issues the Firm was having responding timely to FINRA’s Rule 8210 requests.<sup>403</sup>

The Hearing Panel finds that Lowry repeatedly failed to intervene after he learned of red flags indicating that Spartan’s compliance department was not complying with Rule 8210. Once aware of the red flags, Lowry had an obligation to implement steps to avoid future Rule 8210 violations but he failed to do so. The Hearing Panel concludes that, by failing to supervise and failing to maintain a reasonable supervisory system at Spartan to ensure the Firm’s compliance with Rule 8210, Lowry violated FINRA Rules 3110(a) and 2010.<sup>404</sup>

## **D. Respondents’ Other Defenses**

### **1. Alleged Bias**

Monchik contends the Hearing Panel has the authority to do all things necessary and appropriate to ensure hearings are conducted fairly.<sup>405</sup> Based on that authority, Monchik argues the Hearing Panel should disregard all of Macfadden’s testimony, as well as all of the work he did in connection with the Atlas Funds investigation, because she claims he had a bias against her.<sup>406</sup> As evidence of the bias, she references Macfadden’s testimony where he stated that the

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<sup>400</sup> Lowry Br. at 41.

<sup>401</sup> JX-31; JX-63; JX-64.

<sup>402</sup> In fact, he testified he believed the Firm had adequate staffing during the Relevant Period. Tr. 97–99.

<sup>403</sup> Tr. 233–35.

<sup>404</sup> In the Complaint, FINRA alleged that Lowry “did not reasonably supervise Monchik to ensure timely responses to the Lowry Requests.” Compl. ¶ 138. But in Enforcement’s Post-Hearing Reply Brief, FINRA stated it is “not charging Lowry with violating Rule 3110 for not supervising the responses to his personal Rule 8210 requests.” Enforcement’s Post-Hearing Reply Brief at 11. While it is not clear whether FINRA is abandoning that portion of the supervision charge, it is not relevant to the Hearing Panel’s conclusion. For the reasons addressed in Section III.C. the Hearing Panel finds that Lowry failed to reasonably supervise the Firm’s compliance with Rule 8210 during the Relevant Period.

<sup>405</sup> Monchik Br. at 32–33 (citing *Dep’t of Enforcement v. Titan Sec.*, No. 2013035345701, 2021 FINRA Discip. LEXIS 5, at \*42 (NAC June 2, 2021), *appeal docketed*, No. 3-20387 (SEC June 29, 2021)).

<sup>406</sup> Monchik Br. at 33. *See also* Monchik Post-Hearing Reply Brief at 2 (“Macfadden by his actions and words openly confirmed his explicit bias, animus and targeting of and against Monchik.”).

Atlas Funds investigation was his highest priority.<sup>407</sup> She argues that this bias led to Macfadden lying during his testimony.

The Hearing Panel rejects Monchik’s argument. While the Atlas Funds investigation may have been Macfadden’s highest priority case during the Relevant Period, that is not evidence of bias. He testified that the investigation was important to him because there were hundreds of investors, Spartan had raised over \$60 million in the Atlas Funds, and he was concerned about ongoing investor harm.<sup>408</sup> It is therefore reasonable the Atlas Funds investigation would be a high priority. And he was not asked, and offered no testimony, about the nature of the other matters he was handling at the same time he was conducting the Atlas Funds investigation.

## 2. Constitutional Arguments

In their Answers and post-hearing briefs, Respondents argue that this disciplinary proceeding is unconstitutional for two reasons. First, they contend this proceeding violates their right to a jury trial under the U.S. Constitution’s Seventh Amendment. Second, they contend this proceeding violates the U.S. Constitution’s Appointments Clause because the Hearing Officer appointed to preside over this matter is a FINRA employee and a non-government appointed hearing officer. Respondents presented no evidence or argument on these issues during the hearing. Nevertheless, we briefly address those arguments here.

Constitutional rights are protected from infringement by government entities and those who, in certain circumstances, may be deemed state actors because of their close connection to government entities.<sup>409</sup> As the Second Circuit Court of Appeals has explained, “Because the United States Constitution regulates only the Government, not private parties, a litigant claiming that his constitutional rights have been violated must first establish that the challenged conduct constitutes state action.”<sup>410</sup> That means that the threshold issue before any of Respondents’ constitutional arguments can even be considered is whether FINRA is a state actor.<sup>411</sup>

FINRA is a private membership organization and a not-for-profit corporation organized under Delaware law. The SEC has made clear that FINRA, as a private entity, is not subject to

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<sup>407</sup> Monchik Br. at 33; Tr. 1634–35.

<sup>408</sup> Tr. 1421–22.

<sup>409</sup> *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 936 (1982) (most rights secured by the Constitution are protected only against infringement by governments); *Silva v. Swift*, No. 4:19-cv-286-RH/MJF, 2020 U.S. Dist. LEXIS 107624, at \*6 (N.D. Fla. June 1, 2020) (ruling that the Seventh Amendment “cannot be violated by private individuals who were not acting under color of state law or in concert with state actors”).

<sup>410</sup> *Ciambriello v. Cnty. of Nassau*, 292 F.3d 307, 323 (2d Cir. 2002) (quoting *United States v. Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers of Am.*, 941 F.2d 1292, 1295–96 (2d Cir. 1991)).

<sup>411</sup> *Santos-Buch v. Fin. Indus. Reg. Auth., Inc.*, 32 F. Supp. 3d 475, 483 (S.D.N.Y. 2014) (FINRA is not a state actor); *accord D.L. Cromwell Invs., Inc. v. NASD Reg., Inc.*, 279 F.3d 155, 161 (2d Cir. 2002) (stating that “the Fifth Amendment restricts only governmental conduct, and will constrain a private entity only insofar as its actions are found to be ‘fairly attributable’ to the government”).

the Appointment’s Clause of the U.S. Constitution.<sup>412</sup> Similarly, “constitutional due process and trial by jury requirements do not apply in the disciplinary proceedings of private self-regulatory organizations such as FINRA.”<sup>413</sup> “[E]very court to examine the issue has held that FINRA is not a state actor.”<sup>414</sup> Accordingly, the Hearing Panel rejects Respondents’ constitutional arguments.

#### **IV. Sanctions**

##### **A. Overview**

In determining the appropriate sanctions, the Hearing Panel considered FINRA’s Sanction Guidelines, which include the General Principles Applicable to All Sanction Determinations (“General Principles”), Principal Considerations in Determining Sanctions (“Principal Considerations”), and violation-specific principal considerations.<sup>415</sup> The Hearing Panel also considered all relevant facts and circumstances, including the nature of the underlying misconduct and any potential aggravating and mitigating factors.

The General Principles state that “[d]isciplinary sanctions should be designed to protect the investing public by deterring misconduct and upholding high standards of business conduct.”<sup>416</sup> The Guidelines also provide that sanctions should be “a meaningful deterrent and reflect the seriousness of the misconduct at issue” and “significant enough to prevent and discourage future misconduct by a respondent and deter others from engaging in similar misconduct.”<sup>417</sup> To that end, adjudicators should “tailor sanctions to respond to the misconduct at issue.”<sup>418</sup>

##### **B. FINRA Rules 8210 and 2010**

The first cause of action charges Monchik with failing to respond timely to three initial requests for documents and information and four follow-up requests issued to Spartan under Rule 8210. The second cause of action charges both Lowry and Monchik with failing to timely respond to two initial requests and two follow-up requests for documents and information issued by FINRA to Lowry under Rule 8210. The two causes of action against Monchik are closely

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<sup>412</sup> *William Joseph Kielczewski*, Exchange Act Release No. 104352, 2025 SEC LEXIS 3108, at \*33–34 (Dec. 9, 2025).

<sup>413</sup> *Dep’t of Enforcement v. Alpine Sec. Corp.*, No 2019061232601, 2025 FINRA Discip. LEXIS 6, at \*115–16 (NAC Mar. 25, 2025), *appeal docketed*, No. 3-22471 (SEC Apr. 7, 2025); *see also Kielczewski*, 2025 SEC LEXIS 3108, at \*34.

<sup>414</sup> *Weber v. PNC Invs. LLC*, No. 2:19-cv-00704, 2020 U.S. Dist. LEXIS 18723, at \*38 (W.D. Pa. Feb. 5, 2020), *aff’d* 844 F. App’x 579 (3d. Cir. 2021).

<sup>415</sup> FINRA Sanction Guidelines (2024) (“Guidelines”), <https://www.finra.org/rules-guidance/oversight-enforcement/sanction-guidelines>.

<sup>416</sup> Guidelines at 2 (General Principles, No. 1).

<sup>417</sup> *Id.* (General Principles, No. 1).

<sup>418</sup> *Id.* at 3 (General Principles, No. 3).

related. The imposition of a unitary sanction may be appropriate where the respondent’s violations stem from related misconduct or a single underlying problem.<sup>419</sup> The first and second causes of action appear to arise from related misconduct, so a unitary sanction for Monchik is appropriate.

The Sanction Guideline for failing to respond in a timely manner to requests made pursuant to Rule 8210 recommends a fine of \$2,500 to \$20,000 and a suspension in all capacities for a period of three months to two years.<sup>420</sup> There are two principal considerations in determining sanctions for failure to respond in a timely manner to requests made pursuant to Rule 8210: (1) “[t]he importance of the information requested as viewed from FINRA’s perspective” and (2) “[t]he number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response.”<sup>421</sup>

### **1. Monchik**

In determining the appropriate sanctions for Monchik, the Hearing Panel first considered the two principal considerations for the failure to respond in a timely manner to requests made pursuant to Rule 8210. Both are aggravating factors.

The Hearing Panel finds the information FINRA requested from Spartan was important to two ongoing FINRA investigations—one relating to potential sales practice violations involving the Atlas Funds and one relating to Spartan’s net capital compliance. Macfadden testified that Spartan raised over \$60 million for the Atlas Funds from hundreds of investors and FINRA had serious concerns about ongoing investor harm.<sup>422</sup> The records Macfadden requested were important in assessing whether there were any regulatory violations and most of the documents should have been readily accessible.<sup>423</sup> According to Macfadden, Monchik’s delays in responding to the requests issued to Spartan and Lowry in connection with the Atlas Funds investigation drained FINRA’s resources and had a “tremendous impact” on FINRA’s investigation.<sup>424</sup>

Pyun testified the documents and information FINRA requested in the Net Capital Exam were also important. FINRA sought information about non-cash compensation received by the Firm between 2019 and 2021 and large capital distributions in 2021 that FINRA believed could

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<sup>419</sup> *Dep’t of Enforcement v. Silver Leaf Partners, LLC*, No. 2014042606902, 2020 FINRA Discip. LEXIS 36, at \*72 (NAC June 29, 2020), *aff’d*, Exchange Act Release No. 102538, 2025 SEC LEXIS 649 (Mar. 7, 2025), *appeal docketed*, No. 25-1171 (2d Cir. May 2, 2025).

<sup>420</sup> Guidelines at 93.

<sup>421</sup> *Id.*

<sup>422</sup> Tr. 1421.

<sup>423</sup> Tr. 1419–21.

<sup>424</sup> Tr. 1421.

have had a significant impact on the Firm's net capital.<sup>425</sup> Monchik's failure to respond timely to FINRA's requests impeded FINRA's ability to determine whether the Firm had complied with its net capital obligations.<sup>426</sup>

The Hearing Panel finds the number of requests made, the time it took for Monchik to fully respond, and the degree of regulatory pressure required to obtain responses from Monchik particularly egregious. In less than two years, Monchik's failures to timely provide information and documents on behalf of Spartan and Lowry led to multiple extension requests, multiple follow-up requests, and five suspension proceedings under FINRA Rule 9552 to compel compliance. As described above, in several instances Monchik represented to FINRA that documents were forthcoming<sup>427</sup> or falsely claimed that documents had been produced when they had not.<sup>428</sup> In other instances, she ignored FINRA's requests for an update on the status of responses.<sup>429</sup> The Hearing Panel finds that Monchik's repeated failures to timely and fully respond to FINRA's requests, coupled with the amount of resources and effort FINRA had to exert to compel responses, is a significant aggravating factor.

There are other aggravating factors in this case as well. Monchik has a disciplinary history.<sup>430</sup> She recently was suspended for two years and fined for willful Form U4 disclosure violations.<sup>431</sup> As a result of FINRA's finding that she acted willfully, she is also statutorily disqualified from the securities industry. She also engaged in a pattern of failing to timely respond to FINRA's requests over a period of over two years and in connection with multiple requests issued in two investigations, despite prior warnings from FINRA.<sup>432</sup> In addition, her misconduct was reckless, particularly after repeated failures to respond timely and the issuance of multiple notices of suspensions to the Firm and Lowry.<sup>433</sup>

Monchik also failed to accept responsibility for her misconduct.<sup>434</sup> While she conceded during the hearing that she was responsible for responding to the regulatory requests at issue in

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<sup>425</sup> Tr. 762–63, 804–05; *see* JX-74.

<sup>426</sup> Tr. 808–09.

<sup>427</sup> *See* JX-7, at 5–7; *compare* JX-76, at 2–3 (Monchik representing she would respond to FINRA request by May 9, 2022) *with* Tr. 796 (Pyun testifying he did not receive a response by May 9, 2022).

<sup>428</sup> *Compare* JX-5, at 2 *with* JX-96, at 2 and JX-97, at 1–2; *see also* CX-31, at 1–2 (Monchik falsely representing that documents had been provided). *See also* Tr. 1370–74 (Pyun testifying that Monchik produced electronic folders purporting to contain responsive documents and information, but many folders were empty).

<sup>429</sup> *See, e.g.*, CX-28, at 1; Tr. 793.

<sup>430</sup> Guidelines at 7 (Principal Consideration No. 1).

<sup>431</sup> *See Dep't of Enforcement v. Spartan Cap. Sec.*, 2024 FINRA Discip. LEXIS 20 (NAC Oct. 9, 2024), *appeal docketed*, No. 3-22285 (SEC Nov. 4, 2024).

<sup>432</sup> Guidelines at 7–8 (Principal Consideration Nos. 8, 9, and 14).

<sup>433</sup> *Id.* at 8 (Principal Consideration No. 13).

<sup>434</sup> *Id.* at 7 (Principal Consideration No. 2).

this case and that there were instances when she failed to respond timely, she offered a variety of excuses for her failures and contends that FINRA never should have filed the Complaint against her.

Respondents argue there are mitigating factors that weigh against significant sanctions. Respondents contend that Monchik “labored under difficult conditions and worked 16–18 hour day[s]” in “the midst of the Covid Pandemic” to respond to the requests issued to Spartan and Lowry.<sup>435</sup> They compare her to the respondent in *Richard J. Rouse*, where the SEC imposed a minimal sanction for failing to respond timely to Rule 8210 requests.<sup>436</sup> But the circumstances in that case are vastly different from this matter.

In *Rouse*, the respondent’s firm was the subject of investigations by numerous regulatory agencies and approximately 600 registered representatives and all of the compliance staff left the firm. Rouse remained at the firm to deal with multiple regulatory requests, including several issued by FINRA. He made late responses to three series of Rule 8210 requests, ultimately providing full responses 27 to 84 days after the deadlines in the initial request letters.<sup>437</sup> In reducing the sanction to a censure only, the SEC found that there were “highly extraordinary circumstances” justifying the reduction in sanctions; in particular, the respondent’s member firm was in a “crisis atmosphere” that led to the departure of hundreds of brokers and every compliance officer from the firm, leaving the respondent as the only compliance employee.<sup>438</sup>

While the evidence shows that Monchik was dealing with other regulatory requests in addition to those that are the subject of this proceeding, and that she worked long hours and provided responses after business hours, no “highly extraordinary” crisis existed at Spartan during the Relevant Period. And unlike Rouse, who provided full responses to FINRA’s requests within 27 to 84 days, it took Monchik over six months in some instances to fully respond to requests issued to Spartan and Lowry, and she only completed the responses after FINRA issued notices of suspension to compel compliance.

Monchik contends that several other Principal Considerations in the Guidelines are mitigating. First, she claims the Firm voluntarily employed subsequent corrective measures when the Firm hired additional compliance staff.<sup>439</sup> But Lowry conceded that hiring additional compliance staff was not done in response to the Firm’s failures to respond timely to FINRA’s regulatory requests. She also argues that the Firm had in place reasonable WSPs, the Firm’s staff

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<sup>435</sup> Lowry Br. at 48; Monchik Br. at 43.

<sup>436</sup> *Richard J. Rouse*, 1993 SEC LEXIS 1831.

<sup>437</sup> *Id.* at \*7.

<sup>438</sup> *Id.* at \*3, \*16.

<sup>439</sup> Guidelines at 7 (Principal Consideration No. 3).

was properly trained, and the failures to timely respond to FINRA’s requests were an “aberrant” event.<sup>440</sup> But those considerations apply to member Firms, and not individual respondents.<sup>441</sup>

Monchik argues there are other mitigating factors outside those listed in the Guidelines that the Hearing Panel should consider. First, she notes the Relevant Period was during the Covid pandemic, when she was working alone in the office and the Firm was actively looking for more compliance staff.<sup>442</sup> She also blames Macfadden, who Monchik claims was biased against her and issued “insurmountable requests” for which she was responsible.<sup>443</sup> Finally, she downplays the importance of the information requested in the Net Capital Exam since it led only to a cautionary action.<sup>444</sup>

The Hearing Panel finds none of these factors to be mitigating. The first Rule 8210 request at issue—the June 2021 Spartan Request—was issued 15 months after the start of the Covid pandemic. FINRA issued the remaining requests later in 2021, in 2022, and in 2023, but Monchik continued to have difficulties responding timely to FINRA’s requests. And there is no evidence that Macfadden was biased toward Monchik or the Firm or that the number of requests he issued was unreasonable. Rather, he testified he was seeking documents and information necessary to determine whether the Firm violated FINRA rules in connection with the Atlas Fund offerings. Finally, whether or not the Net Capital Exam led to a formal action is irrelevant to sanctions. The issue is the “importance of the information requested as viewed from FINRA’s perspective.”<sup>445</sup> Pyun testified the information was important to determine whether large capital contributions impacted the Firm’s net capital. And mitigation of a FINRA Rule 8210 violation “cannot be based on a respondent’s second guessing the importance of an investigation.”<sup>446</sup>

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<sup>440</sup> *Id.* at 7–8 (Principal Consideration Nos. 5, 6, 15).

<sup>441</sup> Even if applicable, they are not mitigating. The Hearing Panel finds that Spartan’s WSPs were not properly implemented as Monchik repeatedly failed to respond timely to FINRA’s requests despite the requirement in the WSPs that the Firm provide a “prompt response to regulators’ requests for information.” CX-9. And Monchik’s failures to respond clearly were not an aberrant event since Monchik failed to timely respond to several Rule 8210 requests issued by FINRA between June 2021 and February 2023, and the Firm has had other compliance issues. *See Spartan Cap. Sec.*, 2024 FINRA Discip. LEXIS 20.

Monchik also argues that Principal Considerations Nos. 2, 8, 9, 13, and 14 are also mitigating. Monchik Br. at 45–47. For the reasons discussed *supra* at IV.B.1, the Hearing Panel disagrees and finds those factors to be aggravating.

<sup>442</sup> Monchik Br. at 47.

<sup>443</sup> Monchik Br. at 48.

<sup>444</sup> Monchik Br. at 48.

<sup>445</sup> Guidelines at 93.

<sup>446</sup> *See Dep’t of Enforcement v. Felix*, No. 2020065128501, 2022 FINRA Discip. LEXIS 13, at \*23 (NAC Oct. 13, 2022), *aff’d*, Exchange Act Release No. 100662, 2024 SEC LEXIS 1860 (Aug. 6, 2024), *petition for review denied*, No. 24-1308, 2025 U.S. App. LEXIS 24321 (D.C. Cir. Sept. 18, 2025) (quoting *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at \*21 (Apr. 11, 2008), *aff’d*, 566 F.3d 1172 (D.C. Cir. 2009)).

## 2. Lowry

The second cause of action charges Lowry with violating FINRA Rules 8210 and 2010 by failing to respond timely to two requests for documents and information and two follow-up requests issued to him under FINRA Rule 8210. The Hearing Panel considered the two principal considerations specific to the failure to respond in a timely manner to requests made under Rule 8210.<sup>447</sup> For the reasons addressed in Section IV.B.1, the information requested of Lowry in the Atlas Funds investigation was important to FINRA. And the number of requests, the time it took Lowry to respond, and the degree of regulatory pressure needed to compel compliance were significant aggravating factors.

There are additional aggravating factors here. First, Lowry has a disciplinary history—he was suspended for two years in all capacities and fined for widespread and willful Form U4 disclosure violations.<sup>448</sup> As a result of FINRA’s finding that he acted willfully, he is also statutorily disqualified from the securities industry. Contrary to Lowry’s argument, the Hearing Panel finds the recent disciplinary action to be particularly relevant and aggravating because it shows Lowry’s pattern of “disregarding regulatory obligations.”<sup>449</sup> Lowry also has a history of customer arbitrations.<sup>450</sup>

Like Monchik, Lowry engaged in a pattern of misconduct despite prior warnings from FINRA.<sup>451</sup> He failed to timely respond to two initial requests and two follow-up requests issued to him in the Atlas Funds investigation over the course of a year. And his misconduct was reckless, particularly after being warned repeatedly of the consequences for violating FINRA Rule 8210 and after FINRA issued suspension notices to him and his Firm.<sup>452</sup>

Lowry also failed to accept responsibility for his misconduct.<sup>453</sup> He testified he delegated his responsibility for providing timely responses to Monchik and that he trusted her to handle the responses to the requests. But he did little to ensure she was complying with Rule 8210 by timely responding to the requests issued to him, even after FINRA issued him a notice of suspension.

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<sup>447</sup> Guidelines at 93 ((1) “[t]he importance of the information requested as viewed from FINRA’s perspective” and (2) “[t]he number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response”).

<sup>448</sup> *Id.* at 7 (Principal Considerations in Determining Sanctions No. 1); *see Spartan Cap. Sec.*, 2024 FINRA Discip. LEXIS 20, *appeal docketed*, No. 3-22285 (SEC Nov. 4, 2024).

<sup>449</sup> *See* Guidelines at 2 (General Principle No. 2).

<sup>450</sup> *Id.* at 7 (Principal Consideration No. 1); *see* CX-10A; Tr. 249–55. The Hearing Panel considered only arbitration awards and settlements.

<sup>451</sup> *Id.* at 7–8 (Principal Consideration Nos. 8 and 14).

<sup>452</sup> *Id.* at 8 (Principal Consideration No. 13).

<sup>453</sup> *Id.* at 7 (Principal Consideration No. 2).

### 3. Respondents' Additional Arguments on Sanctions for the Rule 8210 Violations

Respondents contend the Hearing Panel should consider the sanctions imposed in the Letter of Acceptance, Waiver, and Consent (“AWC”) that Spartan executed (“Spartan AWC”), which involved the same misconduct at issue in this case but did not include a suspension of the Firm.<sup>454</sup> The sanctions set forth in the Spartan AWC are not relevant here. “[T]he appropriateness of the sanctions imposed depends on the facts and circumstances of the particular case and cannot be determined precisely by comparison with action taken in other cases.”<sup>455</sup> And “comparisons to sanctions in settled cases are inappropriate because pragmatic considerations justify the acceptance of lesser sanctions in negotiating a settlement such as the avoidance of time-and-manpower-consuming adversary proceedings.”<sup>456</sup>

Respondents also argue there was no harm to the public and no need to deter further misconduct since, under the Spartan AWC, the Firm retained an independent consultant to help prevent future issues with responding timely to regulatory requests.<sup>457</sup> The absence of customer harm is not mitigating.<sup>458</sup> And the retention of the independent consultant was part of the Spartan AWC and is irrelevant to determining the appropriate sanctions in this matter, which involves a different set of Respondents’ actions.<sup>459</sup>

\* \* \*

After carefully considering the relevant factors in the Guidelines and the arguments made by the parties, the Hearing Panel concludes that the appropriate sanction for Monchik for violating FINRA Rules 8210 and 2010 is a \$20,000 fine and a two-year suspension in all capacities. The Hearing Panel concludes that the appropriate sanction for Lowry for violating FINRA Rules 8210 and 2010 is also a \$20,000 fine and a two-year suspension in all capacities. We believe these sanctions are appropriately remedial and sufficient to achieve the deterrence goals of the Guidelines.

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<sup>454</sup> See JX-2.

<sup>455</sup> *Dep’t of Enforcement v. C.L. King & Assoc’s, Inc.*, No. 2014040476901, 2019 FINRA Discip. LEXIS 43, at \*136 (NAC Oct. 2, 2019) (quoting *Kaminski*, 2011 SEC LEXIS 3225, at \*41).

<sup>456</sup> *Id.* at \*136–37 (quoting *Kent M. Houston*, Exchange Act Release No. 71589, 2014 SEC LEXIS 614, at \*33 (Feb. 20, 2014)).

<sup>457</sup> Lowry Br. at 44; Monchik Br. at 45; see Guidelines at 2 (General Principle No. 1).

<sup>458</sup> *Dep’t of Enforcement v. Burford*, No. 2019064656601, 2024 FINRA Discip. LEXIS 5, at \*16 (NAC Mar. 14, 2024), *aff’d*, Exchange Act Release No. 103180, 2025 SEC LEXIS 1577 (June 4, 2025), *petition for review filed*, No. 25-60401 (D.C. Cir. July 28, 2025); see also *Michael Joseph Clarke*, Exchange Act Release No. 97860, 2023 SEC LEXIS 1756, at \*32 (July 10, 2023).

<sup>459</sup> The Guidelines provide that “[a]djudicators should design sanctions that are meaningful and significant enough to prevent and discourage future misconduct by a respondent and deter others from engaging in similar misconduct.” Guidelines at 2 (General Principle No. 1).

### C. FINRA Rules 3110(a) and 2010

When an individual fails to supervise, the Guidelines recommend a suspension in all principal capacities of up to two months and a fine of \$5,000 to \$30,000.<sup>460</sup> Where aggravating factors predominate, the Guidelines direct adjudicators to consider suspending the respondent in any or all capacities for up to two years or barring the respondent.<sup>461</sup> The Principal Considerations relevant to sanctions for failure to supervise are:

1. Whether the respondent ignored “red flag” warnings that should have resulted in additional supervisory scrutiny.
2. Whether individuals responsible for underlying misconduct attempted to conceal misconduct from the respondent.
3. The nature, extent, size, and character of the underlying misconduct.
4. The quality and degree of respondent’s implementation of the firm’s supervisory procedures and controls.

Three of the four Principal Considerations are aggravating. First, as discussed above, Lowry ignored several red flags that should have led to additional scrutiny, including three suspension proceedings against Spartan and two against himself to compel compliance with the Rule 8210 requests. The record shows he took virtually no action to address Monchik’s and the Firm’s failures to respond timely to FINRA’s regulatory requests.

Lowry argues he did not ignore the red flag but rather took action by hiring additional compliance staff, including a new CCO. But Lowry admitted at the hearing that the additional hires were not in response to a notice of suspension. Indeed, the Firm had been looking for a new CCO since July 2020. After the Firm hired Chin in December 2021, she implemented the use of a spreadsheet for tracking Rule 8210 requests, but the record is devoid of any evidence of its effectiveness. And the Firm and Lowry failed to respond timely to several Rule 8210 requests even after the Firm began using Chin’s spreadsheet, which suggests Chin’s spreadsheet might not have been effective.<sup>462</sup>

Second, the nature and extent of the misconduct are aggravating. Because of Lowry’s failure to supervise, Spartan repeatedly violated Rule 8210 by failing to respond to three series of requests issued to the Firm between 2021 and 2023. And by failing to supervise Spartan’s

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<sup>460</sup> Guidelines at 124.

<sup>461</sup> *Id.*

<sup>462</sup> See *Dep’t of Enforcement v. Lykos*, No. 2018059510201, 2021 FINRA Discip. LEXIS 33, at \*22 (NAC Dec. 16, 2021) (finding that circumstantial evidence is permissible in FINRA disciplinary proceedings), *sanctions modified*, Exchange Act Release No. 103498, 2025 SEC LEXIS 1986 (July 18, 2025).

compliance with Rule 8210 requests, Lowry repeatedly caused delays in FINRA’s investigations into potential misconduct affecting investors and potential violations of FINRA rules.

Third, the “quality and degree of respondent’s implementation of the firm’s supervisory procedures and controls” is an aggravating factor. Lowry did nothing to implement Spartan’s WSPs regarding compliance with Rule 8210 requests. And while he may have delegated responsibility for Rule 8210 compliance to others, he did not follow up to ensure that the delegated responsibility was being discharged appropriately. When FINRA threatened to suspend the Firm and Lowry for failing to timely respond to the information requests, Lowry still took virtually no action to address the Firm’s deficiencies.

There are additional aggravating factors. As described above, Lowry has a disciplinary history and a history of customer arbitrations.<sup>463</sup> He also engaged in a pattern of misconduct over more than two years, despite prior warnings from FINRA.<sup>464</sup> He took no action to address the Firm’s failures to respond timely to regulatory requests even after FINRA issued several notices of suspension to the Firm. Lowry’s misconduct was also reckless, particularly given the number of suspension proceedings initiated against him and his Firm.<sup>465</sup> The Hearing Panel found no mitigating factors.

The Hearing Panel also considered that Lowry is the CEO of the Firm and should be setting the tone for compliance at the Firm.<sup>466</sup> But he did the opposite. He did not supervise Monchik’s work in responding to the requests, even after FINRA issued suspension notices to the Firm and him for failing to timely comply with Rule 8210 requests. Instead, he continued to rely on Monchik to respond to the Rule 8210 requests.

The Hearing Panel finds that the aggravating factors predominate and warrant a sanction at the high end of the Guidelines. Accordingly, the Hearing Panel concludes that the appropriate sanction for Lowry’s failure to supervise and failure to maintain a reasonable supervisory system for compliance with Rule 8210 is a \$30,000 fine and a two-year suspension in all principal capacities. We believe these sanctions are appropriately remedial and sufficient to achieve the deterrence goals of the Guidelines.

## **V. Order**

For failing to respond timely to five series of requests for documents and information issued to Spartan and Lowry in violation of FINRA Rules 8210 and 2010, Monchik is fined \$20,000 and suspended from associating with any FINRA member firm in any capacity for two

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<sup>463</sup> Guidelines at 7 (Principal Consideration No. 1).

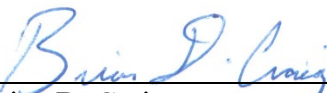
<sup>464</sup> *Id.* at 7–8 (Principal Consideration Nos. 8 and 14).

<sup>465</sup> *Id.* at 8 (Principal Consideration No. 13).

<sup>466</sup> *Id.* at 1 (“Adjudicators . . . may consider aggravating and mitigating factors in addition to those listed in the[] [G]uidelines.”).

years. For failing to respond timely to two series of requests for documents and information issued to him in violation of FINRA Rules 8210 and 2010, Lowry is fined \$20,000 and suspended from associating with any FINRA member firm in any capacity for two years. For failing to adequately supervise and maintain a reasonable supervisory system to ensure the Firm complied with its obligations under FINRA Rule 8210, in violation of FINRA Rules 3110(a) and 2010, Lowry is fined \$30,000 and suspended from associating with any FINRA member firm in a principal capacity for two years. This suspension shall run concurrently with the suspension imposed in connection with the second cause of action.<sup>467</sup>

Respondents are also ordered to pay the costs of the hearing in the amount of \$23,300.19, which includes a \$750 administrative fee and \$22,550.19 for the cost of the transcript.<sup>468</sup> If this Decision becomes FINRA's final disciplinary action, the suspensions of Kim Monchik and John Lowry shall become effective with the opening of business on Monday, May 18, 2026. The fines and assessed costs shall be due on a date set by FINRA, but not sooner than 30 days after this Decision becomes FINRA's final disciplinary action in this proceeding.

  
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Brian D. Craig  
Hearing Officer  
For the Extended Hearing  
Panel

Copies to:

John Lowry, Respondent (via email, overnight courier, and first-class mail)  
Kim Monchik, Respondent (via email, overnight courier, and first-class mail)  
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Brody W. Weichbrodt, Esq., FINRA Enforcement (via email)  
Savvas A. Foukas, Esq., FINRA Enforcement (via email)

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<sup>467</sup> The Hearing Panel has considered and rejects without discussion all other arguments of the parties.

<sup>468</sup> See FINRA Rule 8330 (“A member or person associated with a member disciplined pursuant to Rule 8310 shall bear such costs of the proceeding as the Adjudicator deems fair and appropriate under the circumstances.”).