

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

DEPARTMENT OF MARKET
REGULATION,

Complainant,

v.

PETER JULIJS AUZERS
(CRD No. 832670),

and

SHIVA NABY
(CRD No. 5634974),

Respondents.

Disciplinary Proceeding
No. 20120320803-01

Hearing Officer–CC

HEARING PANEL DECISION

April 4, 2016

Respondent Naby violated FINRA Rules 8210 and 2010 by falsifying documents that her member firm employer provided to FINRA in response to a Rule 8210 request for information. Market Regulation did not prove by a preponderance of the evidence that Respondent Auzers modified the same documents so as to make them misleading. Allegations that Respondents' actions violated MSRB Rule G-17 are dismissed. For violating FINRA Rules 8210 and 2010, Naby is suspended from associating with a member firm in any capacity for two years and fined \$25,000.

Appearances

For Complainant: Gary E. Jackson, Esq., Manuel Yanez, Esq., James J. Nixon, Esq., Department of Market Regulation, Financial Industry Regulatory Authority.

For Respondent Peter Auzers: Peter R. Boutin, Esq., Keesal, Young & Logan.

For Respondent Shiva Naby: Mitchell Albert, Esq., Albert & Will, LLP.

I. Introduction

This case involves allegations that Respondents Peter Auzers (“Auzers”) and Shiva Naby (“Naby”), while employed by member firm Wedbush Securities, Inc. (“Wedbush”), altered firm records that Wedbush produced to FINRA during the course of a FINRA investigation.¹

FINRA’s Department of Market Regulation (“Market Regulation”) filed the Complaint on December 18, 2014. The Complaint alleges in causes one and two that, during the fourth quarter of 2011 (October 1, 2011, through December 31, 2011, hereafter “the Review Period”), Naby and Auzers willfully violated MSRB Rule G-17 and FINRA Rules 8210 and 2010 by falsifying documents that Wedbush gathered to produce to FINRA in response to a FINRA Rule 8210 request for information.

Specifically, causes one and two allege that in April 2012, Wedbush received a Rule 8210 request for information from FINRA. In response, Naby accessed MSRB’s Real-time Transactions Reporting System (“RTRS”) and printed Wedbush’s Dealer Data Quality – Summary Reports (hereafter “Report Cards” or “MSRB Report Cards”) for the Review Period. The Complaint alleges that Naby printed the Report Cards and “whited out” date information that showed when she generated the reports. The Complaint alleges that, in doing so, Naby willfully falsified documents that Wedbush intended to produce to FINRA and intentionally created the false impression that Wedbush conducted and evidenced supervisory reviews of Report Cards during the fourth quarter of 2011 rather than when the firm actually printed and reviewed the Report Cards in April 2012. The Complaint also alleges that, in April 2012, Auzers initialed and signed the Report Cards that Naby produced, thereby intentionally creating the misimpression that he had conducted and evidenced a supervisory review of the Report Cards during the Review Period rather than when he actually conducted the review in April 2012. Causes one and two allege that Naby and Auzers undertook these actions to falsify documents that Wedbush would produce to FINRA in response to a Rule 8210 request for information.

Naby admitted in her Answer that she “whited out” the report-generated dates on the Report Cards. She stated that, as an unregistered person, she did not understand the significance of the dates and believed that they were irrelevant. She stated that she did not intend to falsify firm records, but that the dates simply seemed out of place to her.

Auzers admitted in his Answer that he signed off on the fourth quarter 2011 Report Cards in April 2012. He stated that the head of Wedbush’s Fixed Income department was responsible for reviewing the Report Cards, but that he had resigned from the firm earlier in 2012. Auzers

¹ The Complaint also named as respondents Wedbush and Wedbush’s Capital Markets Business Conduct Officer Samantha Arrieta McAfee (“McAfee”). The Complaint alleged that Wedbush willfully falsified Municipal Securities Rulemaking Board (“MSRB”) reports, produced falsified documents to FINRA, failed to timely report 55 municipal bond transactions during a three-month period, and failed to adequately supervise its municipal bond business with respect to trade reporting. The Complaint also alleged that McAfee produced falsified documents to FINRA in response to FINRA Rule 8210 requests for information. Prior to the November 2015 hearing in this matter, Wedbush and McAfee executed settlement agreements to resolve the allegations against them. The hearing proceeded as to Auzers and Naby only.

indicated that he was willing to sign the Report Cards for the Review Period because he was familiar with the transactions summarized in the Report Cards based on his daily review of cancelled trade reports and weekly review of fixed income exception reports, and that he signed the Report Cards at the direction of McAfee, Wedbush's Capital Markets Business Conduct Officer. Auzers' signatures were not dated.

II. Background

Naby began working in the securities industry in an unregistered capacity in 2009 and joined Wedbush in October 2010.² During the Review Period, Naby held the position of Fixed Income Trade Processing Specialist, which Naby described as "like a trading assistant, back office," supporting approximately 25 traders.³ She had no compliance responsibilities, and she was never registered in any capacity.⁴ During the Review Period, Naby worked in Wedbush's Newport Beach, California office and reported to Sue Pease ("Pease"), Managing Director in the Minneapolis office of Wedbush.⁵ Naby currently works in the Newport Beach office of Wedbush in the same unregistered capacity.⁶

Auzers was associated with Wedbush from October 2010 through February 2013.⁷ He entered the securities business in 1973.⁸ He is not currently associated with a member firm.⁹ At Wedbush, Auzers held several supervisory licenses, including a Series 53 Municipal Securities Principal License, and his title at Wedbush during the Review Period was "Managing Director, Head of Municipal Trading, Underwriting, and Institutional Sales."¹⁰ Auzers reported to Douglas Charchenko ("Charchenko"), the Head of Fixed Income at Wedbush during the Review Period.¹¹ Auzers worked in Wedbush's San Francisco office.¹² His trading assistant was Dan Posthauer ("Posthauer").¹³ Naby did not report to Auzers.¹⁴

² Complainant's Exhibit ("CX")-2; Transcript of November 2015 hearing ("Tr.") 277.

³ Tr. 278, 281.

⁴ Tr. 197, 279, 315. Naby stated that she earned an Associate's Degree in liberal arts and attended college in the evenings until 2012. Tr. 313-314.

⁵ CX-31; Tr. 281, 324, 387.

⁶ CX-2; Tr. 277.

⁷ CX-4; Tr. 413.

⁸ Tr. 461.

⁹ CX-4.

¹⁰ CX-4; Tr. 250, 414.

¹¹ Tr. 416.

¹² Tr. 416.

¹³ Tr. 416.

¹⁴ Tr. 416.

III. Findings of Fact

A. Market Regulation's Investigation

On April 10, 2012, Market Regulation examiner Christine Harrison ("Harrison") issued a Rule 8210 request for information to Wedbush after reviewing Wedbush's trade reporting history in MSRB's RTRS for the fourth quarter of 2011.¹⁵ In response, Wedbush, through McAfee, provided Market Regulation with numerous documents, including MSRB Report Cards for the months of October, November, and December 2011.¹⁶ Wedbush's MSRB Report Cards were signed and initialed by Auzers.¹⁷ Auzers' signatures and initials did not include dates.

Harrison testified that MSRB's RTRS includes a variety of reports that member firms can access.¹⁸ She explained that some of the reports provide a "micro level" of information regarding a firm's trades, while other reports, such as the MSRB Report Card, provide a more general "macro level" of the firm's overall reporting record, as compared to the reporting records of a firm's peer group.¹⁹

Harrison reviewed the MSRB Report Cards and noted that the "report-generated" dates, which are automatically included by MSRB's RTRS in the body of the document, were missing from the Report Cards that the firm produced.²⁰ Harrison compared the Report Cards produced by Wedbush to the Report Cards that Market Regulation pulled for Wedbush from MSRB's RTRS. The Report Cards that Market Regulation printed from MSRB's RTRS included a "report-generated" date under the firm's name and as a footer on the documents. The report-generated date was the date that Market Regulation pulled the report off of MSRB's RTRS.²¹

¹⁵ Tr. 64-75; CX-5a. Harrison directed her April 10, 2012 Rule 8210 request to McAfee. FINRA's preliminary review of Wedbush's MSRB Report Cards for the Review Period indicated that Wedbush failed to report 162 transactions in municipal securities (or 2.47% of the firm's municipal securities transactions) within 15 minutes of the time of the trade, as required by MSRB Rule G-14. Harrison requested that Wedbush produce, among other items, copies of all documents evidencing Wedbush's supervisory review of trade reporting compliance during the Review Period. CX-5a.

¹⁶ Tr. 69-72; CX-47. Wedbush's response is dated April 24, 2012, and is signed by McAfee. CX-47.

¹⁷ CX-47.

¹⁸ Tr. 125.

¹⁹ Tr. 125-126. Harrison testified that the Report Cards are available on MSRB's RTRS monthly. Member firms can pull their Report Cards to obtain a summary for the month of trades that the firm reported late. Tr. 75. The Report Cards compare the timeliness of the reporting by the firm that pulled the report to the timeliness of the firm's industry peers for the month under review. Tr. 75; CX-44; CX-47, at 40-48.

²⁰ Tr. 80. Harrison testified that MSRB's RTRS automatically generates a "report-generated" date for each report created. Tr. 81. She also testified that, because she is very familiar with these reports, she very easily noticed that the report-generated dates had been removed. Tr. 181.

²¹ Tr. 82; CX-44. MSRB enables regulators to obtain a report usage log from RTRS to monitor member firms' compliance with their responsibility for reviewing various reports available on RTRS. The log shows the regulator when a firm's associated persons logged into the RTRS system and what reports they reviewed. Tr. 116-118. Harrison pulled Wedbush's usage log and determined that the firm had not reviewed its Report Cards at any time during the fourth quarter of 2011. Tr. 118-130; CX-45.

When Harrison noticed the missing dates from Wedbush's Report Cards, she contacted McAfee and asked her to produce the original, signed Report Cards.²² On September 10, 2012, Harrison received documents that Wedbush represented were the original MSRB Report Cards for the fourth quarter of 2011.²³ The cover letter included McAfee's name in the signature block, but did not actually include her signature.²⁴ Naby testified that she sent the package of materials, including the cover letter containing McAfee's signature block, to Market Regulation at McAfee's direction.²⁵

Harrison compared the two sets of Wedbush's fourth quarter 2011 MSRB Report Cards.²⁶ She noticed that Auzers' initials and signatures were in different locations on the two sets of Report Cards that Wedbush produced.²⁷ She also noticed that, although both sets did not include report-generated dates, the lines on the paper near the report-generated dates were broken up differently, suggesting that someone had tampered with and redacted the report-generated dates on both sets of Report Cards.²⁸

Market Regulation thereafter obtained on-the-record testimony from Auzers, Naby, McAfee, and Pease. During on-the-record testimony, Naby readily admitted that she twice deleted the report-generated dates from Wedbush's Report Cards on her own volition.²⁹ Also, Auzers' on-the-record testimony is consistent with his testimony before the Hearing Panel that he signed and initialed the Report Cards in April 2012.³⁰

B. Wedbush's Preparation of Responses to Market Regulation's April 2012 Rule 8210 Request

In an April 11, 2012 email, McAfee forwarded FINRA's Rule 8210 request to a group of individuals at Wedbush that included Auzers, Naby, Pease, and Virginia Planellas ("Planellas"), a Wedbush Vice President and Retail Liaison.³¹ McAfee requested that the email recipients compile documents related to Wedbush's late trade reporting and supervisory and exception reviews during the fourth quarter of 2011.³² Naby testified that she talked with Pease and

²² Tr. 85.

²³ Tr. 86-87; CX-8.

²⁴ CX-8.

²⁵ Tr. 295.

²⁶ Tr. 89.

²⁷ Tr. 89-90.

²⁸ Tr. 89-90; CX-8; CX-47.

²⁹ Tr. 191-192.

³⁰ Tr. 163-165, 210-211.

³¹ Tr. 469; CX-9.

³² CX-9.

offered to begin compiling a response for Pease to review.³³ Later on April 11, 2012, Pease emailed McAfee and the other recipients of McAfee's April 11, 2012 email and stated that Naby would be working with Pease on compiling a response.³⁴ Naby thereafter printed the spreadsheet of late-reported trades included in McAfee's initial email and pulled the trade tickets for each trade on the spreadsheet to try to determine the cause of Wedbush's late trade reporting.³⁵

McAfee's April 11, 2012 email also requested "copies of supervisory review conducted during the Review Period" and "copies of any exception reports created during the Review Period."³⁶ Naby testified that, previously, when a supervisor had asked her to compile supervisory documentation, she generally pulled exception reports and cancel/rebill reports.³⁷ Naby pulled those reports, trade tickets, and other documents, which demonstrated that an outside vendor was responsible for many of Wedbush's late trade reports.³⁸

On April 19, 2012, Naby emailed McAfee, Pease, Auzers, and others with a summary of the information that she learned regarding Wedbush's late trade reporting and all of the supporting documentation that she compiled or drafted.³⁹ On April 23, 2012, McAfee responded to Naby, and copied Auzers and several other Wedbush employees. She stated that she needed "copies of proof of supervision."⁴⁰ She further indicated, "If someone signs off on the report cards, that would be good too."⁴¹

Less than one hour later, Auzers responded to the group. He stated that he reviewed Wedbush's municipal trades "daily, real time, on Bloomberg."⁴² He stated, "That is the best way to catch anything out of order – no blotters are printed out on paper. The only reports that are printed out and kept are the daily and weekly exception reports. I also don't know what you mean by 'report cards.'"⁴³ Within minutes, Naby emailed Auzers (and sent a copy to Pease) with an explanation of MSRB Report Cards.⁴⁴

³³ Tr. 326-327.

³⁴ Respondent Naby's Exhibit ("RNX")-1; Respondent Auzers' Exhibit ("RPAX")-7.

³⁵ Tr. 327-328.

³⁶ CX-12, at 3.

³⁷ Tr. 328.

³⁸ Tr. 329-330.

³⁹ Tr. 333; CX-11; RNX-3.

⁴⁰ CX-12, at 1.

⁴¹ CX-12, at 1.

⁴² CX-12, at 1.

⁴³ CX-12, at 1.

⁴⁴ CX-14. McAfee also answered Auzers' email. Approximately 40 minutes after Auzers stated that he did not know what McAfee meant by "report cards," McAfee responded to Auzers (and copied Naby and Pease), stating:

Naby testified that initially she too did not know what McAfee meant by “report cards.”⁴⁵ She stated that, immediately upon receiving Auzers’ email, she contacted Pease and began searching on MSRB’s Website to figure out what McAfee meant.⁴⁶ She talked with Pease while searching, and within five minutes, she emailed Pease and Auzers that there were many different reports available on MSRB’s RTRS and that she would review them and respond to McAfee.⁴⁷ After reviewing the reports available on MSRB’s RTRS, Naby narrowed down the reports that she believed McAfee and FINRA wanted to see, printed those reports, scanned them, and emailed them to Auzers and Pease.⁴⁸ Naby requested that Auzers sign the Report Cards, because McAfee’s April 23, 2012 email stated that it would be “good” if someone signed the Report Cards.⁴⁹

Approximately 15 minutes after Naby sent Auzers the Report Cards on April 23, 2012, Posthauer, Auzers’ assistant, emailed back to Naby scanned MSRB Report Cards for the fourth quarter 2011.⁵⁰ These Report Cards were initialed and signed by Auzers and included in the body of the document a report-generated date of April 23, 2012. They also included the April 23, 2012 date in the footer, near where Auzers signed and initialed the documents.⁵¹

Auzers testified that he was aware that McAfee had received a Rule 8210 request from FINRA and that Naby was working on compiling the documents to send to FINRA in response.⁵² He also testified that, because he was on the production side of the business rather than the compliance side, he had no experience or training with respect to crafting Wedbush’s responses

The daily and weekly exception reports will work great. FINRA publishes report cards on a monthly basis for different trading aspects. They publish a monthly report card for MSRB reporting and TRACE reporting. It shows how many transactions you reported and what percentage of them were reported late. They also show you your percentile in reference to others in your peer group. The peer groups are separated by the average number of transactions reported on a monthly basis.

CX-13.

⁴⁵ Tr. 287, 334.

⁴⁶ Tr. 334-338.

⁴⁷ Tr. 334-338; CX-16; RNX-5. Naby stated in her April 23, 2012 email to Auzers (copied to Pease):

Looking in MSRB there are report cards that we can pull on a monthly basis that shows (sic) summary, matches, late trades etc... I will run this for this review period and send to you to sign as supervisory review. This will be a new report going forward.

They have [five] different reports they offer so I have to narrow down to the correct one and I will send it over to you both.

CX-16.

⁴⁸ Tr. 289, 339-341.

⁴⁹ Tr. 289, 341; CX-16.

⁵⁰ CX-17.

⁵¹ CX-17.

⁵² Tr. 418-419.

to Rule 8210 requests for information, although he knew that he had to respond accurately.⁵³ Auzers stated that, in April 2012, he reviewed the fourth quarter 2011 MSRB Report Cards and signed and initialed them. He stated:

I had not looked at them extensively; however, I knew that the information contained within them was something that I had reviewed previously – actually during the fourth quarter 2011 – during the course of my normal business. In the process of looking at trades transactions (sic) real time during my review of weekly exception reports, during my review of daily cancellation reports, from my periodic review of both pending and executed trades ... I was very comfortable with having seen these transactions before.⁵⁴

Auzers believed that the exception and cancel/rebill reports that he reviewed daily and weekly captured the vast majority of late trades that would appear in MSRB's RTRS and on the Report Cards.⁵⁵ He also admitted, however, that although there is a very significant overlap between the trades that appear on a Report Card and the exception and cancel/rebill reports that he reviewed, there may not have been a complete overlap.⁵⁶

Auzers admitted that he never conducted a review of the actual Report Cards in 2011, and he stated that, by signing and initialing the Report Cards in April 2012, he was not trying to suggest that he had looked at them in 2011.⁵⁷ He testified that he would never back-date a document, particularly a regulatory document.⁵⁸ Rather, he was focusing on expediting Wedbush's response to FINRA.⁵⁹ Auzers understood that Pease and Naby were responsible for compiling Wedbush's Rule 8210 response, so he proceeded as requested, knowing that he previously had reviewed Wedbush's tardily reported trades in real time.⁶⁰

⁵³ Tr. 418-419.

⁵⁴ Tr. 423.

⁵⁵ Tr. 423, 456-460. Auzers testified that, in addition to the exception and cancel/rebill reports, he reviewed Wedbush's fixed income trades daily in Bloomberg and BETA, the two systems through which Wedbush executed all fixed income trades. Tr. 456-460.

⁵⁶ Tr. 424.

⁵⁷ Tr. 427. Auzers testified that he did not date his initials and signatures because it was not a contemporaneous review during the fourth quarter of 2011. He was trying to demonstrate that he reviewed the reports after the fact. Tr. 488. The Hearing Panel finds Auzers assertions credible. The set of Report Cards that Auzers signed and initialed in April 2012 included a report-generated date in the body of the document and the same date in the footer of the document, near where Auzers placed his signature. CX-17. Auzers testified at another point in the hearing that, generally, when he evidenced his supervisory review of a document, he dated his signature and initials. We find no evidence that Auzers attempted to conceal from the firm or FINRA that he reviewed and signed the Report Cards in April 2012, and he admitted as such during on-the-record testimony.

⁵⁸ Tr. 427-428.

⁵⁹ Tr. 428, 473.

⁶⁰ Tr. 467.

Auzers stated:

I was acting in good faith. I was trying to expedite an inquiry. I felt I was qualified to do so in light of both my – not just by long experience, but the fact I had very current market knowledge. We were also dealing with a relatively small number of transactions, overall, during this whole review period. This was not a wire house . . . We're talking about a manageable number of transactions that I know I had reviewed, in a different format, if you will, during the fourth quarter. And although I hadn't seen this report before, I knew that that's what they contained and, therefore, I felt comfortable signing off.⁶¹

When Naby received the MSRB Report Cards containing Auzers' signatures and initials from Posthauer, she printed them.⁶² Naby stated:

When I got them off the printer to take them to scan, I noticed the date on the footer. I whited out the date on the footer. I then went to go scan the documents, and when I was going to scan the documents, I noted the "report-generated" date in the middle of the top of the page, and I whited that out as well.⁶³

Naby stated that she did not know why she did not just forward Posthauer's email to McAfee and why she printed the reports only to rescan them and send them to McAfee.⁶⁴ She testified that she was never trained on how to draft a response to a regulatory inquiry and, because McAfee was Wedbush's Business Conduct Officer, she followed her directive to get Auzers to sign the Report Cards.⁶⁵

Naby testified that she was rushing to compile the documents that McAfee had requested. She stated that the dates "didn't look right" to her, so she deleted them because she did not believe that they mattered or needed to be included.⁶⁶ Naby admitted that she never told Auzers that she deleted report-generated dates after Auzers had signed and initialed the Report Cards, and Auzers stated that he was unfamiliar with Report Cards and never noticed subsequently that

⁶¹ Tr. 428-229.

⁶² Tr. 290.

⁶³ Tr. 290.

⁶⁴ Tr. 292.

⁶⁵ Tr. 315, 322, 343-344.

⁶⁶ Tr. 343-344. Naby testified that she was not trying to conceal the fact that she had removed report-generated dates from the Report Cards and noted that the documents obviously showed that dates had been removed. Tr. 343-344. The Hearing Panel agrees that Naby's efforts to delete the report-generated dates were not very sophisticated and that she left an easily-tracked trail of her actions by using Wedbush's email system. The Hearing Panel, however, does not find credible Naby's claim that she did not try to conceal her actions in that she did not alert anyone to what she had done. Indeed, she did not first discuss it with her immediate supervisor (Pease), did not advise McAfee of the deletions when she sent the Report Cards to her, and did not tell Auzers that she tampered with documents that he had already signed and initialed.

dates were missing.⁶⁷ Naby forwarded the fourth quarter 2011 MSRB Report Cards signed and initialed by Auzers (with report-generated dates deleted) to McAfee for production to FINRA. Naby stated in her email to McAfee, “Please see attached for supervisory review. Attached is the monthly MSRB report cards reviewed and signed by Peter Auzers during the review period.”⁶⁸

On September 4, 2012, McAfee emailed Naby and indicated that FINRA’s examiner had requested that Wedbush send “the original report cards with signatures.”⁶⁹ Naby emailed Posthauer and asked if he had the originals of the MSRB Report Cards that Auzers signed and initialed.⁷⁰ Auzers later advised her that he and Posthauer no longer had the originals.⁷¹ Naby testified that she believed that FINRA’s request for originals related to its desire for “wet ink signature[s],” so she logged into MSRB’s RTRS, reprinted the fourth quarter 2011 MSRB Report Cards, deleted the footer dates and report-generated dates, scanned the documents, and sent them to Posthauer for Auzers to re-sign.⁷² Naby did not tell Posthauer or Auzers that she had deleted the dates when she asked for Auzers’ signature and initials a second time.⁷³

Auzers testified that he learned in early September 2012 that FINRA had requested MSRB Report Cards containing original signatures.⁷⁴ Auzers initially asked Posthauer why FINRA requested originals, but did not receive an answer. Auzers ultimately signed a second set of fourth quarter 2011 MSRB Report Cards to help Wedbush complete its production.⁷⁵ Auzers testified that he did not notice that the report-generated dates were on the first set of Report Cards that he signed, but not on the second set. He conceded that he barely paid attention to the dates the first time that he signed the Report Cards.⁷⁶ Auzers testified that he never tried to misrepresent that he conducted a review of the Report Cards in 2011, but because he knew that he had reviewed the actual trades, cancelled trade reports, and exception reports in real time, he felt comfortable signing off on the Report Cards a second time in 2012.⁷⁷ Auzers stated that it

⁶⁷ Tr. 309, 311, 438-439.

⁶⁸ CX-18. Auzers was copied on Naby’s email. He testified that he did not open the attachment and review the documents again, and Naby did not advise him that she had deleted report-generated dates. Tr. 476. Auzers also did not receive a copy of McAfee’s letter to FINRA that included Wedbush’s response to FINRA’s Rule 8210 request. Tr. 476-477; RPAX-18.

⁶⁹ CX-19.

⁷⁰ Tr. 310-311; RPAX-19.

⁷¹ Tr. 293.

⁷² Tr. 293-294, 344-345.

⁷³ Tr. 311.

⁷⁴ Tr. 434.

⁷⁵ Tr. 435-436.

⁷⁶ Tr. 426.

⁷⁷ Tr. 423-424, 427. Auzers testified that he did not give very much thought to signing off on the second set of MSRB Report Cards. Tr. 478. The Hearing Panel finds credible Auzers’ testimony that it was not his intent to misrepresent that he had conducted a review of the MSRB Report Cards during the fourth quarter of 2011 rather than in April 2012.

was his understanding that Wedbush just needed to evidence that, at some point, the firm had reviewed the MSRB Report Cards for the fourth quarter of 2011, so he was comfortable proceeding as McAfee had requested.⁷⁸

Naby typed a cover letter to send the second set of fourth quarter 2011 MSRB Report Cards to FINRA. The letter contained McAfee's name and title in the signature block, but was not signed.⁷⁹ Naby stated that she typed the letter while on the phone with McAfee and at McAfee's direction.⁸⁰

IV. Discussion

A. FINRA Properly Exercised Jurisdiction Over Naby and Auzers

FINRA possesses jurisdiction over Naby and Auzers, and neither Respondent disputed FINRA's jurisdiction. Naby remains associated with Wedbush and therefore is subject to FINRA's rules.⁸¹ Auzers remains subject to FINRA's jurisdiction because Market Regulation filed the Complaint on December 18, 2014, which is within two years of March 28, 2014, the effective date of the termination of Auzers' association with a FINRA member firm.⁸² Thus, Market Regulation timely filed the Complaint, and FINRA has properly exercised jurisdiction in this matter.

B. Cause One – Falsification of Records

Cause one alleges that Auzers and Naby willfully engaged in deceptive, dishonest, and unfair practices in the conduct of Wedbush's municipal securities activities by modifying the content of MSRB Report Cards for the fourth quarter of 2011. The Complaint alleges that Naby redacted report-generated dates and Auzers signed and initialed the reports, thereby creating the misimpression that Wedbush had conducted a supervisory review of the Report Cards during the fourth quarter of 2011. The Complaint alleges that, in doing so, Naby and Auzers willfully violated MSRB Rule G-17.⁸³

⁷⁸ Tr. 451-452.

⁷⁹ CX-8.

⁸⁰ Tr. 297-298; CX-21.

⁸¹ See FINRA Rule 0140 (stating that FINRA's rules shall apply to all members and persons associated with a member and that associated persons shall have the same duties and obligations as a member under FINRA's rules).

⁸² See CX-4; Art. V, Sec. 4 of FINRA's By-Laws (stating that a person whose association with a member firm has terminated shall continue to be subject to the filing of a complaint based on conduct that occurred prior to the termination ... if the complaint is filed within two years after the effective date of termination of registration or the date upon which the person ceased to be associated with a member firm).

⁸³ In this context, "[w]illfulness means 'intentionally committing the act which constitutes the violation,'" regardless of whether the respondent was attempting to comply with the rule. *Dep't of Enforcement v. Merrimac Corp. Sec., Inc.*, No. 2007007151101, 2012 FINRA Discip. LEXIS 43, at *36-37 (Bd. of Governors May 2, 2012), citing *vFinance Invs., Inc.*, Exchange Act Release No. 62448, 2010 SEC LEXIS 2216, at *48-49 (July 2, 2010).

Naby and Auzers admit that they engaged in the conduct alleged, but deny that they did so willfully. Naby and Auzers also argue that MSRB Rule G-17 does not apply to the conduct at issue because their actions did not occur in the course of Wedbush's municipal securities business.

MSRB Rule G-17 states that, in the conduct of its municipal securities business or municipal advisory activities, each broker, dealer, municipal securities dealer, and municipal advisor shall deal fairly with all persons and shall not engage in any deceptive, dishonest, or unfair practice. MSRB Rule D-11 provides that, unless the context otherwise requires or a rule otherwise specifically provides, the terms "broker," "dealer," "municipal securities dealer," and "municipal advisor" shall refer to and include their respective associated persons.⁸⁴

Auzers and Naby argue that their actions were not "in the conduct of" Wedbush's municipal securities business, as the term is used in MSRB Rule G-17. They argue that compiling documents to present to FINRA in connection with a FINRA Rule 8210 request for information is conduct unrelated to Wedbush's municipal securities business. Market Regulation responds that the records at issue in this case, Wedbush's MSRB Report Cards, relate to Wedbush's supervisory review of its municipal securities trade reporting. Market Regulation argues that, as such, altering the Report Cards is conduct that is part of the firm's municipal securities business.

As discussed in more detail below, we hold that MSRB Rule G-17 applies to conduct related to a firm's municipal securities trade reporting, including a firm's review of MSRB Report Cards. We do not find, however, that Respondents had reasonable notice of the applicability of the rule to the conduct at issue here, which was in essence compiling documents for the firm's Business Conduct department to produce to FINRA. Based on the circumstances of this case, we dismiss the allegations of cause one and instead make findings only under cause two, which includes factual allegations identical to cause one.

The Securities Exchange Act of 1934 ("Exchange Act") requires all broker-dealers to be members of a registered securities association such as FINRA in order to effect transactions in securities.⁸⁵ As a registered broker-dealer that engages in municipal and other securities transactions, Wedbush is required to be a FINRA member. The firm and its associated persons therefore are required to comply with FINRA's rules, including FINRA Rule 8210.⁸⁶ FINRA also administers and enforces its members' compliance with MSRB Rules, including MSRB Rule G-17, pursuant to the Plan of Allocation and Delegation of Functions from FINRA to FINRA Regulation, Inc.⁸⁷ FINRA therefore enforces MSRB's rules as to all of its member firms, including Wedbush, and their associated persons. Thus, in order to conduct a municipal

⁸⁴ *District Bus. Conduct Comm. v. Podesta & Co.*, No. C8A960040, 1998 NASD Discip. LEXIS 27, at *11 (NAC Mar. 23, 1998) (holding that the obligations and requirements imposed by the MSRB rules generally are applicable to associated persons, notwithstanding that many of the rules address only the conduct of brokers and dealers).

⁸⁵ See Section 15(b)(8) of the Securities Exchange Act of 1934, 15 U.S.C. §15(b)(8).

⁸⁶ See FINRA Rule 0140 ("The Rules shall apply to all members and persons associated with a member. Persons associated with a member shall have the same duties and obligations as a member under the Rules.").

⁸⁷ Plan of Allocation and Delegation of Functions from FINRA to FINRA Regulation, Inc., Section II.A.1.b.

securities business and as part of that business, Wedbush and its associated persons are obligated to submit to FINRA’s regulation, comply with FINRA’s rules, and submit to FINRA’s enforcement of its own rules and the MSRB’s rules. We therefore find that the conduct at issue in this case—modifying municipal trade reporting supervisory records that Wedbush intends to produce to FINRA—is conduct that falls within the ambit of Wedbush’s municipal securities business, and MSRB Rule G-17 therefore applies.

We do not, however, find that a prudent associated person could reasonably foresee that Rule G-17 could be construed to apply to the particular conduct at issue here.⁸⁸ The MSRB’s interpretations of Rule G-17 have stressed that Rule G-17 is intended to apply broadly to municipal securities dealers’ business conduct.⁸⁹ The MSRB has specifically expressed a willingness not to limit the conduct to which Rule G-17 applies.⁹⁰ The vast majority of reported FINRA disciplinary cases finding violations of Rule G-17, however, have involved conduct that more clearly falls within a municipal securities dealer’s interactions with customers, issuers, and other market participants.⁹¹ Market Regulation was unable to identify a single case or MSRB Interpretive Notice in which Rule G-17 was applied to an associated person’s conduct related to a firm’s production of MSRB Report Cards or any documents in response to a FINRA Rule 8210 request for information.

Although “[i]t is obvious that a violation can be found even though the rule or concept at issue has never been litigated,”⁹² it is also obvious that regulators have an obligation to provide fair warning of their interpretations of their rules and the applicability of their rules to conduct not directly referenced in the language of the rule.⁹³

⁸⁸ See *Dep’t of Enforcement v. Gardnyr Michael Capital, Inc.*, No. 2011026664301, 2014 FINRA Discip. LEXIS 14, at *48 (Jan. 28, 2014) (declining to apply Rule G-17 to some of the conduct alleged, stating “there is no well-established MSRB policy that would lead a prudent member firm to reasonably foresee that seeking reimbursement for any entertainment expense incurred on a bond rating trip would violate MSRB Rule G-17.”) (emphasis in original).

⁸⁹ *Interpretive Notice re the Application of MSRB Rule G-17 to Underwriters* (Aug. 2, 2012), at 2 (“[Rule G-17] also establishes a general duty of a dealer to deal fairly with *all persons* (including, *but not limited to*, issuers of municipal securities), even in the absence of fraud.”) (emphasis added).

⁹⁰ *Id.*

⁹¹ See, e.g., *Dep’t of Enforcement v. Gardnyr Michael Capital, Inc.*, 2014 FINRA Discip. LEXIS 14 at *65 (OHO Jan. 28, 2014) (finding that Rule G-17 imposes a duty to deal fairly that is most often cited in connection with a duty owed to investors and issuers, and that it also applies to interactions with market participants); *Dep’t of Enforcement v. Grey*, No. 2009016034101, 2013 FINRA Discip. LEXIS 24, at *48-49 (OHO June 20, 2013) (finding that Rule G-17 imposes a duty to deal fairly with customers), *aff’d*, 2014 FINRA Discip. LEXIS 31 (NAC Oct. 3, 2014); *Dep’t of Enforcement v. SFI Investments, Inc.*, No. C10970176, 2000 NASD Discip. LEXIS 52, at *31-32 (OHO Mar. 28, 2000) (holding that Rule G-17 seeks to discourage conduct that is unfair or unethical and that the rule applies to a member firm’s interpositioning trades ahead of customer trades and fictitious trading in customer accounts).

⁹² *Wanda P. Sears*, Exchange Act Release No. 58075, 2008 SEC LEXIS 1521, at *16 n.25 (July 1, 2008).

⁹³ See *American Funds Distributors, Inc.*, Exchange Act Release No. 64747, 2011 SEC LEXIS 2191, at *18-20 (June 24, 2011) (dismissing action where FINRA’s interpretation of its rule could not have been ascertained from any enforcement action, given that FINRA “brought no enforcement proceeding under [NASD Rule 2930] that could have helped elucidate its meaning.”); *James W. Browne*, Exchange Act Release No. 58916, 2008 SEC LEXIS 3113, at *25 (Nov. 7, 2008) (rejecting FINRA’s interpretation of its rule, stating that “the parameters of the rule

Regulators may enforce a new application of a rule if the application does not establish a new standard of conduct and can be reasonably and fairly implied from the rule and the case law.⁹⁴ While we conclude that Rule G-17 applies to all aspects of a broker-dealer's municipal securities business, including its interactions with its regulators, we do not find that Auzers and Naby could fairly foresee the application of Rule G-17 to the conduct at issue from the body of the rule and the current case law. As such, we decline to find a violation in this case. We dismiss the allegations of cause one.

C. Cause Two – Production of Falsified Documents

The allegations in cause two of the Complaint are identical to those in cause one, except that cause two alleges that Respondents' conduct violated FINRA Rules 8210 and 2010.

FINRA Rule 8210 requires FINRA members and associated persons to provide information orally or in writing with respect to any matter involved in a FINRA investigation. "The duty of members and their associated persons to cooperate with FINRA investigations and respond fully to Rule 8210 requests is unequivocal."⁹⁵ Failing to provide information, providing only selective information, and providing false or misleading information impedes FINRA's ability to carry out its self-regulatory functions and violates Rule 8210.⁹⁶ A violation of FINRA Rule 8210 constitutes conduct inconsistent with just and equitable principles of trade and therefore also violates FINRA Rule 2010.⁹⁷

In this case, FINRA did not issue Rule 8210 requests directly to Naby and Auzers. Rather, FINRA directed the requests to Wedbush through McAfee. Naby and Auzers were assisting McAfee in gathering documents that Wedbush would use to respond to FINRA's requests. "In those instances when FINRA staff does not direct a request for information to a specific associated person, an individual may nevertheless violate [FINRA] Rule 8210 when he is aware that the false information is being provided by the member firm to FINRA in response

must be sufficiently clear so that associated persons have fair notice of what conduct is proscribed"); *Jay Alan Ochanpaugh*, Exchange Act Release No. 54363, 2006 SEC LEXIS 1926, at *19 (Aug. 25, 2006) (dismissing FINRA's application of Rule 8210, stating that it was not supported by "citation to authority, analysis or interpretation of the language of the Rule, or discussion of the history of the Rule.").

⁹⁴ See *Gardnyr Michael Capital, Inc.*, 2014 FINRA Discip. LEXIS 14, at *44.

⁹⁵ *Dep't of Enforcement v. Palmeri*, No. 2007010580702, 2013 FINRA Discip. LEXIS 2, at *11 (NAC Feb. 15, 2013).

⁹⁶ See *Dep't of Enforcement v. North Woodward Financial Corp.*, No. 2010021303301, 2014 FINRA Discip. LEXIS 32, at *41 (NAC July 21, 2014) (finding that respondents' failure to respond fully impeded Enforcement's ability to determine if respondents engaged in other serious misconduct); *Dep't of Enforcement v. Ortiz*, No. E0220030425-01, 2007 FINRA Discip. LEXIS 3, at *33 (NAC Oct. 10, 2007) (finding that respondent's providing false and misleading information to FINRA subverts FINRA's ability to conduct its regulatory functions), *aff'd*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401 (Aug. 22, 2008); *Dep't of Enforcement v. Duma*, No. C8A030099, 2005 NASD Discip. LEXIS 46, at *30 (NAC Oct. 27, 2005) (finding that respondent's untruthful testimony thwarted FINRA's regulatory mandate).

⁹⁷ See *Mitchell H. Fillet*, Exchange Act Release No. 75054, 2015 SEC LEXIS 2142, at *50 (May 27, 2015).

to a request for information issued pursuant to [FINRA] Rule 8210.”⁹⁸ Furthermore, “[a]n associated person can violate FINRA Rule 2010 by participating in the submission of false information to FINRA even where FINRA’s Rule 8210 request is not directed to the associated person.”⁹⁹ Auzers and Naby admit that they were compiling the MSRB Report Cards at issue for McAfee to include as part of Wedbush’s response to FINRA’s Rule 8210 request. Thus, if we conclude that either Auzers or Naby falsified Wedbush’s fourth quarter 2011 MSRB Report Cards, we must find that they violated FINRA Rules 8210 and 2010.

We turn next to the question of whether Naby and Auzers falsified Wedbush’s fourth quarter 2011 MSRB Report Cards. We find that Naby falsified the Report Cards, and Auzers did not.

1. Auzers

In April 2012, when McAfee received FINRA’s Rule 8210 request, she relied on Naby and Naby’s supervisor, Pease, to compile responsive information. McAfee requested proof of supervision from Naby, Pease, Auzers and others. Auzers responded with an honest recitation of the supervision that he regularly conducted (which did not include reviewing Report Cards).¹⁰⁰ McAfee’s April 23, 2012 email stated that it would be “good” if someone signed the Report Cards. In response, Naby requested that Auzers sign the Report Cards. Auzers complied. Based on these emails and other communications included in the record, we find that Auzers reasonably believed that, through Naby, McAfee directed him to sign and initial the fourth quarter 2011 Report Cards because of and based on the actual trade review and supervision that Auzers had conducted in real time. We also find reasonable Auzers’ understanding that, by doing so, he was not misrepresenting facts.

We find Auzers’ testimony on all relevant points to be credible. He believed that, through his daily and weekly review of various cancel/rebill and exception reports, he had in fact reviewed in real time the vast majority of the trades summarized on the Report Cards. We also find credible his testimony that it was not his intention, by signing and initialing the Report Cards, to misrepresent to FINRA that he had reviewed the Report Cards during the fourth quarter of 2011. Auzers states that he had intended only to note his review, which occurred in April 2012, before Wedbush produced the materials to FINRA.¹⁰¹ The initial set of Report Cards that Auzers signed and initialed included report-generated dates in two places, one of which was

⁹⁸ *Dep’t of Enforcement v. Palmeri*, 2013 FINRA Discip. LEXIS 2, at *12 n.6. See also *Michael A. Rooms*, Exchange Act Release No. 51467, 2005 SEC LEXIS 728, at *11 (Apr. 1, 2005) (holding that Rule 8210 liability may extend to an associated person of a firm if he is aware of an 8210 request propounded to the firm and seeks to falsify or impede the firm’s response), *aff’d*, 444 F.3d 1208 (10th Cir. Mar. 14, 2006).

⁹⁹ *Dep’t of Enforcement v. Harari*, No 2011025899601, 2015 SEC LEXIS 899, at *17 (NAC Mar. 9, 2015).

¹⁰⁰ CX-12.

¹⁰¹ We note that the MSRB Report Cards do not identify individual trades or provide details about those trades. See CX-44. Rather, the MSRB Report Cards summarize late trade reporting figures for the month. Auzers had already reviewed in more detail the trades that the firm reported late through the real-time review of the daily and weekly cancel/rebill and exception reports that he conducted.

adjacent to his initials and signatures.¹⁰² Although Auzers testified that he did not pay much attention to the dates, he did not alter or delete them and did not back-date his own signatures.¹⁰³ Auzers' actions in this regard support his contention that he did not intend to mislead FINRA into believing that he reviewed and signed the Report Cards in the fourth quarter of 2011. Auzers had no knowledge that Naby subsequently would delete the report-generated dates.

We also find credible Auzers' statement that, when Naby asked him a second time to sign the Report Cards, he did not notice that Naby had redacted the report-generated dates, just as he had not paid much attention to the dates that were included on the first set of Report Cards.¹⁰⁴ Our credibility finding is supported by Auzers' testimony that he was unfamiliar with Report Cards and his email to McAfee stating that he did not know what she meant by "Report Cards."

Auzers knew that he had reviewed in detail and in real time most, if not all, of the trades that were summarized on the MSRB Report Cards. We find that he reasonably believed that the firm wanted him to demonstrate that he had conducted that review by signing and initialing the Report Cards. He also believed that McAfee, the firm's Capital Markets Business Conduct Officer, asked him to sign the Report Cards because of his review of the underlying trades and that, as the Capital Markets Business Conduct Officer, he could safely follow her directives. He did not delete, change, or back-date any of the Report Cards, and when questioned, he readily admitted to FINRA that he had signed the Report Cards and when he had signed them.¹⁰⁵

We find that Auzers did not attempt to mislead FINRA and did not falsify documents that Wedbush intended to produce to FINRA. While we do not endorse a firm culture in which a Capital Markets Business Conduct Officer requests that an individual not regularly responsible for reviewing MSRB Report Cards to sign them so that she can produce them to FINRA, we do not fault Auzers for this shortcoming.

2. Naby

We find that Naby falsified firm records, intending to mislead FINRA. Naby redacted report-generated dates from MSRB Report Cards to create the misimpression that the Report Cards were reviewed and signed during the fourth quarter of 2011, not in April 2012 when Auzers actually signed them. Naby has admitted throughout the course of this proceeding that she redacted the dates. She offers little explanation for her behavior, other than that she did not think the dates "mattered" and that the dates "didn't look right."¹⁰⁶ Naby knew that she was gathering these documents for Wedbush to produce to FINRA as part of an ongoing investigation. Yet, she redacted portions of the documents with "white out" without telling anyone, without noting on the documents that information was redacted, and without obtaining

¹⁰² See CX-17.

¹⁰³ CX-17.

¹⁰⁴ Tr. 438.

¹⁰⁵ During the third quarter of 2011, Charchenko, not Auzers, was responsible for reviewing Wedbush's Report Cards. Auzers never misrepresented that he had assumed responsibility for that review or that he had conducted the review in place of Charchenko.

¹⁰⁶ Tr. 297.

permission to redact dates from the person who signed and initialed the documents (Auzers) or the person who requested the documents (McAfee). Associated persons “must cooperate fully in providing FINRA with information and may not take it upon themselves to determine whether the information FINRA has requested is material.”¹⁰⁷ By unilaterally deciding that the report-generated dates were unimportant and removing them, Naby violated FINRA Rules 8210 and 2010, as alleged in cause two.

We considered Naby’s arguments that her youth and inexperience caused her to make an unfortunate decision. As defenses to Naby’s misconduct, however, these facts fail. The Securities and Exchange Commission and FINRA consistently have rejected youth and inexperience as defenses to violations of FINRA’s rules.¹⁰⁸ Naby’s claim that this was a one-time lapse in judgment is equally unavailing as a substantive defense.¹⁰⁹ Naby made a choice when she compiled the fourth quarter 2011 MSRB Report Cards. Knowing that Wedbush’s regulator would receive the Report Cards in response to a request for information, she nonetheless substituted her judgment for that of her superiors and concluded that it was appropriate to delete dates from the documents after Auzers had already signed them and without flagging the deletions to her superiors. This type of conduct contravenes the purposes of Rule 8210. We find that Naby violated FINRA Rules 8210 and 2010.

V. Sanctions

Given that FINRA does not possess subpoena power, Rule 8210 is “at the heart of the self-regulatory system for the securities industry.”¹¹⁰ As such, untruthful responses are significant violations because “they mislead [FINRA] and can conceal wrongdoing.”¹¹¹ For violating FINRA Rules 8210 and 2010, we suspend Naby from associating with any member firm in any capacity for two years and fine her \$25,000.

¹⁰⁷ *Dep’t of Enforcement v. Ballard*, No. 2010025181001, 2015 FINRA Discip. LEXIS 52, at *23 (NAC Dec. 17, 2015); *see also Morton Bruce Erenstein*, Exchange Act Release No. 56768, 2007 SEC LEXIS 2596, at *13 (Nov. 8, 2007) (“[Rule 8210] does not require that NASD explain its reasons for making the information request or justify the relevance of any particular request.”).

¹⁰⁸ *See Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at *73 (Jan. 30, 2009) (rejecting youth and inexperience and lack of adequate supervision as defenses to allegations of unsuitable recommendations); *Dep’t of Enforcement v. Neaton*, No. 2007009082902, 2011 FINRA Discip. LEXIS 13, at *20 (NAC Jan. 7, 2011) (finding that respondent’s novitiate in the securities industry was not a defense to his failure to disclose material information on a Form U4); *Dep’t of Enforcement v. White*, No. 2012033128703, 2015 FINRA Discip. LEXIS 48, at *70 (OHO June 30, 2015) (finding that, although new and inexperienced in the securities industry, the respondent must accept responsibility for his own actions, which cannot be excused by lack of knowledge, understanding or appreciation of the rules).

¹⁰⁹ *Cf. Denise M. Olson*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629, at *33 (Sept. 3, 2015) (stating that the Commission gave respondent no credit for being, “as she claims, an ‘exemplary employee’” aside from the misconduct in which she engaged).

¹¹⁰ *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008), *aff’d*, 347 F. App’x 692 (2d Cir. 2009).

¹¹¹ *Michael A. Rooms*, 2005 SEC LEXIS 728, at *15-16.

FINRA's Sanction Guidelines ("Guidelines") for failing to respond truthfully to a FINRA Rule 8210 request recommend a fine of \$25,000 to \$73,000 and a bar unless mitigation exists, in which case the adjudicator may consider a suspension of up to two years.¹¹²

The Guidelines recommend that we consider the nature of the document or information falsified.¹¹³ Naby's falsification of supervisory documents compromised FINRA's ability to investigate Wedbush's supervision of trade reporting. Proper supervision is the "touchstone" of compliance and documents that demonstrate supervision therefore are important.¹¹⁴ We find the importance of the documents that Naby falsified to be an aggravating factor. The Guidelines for falsification of records also recommend consideration of whether the respondent had a good faith, but mistaken, belief of express or implied authority.¹¹⁵ This factor does not mitigate Naby's misconduct. She does not contend that she believed that she had express or implied authority to delete the report-generated dates from the Report Cards. Rather, she admits that she took it upon herself, without advising Auzers or McAfee, to delete the dates because they "didn't look right."¹¹⁶ This factor therefore is not mitigating.

We also considered principal considerations applicable to all violations.¹¹⁷ We acknowledge an absence of aggravating factors, such as a disciplinary history, numerous acts or a pattern of misconduct, engaging in misconduct over an extended period of time, customer harm, efforts to delay FINRA's investigation, and the potential for personal gain for the respondent.¹¹⁸ We acknowledge the absence of these aggravating factors.

Naby contends that her misconduct was negligent, not intentional, and that the Hearing Panel should consider this in mitigation of sanctions.¹¹⁹ We find that Naby acted intentionally. Naby's own explanation of events demonstrates that she looked at the report-generated dates that the RTRS system automatically included on the Report Cards and decided, without first discussing her thoughts with her superiors, to delete the dates. Naby did this even though she contends that responding to a FINRA Rule 8210 request is a task for which she was not trained

¹¹² *FINRA Sanction Guidelines* at 33 (2015), http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf. Cause two alleges that Naby violated Rules 8210 and 2010 by producing documents that she falsified. As such, we also consulted the Guidelines for falsification of records, which recommend a fine of \$5,000 to \$146,000 and, if mitigation exists, a suspension of up to two years. The Guidelines recommend a bar in egregious cases. *Guidelines* at 37.

¹¹³ *Guidelines* at 33 (Consideration No. 1), 37 (Consideration No. 1).

¹¹⁴ See *Dennis S. Kaminski*, Exchange Act Release No. 65347, 2011 SEC LEXIS 3225 at *35 (Sept. 16, 2011) (stating that supervision is key to ensuring a broker-dealer's compliance with securities laws and critical to investor protection).

¹¹⁵ *Guidelines* at 37 (Consideration No. 2).

¹¹⁶ Tr. 297.

¹¹⁷ *Guidelines* at 6-7.

¹¹⁸ See *Id.* at 6-7 (Principal Considerations Nos. 1, 8, 9, 11, 12, 17).

¹¹⁹ *Id.* at 6-7 (Principal Considerations No. 13).

and which, she states, was not part of her normal job responsibilities.¹²⁰ Rather than proceed cautiously in an area in which she admittedly was not trained, she chose to delete information from documents that Auwers had already signed without obtaining permission from Auwers, seeking guidance from her immediate supervisor (Pease), or advising McAfee that she had deleted information from the documents. We find that she exercised poor judgment and that her conduct was intentional. This aggravates the egregiousness of Naby's misconduct.

Naby argues that we should credit her for Wedbush's imposition of a one-week suspension without pay as a result of her misconduct. The collateral consequences of misconduct, such as the suspension at issue, generally are not mitigating.¹²¹ The principal considerations applicable to all violations, however, direct us to consider whether Wedbush disciplined Naby for the misconduct at issue prior to regulatory detection.¹²² Setting aside that Wedbush appears to have discovered that Naby altered MSRB Report Cards only after FINRA questioned her and other employees about it, we have considered Wedbush's imposition of a suspension. The mitigative effect of Wedbush's suspension of Naby is not sufficient to overcome our concern about the intentional nature of Naby's actions. She made a choice to alter a signed document without advising the person who signed it, in an area that she admittedly knew little, without first asking for permission or subsequently advising interested parties of her conduct. Wedbush's one-week suspension of Naby provides little mitigation given the significance of her actions.

Naby also seeks mitigation based on considerations that are not addressed in FINRA's Sanction Guidelines. First, she states that she was never trained in responding to Rule 8210 requests. We reject this as mitigating. We find that an individual employed by a member firm should not have to be specifically trained to understand that he or she should not tamper with firm records by adding or deleting information, particularly after a superior has placed his signature on the document. Second, she states that it has been more than two years since the misconduct at issue, and she has not had recurrent compliance problems. We reject this as mitigating. The fact that Naby has not engaged in additional misconduct subsequent to the Review Period does not mitigate the significance of her rule violation.¹²³

Third, Naby notes that she never tried to blame others at her firm for her actions and that she has accepted responsibility. While this characterization may be true, we have balanced it against the fact that Naby actively sought to conceal her actions from her employer and

¹²⁰ See Naby Pre-Hearing Brief at 10.

¹²¹ See *John M.E. Saad*, Exchange Act Release No. 76118, 2015 SEC LEXIS 4176, at *18 (Oct. 8, 2015), *appeal docketed*, No. 15-1420 (D.C. Cir. Nov. 20, 2015).

¹²² *Guidelines* at 6-7 (Principal Considerations No. 14).

¹²³ See *Denise M. Olson*, 2015 SEC LEXIS 3629, at *33 (declining to credit respondent for good behavior subsequent to the misconduct at issue). Naby's lack of disciplinary history also is not mitigating. See *John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *79 (Feb. 10, 2012) (holding that lack of disciplinary history is not a mitigating factor because an associated person should not be rewarded for acting in accordance with his duties as a securities professional).

supervisors. Naby denies that this is so, and points to her use of Wedbush's email system as evidence of her lack of efforts to conceal.¹²⁴ In our view, if she was not trying to hide her actions, she would have advised Auzers that she had altered documents he had signed. She also would have alerted McAfee to her revisions when she forwarded the documents to McAfee and questioned Pease (who was working with her to produce Wedbush's 8210 response) as to the efficacy of deleting report-generated dates. She did none of this. We find that Naby attempted to conceal her misconduct from Wedbush and her superiors and that this aggravates Naby's misconduct.¹²⁵

Finally, we have considered the role that Rule 8210 plays in FINRA's investigations and the importance that FINRA places on truthful answers. FINRA Rule 8210 forms the foundation of FINRA's regulatory process.¹²⁶ It sustains FINRA's efforts to police its members and their associated persons. Misconduct, like Naby's, that compromises FINRA's regulatory and investigative abilities is serious, and we have considered this in our determination of appropriate sanctions. For violating FINRA Rules 8210 and 2010, we suspend Naby from associating with any member firm in any capacity for two years and fine her \$25,000.

VI. Order

The Complaint is dismissed as to Respondent Peter Auzers. As to Respondent Shiva Naby, the allegations in cause one of the Complaint are dismissed. Under cause two of the Complaint, we find that Naby violated FINRA Rules 8210 and 2010 by falsifying information produced to FINRA in response to a Rule 8210 request.¹²⁷ For this misconduct, we suspend Naby from associating with any member firm in any capacity for two years and fine her \$25,000.

¹²⁴ The Hearing Panel did not find Naby credible on this issue. While we agree that Naby's use of Wedbush's email system left a trail of emails that included as attachments the fourth quarter 2011 MSRB Report Cards both before and after she deleted the report-generated dates, the Hearing Panel did not find Naby's testimony that she was not trying to hide her actions credible, given that she alerted no one, not even Auzers, to her actions.

¹²⁵ See *Guidelines* at 6 (Principal Consideration No. 10); *Dep't of Enforcement v. Grivas*, No. 2012032997201, 2015 FINRA Discip. LEXIS 16, at *29 (NAC July 16, 2015) (finding that respondent's efforts to conceal his misconduct aggravated the severity of his misconduct for purposes of sanctions).

¹²⁶ *Howard Brett Berger*, 2008 SEC LEXIS 3141, at *13.

¹²⁷ We considered and rejected without discussion all other arguments by the parties.

If this decision becomes the final disciplinary action of FINRA, the suspension shall become effective with the opening of business on June 6, 2016. Naby is ordered to pay the costs of the hearing in the amount of \$5,225.19, which includes a \$750 administrative fee. The fine and costs shall be payable on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this matter.

Carla Carloni
Hearing Officer
For the Hearing Panel