FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. HARRISON A. HATZIS (CRD No. 2640978), Respondent.	Disciplinary Proceeding No. 20060051788-01 Hearing Officer – MAD **HEARING PANEL DECISION** March 22, 2010

Respondent violated Membership and Registration Rule 1013, Conduct Rule 2110, and IM-1000-1 by providing inaccurate, incomplete, and misleading information to FINRA during the membership application process. For this violation, Respondent is barred from associating with any member firm in any capacity.

Appearances

For Complainant: Elissa Meth Kestin, New York, NY, and Mark P. Dauer, New Orleans, LA, FINRA, DEPARTMENT OF ENFORCEMENT.

For Respondent: Andrew J. Goodman, GARVEY SCHUBERT BARER, New York, NY.

DECISION

I. INTRODUCTION

The Department of Enforcement ("Enforcement") brought this disciplinary proceeding against Respondent Harrison A. Hatzis ("Hatzis"). Enforcement alleges that Hatzis violated Membership and Registration Rule 1013, Conduct Rule 2110, and IM-1000-1 in connection with

the membership application for Algorithmic Trading Management, LLC ("Algorithmic Trading").[1]

II. BACKGROUND AND PROCEDURAL HISTORY

When applicants, such as Hatzis on behalf of Algorithmic Trading, apply for FINRA membership, they are required to submit documentation reflecting adequate capitalization and the source of funding to FINRA's Membership Applications Staff ("MAP Staff"). This disciplinary proceeding arose after an investigation into concerns regarding Hatzis' submissions to the MAP Staff during the membership application process for Algorithmic Trading. The staff concluded that Hatzis submitted to the MAP Staff incomplete and inaccurate information that was misleading regarding the source of Algorithmic Trading's initial $10,000 funding and a $250,000 payment relating to its financing. In addition, the staff concluded that Hatzis deliberately provided false information during the membership application process in an attempt to conceal the source of Algorithmic Trading's initial funding and the true nature of the $250,000 payment.

Enforcement filed a Complaint with the Office of Hearing Officers on March 2, 2009. On March 30, 2009, Hatzis filed an Answer denying the charges and requesting a hearing. The hearing was held on October 12-15, 2009, in New York, New York, before a Hearing Panel composed of the Hearing Officer, a current member of FINRA's District 10 Committee, and a former member of FINRA's District 10 Committee. Enforcement called three witnesses: Leyna

[1] As of July 30, 2007, NASD and New York Stock Exchange Regulation, Inc. consolidated their member regulation functions and began operating under a new corporate name, the Financial Industry Regulatory Authority ("FINRA"). References in this decision to FINRA include, where appropriate, NASD. Initially, FINRA adopted NASD's rules and certain NYSE rules, but it is in the process of establishing a consolidated FINRA rulebook. To that end, on December 15, 2008, certain consolidated FINRA rules became effective, replacing parallel NASD and/or NYSE rules, and in some cases, the prior rules were re-numbered and/or revised. *See* Regulatory Notice No. 08-57, FINRA Notices to Members, 2008 FINRA LEXIS 50 (Oct. 2008). This Decision refers to and relies on the NASD rules in the Complaint that were in effect at the time of the Respondent's alleged misconduct.

Goro, FINRA Associate Principal Examiner and a member of FINRA's MAP Staff; Brent Poley, FINRA Associate Principal Examiner; and Respondent Hatzis. Hatzis testified on his own behalf; he did not call any other witnesses.[2] The parties filed post-hearing briefs and replies with the Office of Hearing Officers on November 25, 2009, and December 11, 2009, respectively.

Based upon a preponderance of the evidence, the Hearing Panel makes the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

A. Respondent

Hatzis has been in the securities industry for approximately 15 years. He began his career in July 1995 at Merrill Lynch, Pierce, Fenner & Smith, Inc., where he was registered as a General Securities Representative.[3] Between July 1999 and March 2004, Hatzis worked at several securities firms. During that time, he was registered with FINRA as an Equity Trader and General Securities Representative.[4] Hatzis was not registered from March 2004 until March 2006. Since March 2006, Hatzis has been registered with FINRA as a General Securities Representative and General Securities Principal through his association with ATM USA, LLC ("Firm USA").[5]

FINRA has disciplinary jurisdiction over firms and their associated persons for misconduct occurring during the pendency of the firm's membership application.[6] Accordingly,

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[2] In this decision, "Tr." refers to the transcript of the hearing; "CX" to Enforcement's exhibits; "RX" to Respondent's exhibits. "Stip." refers to stipulations of fact between Enforcement and Respondent.

[3] CX-1, at 1.

[4] CX-1; Stip. ¶ 1.

[5] Stip. ¶ 2.

[6] *DBCC v. First Capital Funding, Inc.*, 1990 NASD Discip. LEXIS 119, at *14 (Board of Governors Aug. 16, 1990) ("[FINRA] exercises extensive regulatory authority on a consensual basis … over every applicant for membership during the pre-membership qualification process."), *aff'd*, 1992 SEC LEXIS 1369, 50 S.E.C. 1026 (1992)).

while Hatzis was not registered during Algorithmic Trading's application for membership, he was and remains subject to the jurisdiction of FINRA.[7]

B. Respondent's Firms

1. Algorithmic Trading

Algorithmic Trading's business involved developing, marketing, and implementing a computerized proprietary trading platform, an analytical tool that did not execute trades.[8] Algorithmic Trading was directly owned by ATM, LLC ("ATM"), a parent company.[9] Hatzis owned ATM.[10]

Algorithmic Trading was initially funded by TH, a close friend of Hatzis.[11] On March 11, 2004, TH opened a bank account in the name of Algorithmic Trading into which he deposited $10,000 drawn from his personal account.[12] TH was registered with another broker-dealer at the time he provided the funds to Algorithmic Trading.[13]

Hatzis was the founder and president of Algorithmic Trading.[14] He signed many of the documents submitted to FINRA by Algorithmic Trading during its membership application process, including one that identified Hatzis as Algorithmic Trading's prospective Executive Representative.[15]

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[7] Stip. ¶ 6.

[8] Stip. ¶ 3.

[9] Stip. ¶ 8. ATM never applied for FINRA membership. *Id*.

[10] CX-4, at 2.

[11] CX-8, at 1.

[12] Stip. ¶ 9.

[13] CX-14, 17; CX-20, at 2.

[14] Stip. ¶ 3.

[15] *See, e.g.*, CX-4, at 7; CX-2, at 8.

FINRA denied Algorithmic Trading's application for membership in June 2005.[16] The denial letter stated that "the Applicant [Algorithmic Trading] has withheld significant material information and provided conflicting information relating to the ownership of the Applicant and ATM, LLC (collectively, 'ATM entities'), the funding of the ATM entities, and the involvement of Mr. [TH] with the ATM entities."[17] When FINRA denied Algorithmic Trading's membership application, the MAP Staff had not yet learned that Hatzis also had misrepresented the true facts and circumstances regarding the $250,000 payment Algorithmic Trading received in May 2004. The MAP Staff believed that the $250,000 was a service fee related to an agreement, titled Service Agreement with ATM, LLC ("Service Agreement"), dated May 25, 2004, with Firm 2, another member firm.[18]

2. Firm USA

After FINRA rejected Algorithmic Trading's application, Hatzis formed Firm USA, a new company with the same business plan as Algorithmic Trading. He sought FINRA membership for Firm USA on August 19, 2005.[19] FINRA approved the membership application for Firm USA on March 16, 2006.[20] Hatzis is Firm USA's founder, and he has served as its Chief Executive Officer and Chief Compliance Officer.[21]

In September 2006, FINRA staff conducted a routine exam of Firm USA and uncovered documentation relating to Algorithmic Trading's funding and finances during Algorithmic

[16] Stip. ¶ 28; CX-20.

[17] CX-20, at 1.

[18] CX-12, at 1. Firm 2 is not the actual name of the member firm. Enforcement identified the firm as Firm 2 in the Complaint. Hatzis also entered into agreements with two other firms, which are referred to as Firm 3 and Firm 4 in the decision.

[19] CX-45.

[20] CX-46.

[21] Stip. ¶ 2.

Trading's membership application process. During the exam, FINRA learned for the first time that, on May 25, 2004, Hatzis, on behalf of Algorithmic Trading and ATM, the parent of Algorithmic Trading, had entered into an agreement, titled "Investment in ATM, LLC" ("Original Agreement"). The counterparty to the Original Agreement was Firm 2, the same member firm that had entered into the Service Agreement, also dated May 25, 2004. Unlike the Service Agreement, the Original Agreement affected Algorithmic Trading's expected commission structure.[22] The staff also uncovered emails revealing that Hatzis and his counsel engaged in a strategy to withhold the Original Agreement and its terms from FINRA.[23]

C. FINRA's Membership Application Process

In 2004 and 2005, FINRA membership applications were governed by NASD Rules 1013 and 1014. Rule 1013 describes the required information that applicants must submit in connection with their applications, and the required membership interview.[24] Pursuant to Rule 1013, the first item required as part of the membership application is "an original signed and notarized paper Form BD [Uniform Application for Broker-Dealer Registration] …." The Rule also requires the submission of (1) a copy of final or proposed contracts with banks, clearing entities, or service bureaus, and a general description of any other final or proposed contracts; and (2) a "description of the nature and source of Applicant's capital with supporting documentation."[25] Rule 1014 describes the standards for assessing the applicant's fitness for membership.[26]

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[22] CX-40, at 22.

[23] *See, e.g.*, CX-33; CX-34, at 1.

[24] Tr. at 47, 459-60.

[25] NASD Membership and Registration Rule 1013(a)(1)(L) and (M).

[26] NASD Membership and Registration Rule 1014; Tr. at 47.

Conduct Rule 2110 and IM-1000-1 require associated persons to provide complete and accurate information when applying for FINRA membership, and to observe high standards of commercial honor and just and equitable principles of trade.[27]

Once an application is submitted, the MAP Staff reviews it.[28] Among other items, the staff reviews an applicant's net capital, funding, source of funding, and documentation related thereto.[29] If additional information is needed in order to process an application, the MAP Staff sends information request letters to the applicant.[30]

D. Algorithmic Trading's Membership Application

On April 28, 2004, Hatzis signed the Form BD on behalf of Algorithmic Trading. In doing so, he represented that the information and statements provided, including attached exhibits and other information filed, were "current, true and complete."[31] On May 11, 2004, Hatzis sent the membership application to FINRA.[32] The application included a six page cover letter, the Form BD, and several attached exhibits.[33]

On June 10, 2004, the MAP Staff notified Hatzis that Algorithmic Trading's application for membership "did not contain all of the information and documents required by Rule 1013(a)(2) … to adequately assess the application in terms of the Standards for Admission in

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[27] IM-1000-1 provides that the filing of membership information that "is incomplete or inaccurate so as to be misleading … or the failure to correct such filing after notice thereof, may be deemed to be conduct inconsistent with just and equitable principles of trade" in violation of Rule 2110. NASD Rule 0115 extends NASD rule requirements to persons associated with a member.

[28] Tr. at 48.

[29] *Id.*

[30] Tr. at 59-60; *see, e.g.*, CX-3.

[31] CX-2, at 8.

[32] CX-2.

[33] *Id.*

Rule 1014."[34] The letter also delineated additional information needed for the Algorithmic Trading application.[35] On September 1, 2004, the MAP Staff sent another letter to Hatzis, requesting additional information.[36] Between October 2004 and April 2005, the MAP Staff sent seven additional letters to Hatzis, through counsel, for information related to Algorithmic Trading's application.[37] On October 19, 2004, and January 18, 2005, Hatzis and his counsel attended membership interviews with FINRA staff.[38]

E. Hatzis' Incomplete and Inaccurate Submissions

Hatzis submitted to FINRA incomplete and inaccurate information that was misleading regarding the source of Algorithmic Trading's initial $10,000 funding in March 2004 and the nature of a $250,000 payment in May 2004.

1. The March 2004 Initial $10,000 Funding

Hatzis' initial filing for Algorithmic Trading's membership application, dated May 11, 2004, was incomplete and misleading with regard to the source of the $10,000 used to capitalize Algorithmic Trading. The filing provided documentation "[i]n connection with [Algorithmic Trading's] present and future financial condition," which included an April 27, 2004 bank statement for Algorithmic Trading and a net capital computation. The bank statement listed a $10,000 deposit on March 11, 2004.[39] The net capital computation reflected total assets of

[34] CX-3, at 1.

[35] *Id.*

[36] CX-5.

[37] CX- 7, 9, 11, 13, 14, 16, 18. During the hearing, Hatzis testified that he did not remember receiving FINRA's request letters from his attorney. Tr. at 704. However, the evidence demonstrates that Hatzis was aware of FINRA's requests. Emails reflect that Hatzis' counsel informed Hatzis of the nature of the requests. *See, e.g.*, CX-71, CX-76, CX-79 and CX-82. And, his counsel also copied Hatzis on all the response letters he sent to FINRA. *See, e.g.*, CX-4, at 5; CX-6, at 3; CX-8, at 5; CX-10, at 2; and CX-12, at 2. Moreover, Hatzis was the owner, president, and prospective Executive Representative of Algorithmic Trading. As such, he was obligated to ensure that FINRA had all the necessary information to review Algorithmic Trading's application.

[38] CX-7, 50; Stip. ¶ 18; Tr. at 102-03.

[39] CX-2, at 19.

approximately $10,000.[40] In the May 11, 2004 letter, in support of Algorithmic Trading's application, Hatzis stated "[i]n connection with the nature and source of the Applicant's capital, please be advised the Applicant's business operations will initially be funded by capital contributions from Mr. Hatzis."[41] His representation regarding the source of funds was false. Hatzis knew that the true source of the initial $10,000 capital contribution was TH.[42]

Instead of disclosing the source of those funds, Hatzis withheld TH's identity as the source of the $10,000 in several submissions to FINRA. Not only did Hatzis affirmatively state that he provided the initial funds in the May 11, 2004 submission, but also he falsely responded to Question 9B on the Form BD. Question 9B specifically asked if any person directly, or indirectly, "wholly or partially finance[d] the business of applicant [Algorithmic Trading]?" Hatzis answered "No" to that question.[43]

FINRA sought the source of the funds in letters dated June 10, 2004, September 1, 2004, and October 21, 2004. In response to the June 10, 2004 request letter, Hatzis, through counsel, stated that Hatzis and ATM provided the $10,000.[44] In response to the September 1, 2004 letter, Hatzis, through counsel, stated that "although Mr. Hatzis initially" provided that funding, "such contribution was not made from Mr. Hatzis' personal checking account."[45] Further, neither Hatzis nor his counsel mentioned TH at Algorithmic Trading's October 19, 2004 membership interview.[46] On November 30, 2004, in response to the October 21, 2004 request, Hatzis admitted that "[t]he initial capital infusion of $10,000 into ATM was contributed by [TH], who is a close

[40] CX-2, at 20-21.

[41] CX-2, at 5.

[42] Stip. ¶ 9.

[43] CX-2, at 10.

[44] CX-4, at 3.

[45] CX-6, at 2.

[46] Tr. at 83, 89.

personal friend of Mr. Hatzis."[47] However, the November 30, 2004 response letter did not enclose any documentation evidencing TH's contribution.[48] Accordingly, on December 8, 2004, the MAP Staff again requested documentation evidencing the source of the $10,000.[49] On December 13, 2004, six months after the original submission, Hatzis provided a copy of TH's relevant bank account statement and the March 2004 cancelled $10,000 check, payable to Algorithmic Trading.[50]

2. The May 2004 $250,000 Payment

In the spring of 2004, Hatzis negotiated with Firm 2 for the use of Algorithmic Trading's trading platform. On May 25, 2004, Hatzis, on behalf of Algorithmic Trading and ATM, and a principal of Firm 2 executed the Original Agreement.[51] The agreement stated that Firm 2 would provide $250,000 to ATM, Algorithmic Trading's owner, and in return Algorithmic Trading would agree to forego the first $285,000 of commissions it would have been entitled to from Firm 2 for the use of its trading platform.[52] Pursuant to the Original Agreement, Firm 2 provided $250,000 to ATM,[53] which was deposited into an account in Algorithmic Trading's name on May 25, 2004.[54]

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[47] CX-8, at 1; Tr. at 88-89.

[48] CX-8.

[49] CX-9, at 1.

[50] CX-10, at 5-7.

[51] CX-40, at 26.

[52] CX-40, at 22. Initially, the agreement reflected that Algorithmic Trading would forego $250,000 in commissions from Firm 2. Later, the parties modified the agreement to reflect that Algorithmic Trading would forego $285,000 in commissions. Tr. at 509-10.

[53] CX-41, at 2-3.

[54] CX-4, at 27. Prior to August 2004, Algorithmic Trading and ATM used one bank account, which was in Algorithmic Trading's name. The $10,000 check made out to Algorithmic Trading by TH in March 2004 was deposited into that account. CX-6, at 24; CX-12, at 42. The $250,000 check, payable to ATM from Firm 2 in May 2004, was also deposited into that account. CX-4, at 27; CX-41, at 2-3. In August 2004, Hatzis opened a separate account in Algorithmic Trading's name. CX-4, at 3; CX-17, at 62-63. The name of the account holder on the original bank account was changed to ATM. CX-4, at 3; CX-17, at 41.

a. Inaccurate and Incomplete Information in Hatzis' First Filing

In the first filing with FINRA, dated May 11, 2004, Hatzis provided incomplete and inaccurate information about Algorithmic Trading's structure, financial arrangements, and funding. The May 11, 2004 letter stated that Algorithmic Trading "would be compensated by receiving a portion of the commission charged by a BD in connection with the transactions executed by such BD through [Algorithmic Trading's] software on a per share basis."[55] It also stated that Algorithmic Trading is "100% owned by Mr. Hatzis."[56] The letter did not disclose that: (1) ATM existed and had an ownership interest in Algorithmic Trading; and (2) Hatzis was at that time negotiating the Original Agreement, whose terms would require Algorithmic Trading to repay the $250,000 to Firm 2 before Algorithmic Trading could share in commissions generated through Firm 2's use of Algorithmic Trading's trading platform.[57]

The emails that FINRA staff discovered during Firm USA's 2006 routine exam demonstrate that by May 11, 2004, Hatzis and principals of Firm 2 had been negotiating the Original Agreement for over a month.[58] By the end of March 2004, Hatzis' negotiations with Firm 2 focused on a "commission recapture program" pursuant to which "the commission splits would be 0 percent ATM, 100 percent [Firm 2] up to and including $250,000, later $285,000."[59] A version of the Original Agreement that Hatzis sent to a Firm 2 principal on May 11, 2004, defined ATM as the sole equity owner of Algorithmic Trading.[60] The agreement indicated that Firm 2 would pay a $250,000 loan to ATM, and it stated that the "principal of the loan will be

[55] CX-2, at 3.

[56] CX-2, at 3.

[57] CX-2, at 1-6.

[58] *See, e.g.*, CX-21-26

[59] Tr. at 509-10.

[60] CX-25, at 2.

repaid to [Firm 2] by offsetting commission payments due from [Firm 2]" to Algorithmic Trading.[61] Firm 2 would "not be obligated to pay anything" to Algorithmic Trading for services Algorithmic Trading performed for Firm 2 "until the amounts receivable by [Algorithmic Trading] from [Firm 2] exceed $285,000."[62]

Later that same day, Hatzis executed a version of the Original Agreement containing the above language, and his attorney sent it to the principals of Firm 2 for their signature.[63] Although Hatzis and Firm 2 made small modifications to the Original Agreement after May 11, 2004, the final version, dated May 25, 2004, contained the "commission recapture" language.[64]

The Original Agreement with Firm 2 was not the only "commission recapture" agreement that Hatzis withheld from FINRA when he submitted the May 11, 2004 letter on behalf of Algorithmic Trading. On April 6, 2004, four weeks before Hatzis submitted Algorithmic Trading's FINRA membership application, he sent his counsel a draft agreement with another broker-dealer, Firm 3, for $150,000 in financing with terms similar to those in the Original Agreement with Firm 2.[65] The draft agreement with Firm 3, titled "Investment in Algorithmic Trading Management, LLC," stated that Firm 3 would provide $150,000 as a loan to ATM.[66] Algorithmic Trading would repay "the principal of the loan" by "offsetting commission payments due" to Algorithmic Trading from Firm 3.[67]

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[61] *Id.*

[62] CX-25, at 2.

[63] CX-26; Tr. at 608-10.

[64] *Compare* CX-27-31 *with* CX-40, at 22-28 *and with* CX-25 and CX-26.

[65] CX-56.

[66] *Id.* at 2.

[67] *Id.*

On May 20, 2004, a week after Hatzis filed Algorithmic Trading's membership application, he contacted his counsel by email regarding the agreement with Firm 3.[68] The email attached a draft of the agreement with Firm 3, which had been renamed "Investment in ATM, LLC" and defined ATM as Algorithmic Trading's "sole equity owner." [69] Hatzis instructed his counsel to "examine atm's agreement with a different firm that has chosen to buy equity."[70] Similar to the April 6, 2004 version, the agreement described the $150,000 as a loan and stated that Algorithmic Trading would repay the loan "by offsetting commission payments."[71] Hatzis did not disclose the draft agreement with Firm 3 at any time during Algorithmic Trading's membership application process.[72]

b. Inaccurate and Incomplete Information in Hatzis' Subsequent Filings

The Original Agreement with Firm 2 was responsive to several FINRA requests for information from the MAP Staff. Specifically, on June 10, 2004, the MAP Staff requested the following: (1) a "description of the economic rationale regarding the Applicant's the (sic) income projections, along with any supporting documentation," (2) an amended 12-month projection to clearly identify fixed expenses and the identity of other expenses, and (3) "sample books and records relative to the Applicant's proposed business activities (e.g., software usage agreements etc.)."[73] On October 21, 2004, the MAP Staff requested: (1) "a detailed description of the Parent, including but not limited to … a statement indicating the source of revenue, and, if applicable, a copy of … any information circulated to potential investors and/or clients within

[68] CX-68.

[69] *Id.* at 2.

[70] *Id*. at 1.

[71] *Id.*

[72] Tr. at 139-40, 338. Hatzis also failed to disclose that he circulated a proposed agreement with similar financing terms to Firm 4, another FINRA member. CX-89; Tr. at 140, 345.

[73] CX-3, at 3-5.

the last twelve months," and (2) "copies of any proposed or executed agreements between the Applicant and the other broker/dealers for the commissions it will receive."[74] Then, on December 28, 2004, the MAP Staff requested:

> a detailed description of the $250,000 deposit, which was infused into the Parent's account on May 25, 2004. This description should address the nature of this deposit, and where the funds originated. Include bank account statements specifically evidencing the withdrawal of these funds, and documentation from all involved parties, authorizing the infusion.[75]

The Original Agreement and its terms were not disclosed to FINRA at any time during Algorithmic Trading's membership application process.[76] As noted above, FINRA did not learn of the executed Original Agreement until its first routine examination of Firm USA in 2006.[77]

c. The Strategy to Withhold Information from FINRA

Instead of providing the Original Agreement to FINRA, Hatzis engaged in a strategy to withhold any information regarding the "commission recapture" arrangement.[78] He omitted any reference to Algorithmic Trading's obligation, pursuant to the Original Agreement, to forego $285,000 in commissions from Firm 2 in exchange for ATM's receipt of $250,000 from Firm 2 when he submitted the following:

- Algorithmic Trading's draft revenue and expense projections,[79]
- draft and executed service agreements indicating that Algorithmic Trading and ATM were to receive a share of commissions generated by clients implementing

[74] CX-7, at 2.

[75] CX-11.

[76] Tr. at 203-9.

[77] Tr. at 203-9, 215-17, 220-21, 242-43. Firm 2 provided the executed agreement in response to a request for information pursuant to Procedural Rule 8210. CX-40, at 1-2, 22-28; Tr. at 226-30.

[78] *See* CX-95; Tr. at 630-31.

[79] CX-2, at 22; CX-4, at 45-46; CX-8, at 44.

Algorithmic Trading's trading platform,[80]

- draft and executed capital contribution agreements describing ATM's commitment to provide Algorithmic Trading with capital,[81]
- draft and executed expense sharing agreements detailing ATM's commitment to pay certain Algorithmic Trading expenses, [82]
- a description of the ways Algorithmic Trading expected to be compensated,[83] and
- documentation indicating that ATM had provided Algorithmic Trading with $30,000 in capital to cover Algorithmic Trading's operating expenses for the first year of operation.[84]

In an October 18, 2004 letter to FINRA, Hatzis, through counsel, stated that "the source of the majority of ATM, LLC's capital, was the payment of up-front, fixed-rate service fees by certain of ATM, LLC's customers."[85] Hatzis testified that the payment referred to in that letter was the $250,000 payment from Firm 2.[86] Hatzis failed to mention the Original Agreement or its terms regarding the "commission recapture" arrangement.

The strategy also included creating a misleading, backdated document to submit to FINRA. On December 28, 2004, when FINRA requested, "a detailed description of the $250,000 deposit" and supporting documentation, the Original Agreement was the only executed agreement relating to the $250,000 and the only agreement Hatzis had exchanged with Firm 2.[87]

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[80] CX-4, at 5, 52-57; CX-8, at 4, 25-30; CX-12, at 1, 23-26.

[81] CX-4, at 3-4, 48; CX-6, at 2, 39; CX-10, at 1, 4; CX-15, at 2, 6.

[82] CX-6, at 2, 11-13; CX-8, at 2, 7-9.

[83] CX-2, at 3; CX-8, at 3-4.

[84] CX-10, at 1, 4. The $30,000 came from the $250,000 provided by Firm 2. Tr. at 675-76.

[85] CX-6, at 2.

[86] Tr. at 568.

[87] *See* CX-11; CX-21-32; CX-66; CX-73; CX-40, at 22.

Rather than provide the applicable document, Hatzis and his counsel created the Service Agreement to mislead the MAP Staff.[88] The Service Agreement stated that Firm 2 would pay ATM $250,000 in consideration for services to be rendered pursuant to the agreement.[89] The agreement was silent as to any obligation on the part of Algorithmic Trading to forego commissions.[90] Hatzis testified that he and a principal at Firm 2 then backdated the Service Agreement to May 25, 2004.[91]

Hatzis and the Firm 2 principals negotiated and executed the Service Agreement after receiving FINRA's December 28, 2004 request letter. On December 28, 2004, Hatzis' counsel sent Hatzis an email listing FINRA's December 28, 2004 requests for information, including the "description of the $250,000 capital infusion to ATM on May 25, 2004, and documentation evidencing the source."[92] Counsel stated "[f]or this I will provide you with an appropriate agreement by Friday of this week, which then should be executed by you and [Firm 2]."[93] Hatzis testified that at no time prior to that email did a written document with revised terms exist.[94]

On December 29, 2004, Hatzis voiced his fear that FINRA would ask for more information about the May 2004 $250,000 payment.[95] He sent an email to another attorney at his counsel's law firm, reiterating FINRA's request regarding the May 2004 $250,000 payment and stating "THIS IS WHAT I'VE FEARED ALL ALONG."[96]

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[88] *See* CX-33, 34.

[89] CX-12, at 23.

[90] CX-12, at 23-26.

[91] Tr. at 590-91.

[92] CX-82.

[93] *Id*.

[94] Tr. at 641-44.

[95] CX-83.

[96] CX-83; Tr. at 501.

Instead of disclosing the Original Agreement to FINRA, Hatzis provided the Service Agreement to the Firm 2 principals and suggested they backdate it.[97] On January 4, 2005, Hatzis emailed a principal at Firm 2 and stated:

> My attorneys had been trying to avoid this issue with the NASD for months, but now it's unavoidable. As discussed several months ago, the agreement between ATM & [Firm 2] is problematic for the NASD. ATM's application will be *certainly DISAPPROVED* due to the fact that the $250k "loan" is to be "repaid" with commission revenues.[98]

Hatzis asked the Firm 2 principal:

> When can we discuss executing a *revised* and *backdated agreement* that is in compliance with NASD regulations? *Perhaps we can execute a "side" agreement that restores the original agreement immediately upon ATM's approved registration.*[99]

That same day, Hatzis emailed the Firm 2 principals a "proposed [Firm 2]/ATM Service Agreement to be back-dated (May 04) and executed prior to ATM's final NASD inquiry."[100] The email stated that the "agreement is devoid of any references to commission sharing or equity interests" and "is 100% compliant with NASD rules and regulations."[101] As Hatzis' emails reflect, the Service Agreement did not exist prior to January 2005; it was executed at some time during that month and backdated to May 25, 2004.[102]

On January 18, 2005, Hatzis, through counsel, submitted the backdated Service Agreement to FINRA.[103] The cover letter for the submission stated: "On May 25, 2004, [Firm 2]

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[97] CX-33, 34.

[98] CX-33 (emphasis added).

[99] CX-33 (emphasis added).

[100] CX-34.

[101] *Id.*

[102] *Compare* CX-33 and 34 *with* CX-12, at 23-26 and CX-40, at 5-8.

[103] CX-12, at 23-26. Hatzis is copied on the submission. *Id.* at 2. The letter is erroneously dated January 18, 2004; however, it is stamped "Received January 18, 2005." *Id.* at 1.

paid to ATM, LLC a $250,000 service fee pursuant to a service agreement."[104] The January 18, 2005 letter did not mention the executed Original Agreement or its terms.[105]

Hatzis and his counsel also attended a membership interview with FINRA staff on January 18, 2005.[106] Even though the information about the May 2004 $250,000 payment had been requested just prior to that meeting,[107] neither Hatzis nor his counsel disclosed the Original Agreement or its terms during that meeting or at any time thereafter.

IV. CONCLUSIONS OF LAW

A. Legal Standard

Rule 1013, and the guidance in IM-1000-1, delineate the requirements for a membership application. The two applicable sections at issue are Rule 1013(a)(2)(L) and (M). As stated above, subsection (L) requires "a copy of final or proposed contracts with banks, clearing entities, or service bureaus, and a general description of any other final or proposed contracts." And, subsection (M) requires:

> a description of the nature and source of Applicant's capital with supporting documentation, including a list of all persons or entities that have contributed or plan to contribute financing to the Applicant's business, the terms and conditions of such financing arrangements, the risk to net capital presented by the Applicant's proposed business activities, and any arrangement for additional capital should a business need arise.[108]

Membership and Registration IM-1000-1 warns applicants that information supplied with respect to membership "which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead … may be sufficient cause for appropriate disciplinary action."

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[104] *Id.* at 1.

[105] *Id.* at 1-2.

[106] CX-50; Tr. at 102-03. Hatzis was a full participant in the Algorithmic Trading membership interview. Tr. at 103.

[107] CX-50; Tr. at 106-07.

[108] NASD Membership and Registration Rule 1013(a)(1)(L) and (M).

Rule 2110 states that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."[109] A violation of a Securities and Exchange Commission or NASD (now FINRA) rule also constitutes a violation of Rule 2110.[110] Rule 2110 applies to all business related misconduct, regardless of whether the misconduct involved securities or harmed investors.[111] "The principal consideration is whether the misconduct reflects on an associated person's ability to comply with regulatory requirements necessary to the proper functioning of the securities industry and protection of the public."[112] Under NASD Rules, persons associated with a member have the same duties and responsibilities as a member.[113]

B. Hatzis Violated Membership and Registration Rule 1013, Conduct Rule 2110, and IM-1000-1

It was Hatzis' responsibility to provide FINRA with complete and accurate information in connection with Algorithmic Trading's membership application. Hatzis was Algorithmic Trading's indirect and ultimate owner, as well as its president and prospective Executive Representative.[114] He signed many of the documents Algorithmic Trading filed with FINRA, including Algorithmic Trading's Form BD and Form BD Amendment.[115] He also submitted to

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[109] *Dep't of Enforcement v. W.R. Hambrecht & Co., LLC*, No. C01000011, 2001 NASD Discip. LEXIS 13, at *12-3 (OHO Jan. 16, 2001)(*quoting First Capital Funding, Inc.*, 1990 NASD Discip. LEXIS 119, at *14 (FINRA "exercises extensive regulatory oversight on a consensual basis as provided in [Rule 2110] over every applicant for membership during the pre-membership qualification process.").

[110] *Stephen J. Gluckman*, 54 S.E.C. 175, 185, 1999 SEC LEXIS 1395, at *22 (1999) (citations omitted).

[111] *See, e.g., DWS Sec. Corp.*, 51 S.E.C. 814, 822, 1993 SEC LEXIS 3137, at *19 (1993).

[112] *Dep't of Enforcement v. Davenport*, Complaint No. C05010017, 2003 NASD Discip. LEXIS 4, at *9-10 (NAC May 7, 2003).

[113] *See Dep't of Enforcement v. Stein*, Complaint No. C07000003, 2001 NASD Discip. LEXIS 38, at *8 n.9 (NAC Dec. 3, 2001); NASD Rule 0115.

[114] CX-2, at 3, 8, 13; CX-1, at 17; CX-4, at 7. In Algorithmic Trading's initial filing with FINRA and its Form BD, it named Hatzis as its 100% owner. CX-2, at 3, 13. Later in the application process, Algorithmic Trading stated that ATM owned Algorithmic Trading, and that Hatzis owned ATM. CX-4, at 2.

[115] *See e.g.*, CX-2, at 8; CX-8, at 33.

FINRA a Uniform Application for Security Industry Registration or Transfer ("Form U4") related to his association with Algorithmic Trading.[116] While Hatzis hired counsel to assist with the application process,[117] he remained ultimately responsible for the membership application, which he signed and represented as "current, true and complete."[118] Moreover, "[i]t is axiomatic that the person who provides information for a regulatory filing and executes that filing is responsible for ensuring that the information contained therein is accurate."[119]

Hatzis misled FINRA by failing to provide complete and accurate information to FINRA during Algorithmic Trading's application process regarding both the source of the March 2004 $10,000 initial funding and the nature of the May 2004 $250,000 payment. Although Hatzis disclosed to FINRA that TH had provided the initial $10,000, he only did so after two false representations about the source of the funds: (1) the original representation that Hatzis himself funded Algorithmic Trading and (2) the subsequent representation that Hatzis and ATM were the source of the $10,000.[120] The identity of TH was required to be disclosed on the Form BD. Not only did Hatzis fail to provide the information initially, he misled FINRA for approximately six months by falsely stating that he was the source of the funds and failing to provide the required supporting documentation.

The Original Agreement, dated May 25, 2004, and a description of its terms were required to be disclosed under Rules 1013(a)(1)(L) and (M). Throughout Algorithmic Trading's membership application process, the agreement was a final or proposed contract. The Original

[116] CX-1, at 12.

[117] Hatzis testified that counsel was his agent in the membership application process. Tr. at 693.

[118] CX-2, at 8.

[119] *Dep't of Enforcement v. Howard*, 2000 NASD Discip. LEXIS 16, at *31 (NAC Nov. 16, 2000) (citation omitted), *aff'd*, 2002 SEC LEXIS 1909 (July 26, 2002), *aff'd*, 77 Fed. Appx. 2 (1st Cir. 2003).

[120] CX-2, at 5; CX-3, at 3; CX-4, at 3; CX-5, at 1; CX-7, at 1.

Agreement also contained a description of the nature and source of the applicant's capital, and the terms of financing arrangements.[121] Further, as discussed above, the Original Agreement was directly responsive to numerous FINRA requests for information. On December 28, 2004, FINRA specifically requested "a detailed description of the $250,000 deposit … and documentation from all involved parties, authorizing the infusion."[122]

Rather than provide the Original Agreement to FINRA, Hatzis engaged in a strategy to withhold that information.[123] The strategy included creating a backdated, misleading document: the Service Agreement.[124] That backdated Service Agreement was then provided to FINRA as if it had been in effect since May 25, 2004.[125] At no time did Hatzis provide the Original Agreement to FINRA or describe the true nature of the Original Agreement as required by Membership and Registration Rule 1013.

The Panel finds that Hatzis submitted incomplete, inaccurate information concerning the initial March 2004 $10,000 deposit and the May 2004 $250,000 payment, which misled FINRA during its review of Algorithmic Trading's membership application. Accordingly, the Panel finds that Hatzis violated Membership and Registration Rule 1013, Conduct Rule 2110, and IM-1000-1.

V. HATZIS' ARGUMENTS

Throughout the hearing, Hatzis argued that he relied on his counsel to handle the membership application and the submissions. However, advice of counsel is not available as a substantive defense when scienter is not an element of the violation, and scienter is not required

[121] CX-40, at 22-28.

[122] CX-11.

[123] *See* CX-95; Tr. at 631.

[124] CX-12, at 23-26; CX-33; CX-34.

[125] CX-12, at 1.

for the violation at issue.[126] Hatzis also presented several arguments relating to the nondisclosure of the Original Agreement. Each is addressed separately below.

A. The Original Agreement Was Not a Loan

Hatzis argued that the Original Agreement was not a loan, and thus did not need to be disclosed to FINRA. The Panel finds that the characterization of the agreement as a loan is irrelevant to the outcome of this matter. The Original Agreement was clearly a document that Rule 1013 required to be provided to FINRA. The agreement was also responsive to many of FINRA's requests. The agreement and its terms should have been disclosed to FINRA.[127]

B. The Original Agreement Was Illegal

Hatzis also argued that the Original Agreement was "illegal." According to Hatzis, he and his counsel met on a street corner at some time during the week of August 23, 2004,[128] and his attorney told him that the Original Agreement was "illegal" and had to be revised.[129] Hatzis' testimony is uncorroborated. In fact, it is contradicted by a letter from his counsel to Hatzis, stating that they did not tell Hatzis that the agreement was "illegal," only that it "may have been problematic under NASD regulations."[130] Regardless, the agreement reflected a financial arrangement relating to Algorithmic Trading that Hatzis was required to submit to FINRA pursuant to Rule 1013.

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[126] *Dep't of Enforcement v. Fergus*, No. C8A990025, 2001 NASD Discip. LEXIS 3, at *44 n.30 (May 17, 2001).

[127] The Panel further notes that the agreement described the arrangement as a loan. CX-40, at 22. The agreement had clear repayment terms: it would be repaid "by offsetting commission payments due from [Firm 2] to ATM in connection with the services provided by ATM to [Firm 2] as described in Section 5 of this Agreement." *Id*.

[128] RX-42; Tr. at 539-40, 617-18.

[129] RX-42; Tr. at 540.

[130] CX-96, at 2.

C. The Original Agreement Was Terminated

Hatzis argued that the Original Agreement was terminated.[131] However, there is no evidence that the agreement was terminated. Hatzis did not testify that he and Firm 2 terminated the agreement.[132] While the Original Agreement had a termination provision,[133] Hatzis did not provide a date of such termination or documentation evidencing that it had been terminated. The backdated Service Agreement did not state that it replaced the Original Agreement or that the Original Agreement was terminated.[134]

In addition, Hatzis' emails refute his assertion that the Original Agreement was terminated in 2004. For example, on August 30, 2004, Hatzis stated that the parties must revise the agreement only "*if* nasd review board" asks for it during Algorithmic Trading's application process.[135] He also stated "I will know for sure by the date of my nasd b/d member interview scheduled for sep 14th *if* this will be necessary."[136] According to the August 30 email, the parties would revise the agreement only if FINRA asked for it. On December 31, 2004, Hatzis wrote to his counsel stating, "[Firm 2] agreement drafted by [law firm] is problematic for the NASD. New agreement proposed by [counsel] is problematic for [Firm 2]."[137] The email indicated that the Original Agreement is problematic for FINRA, not that it had been terminated. On January 4, 2005, Hatzis wrote to a Firm 2 principal and stated that "the agreement between ATM & [Firm 2] is problematic for the NASD" and that the agreement's terms would cause Algorithmic

[131] Hatzis Post-Hr'g Br. at 7-8.

[132] Tr. at 550-1. Hatzis testified that between August 30, 2004 and January 4, 2005, he and a principal at Firm 2 determined that the Original Agreement was "not going to work." Tr. 550-51, 620.

[133] CX-40, at 23.

[134] CX-40, at 5-8.

[135] CX-32 (emphasis added).

[136] *Id.*

[137] CX-84.

Trading's application to be "certainly DISAPPROVED."[138] There is no mention that the Original Agreement had already been terminated.

Hatzis' emails also reflect his belief that his company remained obligated to repay the $250,000 even after the Service Agreement was signed in January 2005. On August 18, 2005, Hatzis wrote to several Firm 2 principals, stating "Nothing has changed about our original agreements including **BOTH** the: **Investment** (in atm) **AND Expenses** (incurred to construct a viable algorithmic execution services platform)."[139] Even as of May 2006, Hatzis believed he was obligated to repay the May 2004 $250,000 payment. On May 10, 2006, Hatzis emailed a representative of an entity that obtained an ownership interest in Firm USA,[140] stating that Firm 2 had paid advances to ATM in the amount of "$250k, $250k, [and] $40k."[141] In describing the repayment terms for the three payments from Firm 2, Hatzis explained that "[o]n paper these advances were accounted for as service fees and reported as revenue to the IRS." "ATM had to report revenue for purposes of BD approval," but "[i]n reality, ATM is responsible for paying back [Firm 2]."[142]

D. Hatzis Assumed His Attorneys Disclosed the Original Agreement to FINRA

Hatzis admitted that as of August 30, 2004, FINRA did not have a copy of the original Agreement.[143] According to Hatzis, counsel told him "that in his interface with FINRA, with the NASD at the time, was that he had discussed it and that the problem – that the situation did not

[138] CX-33.

[139] CX-35 (emphasis in original).

[140] CX-38, 48; Tr. at 222-23.

[141] CX-38. In addition to the May 25, 2004 $250,000 payment, Firm 2 provided ATM with $250,000 on June 1, 2005, and another $40,000. CX-41, at 13; Tr. at 597.

[142] CX-38, at 2.

[143] Tr. at 620.

pose a problem currently."[144] Hatzis also emphasized a September 21, 2004 email in which counsel stated "[t]he [Firm 2] situation appears also, at this time, not to be a problem with the NASD, and if it becomes one, we would be able to deal with it."[145] Hatzis testified that he assumed that his counsel discussed the "situation" with the examiner, but Hatzis had no recollection of the specific conversation his counsel had with FINRA.[146] The September 21 email does not reflect any information that counsel may have provided to FINRA.[147] Neither Hatzis' testimony nor the September 21 email establishes that his counsel informed FINRA about the Original Agreement.

Instead, Hatzis' communications with his counsel reveal that he was fully aware that the Original Agreement was not provided to FINRA. On April 21, 2004, Hatzis' counsel emailed him a draft of the initial May 11, 2004 letter, which failed to mention ATM or the Original Agreement.[148] Counsel asked Hatzis to provide comments on the letter.[149] Counsel then copied Hatzis on every FINRA submission, and none of them mentioned the Original Agreement or its terms.[150]

Further, in December 2004, Hatzis' counsel explicitly told him that FINRA was not aware of the Original Agreement. On December 9, 2004, counsel sent Hatzis an email that stated "we don't want them to start asking about the other money that came into ATM."[151] Hatzis

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[144] Tr. at 554.

[145] RX-36.

[146] Tr. at 554-55.

[147] RX-36.

[148] CX-58, at 1, 8-13.

[149] *Id.* at 1.

[150] *See*, *e.g.*, CX-2, at 6; CX-4, at 5; CX-6, at 3; CX-8, at 5; CX-10, at 2; CX-12, at 2. Hatzis was also copied on all of the letters sent to FINRA after the January 18, 2005 submission. *See* CX-15, at 4; CX-17, at 3; CX-19, at 10.

[151] CX-79.

testified that the "other money" referred to in that email was the $250,000 payment from Firm 2.[152] As of December 9, 2004, neither Hatzis nor his counsel had provided FINRA with details about the May 2004 $250,000 payment. On December 23, 2004, Hatzis' counsel wrote to Hatzis and reconfirmed that "[t]he NASD is not even aware of the agreement with [Firm 2]."[153]

Based on the documentary evidence, Hatzis could not have assumed his counsel disclosed the Original Agreement to FINRA at any time in 2004. Then, in 2005, Hatzis and his counsel created a backdated Service Agreement to conceal the Original Agreement and its terms from FINRA.

VI. SANCTIONS

A. The Sanction Guidelines

For the Membership and Registration violation at issue in this case, the submission of incomplete and inaccurate information to FINRA during the membership application process, the FINRA Sanction Guidelines ("Guidelines") recommend consideration of a fine of $2,500 to $50,000, and suspension in any or all capacities for up to six months. In egregious cases, the Guidelines recommend consideration of a suspension up to two years, or a bar.[154]

B. Aggravating Factors

The Panel concludes that this case involves several aggravating factors. The record overwhelmingly demonstrates that Hatzis intentionally withheld information regarding the $10,000 initial funding and the $250,000 payment.[155] Even more disturbing, however, is the fact that Hatzis deceived FINRA staff regarding the true facts and circumstances of Algorithmic

[152] Tr. at 576.

[153] CX-96, at 2.

[154] *FINRA Sanction Guidelines* 48 (2007), *available at* www.finra.org/sanctionguidelines.

[155] Sanction Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 13). The Hearing Panel rejects Hatzis' argument that his misconduct was merely negligent.

Trading's funding and financing arrangements.[156] Hatzis testified that the membership application process was adversarial, which justified the use of deceptive tactics to accomplish his goal of membership for Algorithmic Trading.[157] Hatzis withheld the identity of TH as the source of the $10,000 for many months. During that time, Hatzis falsely asserted that he and ATM were the source of the funds. And, all of the evidence indicates Hatzis and his counsel purposefully withheld the Original Agreement and its terms from FINRA. Then, when pressed for the source documents for the $250,000 payment, they created the backdated Service Agreement and submitted it to FINRA as if it had been in place since May 2004.

Hatzis' misconduct also resulted in the potential for monetary and other gain.[158] He deliberately withheld information that he felt would be "problematic" for Algorithmic Trading's application in order to gain membership.

It is also an aggravating factor that Hatzis sought to shift the blame to others instead of accepting responsibility for his conduct.[159] Hatzis blamed his counsel; however, Hatzis signed and submitted the application, and as such he was responsible for making sure it was accurate and complete. Hatzis was the founder, president, and prospective Executive Representative of Algorithmic Trading, and signed all agreements on behalf of Algorithmic Trading. No one other than Hatzis had greater knowledge about Algorithmic Trading's finances and funding. As such, he was in the best position to ensure that FINRA had all the required documents necessary for its review of Algorithmic Trading's application.

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

[157] *See* Tr. at 691, 693-96.

[158] Sanction Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 17).

[159] Sanction Guidelines at 6 (Principal Considerations in Determining Sanctions, No. 2).

Hatzis also blamed FINRA for his misconduct. He emphasized that FINRA's request for follow-up information regarding the $250,000 payment was not timely.[160] Yet, Hatzis failed to appreciate FINRA's repeated requests prior to December 2004 to which the Original Agreement was responsive but not disclosed. Plus, his own emails provide a roadmap of his deliberate efforts to withhold information from FINRA in order to bolster Algorithmic Trading's membership application.[161]

Hatzis also stressed that, in 2004, FINRA did not provide applicants with a checklist of information that they were required to provide in the membership application.[162] It is well-established that "[t]he responsibility for compliance with applicable requirements cannot be shifted to regulatory authorities."[163] While "[i]gnorance of NASD requirements … is no excuse for violative behavior,"[164] in this case, the very first letter Hatzis received from the MAP Staff notified him of the applicable Rules. In 2004 and 2005, NASD Rule 1013 clearly listed the information applicants were required to provide to FINRA. The Rule 1013 requirements were not complicated.[165] More importantly, as noted above, the Hearing Panel finds that Hatzis' failure to provide the required information was intentional, not negligent.

Hatzis had several opportunities to inform FINRA of the relevant circumstances surrounding the March 2004 $10,000 initial funding and the May 2004 $250,000 payment, but

[160] Hatzis Post-Hr'g Br. at 6, 10, 15.

[161] CX-32, CX-33, CX-34, CX-84.

[162] Hatzis Post-Hr'g Br. at 4, 16.

[163] *John Montelbano*, Exchange Act Release No. 47,227, 2003 SEC LEXIS 153, at *27 (Jan. 22, 2003).

[164] *Dep't of Enforcement v. Fox & Co. Inv., Inc.*, No. C3A030017, 2005 NASD Discip. LEXIS 5, at *45 (N.A.C. Feb. 24, 2005) (citation omitted), *aff'd, Fox & Co. Inv., Inc.*, Exchange Act Rel. No. 52697, 2005 SEC LEXIS 2822 (Oct. 28, 2005).

[165] Tr. at 577.

he failed to do so.[166] Despite the fact that the identity of TH should have been provided on the Form BD, it took Hatzis over six months to provide the true source of the $10,000 funding, and the related documentation. This caused a significant delay in the review process. Further, Hatzis never revealed the true facts and circumstances surrounding the May 2004 $250,000 payment. Not only did Hatzis fail to disclose the information in his written responses, he attended two membership interviews and never disclosed the required information. Hatzis' pattern of deceit occurred over an extended period of time[167] – over one year – and at no time did he take any corrective measures to disclose the true nature of the $250,000 payment.[168] But for the routine examination of Firm USA in 2006, during which FINRA uncovered information about the nature of the $250,000 payment, Hatzis would have successfully deceived FINRA as to the terms of the payment.

C. Hatzis' Mitigation Arguments

Hatzis argued before the Hearing Panel that the following factors should be considered mitigating: (1) his reliance on counsel's advice, (2) his lack of disciplinary history, (3) the failure of FINRA to provide a warning, and (4) the fact that no harm resulted from the misconduct.

1. Advice of Counsel

The Guidelines state that the Panel may consider whether "the respondent demonstrated reasonable reliance on competent legal or accounting advice." Regarding the source of the $10,000 funding, Hatzis failed to establish that he received advice that it was legal to withhold the identity of the individual who provided the $10,000. The record demonstrates that Hatzis did not seek his counsel's advice on the issue. In fact, on October 14, 2004, five months after the

[166] Sanction Guidelines at 6-7 (Principal Considerations in Determining Sanctions, Nos. 4, 10, and 12).

[167] Sanction Guidelines at 6 (Principal Considerations in Determining Sanctions, No. 9).

[168] Sanction Guidelines at 6 (Principal Considerations in Determining Sanctions, No. 4).

submission of the Algorithmic Trading application, counsel requested that Hatzis provide his personal account statement evidencing the initial funding of Algorithmic Trading in order to respond to FINRA's request.[169] Regarding the $250,000 payment, the Panel finds that Hatzis and his counsel engaged in a strategy to withhold the true nature of that payment from FINRA, which prevented full compliance with Rule 1013 and IM-1000-1 and full and complete responses to FINRA's follow-up questions. As the Securities and Exchange Commission stated, "an advice-of-counsel claim is not mitigating if it is premised on a strategy to avoid full compliance with applicable regulatory requirements."[170] We therefore find that Hatzis' purported reliance on counsel was not reasonable.

2. Lack of Disciplinary History

Hatzis argues that his lack of disciplinary history is mitigating. While the existence of a disciplinary history can be an aggravating factor, the absence of one is not mitigating.[171] Registered individuals are required to comply with FINRA's rules and observe high standards of conduct. [172]

3. No Prior Warning Provided by FINRA

Hatzis argues that FINRA failed to warn him of the misconduct. The Hearing Panel does not find this mitigating. The requirements for membership were clearly laid out in Rule 1013 and the Form BD. All Hatzis had to do was follow those requirements and supply the requested information. FINRA should not have to warn its applicants to be honest and forthright. That said,

[169] CX-76.

[170] *Howard B. Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *49 (Nov. 14, 2008) (citing *Toni Valentino*, 57 S.E.C. 330, 338 (2004)).

[171] *Dep't of Enforcement v. Fergus*, Disciplinary Proceeding No. C8A990025, 2001 NASD Discip. LEXIS 3, at *58 (NAC May 17, 2001).

[172] *Id.*

the Form BD did warn Hatzis that intentional misstatements or omissions, and the failure to accurately supplement as needed, could result in disciplinary action.[173]

4. No Harm Resulted

Hatzis argues that no harm resulted because Algorithmic Trading's application was ultimately denied. The Hearing Panel rejects Hatzis' argument that lack of harm should be considered a mitigating factor. "The harm in such instances, as here, is to the self-regulatory process and to investors' confidence in that process."[174]

D. Conclusion

The Hearing Panel concludes that the egregious nature of Hatzis' violation, coupled with the lack of any mitigating factors, warrants Hatzis' bar from the securities industry. He and his counsel employed a strategy to divert FINRA from inquiring into certain areas of Algorithmic Trading's funding and finances.[175] His willingness to backdate an important record, and to misrepresent and withhold necessary information from the MAP Staff, evidences a serious lack of respect for the rules and regulations governing the securities industry. Here, the evidence amply demonstrates Hatzis' lack of truthfulness and his unwillingness to comply with FINRA's Rules, which support the Hearing Panel's conclusion that he poses too great a threat to the investing public to permit him to remain in the securities industry. Accordingly, the Hearing Panel will bar Hatzis for providing inaccurate, incomplete, and misleading information to FINRA during the membership application process.[176]

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[173] CX-2, at 8.

[174] *Dep't of Enforcement v. Dieffenbach*, No. C06020003, 2004 NASD Discip. LEXIS 10, at *40 n.18 (NAC July 30, 2004), *aff'd on other grounds*, *Rooms v. SEC*, 444 F.3d 1208 (10th Cir. 2006).

[175] *See* CX-95, at 2; Tr. at 631.

[176] The Hearing Panel did not fine the Respondent in light of the imposed sanction. *See* NASD Notice to Members 99-86, 1999 NASD LEXIS 63 (Oct. 1999).

VII. ORDER

Hatzis is barred from associating with any firm in any capacity for providing inaccurate, incomplete, and misleading information to FINRA during the membership application process, in violation of Membership and Registration Rule 1013, Conduct Rule 2110, and IM-1000-1, as alleged in the Complaint.[177] In addition, he is ordered to pay costs in the amount of $6,415.43, which includes a $750 administrative fee and the cost of the hearing transcript. The costs shall be payable on a date set by FINRA, but not less than 30 days after this decision becomes FINRA's final disciplinary action in this matter. The bar shall become effective immediately if this decision becomes FINRA's final disciplinary action in this proceeding.

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Maureen A. Delaney
Hearing Officer
For the Hearing Panel

Copies to: Harrison A. Hatzis (*via overnight courier and first-class mail*)
Andrew J. Goodman, Esq. (*via electronic and first-class mail*)
Elissa Meth Kestin, Esq. (*via electronic and first-class mail*)
Mark P. Dauer, Esq. (*via electronic mail*)
David R. Sonnenberg, Esq. (*via electronic mail*)

[177] The Hearing Panel considered and rejected without discussion all other arguments of the parties.