

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MELISSA M. VELASQUEZ
(CRD No. 5312952),

Respondent.

Disciplinary Proceeding
No. 2015044379701

Hearing Officer – RES

HEARING PANEL DECISION

OCTOBER 11, 2016

Respondent Melissa Velasquez failed to observe high standards of commercial honor and just and equitable principles of trade when she made two false statements in an email to the wire room of her non-member employer bank. For this violation, this Decision will serve as a Letter of Caution.

Appearances

For the Complainant: Jessica Zetwick-Skryzhynskyy, Esq., and Perry C. Hubbard, Esq.,
Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Brandon Reif, Esq., and Valerie N. Gallo, Esq., Winget Spadafora &
Schwartzberg LLP

DECISION

I. Introduction

This disciplinary proceeding is about two false statements that Respondent Melissa Velasquez (“Velasquez”), an employee of Union Bank, NA (the “Bank” or “Union Bank”), made in an email she sent to the Bank’s wire room, attaching wire transfer instructions. Her two false statements concerned the manner in which she obtained the wire instructions, which were purportedly signed by JT, a customer of the Bank. Velasquez’s first false statement was “I met [JT] at his home, and he gave me these wire instructions.” The second was JT “doesn’t have a fax at home. So I took [the wire instructions] to the office to fax to the wire room.” Unknown to Velasquez, the wire instructions actually were a forgery that had been created by an imposter posing as JT. Velasquez did not pick up the wire instructions from JT at his home, but instead

received them by email from the imposter, who had hacked into JT's email account. The Bank discovered the false nature of the wire instructions in time and did not make the wire transfer.

Velasquez admits the statements in her email were false. The parties' factual disputes concern more tangential subjects. Two of these are relevant only as to sanctions. The first is whether Velasquez knowingly violated the Bank's written policy, which prohibited employees from acting on customers' wire transfer requests received by email. The second involves the motive and circumstances surrounding false statements Velasquez made to Bank investigators when they interviewed her about the false wire instructions. A third factual dispute, which is not relevant even as to sanctions, is whether Velasquez was the Bank employee who first spoke with JT by telephone and thus was the one who thwarted the wire transfer and the fraud.

The Hearing Panel conducted a hearing in Los Angeles, California on June 27, 28, and 29, 2016.¹ The Hearing Panel finds Enforcement proved by a preponderance of the evidence that Velasquez violated FINRA Rule 2010 by not observing high commercial standards and just and equitable principles of trade. However, the Hearing Panel also finds that it would not serve a remedial purpose to impose a suspension, a monetary fine, or other sanction beyond a Letter of Caution.

II. Jurisdiction

In January 2015, Velasquez held Series 7 and Series 66 licenses, which she maintained through Unionbanc Investment Services, LLC ("Unionbanc"), a brokerage affiliate of Union Bank.² FINRA has jurisdiction over this disciplinary proceeding pursuant to FINRA By-Laws Article V, Section 4 because (1) the Complaint was filed within two years after the effective date of termination of Velasquez's registration with a member firm, and (2) the Complaint charges her with misconduct that occurred when she was registered with a member firm.

III. Findings Of Fact

A. Background

Velasquez is thirty years old and has been in the financial industry for twelve years.³ She began working at Wells Fargo Bank as a part-time teller when she was eighteen and attending college.⁴ Wells Fargo rated her as one of its top tellers.⁵ She was promoted to Customer Service Representative and was one of the top performers in that position as well.⁶ Wells Fargo

¹ The hearing transcript is cited as "Tr." Enforcement's exhibits are cited as "CX." Velasquez's exhibits are cited as "RX."

² Tr. 50, 155, 356-57.

³ Tr. 48.

⁴ Tr. 159-60.

⁵ Tr. 160.

⁶ Tr. 161.

promoted her to Personal Banker and then, in 2007, to Premier Banker, where she handled accounts of \$25,000 or more.⁷ She was then promoted to Regional Bank Private Banker, responsible for accounts of \$250,000 or more.⁸

Because of a merger with Wachovia Bank, Wells Fargo eliminated the position to which Velasquez would next be promoted. She testified that Wells Fargo told her “I had to wait two more years to get promoted.”⁹ Instead of waiting, in August 2012 she accepted a position at Union Bank as Vice President Private Banker.¹⁰ In her first four months at the Bank, she won the Newcomer of the Year Award and an incentive trip as the distinguished production winner in 2012.¹¹ In 2014, she was promoted to the next level of private wealth management—Private Wealth Advisor, in which she worked with high net-worth individuals with assets of \$3 million or more.¹² This was the highest level of relationship management at the Bank.¹³ That year she was “the No. 1 producer in loans. I was the No. 2 producer in overall profitability.”¹⁴ She was the youngest Private Wealth Advisor in her group by more than ten years.¹⁵ The private banking group “was supposed to meet the needs of each individual client and make their banking as easy as possible.”¹⁶

One of Velasquez’s customers, JT, was a member of a family that historically had one of Union Bank’s largest relationships.¹⁷ Upon the death of JT’s father, the family moved a number of their accounts to other banks. Velasquez testified she was assigned to JT’s accounts to “make sure that we maintain what we have and see if we can grow that relationship.”¹⁸ Velasquez built her relationship with JT exclusively through telephone and email contacts.¹⁹

⁷ Tr. 162-63.

⁸ Tr. 164.

⁹ Tr. 165.

¹⁰ Tr. 48, 167-68, 513.

¹¹ Tr. 169.

¹² Tr. 49, 109-10, 170, 392.

¹³ Tr. 412-13.

¹⁴ Tr. 171.

¹⁵ Tr. 133-34.

¹⁶ Tr. 273. Velasquez’s supervisor, JS, testified that the role of a Private Wealth Advisor was “to understand from a client’s perspective their goals and objectives, both personally, family and business, and as we understand those objectives and what gaps a client may have to achieving those objectives.” Tr. 358. The Private Wealth Advisor was expected to provide her customers with “the highest level of service that we can provide.” Tr. 386.

¹⁷ Tr. 114, 296.

¹⁸ Tr. 115.

¹⁹ Tr. 117.

B. Velasquez Sent An Email Containing Two False Statements

At 9:21 a.m. Pacific Time on Wednesday, January 7, 2015, when she was out of the office,²⁰ Velasquez received an email from the email account of JT requesting a payment be made from his personal account at the Bank:

Please I need to send out a payment from my personal account for the new piece of art I just purchased, could you please make the payment for me while I provide you with the art payment invoice. Please let me know.²¹

The account from which the wire transfer was to be made was one of JT's bank accounts, not a securities account.

At 9:27 a.m., Velasquez sent a reply email saying, "Send me the wire instructions (sign it) and I will take care of the payment for you."²² At 10:55 a.m., Velasquez received an email reply from JT's email account attaching signed wire instructions and a payment invoice, and stating, "Attached please find the signed instructions and the payment invoice. Please confirm once the payment has been made."²³ At 11:03 a.m., Velasquez replied to the email: "Thank you [JT]!! I'll submit this right away. Keep your phone on you because the wire room will be calling you some time this afternoon to confirm the wire request."²⁴ The wire instructions that Velasquez received from JT's email account stated as follows:

This is your authorization to wire \$18,953.00 from the above account to:

Beneficiary's Name: [ED]
C/O [ED] Fine Art
XXX Freeman Street
Beckley, WV 25801
Beneficiary's Account No: XXXXXX3336
Routing No: XXXXX1299
Beneficiary's Bank Name: First Community Bank
111 Citizens Drive,

²⁰ Velasquez testified that she was not at the office because she "was either with a client or going to see a client or see a COI, like a center of influence, like a business partner." Tr. 131. She was out of the office for most of the day. Tr. 132.

²¹ CX-5, at 3. See Tr. 51-52. The emails sent from JT's email account appear to have been sent from the Eastern Time Zone, with the result that there is a three-hour difference in the time stamps on JT's emails and those on the emails of Velasquez and other Bank employees. To present a consistent chronology of events on January 7, 2015, this Decision converts all of the time stamps to Pacific Time.

²² CX-5, at 2.

²³ CX-5, at 2.

²⁴ CX-5, at 1.

Beckley, WV 25801²⁵

The payment invoice represented it was issued by “[ED] Fine Art, XXX Freeman Street, Beckley WV 25801, Tel: (XXX) XXX-XXXX, Email: [REDACTED].”²⁶

At 11:05 a.m., Velasquez emailed the wire instructions and the payment invoice to the Union Bank wire room.²⁷ In her email, Velasquez wrote that she obtained the wire instructions from JT at his home:

I met [JT] at his home and he gave me these wire instructions. He doesn’t have a fax at home so I took it to the office to fax to the wire room and all of our fax systems are down as well. Can you please process the wire for [JT]? You may call him on his cell phone at XXX-XXX-XXXX to verify and KBA him.²⁸

Velasquez’s email contained two false statements: (1) “I met [JT] at his home and he gave me these wire instructions;” and (2) JT “doesn’t have a fax at home so I took [the wire instructions] to the office to fax to the wire room and all of our fax systems are down as well.” In a written statement she signed subsequently, Velasquez stated: “I did state in my email to the wire room that I had met with the client at home which I had not done.”²⁹ With regard to the second statement, she admitted in the hearing “I had not been to the office when I wrote that.”³⁰

C. Velasquez Understood that Private Wealth Advisors Could Act on Customer Requests—Received by Email

Enforcement contends that Velasquez had a bad motive for making the false statements: that she was trying to circumvent a Bank policy prohibiting employees from acting on wire instructions they received by email.³¹ The Bank’s Policy Manual directed employees:

do not act on any request received via e-mail outside established secured methods ... Customers submitting e-mails with transaction requests and/or sensitive information should be contacted immediately, advised that it is an unsafe practice, and provided guidance on establishing secure

²⁵ CX-6. See Tr. 53-54. Pursuant to a Protective Order regarding Personal Confidential Information issued in this proceeding, this Decision redacts all telephone numbers, account numbers, and other confidential information.

²⁶ CX-7. See Tr. 54-55.

²⁷ Tr. 55-56, 137-38.

²⁸ CX-3, at 2. See Tr. 57, 63. The phrase “KBA him” is explained later in this Decision in Section III.C. *infra*.

²⁹ CX-10, at 2. See Tr. 57.

³⁰ Tr. 57.

³¹ Tr. 706, 712-13.

transactions processing through online banking or establishing appropriate agreements for telephone transactions.³²

The parties dispute whether this prohibition applied to the ultra-high net worth banking group in which Velasquez worked. Her supervisor, JS, testified that the Policy Manual was applicable to the group.³³ The Private Wealth Advisors did not have different rules to follow from the retail bankers.³⁴ And there was no exception to the email prohibition for Velasquez or anyone else.³⁵

Velasquez, on the other hand, testified that the Bank's policies and rules were relaxed for private banking relationships "[b]ecause these are clients that expect that type of level of service because they're getting it everywhere else"—meaning from the Bank's competitors.³⁶ In particular, "retail would not take separate requests on e-mail, but in private banking, we are able to accept any transaction via e-mail."³⁷ Instead of consulting the written Policy Manual, Velasquez learned how to process Bank transactions through "informal training ... I didn't go to training when I got hired."³⁸ There was no formal training when Velasquez joined the Bank.³⁹ Thus, according to Velasquez, the purpose of her false statements was not to circumvent a Bank policy, but to expedite the wire room's processing of JT's wire instructions to meet a 2:00 p.m. deadline:

³² CX-1, at 9 (emphasis original).

³³ Tr. 373.

³⁴ Tr. 390.

³⁵ Tr. 374, 421, 425, 454.

³⁶ Tr. 120. *Accord* the testimony of former bank employee KC, Tr. 640, who stated: "When it came to the private bank, I feel like everything was a case-by-case basis."

³⁷ Tr. 241. There was sharply conflicting testimony on whether Private Wealth Advisors could act on wire instructions received by email. The testimony in support of that proposition includes: Tr. 122 (Velasquez) (the Bank encouraged the employees in Velasquez's group to communicate with customers by email); Tr. 243 (Velasquez) (email requests "were permitted in the private bank"); Tr. 245-47 (Velasquez) ("e-mails, as a general form and means of communication, was permitted in the private bank"); Tr. 299 (JT) (he has emailed requests to his Union Bank private bankers to process banking transactions); Tr. 522 (PM) (Bank customers emailed wire transfer instructions to their Private Wealth Advisors); Tr. 557-58 (DD) (Private Wealth Advisors processed wire instructions received from their customers via email); Tr. 604 (KC) ("everything that we did in banking was done via e-mail request," including wire transfers); Tr. 631 (KC) (permission to act on emailed wire instructions was "unspoken when, every single day, we conduct ourselves and do transactions and our supervisors are immediately assisting in those rules"). The testimony refuting the proposition includes JS's testimony described above and Tr. 652 (CN) (JT's present Private Wealth Advisor has never accepted wire instructions that JT sent to her by email); Tr. 630 (KC) (there is nothing in writing that allows Private Wealth Advisors to act on customers' email requests for wire transfers).

³⁸ Tr. 251. *Accord* Tr. 253-54 ("there was never a sit-down with any one person that said, 'You can do this,' or, 'You can't do that,' regarding e-mail requests").

³⁹ Tr. 271, 273. *Accord* the testimony of former Bank supervisor PM, Tr. 520, who stated: "Most of the staff learned from others how to process things. It was not a formalized system."

[W]e knew the deficiencies in the wire room. So if you gave them some sense of urgency as in the client had already been inconvenienced, sometimes they would put some requests ahead of others. And that's all I was trying to do since [JT] was a really good client of mine. I wanted to make sure that the wire went out that day and that we didn't miss the deadline to send it.⁴⁰

It was Velasquez's experience and suspicion that the wire room did not try to call the customers soon enough to meet the 2:00 p.m. deadline.⁴¹

The Hearing Panel finds that notwithstanding the Bank's written Policy Manual, the private bankers in Velasquez's group regularly acted on customers' instructions and requests by email.⁴² The Bank pursued a business strategy of providing superior service to high net-worth customers, which it called the "affluent strategy." In this case, the goal of superior service led Velasquez to think that she could send JT's wire instructions to the wire room even though she had received them by email.

For the Bank to send a wire transfer, it was necessary for the wire room to conduct Knowledge Based Authentication or "KBA" of the customer.⁴³ This is a method banks commonly employ to verify that financial transactions are requested by authentic bank customers and not imposters.⁴⁴ Typically, a bank employee speaks with the customer by telephone and asks the customer one or more questions in the customer's exclusive personal knowledge—*e.g.*, the customer's date of birth or the maiden name of the customer's mother.⁴⁵ In Velasquez's January 7, 2015 email attaching the JT wire instructions, she suggested that the wire room conduct Knowledge Based Authentication of JT: "You may call him on his cell phone at XXX-XXX-

⁴⁰ Tr. 58. *Accord* Tr. 234 ("The e-mail I had sent to the wire room was to facilitate a request for a client. That had no other ulterior motives other than to get a transaction done for our client."). *See* Tr. 328 (JT) ("I work in an industry where I need to get things done on time or ahead of time in order to remain competitive. [Velasquez] was trying to help me out."). Tr. 105 (Velasquez) ("The employees of the bank or the bankers and the assistants [know] that the wire deadline is two o'clock if you want it to go out the same day."); Tr. 428 (JS) (processing wire instructions had to be completed by 2:00 p.m. for the wire to go out that day); Tr. 558 (DD) (the deadline for processing domestic wire transfers was 2:00 p.m.).

⁴¹ Tr. 107. *Accord* Tr. 523-24, 558, 611. *See* KC's testimony, Tr. 610, stating that when customers tried to send their wire instructions directly to the wire room, "the wire goes into a black abyss, if you will."

⁴² Tr. 224, 236.

⁴³ Tr. 112, 679.

⁴⁴ Tr. 111-12.

⁴⁵ *See* CX 9, at 1 ("Anthony attempted to authenticate the person with date of birth"); Tr. 423 ("it's information that only the client should know"). *See* Tr. 426 ("It's required, if the client walks in or we've met with the client at their place of business, to do a knowledge-based authentication."). In addition, if the customer requested a wire transfer, "the wire room would be required to, one, verify that there's a funds transfer authorization on file, which is pretty much a form, that the client had signed beforehand saying that they want to do ... not-in-person transactions." Tr. 113. *Accord* Tr. 613.

XXXX to verify and KBA him.”⁴⁶ Velasquez testified that “I wanted them to make sure that they continued doing that process regardless of who the client was and ... I’m not asking for any exceptions to be made.”⁴⁷

D. The Wire Instructions Were False

At 1:27 p.m. on January 7, DR from the wire room emailed Velasquez: “Maria in the Wire Dept has left two messages for [JT]. At this time he has not returned her calls.”⁴⁸ Velasquez immediately replied to DR: “That’s so weird! He just emailed me asking for the staus [sic]—let me tell him to call you back.”⁴⁹ Velasquez immediately forwarded to JT’s email address DR’s email to her and a message of her own:

My wire room has called and left you messages to confirm the wire and they haven’t heard back from you. If they don’t hear back from you they can’t release the wire ... Please call [DR] at XXX-XXX-XXXX options 1 and 6 and she can finalize the wire request for you.”⁵⁰

At 1:39 p.m., Velasquez followed up with a text message to JT.⁵¹

Unbeknownst to Velasquez, the wire instructions originated from an imposter who had hacked into JT’s email account.⁵² The Bank learned in time that the wire instructions were false and did not wire the \$18,953 to the imposter. The fraud was discovered when an employee of the wire room (Maria R) spoke with JT on the telephone, and he denied that he was the source of the wire instructions. At 2:29 p.m., DR made the following entry in the wire room’s telephone log:

PBCSWealth received a wire request from RM Melissa Quevedo⁵³ to process today. Wire request was sent to the Wire area for processing. When the wire dept

⁴⁶ CX-3, at 2. See Tr. 57, 63, 126.

⁴⁷ Tr. 126.

⁴⁸ CX-3, at 1. See Tr. 63. This email came to Velasquez nearly 2.5 hours after her 11:05 a.m. email to the wire room forwarding the JT wire instructions and 33 minutes before the 2:00 p.m. deadline for sending the wire out. See Tr. 124.

⁴⁹ CX-3, at 1. At 1:28 p.m., Velasquez received an email from JT’s email account stating “Please let me know once the payment has been completed as well.” CX-5, at 1. See Tr. 65. Although there is a one-minute discrepancy in the time stamps of the emails, Velasquez appears to have referred to this 1:28 p.m. email from JT’s email account when she wrote to DR at 1:27 p.m. that JT “just emailed me asking for the staus [sic].” CX-3, at 1.

⁵⁰ CX-4, at 1. See Tr. 64-65.

⁵¹ CX-12, at 17.

⁵² Tr. 175, 187, 323.

⁵³ Quevedo was Velasquez’s maiden name and the name by which she was known at the Bank. Tr. 54. “PBCSWealth” was Private Banking Customer Service, of which the wire room was a part. Tr. 56. “RM” stands for Relationship Manager.

(Maria R) attempted to confirm the wire request with the client, it was discovered to be a fraud request. During this time, Maria transferred the client to me and I attempted to contact Melissa but the call went to voice mail. As I was on the call with the client, the fraudster called into PBCS to speak to me regarding the wire request. Anthony J received the call @ 1:37 p.m. from phone number XXX-XXX-XXXX. Anthony attempted to authenticate the person with date of birth and the call was disconnected ... Fraud person (male) called a second time and Veta B received the call @ 1:58 p.m. This person was told that we know that the wire request is fraud and he disconnected the call.⁵⁴

Velasquez first spoke with JT, by telephone, at 1:41 p.m.⁵⁵ She initiated the call because, she testified, she wanted “to see why he hasn’t responded back to the wire room.”⁵⁶ JT told Velasquez that “he had received a call and that he knew his e-mail account had been hacked.”⁵⁷ At 1:44 p.m., Velasquez called the wire room and told them not to wire the money.⁵⁸ The wire was aborted and not sent out.⁵⁹ Later that afternoon, Velasquez worked with JT to close down his existing accounts at the Bank—which were vulnerable to the person who had hacked into JT’s email—and open new accounts.⁶⁰

E. Velasquez Made False Statements To The Bank’s Investigators

The next day, JS, Velasquez’s supervisor, called her to ask about the false wire instructions and, in that conversation, he testified: “I was told by Ms. Velasquez that she had met with the client, and that was the story that she had indicated to me in terms of what had happened.”⁶¹ Velasquez then received an Outlook Meeting Invite from the Bank’s Human Resources Department for a meeting on Monday morning, January 12.⁶² She called DP, the HR employee who had sent the Invite, but DP told her “she didn’t know what it was about or couldn’t give me any information, just to be there on Monday morning.”⁶³ Still, Velasquez suspected the meeting concerned the false wire instructions and, according to JS, he told her that HR “wanted to talk with her [about] the circumstances of the wire.”⁶⁴

⁵⁴ CX-9, at 1.

⁵⁵ CX-12, at 10; Tr. 70.

⁵⁶ Tr. 100.

⁵⁷ Tr. 72. *See* Tr. 100.

⁵⁸ Tr. 73-74, 92, 102. *See* CX-12, at 10.

⁵⁹ Tr. 319-20.

⁶⁰ Tr. 174-75, 318-19.

⁶¹ Tr. 362.

⁶² Tr. 76, 177.

⁶³ Tr. 77.

⁶⁴ Tr. 401. *See* Tr. 78.

At the meeting on January 12, Velasquez was interviewed by two Union Bank employees investigating the false wire instructions.⁶⁵ Velasquez initially maintained she had met JT at his home and picked up the wire instructions, and described in detail the man she had supposedly met.⁶⁶ She testified that she made false statements to the investigators because she was worried about losing her job.⁶⁷ At one point in the meeting

the investigators told me ... “This is what I think happened,” and they recollected the events to me. They stepped outside so I could put my thoughts together. And when he came back in, I told him everything that happened, which has been my statement from that point moving forward, which is exactly what happened.⁶⁸

At the end of the interview, Velasquez signed a statement to the effect that “I did state in my e-mail to the wire room that I had met with the client at home which I had not done.”⁶⁹

After the interview, Velasquez went to JS’s office and tendered her resignation.⁷⁰ He did not accept it because, according to Velasquez, “[t]hey knew that this was an isolated event; it was not a reflection of my character, of the way I do business.”⁷¹ However, four days later, the Bank terminated Velasquez’s employment.⁷² In the meeting in which her employment ended, Velasquez understood that the Bank was allowing her to resign in lieu of termination.⁷³

The Bank reported the termination in a Form U5. The Form U5 stated:

Individual violated Bank’s business standards for ethical conduct policies/procedures with regard to dishonest and fraudulent acts in which she made a false or untrue entry in a Bank record and failed to fully cooperate and answer questions truthfully and completely during an investigation conducted by

⁶⁵ Tr. 81-82.

⁶⁶ CX-14, at 2.

⁶⁷ Tr. 79, 82. *Accord* Tr. 263.

⁶⁸ Tr. 82-83. Under cross-examination by her counsel, Velasquez similarly testified that when the investigators “came back in, I told them exactly what happened, which is what I’ve been saying all along—how I got the e-mail, how I got in contact with [JT], how I let the wire room know.” Tr. 184. In contrast, JS was told by DP that Velasquez recanted only when the investigators told her they needed to turn the matter over to the FBI. Tr. 370.

⁶⁹ CX-10, at 2. *See* CX-14, at 2; Tr. 84-85, 184. Velasquez added the line quoted above at the request of one of the investigators. Tr. 185, 258.

⁷⁰ Tr. 148-49.

⁷¹ Tr. 149.

⁷² Tr. 196, 198, 371.

⁷³ Tr. 687.

corporate investigations and employee relations into the false or untrue entry. Not securities related and no customers were harmed.⁷⁴

Because of the Form U5, Velasquez has not been able to find employment by any private bank.⁷⁵ She testified that “I’m unemployable in the industry that I spent, literally, my entire adult life building.”⁷⁶ Today she works in the residential mortgage group of Wells Fargo.⁷⁷

JT appeared voluntarily at the hearing and testified on Velasquez’s behalf. After the incident of the false wire instructions, JT continued doing business with Velasquez.⁷⁸ He actively sought and found her after the Bank had terminated her employment.⁷⁹ He testified that the incident “didn’t affect my opinion of [Velasquez]. Because as soon as she went over to Wells Fargo, I contacted her and had her try to do my refinance, which she was very attentive and responsive that way.”⁸⁰

The Bank investigated whether there was any connection between Velasquez and the originator of the false wire instructions. None could be found.⁸¹

The hearing exhibits and the witnesses’ testimony show that Velasquez made false statements to her employer in her email to the wire room. This contravened high standards of commercial honor and just and equitable principles of trade and thus violated FINRA Rule 2010.

IV. Conclusions Of Law: Velasquez Violated FINRA Rule 2010

FINRA Rule 2010 provides: “A member in the conduct of its business shall observe high standards of commercial honor and just and equitable principles of trade.” FINRA’s National Adjudicatory Council recently re-affirmed the purpose and scope of this Rule, holding once again that it applies to all business-related conduct of associated and registered persons:

FINRA Rule 2010 is a broad and generalized ethical provision. FINRA’s authority to pursue discipline for violations of FINRA Rule 2010 is sufficiently wide to encompass any unethical, business-related conduct, regardless of whether it involves a security ... The rule therefore applies “when the misconduct reflects on [an] associated person’s ability to comply with the regulatory requirements of

⁷⁴ HPX-1. The parties produced the Form U5 in the hearing at the Hearing Panel’s request, and the Hearing Panel designated it as “HPX-1.” Tr. 591.

⁷⁵ Tr. 189, 201.

⁷⁶ Tr. 208.

⁷⁷ Tr. 47, 191.

⁷⁸ Tr. 308.

⁷⁹ Tr. 309.

⁸⁰ Tr. 329.

⁸¹ CX-13, at 1. *See* Tr. 175, 494.

the securities business and to fulfill his fiduciary duties in handling other people's money.”⁸²

To prove a claim under FINRA Rule 2010, Enforcement need not show the respondent had a bad motive or *scienter*.⁸³

According to the National Adjudicatory Council, withholding material information from one's employer member firm is unethical and in violation of FINRA Rule 2010:

A registered representative's failure to disclose material information to his firm violates ... FINRA Rule 2010 and is misconduct that calls into question the registered representative's "ability to comply with regulatory requirements necessary for the proper functioning of the securities industry and the protection of the public.”⁸⁴

Giving the employer false information is more serious than withholding information. And the same principle applies when a representative's employer is a financial institution other than a brokerage firm because the focus is on the representative's ability to comply with all regulatory requirements, not just FINRA requirements.

Velasquez violated FINRA Rule 2010. She made false statements in her email to the Union Bank wire room, to the effect that she had purportedly received the wire instructions from JT at his home and had taken them to the Bank to fax to the wire room. In reality, she received the wire instructions by email, and she did not take them to the Bank. These were false

⁸² *Dep't of Enforcement v. Grivas*, No. 2012032997201, 2015 FINRA Discip. LEXIS 16, at *22 (NAC July 16, 2015), *aff'd*, Exchange Act Release No. 77470 (Mar. 29, 2016). *Accord Dep't of Enforcement v. Charles*, No. 2008016036901, 2010 FINRA Discip. LEXIS 40, at *9-10 (OHO Nov. 3, 2010) (FINRA Rule 2010's predecessor "is violated by unethical conduct that is not securities-related but that reflects on a person's 'ability both to comply with regulatory requirements fundamental to the securities business and to fulfill his fiduciary responsibilities in handling other people's money'" (quoting *Dep't of Enforcement v. Davenport*, No. C05010017, 2003 NASD Discip. LEXIS 4, at *8-9 (NAC May 7, 2003)); *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *22 (Aug. 22, 2008) ("conduct that reflects negatively on an applicant's ability to comply with regulatory requirements fundamental to the securities industry is inconsistent with just and equitable principles of trade"). Associated persons have the same duties and responsibilities under FINRA Rules as member firms. FINRA Rule 0140; *Dep't of Enforcement v. Pierce*, No. 2007010902501, 2013 FINRA Discip. LEXIS 25, at *59 (NAC Oct. 1, 2013).

⁸³ *Dep't of Enforcement v. Golonka*, No. 2009017439601, 2013 FINRA Discip. LEXIS 5, at *24 (NAC Mar. 4, 2013) (a violation of NASD Rule 2110 "need not be premised on a motive or scienter finding") (quoting *Thomas W. Heath, III*, Exchange Act Release No. 59223, 2009 SEC LEXIS 14, at *15 (Jan. 9, 2009)); *Dep't of Enforcement v. Jennings*, No. 2008013864401, 2013 FINRA Discip. LEXIS 18, at *54 n.142 (NAC Mar. 4, 2013) ("Rule 2110 focuses on the securities professional's conduct rather than on a subjective inquiry into the professional's intent or state of mind. Accordingly, a violation of the rule need not be premised on a motive or scienter finding.")

⁸⁴ *Dep't of Enforcement v. Mielke*, No. 20090198373302, 2014 FINRA Discip. LEXIS 24, at *39-40 (NAC July 18, 2014) (quoting *Davenport*, 2003 NASD Discip. LEXIS 4, at *9-10), *aff'd*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927 (Sept. 24, 2015), *appeal docketed*, No. 05-1234 (11th Cir. Nov. 19, 2015).

statements she made to her employer relating to an \$18,953 banking transaction. They cannot be reconciled with high standards of commercial honor and just and equitable principles of trade.

The desire to expedite a wire room's processing of wire instructions does not excuse Velasquez's misconduct. Indeed, it is difficult to imagine any valid excuse for a registered person to make false statements. In the context of this case, a registered person's false statement that she had met a Bank customer at his home is a poor substitute for truthfully and explicitly telling the wire room that the wire instructions were urgent and should be processed expeditiously. And the fact that she subsequently tried to abort the wire transfer has nothing to do with—and does not mitigate—the false statements she made in her email.

Whether Bank employees consistently violated the written policy against acting on customers' emailed requests, as Velasquez contends, that does not absolve her of responsibility for her false statements. The Securities and Exchange Commission rejected this defense in *Charles E. Kautz*:

Kautz reasons that, if a conduct is pervasive and approved by a Firm, it should not constitute an NASD violation. However, we have repeatedly held that it is no defense that others in the industry may have been operating in a similarly illegal or improper manner.⁸⁵

In sum, the Hearing Panel finds that Velasquez violated FINRA Rule 2010 by making false statements in her email to the wire room.⁸⁶

V. Sanctions

The Sanction Guidelines provide that a sanction must be remedial, not punitive.⁸⁷ The Hearing Panel finds that, in the circumstances of this case, imposing a monetary fine or suspension on Velasquez would serve no remedial purpose, but would only be punitive.⁸⁸ A Letter of Caution will have a sufficient deterrent effect on Velasquez and others in the industry who may consider making such false statements to their employers.

⁸⁵ *Charles E. Kautz*, 52 S.E.C. 730, 733 (Apr. 5, 1996).

⁸⁶ Enforcement contends Velasquez's false statements in the interview constitute a separate violation of FINRA Rule 2010. Tr. 706. But the Complaint shows that Enforcement's single cause of action for violation of FINRA Rule 2010 is limited to Velasquez's false statements in her January 7 email. Complaint ¶¶ 27-29. For this reason, the Hearing Panel does not consider her false statements in the interview to be a separate Rule 2010 violation, but solely as an aggravating factor in the Panel's sanctions analysis.

⁸⁷ FINRA Sanction Guidelines ("Guidelines") at 2 (General Principle No. 1). *Accord Dep't of Enforcement v. Lalley*, No. 2011030072301, 2015 FINRA Discip. LEXIS 28, at *53 (OHO June 26, 2015). *See McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005) ("the purpose of ... suspension from trading is to protect investors, not to penalize brokers").

⁸⁸ Enforcement seeks a monetary fine of \$10,000 and a suspension of six months. Tr. 722.

No Sanction Guideline applies to the kind of FINRA Rule 2010 violation we have here. The closest analogy is Forgery and/or Falsification of Records, which calls on adjudicators to consider a monetary fine of \$5,000 to \$146,000 and, in cases where mitigating factors exist, suspending the respondent in any or all capacities for up to two years.⁸⁹ There are two considerations specific to this Guideline. The first is the nature of the document(s) forged or falsified. The second is whether the respondent had a good-faith, but mistaken, belief of express or implied authority.⁹⁰

Although Velasquez's conduct was serious, the Guideline for Forgery and/or Falsification of Records is not directly applicable because this case did not involve a violation of customer trust, as a forgery of a customer signature would.⁹¹ Velasquez made two false statements in an email to the wire room about how she came to possess wire instructions that she thought were signed by JT. The nature of the falsified document was an email, something one would not normally consider to be a Bank "record" on the same level as a book entry, account documents, transaction back-up, etc. Having the email in the Bank's electronic system would not affect any customer's account with the Bank, and Velasquez did not foresee that the email would place the Bank in danger of losing \$18,953 at the hands of a computer hacker. The intended effect of the email was to induce the wire room to expedite its processing of wire instructions that turned out to be false. Velasquez had a good-faith, but mistaken, belief that she was doing what JT wanted—making sure the wire instructions were processed expeditiously.⁹² And Velasquez took this action to assist her customer and further her customer's interest, not her own interest. Her motivation in this regard was reinforced by the Bank's expectation that Private Wealth Advisors would give their high net-worth customers "the highest level of service that we can provide."⁹³ On the other hand, Velasquez made false statements in her email and continued with her falsehood until her interview. In that interview, after maintaining the same falsehood, she ultimately recanted and told the truth.⁹⁴

⁸⁹ Guidelines at 37.

⁹⁰ *Id.*

⁹¹ In *Dep't of Enforcement v. Bukovcik*, No. C8A050055, 2007 NASD Discip. LEXIS 21, at *12 (NAC July 25, 2007), the National Adjudicatory Council found that lack of customer authority is essential to applying the Sanction Guideline for Forgery and/or Falsification of Records:

[W]e do not find the Guideline for forgery and/or falsification of records to apply to the misconduct at issue here and have not based our sanctions on it. Bukovcik violated both high standards of commercial honor and his firm's policy, but the record does not show that he acted without his customer's authority in signing their names to firm documents.

⁹² See *Dep't of Enforcement v. Hughes*, No. 2008013391701, 2010 FINRA Discip. LEXIS 5, at *6 (OHO Jan. 12, 2010) ("while the falsified documents were significant because they facilitated the withdrawal of funds from customer accounts, it is undisputed that the customers requested the transfers and Respondent acted with their authority").

⁹³ Tr. 386.

⁹⁴ *Dep't of Enforcement v. Yee*, No. 2011029227701, 2014 FINRA Discip. LEXIS 16, at *9 (OHO Jan. 21, 2014), ("The Hearing Panel also found aggravating Respondent's initial false claim that she made an innocent error.

Although this continuous course of misconduct is troubling, Velasquez eventually abandoned it in favor of honesty. And the Principal Considerations of the Sanction Guidelines provide mitigating factors that weigh in her favor. These include:

- The violation was isolated and aberrational.⁹⁵ It involved misrepresentations in a single email to assist what Velasquez believed was a legitimate request from her customer. There is no evidence that she sent any other false emails to the Bank.⁹⁶
- The Bank disciplined Velasquez for the same misconduct prior to regulatory detection.⁹⁷ The National Adjudicatory Council has stated, “[w]e generally encourage firms to take the initiative, investigate and evaluate an episode of misconduct, and—in appropriate instances—impose a suspension on an employee.”⁹⁸ Here, the Bank terminated Velasquez’s employment.
- JS, the Bank supervisor who made the decision to terminate Velasquez’s employment, did not view her as a participant in a fraudulent act.⁹⁹ After its investigation, the Department of Enforcement concluded that Velasquez did not commit fraud, work with, or conspire with the originator of the false wire instructions.¹⁰⁰

However, this was mitigated by her later admission of her true state of mind.”); *Charles*, 2010 FINRA Discip. LEXIS 40, at *18 (“Charles did not exacerbate the aggravating nature of [misleading his firm] by persisting in his transparent deception, as he would have if he had not told the truth the next day and thenceforth cooperated with the Firm’s internal investigation”). See Tr. 77, 81-83, 184.

⁹⁵ Guidelines at 6 (Principal Consideration No. 8: Whether the respondent engaged in numerous acts and/or a pattern of misconduct). *Accord Iida*, 2016 FINRA Discip. LEXIS 32, at *17 (“[w]e conclude that this was not an extended scheme, but rather an isolated and aberrational event that occurred during one week”); *Charles*, 2010 FINRA Discip. LEXIS 40, at *19 (“The forgeries were apparently completed and submitted on a single date, and were the product of a single misguided decision.”).

⁹⁶ Tr. 446.

⁹⁷ Guidelines at 7 (Principal Consideration No. 14: Whether the member firm with which the respondent was associated disciplined the respondent for the same misconduct at issue prior to regulatory detection). *Accord Denise M. Olson*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629, at *18 (Sept. 3, 2015) (“the Board erred when it declined to consider as mitigating that Wells Fargo terminated [the respondent] prior to regulatory detection”). *Cf. Iida*, 2016 FINRA Discip. LEXIS 32, at *20 (“we apportion only de minimis mitigating effect from Iida’s termination”).

⁹⁸ *Dep’t of Enforcement v. Prout*, No. C01990014, 2000 NASD Discip. LEXIS 51, at *9 (NAC Dec. 18, 2000). *Accord Bukovcik*, 2007 NASD Discip. LEXIS 21, at *12 (“the Firm, upon learning of the misconduct, promptly sanctioned Bukovcik by imposing on him a 30-day suspension, a \$2,500 fine, and a requirement that he be subject to heightened supervision for a period of one year”).

⁹⁹ Tr. 459.

¹⁰⁰ Tr. 494.

- The violation did not present the potential for Velasquez’s monetary or other gain.¹⁰¹

The Hearing Panel takes into consideration other salient facts in this case. First, Velasquez expressed remorse at the hearing.¹⁰² She admitted the false statements in her email to the wire room were ethically wrong.¹⁰³ The conclusions drawn in *Dep’t of Enforcement v. Lalley* are applicable here:

Based on [the respondent’s] testimony, and her demeanor throughout the hearing, we are satisfied that the experience of this disciplinary proceeding has had a profound impact upon her and that there is no reasonable likelihood that she will in the future engage in [a violation of FINRA Rules].¹⁰⁴

Here, Velasquez testified:

You know, regardless of the excuses whether I was out of the office, whether I was not getting the support, it was still my responsibility to do the due diligence ... But for it to have blown up to what it is is like—I get it. Like, I lost my book. I lost the job. I saw the consequences by not being able to get other companies to take me on. Like, trust me, I’ve taken ownership. I felt the consequences all along the way. But with this—Now all I’m trying to do is pick up, start from scratch. And for that too to be taken away, I don’t know what to do.¹⁰⁵

Second, at the time of the violation, Velasquez requested the wire room call JT and perform Knowledge Based Authentication, and the wire instructions were aborted after that call was made.¹⁰⁶ The email was not required for processing the wire instructions.¹⁰⁷ Third, Velasquez’s decision to send the false email was made in an attempt to assist, rather than harm, JT. In fact, JT appeared voluntarily at the hearing and testified on Velasquez’s behalf, expressing

¹⁰¹ Guidelines at 7 (Principal Consideration No. 17: Whether the respondent’s misconduct resulted in the potential for the respondent’s monetary or other gain).

¹⁰² *Iida*, 2016 FINRA Discip. LEXIS 32, at *17-18 (“We also find [respondent’s] expression of remorse mitigating.”); *Olson*, 2015 SEC LEXIS 3629, at *21 (“the Board should have considered as mitigating that [respondent] has repeatedly admitted her misconduct and expressed remorse from the time she was questioned by the Firm auditor through the present, and that she promises not to repeat her misconduct”); *Dep’t of Enforcement v. Binstock*, No. 2009018377601, 2012 FINRA Discip. LEXIS 70, at *17 (OHO Nov. 19, 2012) (“Respondent also expressed remorse for his misconduct”).

¹⁰³ Tr. 95.

¹⁰⁴ *Lalley*, 2015 FINRA Discip. LEXIS 28, at *53.

¹⁰⁵ Tr. 217.

¹⁰⁶ Tr. 127.

¹⁰⁷ Tr. 129-30.

his confidence in her as his banker. Fourth, JT and the Bank did not incur a financial loss as a result of Velasquez's misconduct.¹⁰⁸

The mitigating factors here are similar to those in *Dep't of Enforcement v. Bukovcik*:

In light of a number of mitigating factors—including, the lack of any customer harm, the customers' oral authorization of Bukovcik's actions, the Firm-imposed sanctions (with which he fully complied), his remorsefulness, and our finding that the misconduct stemmed from Bukovcik's single (albeit misguided) decision to accommodate his customers—we reduce, but do not completely eliminate, the sanctions imposed by the Hearing Panel below.¹⁰⁹

Under the unique facts and circumstances of this case, the Hearing Panel finds it would not serve a remedial purpose to impose a monetary fine or a suspension on Velasquez.¹¹⁰ “[S]anctions should protect the public, not penalize brokers, and prevent the respondent from causing future harm to the public.”¹¹¹ Although serious, the misconduct at issue was aberrational and isolated.¹¹² A Letter of Caution will prevent future misconduct by Velasquez and serve as a general deterrent against other registered persons thinking about making false statements to their employers.¹¹³

VI. Order

Respondent Melissa Velasquez failed to observe high standards of commercial honor and just and equitable principles of trade in violation of FINRA Rule 2010. For this violation, this Decision will serve as a Letter of Caution.¹¹⁴ Velasquez is ordered to pay the costs of the hearing in the amount of \$6,345.24, consisting of an administrative fee of \$750 and the cost of the

¹⁰⁸ Tr. 320.

¹⁰⁹ Bukovcik, 2007 NASD Discip. LEXIS 21, at **15-16.

¹¹⁰ Velasquez raises a number of purported mitigating factors that have no relevance to this proceeding. For example, she testified that she was subject to gender discrimination at Union Bank. Tr. 142-43. Such subjects are far afield from the issue of the appropriate sanctions, if any, to impose on Velasquez, and the Hearing Panel did not consider them in reaching this Decision.

¹¹¹ *Ida*, 2016 FINRA Discip. LEXIS 32, at *22. Velasquez does not present a danger to the investing public.

¹¹² Guidelines at 3 (General Principle No. 3: Adjudicators should tailor sanctions to respond to the misconduct at issue).

¹¹³ Guidelines at 2 (General Principle No. 1: Disciplinary sanctions should be designed to protect the investing public by deterring misconduct and upholding high standards of business conduct).

¹¹⁴ The Hearing Panel considered all arguments of the parties. They are accepted or rejected to the extent they are in accord or inconsistent with the views expressed in this Decision.

transcript. The costs shall be due on a date set by FINRA, but no sooner than thirty days after FINRA's final disciplinary action.

For The Hearing Panel

Richard E. Simpson
Hearing Officer