

BEFORE THE NATIONAL ADJUDICATORY COUNCIL
FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of

Department of Enforcement,

Complainant,

vs.

Trevor Michael Saliba
Beverly Hills, CA,

Respondent.

DECISION

Complaint No. 2013037522501r

Dated: October 6, 2022

On remand from the Securities and Exchange Commission for clarification of findings and reconsideration of sanctions. Held, findings and sanctions modified.

Appearances

For the Complainant: Richard Chin, Esq., Jennifer Crawford, Esq., Megan Davis, Esq., John Luburic, Esq., David Monachino, Esq., Christina Stanland, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Heidi VonderHeide, Esq., Alan Wolper, Esq.

Decision

This case is before us on remand from the Securities and Exchange Commission to clarify findings, and reconsider sanctions, in a National Adjudicatory Council (“NAC”) decision issued against Trevor Michael Saliba in January 2019.¹ In that decision, the NAC found that

¹ In March 2016, FINRA’s Department of Enforcement (“Enforcement”) filed an eight-cause complaint against Saliba and three other respondents—Arthur Mansourian, Richard Tabizon, and Sperry Younger. In December 2017, a FINRA Hearing Panel issued a decision finding that all four respondents had generally engaged in the misconduct alleged in the complaint, and the Hearing Panel imposed a bar on each respondent for that misconduct. Saliba, Mansourian, and Younger appealed the Hearing Panel’s decision to the NAC, but Tabizon did not. In January 2019, the NAC affirmed the Hearing Panel’s findings against Saliba, Mansourian, and Younger and imposed multiple bars on them for the violations. In February 2019, Saliba and Mansourian appealed the NAC’s decision to the Commission. Younger did not appeal the NAC’s decision to the Commission. In April 2021, the Commission affirmed the

Saliba: (1) violated FINRA Rule 2010 because he acted as a principal of NMS Capital Securities, LLC (“NMS Capital Securities”), a firm Saliba owned, while the firm was subject to interim restrictions pending the disposition of a continuing membership application (“CMA”) (cause one); (2) violated FINRA Rules 8210 and 2010 because he falsely testified during his on-the-record testimony about his use of computers and failed to produce all of his computers to FINRA staff (cause two); (3) violated FINRA Rule 2010 because he provided three falsified memoranda, the “Miller Memoranda,” to the Membership Application Group (“MAP Group”) as part of the CMA process (cause three); (4) violated FINRA Rules 8210 and 2010 because he provided the falsified Miller Memoranda, and a fourth falsified memorandum, the “Eighth Younger Memorandum,” to Enforcement during the course of its investigation (cause five); and (5) violated FINRA Rule 2010 because he obtained backdated compliance records from associated persons of NMS Capital Securities and provided those records to FINRA staff (cause six).²

The NAC imposed three separate bars on Saliba for his misconduct. The NAC imposed the first bar against Saliba for acting as a principal of NMS Capital Securities during the pendency of the firm’s CMA (cause one). The NAC imposed the second bar against Saliba for obtaining the backdated compliance records from NMS Capital Securities’ registered representatives and providing those records to FINRA staff (cause six). The NAC imposed the third bar against Saliba as a unitary sanction for providing false on-the-record testimony about his computer use; failing to produce all his computers to FINRA staff; providing the falsified Miller Memoranda to the MAP Group; and providing the falsified Miller and Eighth Younger Memoranda to Enforcement (causes two, three, and five).

Saliba appealed the NAC’s decision to the Commission. On appeal, the Commission affirmed the NAC’s findings that Saliba violated FINRA Rule 2010 by acting as a principal in violation of the interim restrictions that the MAP Group imposed on NMS Capital Securities during the CMA process (cause one), and the Commission affirmed the NAC’s bar for that violation. The Commission also affirmed the NAC’s findings that Saliba violated FINRA Rule 2010 by obtaining backdated compliance records from NMS Capital Securities’ associated persons and by providing those records to FINRA staff (cause six), and the Commission affirmed the NAC’s bar for that violation. Finally, the Commission affirmed the NAC’s findings that Saliba violated FINRA Rules 8210 and 2010 by providing false testimony about his computers to FINRA staff during his on-the-record interview and by failing to provide FINRA staff with all his computers used for firm business (cause two). The NAC’s findings under causes one, two, and six, and the bars that the NAC imposed on Saliba under causes one and six are not under review as part of this remand.

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NAC’s findings and modified the sanctions against Mansourian, but remanded the case to the NAC to clarify the findings and sanctions against Saliba as discussed in this decision. Accordingly, the NAC’s findings and sanctions in this remand decision concern only Saliba.

² Saliba is named in six of the eight causes of action in the complaint—causes one, two, three, five, six, and seven. The Hearing Panel dismissed Enforcement’s allegations against Saliba under cause seven, and the NAC did not review that dismissal. The NAC found Saliba liable under the remaining five causes of action against him.

The Commission remanded the case to the NAC to clarify the NAC's findings that Saliba violated FINRA Rule 2010 because he knew or should have known that he provided the falsified Miller Memoranda to the MAP Group during the pendency of the CMA (cause three), and that he violated FINRA Rules 8210 and 2010 because he knew or should have known that he provided the falsified Miller and Eighth Younger Memoranda to Enforcement during its investigation (cause five). Considering these clarifications, the Commission also directed the NAC to reconsider the bar that the NAC imposed on Saliba as a unitary sanction for the misconduct under causes two, three, and five.

On remand, we have clarified our findings and determined that the Miller Memoranda were falsified, and that Saliba knew he was providing documents that contained false information to FINRA staff. For sanctions, we impose bars for Saliba's misconduct.

I. Factual Background

The Commission's remand focuses our discussion of the facts on Saliba's computer use for business purposes and his on-the-record testimony concerning that computer use (cause two), Saliba's submission of the Miller Memoranda to the MAP Group (cause three), and Saliba's submission of the Miller and Eighth Younger Memoranda to Enforcement (cause five). We, however, must revisit the facts and findings that the Commission affirmed concerning Saliba's violation of the interim restrictions (cause one) because they ultimately inform our findings and sanctions under causes two, three, and five.³

A. Saliba, NMS Capital Securities, and the Other NMS Entities

Saliba joined the securities industry in 1995. Since that time, he has been registered as a general securities representative and principal with various FINRA members. He is not currently registered with a FINRA member firm.

In February 2009, Saliba founded NMS Capital Asset Management, LLC ("NMS Capital Asset Management"), a registered investment advisor. Saliba is the sole owner of NMS Capital Asset Management. While operating NMS Capital Asset Management, Saliba began working on private placements and other investment banking transactions and associated with various FINRA members to conduct those transactions. Eventually, Saliba determined that it would be financially beneficial to purchase his own broker-dealer, rather than continue to pay fees to other firms for investment banking transactions.

In November 2011, to facilitate the purchase of his own broker-dealer, a non-registered entity that Saliba owned, NMS Capital Group, LLC ("NMS Capital Group"),⁴ purchased MCA Securities, LLC ("MCA Securities").⁵ After acquiring MCA Securities, Saliba renamed the firm

³ Although the NAC's findings for cause two are not under review as part of this remand because the Commission affirmed those findings, the sanctions for cause two are at issue because they were included as part of the NAC's unitary sanction with causes three and five.

⁴ Saliba is the CEO, sole owner, and managing director of NMS Capital Group.

⁵ MCA Securities had been a FINRA member since 2001.

NMS Capital Securities. NMS Capital Securities operated from the same Beverly Hills, California offices as Saliba's other businesses. In October 2015, NMS Capital Securities filed a Form Broker-Dealer Withdrawal ("Form BDW") to terminate its FINRA membership.

While Saliba was associated with NMS Capital Securities, Saliba was registered with another FINRA member and NMS entity, NMS Capital Advisors, LLC ("NMS Capital Advisors"). Saliba was registered with NMS Capital Advisors as a general securities representative, general securities principal, investment banking representative, investment banking principal, and an operations professional. During the period at issue, Saliba owned 24 percent of NMS Capital Advisors through a wholly owned subsidiary of NMS Capital Group.⁶ Saliba was registered with NMS Capital Advisors from April 2012 to December 2018. Saliba has not been associated with a FINRA member since terminating his registration with NMS Capital Advisors.

B. NMS Capital Securities Files a CMA with the MAP Group, and the MAP Group Prohibits Saliba from Acting as a Principal Pending the CMA's Disposition

In 2011, when NMS Capital Group purchased MCA Securities and renamed the firm NMS Capital Securities, NMS Capital Securities filed a required CMA with the MAP Group to approve the ownership change.⁷ While the CMA was under consideration, the MAP Group learned that the Commission was investigating NMS Capital Asset Management, Saliba's registered investment advisor, and that the Commission had issued a subpoena to both Saliba and the investment advisor. Saliba did not disclose the subpoena in the CMA and falsely represented to the MAP Group that neither NMS Capital Securities, nor any associated person of the firm, was the subject of a regulatory investigation.

Based on the Commission's investigation, and Saliba's failure to disclose it, the MAP Group imposed interim restrictions on NMS Capital Securities pending its review of the CMA "in order to ensure the protection of investor interests." On August 15, 2012, the MAP Group sent Saliba and NMS Capital Securities a letter outlining the interim restrictions. Effective immediately, the MAP Group prohibited NMS Capital Securities from "[p]ermitting Trevor Saliba [to act] in any principal and/or supervisory capacity."

On August 20, 2012, Saliba wrote to the MAP Group asking it to modify the interim restrictions and, on September 25, 2012, he met with the MAP Group to discuss his request. Because he owned and was providing all the operating capital for NMS Capital Securities, Saliba sought permission to retain some financial control over the firm. The MAP Group informed

⁶ NMS Capital Advisors is a current FINRA member, which operates under the name HB Securities, LLC ("HB Securities"). A wholly owned subsidiary of NMS Capital Group directly owns between 10 and 25 percent, and indirectly owns more than 75 percent, of HB Securities. Saliba's ownership interest in HB Securities, if any, is unclear.

⁷ The conduct at issue occurred during the period that NMS Capital Securities' CMA was pending, and it operated as a FINRA member.

Saliba it would consider his request, but all the interim restrictions would remain in place in the meantime.

On October 17, 2012, the MAP Group agreed to amend the interim restrictions. The MAP Group advised Saliba that he could “act in a limited capacity with respect to supporting the following financial functions of the Firm: invoice approval, payment of bills/corporate expenses, check writing, personal contributions of operating capital to the Firm, and oversight of corporate budgeting.” The MAP Group emphasized that this “supporting role” would be subject to the oversight of the firm’s FINOP. Aside from these limited modifications, the MAP Group cautioned Saliba that the interim restrictions imposed on August 15, 2012 “shall remain, in full force and effect,” pending the final disposition of the CMA.

C. The Commission Affirms the NAC’s Findings That Saliba Violated the Interim Restrictions by, Among Other Things, Signing Engagement Agreements on Behalf of NMS Capital Securities

Between August 30, 2012, two weeks after the MAP Group first imposed the interim restrictions, and May 1, 2013, Saliba signed at least 15 client engagement agreements on behalf of NMS Capital Securities. He signed the agreements as either NMS Capital Securities’ “CEO,” “Chairman,” “Senior Managing Director,” or “Managing Director.” The Commission affirmed the NAC’s findings that Saliba violated the interim restrictions when he negotiated and signed these engagement agreements and performed other acts as a principal of NMS Capital Securities, including hiring a new CEO and other personnel. In affirming these findings, the Commission specifically rejected Saliba’s claim that he misunderstood the restrictions or was otherwise acting in good faith.

D. The MAP Group Denies NMS Capital Securities’ CMA Based on Saliba’s Violation of the Interim Restrictions

On June 21, 2013, the MAP Group denied NMS Capital Securities’ CMA based on Saliba’s violation of the interim restrictions. The MAP Group also referred the matter to Enforcement.

In explaining the bases for the denial of the CMA, the MAP Group stated that Saliba had acted as a principal, in violation of the interim restrictions, by engaging in activities such as signing engagement agreements on behalf of NMS Capital Securities. The denial letter cited to, and attached copies of, eight engagement agreements that the MAP Group was aware of at the time of the denial. Saliba did not disclose the engagement agreements to the MAP Group; rather, the MAP Group discovered and obtained copies of the eight agreements as the result of a separate sales practice examination. FINRA did not learn that Saliba had signed additional engagement agreements until later, after the denial of the CMA and the referral to Enforcement.

E. While NMS Capital Securities' Appeal of the CMA Denial Is Pending, Saliba Provides FINRA Staff with Falsified Memoranda to Demonstrate That He Was Authorized to Enter into the Engagement Agreements

NMS Capital Securities appealed the denial of the CMA to the NAC in July 2013.⁸ On August 22, 2013, while the appeal was pending, Saliba and his attorney requested a meeting with the MAP Group during which he requested reconsideration of the denial of the firm's CMA. During the meeting, Saliba argued that he had not violated the interim restrictions when he signed the engagement agreements because his activities were supervised and authorized by the firm's CEOs during that period, James Miller and Sperry Younger. At the conclusion of the meeting, the MAP Group asked for any written documentation to support Saliba's claims. Saliba testified that he left the meeting believing that "if [he] could prove that [he] had approval, somehow this Enforcement referral would get reversed and somehow the MAP Group would change the decision that [he] violated the interim restriction."

On August 30, 2013, Saliba provided the MAP Group with 11 memoranda purporting to show that he had received authorization from either Miller or Younger to enter into engagement agreements while the interim restrictions were in place. Saliba later provided the same 11 memoranda in response to a FINRA Rule 8210 request from Enforcement while Enforcement was investigating the circumstances surrounding the MAP Group's referral.⁹

Three of the 11 memoranda that Saliba produced were purportedly signed by Miller—the Miller Memoranda. Each Miller Memorandum stated that Miller "approved" or "authorized" Saliba to sign an engagement agreement based on his prior conversations with Saliba. The remaining eight memoranda were purportedly signed by Younger—the Younger Memoranda. Each of these memoranda stated that Younger had provided "approval" to proceed with the engagement and appeared to bear Younger's signature under the word "APPROVED." Prior to August 30, 2013, Saliba had never provided FINRA with copies of the Miller Memoranda or the Younger Memoranda.

F. The Commission Affirms the NAC's Findings That the Miller and Eighth Younger Memoranda Were Falsified

The Commission found that the Miller Memoranda and one of the eight Younger Memoranda—the Eighth Younger Memorandum—were falsified.

⁸ The NAC affirmed the denial in September 2014. NMS Capital Securities did not appeal the NAC's decision on the CMA to the Commission.

⁹ Enforcement asked Saliba to produce "[a]ll documents evidencing executive management approval or authority to engage in banking deals and placement agent/commission agreements, during the time period November 1, 2011, through the present." Enforcement sent the request in October 2013.

1. The Commission Defers to the Hearing Panel's Credibility Findings Concerning the Falsified Miller Memoranda

The Commission, like the NAC, deferred to the Hearing Panel's determination that Miller was a credible witness, and it found that the Miller Memoranda "were not genuine" based, in part, on Miller's testimony. The Commission observed that the Hearing Panel "found Miller to be a credible witness as '[h]e answered all questions directly, his answers appeared candid, and his testimony was internally consistent.'" The Commission noted that:

Miller testified that he had not signed them, that the signatures on the Miller Memo[randa] were forgeries that differed from his genuine signature in identifiable ways, and that he had not authorized Saliba to enter into agreements for the transactions the Miller Memo[randa] referenced. Miller testified that he had not approved prospective engagements and that the memoranda recounted purported conversations that he had not had with Saliba. Miller also testified that he did not view himself as Saliba's supervisor and that Saliba ran the Firm and made all the important decisions.

The Commission also addressed the issue of Saliba's credibility. The Commission deferred to the Hearing Panel's credibility findings concerning Saliba's testimony and stressed that "Saliba could not rebut Miller's testimony that the Miller Memo[randa] were forged." The Commission explained that:

Saliba admitted that he did not know who created the Miller Memo[randa], when they were created, or if Miller signed them. The Firm could not produce any documents to authenticate the Miller Memo[randa], and Saliba testified that he found them without contacting Miller. Saliba testified that he found the Miller Memo[randa] under a desk in a box [that] NMS [Capital Securities] had received from a closed office of another broker-dealer in Florida that Saliba partially owned. But Saliba admitted that the closed office, and boxes that came from it, had nothing to do with NMS [Capital Securities] or the transactions addressed in the Miller Memo[randa]. Indeed, Saliba found it 'confusing' that the documents were in the box where he said that he found them. Although he speculated that an unknown person, perhaps [NMS Capital Securities's CCO], put them there, no witness testified to creating the Miller Memo[randa] or placing them in the box, and no other evidence supported Saliba's account of his discovery of the Miller Memo[randa]. NMS [Capital Securities] was also unable to produce electronic copies of the Miller Memo[randa] or any associated metadata bearing on the dates that they were created.

As the Commission noted, Saliba's account of his discovery of the Miller Memoranda at the hearing also contradicted his earlier on-the-record testimony. In his on-the-record testimony, Saliba claimed that "[t]here were files that we had that were specific to the approval memos for engagement deals that I was working on," and that "I remember looking for [the approval memos] and finding them in some file." But Saliba could not remember where he "actually found the file" or "if they were in the deal files or if they were in one specific file."

The Commission stated that “FINRA found that Saliba was not a credible witness,” explained that it “generally defer[s] to demeanor-based credibility findings, and emphasized that Saliba fail[ed] to establish that [the Commission] should set aside that credibility finding here.”

2. The Commission Defers to the Hearing Panel’s Credibility Findings Concerning the Falsified Younger Memorandum

The Commission found that one of the eight Younger Memoranda that Saliba produced to FINRA, the Eighth Younger Memorandum, was also not genuine. As the basis for the finding that the Eighth Younger Memorandum was falsified, the Commission stated that:

The Hearing Panel found it ‘readily apparent’ that the signature on the Eighth Younger Memo[randum] ‘was traced or photocopied from Younger’s signature on one of the other [Younger] Memo[randa], rather than being signed by Younger himself.’ NMS [Capital Securities] could provide no record of the origin of the Eighth Younger Memo[randum] or draft of it in paper or electronic form in response to FINRA’s requests. At the hearing, Saliba offered no account of how he obtained the Eighth Younger Memo[randum]. Although he concedes before us that it was not provided to him by email, he does not identify its source.

Although Younger testified at the hearing that he signed the Eighth Younger Memorandum, and otherwise denied that his signature was duplicated, the Hearing Panel rejected Younger’s testimony as not credible. The Commission deferred to that credibility determination.¹⁰

G. The Commission Affirms the NAC’s Findings That Saliba Provided False Testimony About His Computers During His On-the-Record Interview and Failed to Provide FINRA Staff with All Computers Used for Firm Business

As part of its investigation into the authenticity of the Miller and Younger Memoranda, Enforcement took Saliba’s on-the-record testimony and served him with a request made pursuant to FINRA Rule 8210. The request asked Saliba to produce “[a]ny and all computers and/or electronic storage devices used by Trevor Saliba for NMS Capital Securities business.” Enforcement made this request to provide FINRA staff with the opportunity to perform a forensic data capture on any computers and electronic storage devices that Saliba produced. During his on-the-record testimony, Saliba testified that, since 2012, he had used only one computer, a laptop, for firm business. And, in response to the production request, Saliba made only one laptop available to FINRA.

¹⁰ The record also supports that the Eighth Younger Memorandum was falsified. On August 27, 2013, after MAP requested documentary evidence that Miller and Younger had supervised and authorized Saliba’s execution of the engagement agreements, Saliba sent Younger an email requesting copies of “whatever documents you have that ‘paper’ your approval” of the investment banking transactions. In response to Saliba’s email, Younger forwarded seven of the Younger Memoranda, but not the Eighth Younger Memorandum.

Based on these facts, the Commission found that Saliba's on-the-record testimony was false. Contrary to his representations during his on-the-record testimony, Saliba had purchased a second work computer in May 2013, and the second computer effectively replaced the first one. A forensic analysis of the one laptop that Saliba proffered showed that it had been turned off, and was never used, from July 2013 to September 2013, which is the period that encompassed Saliba's production of the Miller and Younger Memoranda to the MAP Group in August 2013. In addition, as part of its findings in this area, the Commission determined that Saliba violated FINRA Rules 8210 and 2010 by failing to provide Enforcement with access to the second work laptop that he purchased in May 2013.

II. Discussion

On remand, Saliba questions whether the Miller and Eighth Younger Memoranda are falsified, and further asserts that, even if the memoranda are not genuine, there is no evidence to support that he was responsible for falsifying them; that he knowingly produced the falsified memoranda to FINRA; or that he should have known that he was providing falsified memoranda to FINRA. We find that Saliba knew the Miller Memoranda were false when he provided them to FINRA, but that the evidence is insufficient as to the Eighth Younger Memorandum.¹¹ To be clear, as we make the determination that Saliba knew that he was providing false information to FINRA, we do not reach the issue of whether Saliba created the Miller Memoranda or directed their creation. For purposes of liability under these causes, we do not need to do so. The evidence surrounding Saliba's submission of the falsified Miller Memoranda to FINRA amply supports our findings in this case.¹²

¹¹ Accordingly, we dismiss the Hearing Panel's findings of violation by Saliba with respect to the Eighth Younger Memorandum.

¹² On remand, Enforcement argues that Saliba's state of mind, his scienter, is a consideration only for sanctions, not liability. To support its position, Enforcement points to well-established precedent, which states that "scienter is not an element of a [FINRA] Rule 8210 violation." *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *39 (Nov. 14, 2008), *aff'd*, 347 F. App'x 692 (2d Cir. 2009); *see David Kristian Evansen*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080, at *11 (July 27, 2015); *Richard J. Rouse*, 51 S.E.C. 581, 585 (1993) (rejecting claim that showing of scienter was required to establish violation of predecessor of FINRA Rule 8210). We acknowledge this precedent and leave it undisturbed. The issues concerning Saliba's scienter were put into contention with Enforcement's pleading. For cause three, which relates to Saliba's providing of the Miller Memoranda to the MAP Group, in violation of FINRA Rule 2010, Enforcement alleged that "Saliba knew or should have known when he submitted the [Miller Memoranda] to [the] MAP [Group] that these documents were falsified." For cause five, Enforcement alleged that Saliba violated FINRA Rules 8210 and 2010 because he "knew or should have known that the [Miller Memoranda] were falsified and/or not authorized by [Miller] and knew or should have known that the Younger Memo[randa] were backdated" and provided those falsified memoranda to Enforcement during its investigation. Enforcement raised the issue of Saliba's scienter in this case and, as directed by the Commission, we must address it. We also emphasize, as it relates to cause three, that the precedent related to whether scienter is required for FINRA Rule 8210 is

A. Circumstantial Evidence May Establish Saliba's Misconduct

Saliba states that there is no evidence that he created the falsified memoranda, “[a]nd without evidence about the creation of the documents, there is no evidence upon which to base a finding that [] Saliba knew or should have known the documents to be false.” While we agree with Saliba’s statement, and the Hearing Panel’s assessment, that “the evidence was not sufficient . . . to find that Saliba personally created, or caused the creation of,” the memoranda, we find that the circumstantial evidence in this case is overwhelming that Saliba knew he was producing falsified documents, and that “circumstantial evidence can be more than sufficient to prove a violation of the securities laws.” *Joseph R. Butler*, Exchange Act Release No. 77984, 2016 SEC LEXIS 1989, at *18 n.18 (June 2, 2016) (citing *Keith Springer*, 55 S.E.C. 632, 643 n.15 (2002)). “[T]here is no impediment to the use of circumstantial evidence in [a FINRA] proceeding,” and we intend to evaluate the record in this matter, and consider the evidence presented, regardless of whether that evidence is direct or circumstantial. *Dennis Todd Lloyd Gordon*, Exchange Act Release No. 57655, 2008 SEC LEXIS 819, at *41 (Apr. 11, 2008).

B. The Miller Memoranda Were Falsified

On remand, Saliba attempts to relitigate the issue of whether the Miller and Eighth Younger Memoranda were falsified.¹³ Saliba asserts that “Miller was in the office on the same dates the [Miller Memoranda] are dated,” and that “Younger testified he was the one who created and signed the [Eighth Younger Memorandum].” But the Commission has resolved the issue of the genuineness of the Miller and Eighth Younger Memoranda and has determined that the memoranda were falsified, even if there is no evidence that points to Saliba as the individual who created the falsified memoranda or directed their creation. The Hearing Panel’s credibility determinations, to which the NAC and Commission have deferred, solidify that Saliba submitted falsified memoranda to FINRA staff. And we do not reexamine this issue on remand. At this juncture, the issue before us is limited to Saliba’s scienter in submitting the Miller Memoranda to the MAP Group during the CMA process and his scienter in submitting the Miller Memoranda to Enforcement during its investigation. In each instance, we find that Saliba knew that he was providing false information to FINRA staff.

C. Saliba Violated FINRA Rule 2010 Because the Miller Memoranda Were Falsified, and Saliba Knew He Was Providing False Information to the MAP Group During the CMA Process

As it relates to cause three, and Saliba’s submission of the falsified Miller Memoranda to the MAP Group as part of the CMA process, the Commission directed us to clarify whether: (1)

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inapplicable because, as Enforcement notes, “[t]he [Miller Memoranda] were not provided to [the] MAP [Group] in response to a FINRA Rule 8210 request.”

¹³ While we recite the Commissions findings with respect to the Eighth Younger Memorandum here, as noted above, we dismiss the finding of violation by Saliba based on this document.

Saliba was responsible for falsifying the Miller Memoranda or knowingly producing falsified memoranda to the MAP Group; or (2) the Miller Memoranda were falsified, and Saliba should have known that he was providing falsified memoranda to the MAP Group. On remand, we find that the circumstantial evidence demonstrates that Saliba knew the Miller Memoranda contained false information when he provided them to the MAP Group. As previously acknowledged, there is no direct evidence that Saliba himself created the falsified Miller Memoranda or directed someone else to create them. That said, there is resounding support that Saliba knew he was providing false information to the MAP Group. When Saliba provided the falsified memoranda, he acted unethically and violated FINRA Rule 2010.

FINRA Rule 2010 is FINRA's ethical standards rule. The rule states that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." The rule is "designed to enable [FINRA] to regulate the ethical standards of its members." *Heath v. SEC*, 586 F.3d 122, 132 (2d Cir. 2009). The Commission has "long applied a disjunctive 'bad faith or unethical conduct' standard to disciplinary action" under FINRA's just and equitable principles of trade rule. *Blair Alexander West*, Exchange Act Release No. 74030, 2015 SEC LEXIS 102, at *20 (Jan. 9, 2015), *aff'd*, 641 F. App'x 27 (2d Cir. 2016). In determining whether a respondent's conduct violates FINRA Rule 2010 when "the alleged violation is not premised on the violation of another FINRA rule, we must determine whether the respondent has acted unethically or in bad faith." *Kimberly Springsteen-Abbott*, Exchange Act Release No. 88156, 2020 SEC LEXIS 2684, at *28 (Feb. 7, 2020), *petition for review dismissed in part and denied in part*, 989 F.3d 4 (D.C. Cir. 2021). "Unethical conduct is that which is not in conformity with moral norms or standards of professional conduct, while bad faith means dishonesty of belief or purpose." *Id.*

"Providing false information in response to a FINRA request, including requests that do not specifically cite FINRA Rule 8210, is inconsistent with high standards of commercial honor and just and equitable principles of trade." *Dep't of Enf't v. Elgart*, Complaint No. 2013035211801, 2017 FINRA Discip. LEXIS 9, at *32-33 (FINRA NAC Mar. 16, 2017), *aff'd*, Exchange Act Release No. 81779, 2017 SEC LEXIS 3097 (Sept. 29, 2017). Providing false information to FINRA "subvert[s] [FINRA's] ability to perform its regulatory function and protect the public interest" and constitutes "an independent violation of" FINRA Rule 2010. *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *23-24, 33-34 (Aug. 22, 2008). Here, the circumstantial evidence, including Saliba's purported search for the Miller Memoranda, Miller's credible testimony, and Saliba's attempt to use the Miller Memoranda to persuade the MAP group to reverse its denial of the CMA, establish that Saliba's conduct was unethical and a violation of FINRA Rule 2010.

The record overwhelmingly demonstrates that Saliba knew that he was providing falsified memoranda to the MAP Group. Saliba's description of the scope of his purported search for the Miller Memoranda, which he claimed he did not even know existed, was highly implausible. For Saliba's elaborate explanation to be true, some unknown person, for some unknown reason, would have had to create and place the falsified Miller Memoranda in boxes that had no connection with NMS Capital Securities' investment banking transactions, where they were unlikely to be found. Then, Saliba would have to find the falsified Miller Memoranda, which he referred to as "needles in a haystack," by happenstance because of an exhaustive and implausible search. In addition, Saliba's explanation of his search for the Miller Memoranda contradicted his earlier on-the-record testimony, during which he claimed he could not remember if he found them in the specific deal files for the underlying engagements or in a separate file, and made no

mention of the convoluted story he told at the hearing. In sum, we find that Saliba's hearing testimony about finding the Miller Memoranda is incredible, was contradicted by his prior sworn testimony, and the evidence supports that Saliba's testimony was false.

Second, Miller's credible testimony convincingly establishes that Saliba knew he was providing memoranda to the MAP Group that contained false information. Miller credibly testified that the Miller Memoranda were false, his signature on them was forged, and the conversations the memoranda purport to document resulting in his approval of Saliba signing engagement agreements never happened. Miller testified that Saliba did not report to him despite his title as CEO, and that Saliba exercised his full authority to run his firm. Importantly, Miller testified that Saliba never asked for his approval to enter into investment banking engagement agreements. As the Hearing Panel found, Miller's testimony was consistent, forthright, and credible. Miller's testimony is also consistent with the Commission's findings that Saliba ran his firm and acted as a principal in violation of the interim restrictions. Saliba therefore knew that he had not asked for Miller's approval to enter into the engagement agreements and, accordingly, knew the contents of the Miller Memoranda were false when he provided them to the MAP Group. *See Dep't of Enf't v. Stonegate Partners, LLC*, Complaint No. E112005002003, 2008 FINRA Discip. LEXIS 26, at *31-32 (FINRA Hearing Panel May 15, 2008) (providing false and misleading information in response to a formal FINRA request that did not cite FINRA Rule 8210 is a violation of FINRA's just and equitable principles of trade rule).

Third, Saliba's submission of the Miller Memoranda to the MAP Group to persuade the MAP Group to reconsider its denial of NMS Capital Securities' CMA further supports that Saliba knew he was providing false information to them. It is undisputed that Saliba submitted the falsified Miller Memoranda to the MAP Group in an effort to persuade the MAP Group to reconsider its denial of NMS Capital Securities' CMA. Saliba specifically represented that the Miller Memoranda were records of NMS Capital Securities that evidenced Miller's prior approvals of investment banking agreements that Saliba had executed on behalf of the firm. Miller's credible testimony, however, establishes that he never had conversations with Saliba giving any such approval. As the owner of NMS Capital Securities, Saliba was the individual with the most to gain if the MAP Group approved the firm's CMA, and he admitted that he believed that he could accomplish that end if he could prove to the MAP Group that he had approval to enter into the engagement agreements.

Finally, Saliba's conduct in producing the falsified Miller Memoranda to the MAP Group, at a minimum, was "not in conformity with moral norms or standards of professional conduct." *Springsteen-Abbott*, 2020 SEC LEXIS 2684, at *28. By Saliba's own admission, he never knew that the Miller Memoranda existed before he "discovered" them, he did not see Miller sign them, he did not know when they were created or who created them, and he purportedly discovered the Miller Memoranda under highly implausible circumstances. By producing the Miller Memoranda to the MAP Group without doing any investigation into their authenticity—not even contacting Miller—Saliba acted unethically.

Based on the record before us, we find that Saliba's conduct was unethical, in violation of FINRA Rule 2010, because the Miller Memoranda were falsified, and Saliba knew he was providing false information to the MAP Group.

D. Saliba Violated FINRA Rules 8210 and 2010 Because the Miller Memoranda Were Falsified, and Saliba Knew He Was Providing Falsified Memoranda to Enforcement During Its Investigation

For cause five, we engage in a similar exercise as the one set forth above and, on remand, we find that the Miller Memoranda were falsified, and Saliba knew that he was providing falsified memoranda to Enforcement during its investigation.¹⁴ Based on these facts, we find that Saliba violated FINRA Rules 8210 and 2010.¹⁵

FINRA Rule 8210(a) authorizes FINRA staff to “require a member, person associated with a member, or any other person subject to FINRA’s jurisdiction to provide information orally, in writing, or electronically . . . with respect to any matter involved in the investigation, complaint, examination, or proceeding” and to “inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in the investigation, complaint, examination, or proceeding.” FINRA Rule 8210 is indispensable to FINRA’s ability to fulfill its regulatory functions. Because FINRA does not have subpoena power, it “must rely on [FINRA] Rule 8210 to obtain information . . . necessary to carry out its investigations and fulfill its regulatory mandate.” See *CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *15 (Jan. 30, 2009); see also *Berger*, 2008 SEC LEXIS 3141, at *13 (stating that Rule 8210 “is at the heart of the self-regulatory system for the securities industry”); *PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *12 (Apr. 11, 2008) (stating that FINRA’s “lack of subpoena power thus renders compliance with Rule 8210 essential to enable [FINRA] to execute its self-regulatory functions”), *aff’d*, 566 F.3d 1172 (D.C. Cir. 2009).

It is well settled that providing false or misleading information to FINRA in response to a FINRA Rule 8210 request violates FINRA Rule 8210. See *Ortiz*, 2008 SEC LEXIS 2401, at *23; *Dep’t of Enf’t v. Masceri*, Complaint No. C8A040079, 2006 NASD Discip. LEXIS 29, at *36 (NASD NAC Dec. 18, 2006) (explaining that “[i]t is axiomatic that Procedural Rule 8210 prohibits an associated person from providing false or misleading information to [FINRA] in connection with an examination or investigation”); *Dep’t of Enf’t v. Walker*, Complaint No. C10970141, 2000 NASD Discip. LEXIS 2, at *26-27 (NASD NAC Apr. 20, 2000) (affirming a violation of FINRA Rule 8210 when an associated person made false statements during on-the-record testimony). Providing false information to FINRA “can conceal wrongdoing and thereby subvert [FINRA’s] ability to perform its regulatory function and protect the public interest.” *Ortiz*, 2008 SEC LEXIS 2401, at *32. Associated persons have an unequivocal and unqualified duty to comply with FINRA Rule 8210 requests, and to do so completely and accurately. See, e.g., *Dep’t of Enf’t v. Escobio*, Complaint No. 2018059545201, 2021 FINRA Discip. LEXIS 3,

¹⁴ We dismiss, however, the finding of violation with respect to the Eighth Younger Memorandum encompassed in cause five. While the Eighth Younger Memorandum was falsified, we find that the evidence is insufficient to establish that Saliba knew this when he produced it to FINRA.

¹⁵ A violation of FINRA Rule 8210 constitutes a violation of FINRA Rule 2010. See *Dep’t of Enf’t v. Reichman*, Complaint No. 200801201960, 2011 FINRA Discip. LEXIS 18, at *29 (FINRA NAC July 21, 2011).

at *18 (FINRA NAC Mar. 10, 2021), *appeal docketed*, SEC Admin. Proceeding No. 3-20260 (SEC Apr. 8, 2021).

During its investigation, pursuant to FINRA Rule 8210, Enforcement requested that Saliba and NMS Capital Securities provide “[a]ll documents evidencing executive management approval or authority to engage in investment banking deals.” In response, Saliba provided the Miller Memoranda. For the Miller Memoranda, as discussed above, we find that the memoranda were falsified, and that the evidence establishes that Saliba knew that he was providing falsified memoranda to Enforcement. By providing the falsified Miller Memoranda to Enforcement in response to the FINRA Rule 8210 request, Saliba violated FINRA Rules 8210 and 2010. *See Dep’t of Enf’t v. Merrimac Corp. Sec., Inc.*, Complaint No. 2011027666902, 2017 FINRA Discip. LEXIS 16, at *13-14 (FINRA NAC May 26, 2017) (finding that the submission of documents to FINRA on which signatures had been copied violated FINRA Rules 8210 and 2010), *aff’d*, Exchange Act Release No. 86404, 2019 SEC LEXIS 1771, at *1 (July 17, 2019). Like the respondent in *Merrimac.*, the record establishes that Saliba knew the information he was providing to FINRA was false. *See id.*

III. Sanctions

The final issue before us concerns the application of the FINRA Sanction Guidelines (“Guidelines”) to determine the appropriate sanctions for Saliba’s misconduct.¹⁶ Under cause two, Saliba falsely testified during his on-the-record testimony about his use of computers and failed to produce all computers to FINRA staff. Under cause three, Saliba provided the falsified Miller Memoranda to the MAP Group as part of the CMA process. Under cause five, Saliba provided the falsified Miller Memoranda to Enforcement during its investigation. Because the conduct underlying Saliba’s violations with respect to his work computers and those connected to the Miller Memoranda are distinct, we assess separate sanctions for each subject matter.

In assessing sanctions, we apply the Guidelines in place at the time of this decision,¹⁷ any applicable violation-specific Guidelines, and “the General Principles Applicable to All Sanction Determinations and Principal Considerations in Determining Sanctions, which adjudicators consult in every disciplinary case.”¹⁸

¹⁶ *See FINRA Sanction Guidelines* (Oct. 2021), https://www.finra.org/sites/default/files/2022-09/2021_Sanctions_Guidelines.pdf [hereinafter *Guidelines*].

¹⁷ *See Guidelines*, at 8 (Applicability) (“These guidelines are effective as of the date of publication, and *apply to all disciplinary matters, including pending matters.*”) (emphasis added).

¹⁸ *Dep’t of Enf’t v. Mehringer*, Complaint No. 2014041868001, 2020 FINRA Discip. LEXIS 27, at *38 n.38 (FINRA NAC June 15, 2020).

A. False Testimony About Computer Usage and Failure to Produce Computer (Cause 2)

For falsely testifying about his use of computers for NMS Capital Securities' business and failing to produce all the computers he used for firm business, we apply the violation-specific guidelines related to the Failure to Respond, Failure to Respond Truthfully or in a Timely Manner, or Providing a Partial but Incomplete Response to Requests Made Pursuant to FINRA Rule 8210.¹⁹ We focus on the part of those Guidelines related to the failure to respond truthfully and for providing a partial, but incomplete, response to requests made pursuant to FINRA Rule 8210.²⁰

When an individual does not respond truthfully to a FINRA request for information and documents, the Guidelines state that a bar should be standard.²¹ When an individual provides a partial, but incomplete, response, the Guidelines, again, advise adjudicators that a bar should be the standard sanction "unless the [individual] can demonstrate that the information provided substantially complied with all aspects of the request."²² When mitigation exists, the Guidelines suggest that adjudicators consider a fine of \$2,500 to \$39,000, and a suspension of the individual in any or all capacities for up to two years.²³ In applying this violation-specific guidance, the Guidelines direct adjudicators to consider the following factors: (1) the importance of the information requested that was not provided as viewed from FINRA's perspective, and whether the information provided was relevant and responsive to the request; (2) the number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response; and (3) whether the respondents thoroughly explained valid reasons for the deficiencies in the response.²⁴

After a careful application of these factors, we conclude that Saliba did not substantially comply with all aspects of FINRA's request, there is no evidence of mitigation, and, accordingly, Saliba should be barred for the misconduct. The information FINRA sought about Saliba's business computers was critical to its investigation of his violation of the interim restrictions while the CMA was pending and to the origin of the Miller and Eighth Younger Memoranda. Saliba's failure to testify truthfully and produce his computer concealed his misconduct and

¹⁹ See *Guidelines*, at 33 (Failure to Respond, Failure to Respond Truthfully or in a Timely Manner, or Providing a Partial but Incomplete Response to Requests Made Pursuant to FINRA Rule 8210).

²⁰ *Id.*

²¹ *Id.* The Guidelines also recommend a fine between \$25,000 and \$77,000 for failing to respond truthfully to a FINRA information and document request.

²² *Id.* For providing a partial, but incomplete, response to a FINRA request for information and documents, the Guidelines also recommend a fine of \$10,000 to \$77,000.

²³ *Id.*

²⁴ *Id.*

obstructed FINRA's investigation because his computer could have shown that he was acting as a principal in violation of the interim restrictions and could have shed light on the origin of the Miller and Eighth Younger Memoranda. Saliba's misconduct demonstrates a lack of integrity and ability to comply with regulatory rules and, accordingly, a bar is an appropriately remedial sanction.

B. Providing the Falsified Miller Memoranda to the MAP Group and Enforcement (Causes 3 and 5)

There are no specific Guidelines applicable to providing falsified documents to the MAP Group. We therefore apply the most analogous Guidelines for Failure to Respond, Failure to Respond Truthfully or in a Timely Manner, or Providing a Partial but Incomplete Response to Requests Made Pursuant to FINRA Rule 8210. These Guidelines provide that a bar is standard for a failure to respond truthfully. The same Guidelines apply to Saliba's submission of the Miller Memoranda to Enforcement in response to the FINRA Rule 8210 request.

Saliba provided the Miller Memoranda to the MAP Group knowing that the memoranda falsely purported to document that he had received approval prior to entering into investment banking engagement agreements. He did so to persuade the MAP Group to change its determination on his CMA and thereby benefit himself.²⁵ Saliba knew the conversations and approvals that the falsified Miller Memoranda purported to document never occurred, and his use of these falsified documents to convince the MAP Group otherwise demonstrates a dishonesty and lack of integrity that makes Saliba unfit to participate in the securities industry.²⁶

²⁵ *Id.* at 8 (Principal Considerations in Determining Sanctions, No. 16) (considering whether the respondent's misconduct resulted in the potential for the respondent's monetary or other gain).

²⁶ Saliba also asks us to consult the Guidelines for "Forgery, Unauthorized Use of Signatures or Falsification of Records." *Id.* at 37. We have done so. Under these Guidelines, when a respondent affixes a signature to, or falsifies a document without authorization, in furtherance of another violation, resulting in customer harm or accompanied by significant aggravating factors, a bar is standard. *Id.* When a respondent affixes a signature to, or falsifies a document without authorization or ratification, in the absence of other violations or customer harm, the Guidelines advise adjudicators to consider suspending the respondent for a period of two months to two years and a fine between \$5,000 and \$155,000. *Id.* In assessing sanctions, the Guidelines apply the following factors: (1) nature of the document signed or falsified; (2) whether the respondent had a good-faith, but mistaken, belief of express or implied authority; (3) whether the customer possessed or saw the document before the customer's signature was affixed to it, and the customer affirmed the signature; (4) if the document pertained to a transaction, whether the transaction was agreed to by an authorized person; and (5) whether the customer re-signed the document or ratified the signature. *Id.* The application of this violation-specific guidance also directs us to a bar.

Providing false information to FINRA in response to a FINRA Rule 8210 request for information is also very serious misconduct. “[S]upplying false information to [FINRA] during an investigation . . . mislead[s] [FINRA] and can conceal wrongdoing,” and “subvert[s] [FINRA’s] ability to perform its regulatory function and protect the public interest.”²⁷ As the Commission has emphasized, untruthful responses “are more damaging than a refusal to respond to a request for information since they mislead [FINRA] and can conceal wrongdoing.”²⁸ By providing the falsified Miller Memorandum in response to a FINRA Rule 8210 request, Saliba did just this.

FINRA’s request was important to its investigation of Saliba’s violation of the interim restrictions. By providing the falsified Miller Memoranda that Saliba knew reflected conversations and approvals that never actually occurred, Saliba sought to conceal his misconduct.²⁹ Knowingly producing falsified documents in response to a FINRA Rule 8210 request reflects strongly Saliba’s unfitness to serve in the securities industry.³⁰ A bar is appropriate to protect the investing public from persons who will provide false information and false documents to FINRA when it is investigating if FINRA rules have been violated. Accordingly, we bar Saliba in all capacities for his violation of FINRA Rules 8210 and 2010 by providing the falsified Miller Memoranda to the MAP Group and in response to a FINRA Rule 8210 request.

IV. Conclusion

On remand, we find that: (1) Saliba violated FINRA Rule 2010 because the Miller Memoranda were falsified, and Saliba knew that he was providing falsified memoranda to the MAP Group during the CMA process (cause three); and (2) Saliba violated FINRA Rules 8210 and 2010 because the Miller Memoranda were falsified, and Saliba knew that he was providing falsified memoranda to Enforcement during its investigation (cause five). For sanctions, we

²⁷ *Ortiz*, 2008 SEC LEXIS 2401, at *32-33.

²⁸ *Michael A. Rooms*, 58 S.E.C. 220, 229 (2005), *aff’d*, 444 F.3d 1208 (10th Cir. 2006).

²⁹ *Guidelines*, at 8 (Principal Considerations in Determining Sanctions, No. 12) (considering whether the respondent attempted to delay FINRA’s investigation, conceal information from FINRA, or provide inaccurate or misleading testimony or documentary information to FINRA).

³⁰ *See Rita Delaney*, 48 S.E.C. 886, 890 (1987) (affirming bar when applicant falsified firm records to conceal activities from FINRA during its investigation and stating that “[i]n a business that depends so heavily on the integrity of its participants, such behavior cannot be countenanced”).

impose a bar for Saliba violations under cause two and a separate bar for his violations under causes three and five.³¹

On Behalf of the National Adjudicatory Council,

Jennifer Piorko Mitchell,
Vice President and Deputy Corporate Secretary

³¹ The bars are immediately effective upon the service of this decision.