BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Trevor Michael Saliba Beverly Hills, CA, Sperry Randall Younger New York, NY, Richard Daniel Tabizon Beverly Hills, CA, and Arthur Mansourian Beverly Hills, CA, Respondents.	DECISION Complaint No. 2013037522501 Dated: January 8, 2019

Registered principal: (1) caused his firm to violate restrictions imposed by FINRA by functioning in a principal capacity when prohibited from doing so; (2) failed to cooperate fully with a FINRA request for information and provided false information to FINRA; (3) provided to FINRA documents he knew or should have known were false; and (4) participated in the falsification of compliance records that were provided to FINRA. Registered principal failed to exercise reasonable supervision and gave false testimony to FINRA. Registered representative participated in providing falsified compliance records to FINRA and caused the firm to maintain inaccurate books and records. Held, findings affirmed and sanctions modified.

Appearances

For the Complainant: Leo F. Orenstein, Esq., John Luburic, Esq., David Monachino, Esq. Christina Stanland, Esq., Richard Chin, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For Respondents Trevor Saliba and Arthur Mansourian: Alan M. Wolper, Esq., Heidi VonderHeide, Esq.

For Respondent Sperry Younger: Pro se

Decision

Respondents Trevor Saliba, Sperry Younger, and Arthur Mansourian appeal a December 15, 2017 Extended Hearing Panel Decision. The Extended Hearing Panel (the "Hearing Panel") found that Saliba caused his firm to violate certain restrictions placed on it by FINRA by acting in a principal capacity when he was prohibited from doing so. The Hearing Panel also found that Saliba provided falsified documents and false and misleading information to FINRA and failed to cooperate fully with FINRA's investigation. The Hearing Panel found that Younger failed to reasonably supervise Saliba while he was restricted from acting as a principal. The Hearing Panel also found that Younger provided false testimony to FINRA. Finally, the Hearing Panel found that Mansourian participated in obtaining falsified documents that were provided to FINRA and caused the firm to maintain inaccurate books and records. For these violations, the Hearing Panel barred Saliba, Younger, and Mansourian in all capacities.

On appeal, the respondents argue that the Hearing Panel based its determinations on inadequate circumstantial evidence. Saliba both denies causing a violation of the FINRA restrictions and argues that, to the extent he may have violated the restrictions, those violations were unintentional and the result of his lack of understanding of principal activities. Saliba also denies providing falsified documents and false and misleading information to FINRA, and argues that the bar imposed by the Hearing Panel is excessive. Younger denies failing to supervise Saliba, argues that Saliba was not acting as a principal, and denies providing false testimony to FINRA. Younger also argues that the bar imposed on him is "extreme and overly punitive." Finally, Mansourian argues that his participation in the falsification of firm documents was done at the direction of his superiors and with FINRA's knowledge, and that the bar imposed on him is excessive.

After an independent review of the record, we affirm the Hearing Panel's findings of violations and modify the sanctions it imposed.

I. Background

A. Trevor Saliba and NMS Capital Securities, LLC

Saliba joined the securities industry in 1995 and has been registered as a general securities representative with various FINRA members. In November 2011, Saliba registered as a general securities principal.

In February 2009, Saliba founded NMS Capital Asset Management, LLC ("NMS Asset"), a registered investment advisor. Saliba is the sole owner of NMS Asset. While operating NMS Asset, Saliba began working on private placements and other investment banking transactions and associated with various FINRA members in order 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 addition to NMS Asset, Saliba is the sole owner, chief executive officer ("CEO"), and managing director of a non-registered entity, NMS Capital Group, LLC ("NMS Capital"). In November 2011, NMS Capital purchased MCA Securities, LLC ("MCA"), a FINRA member since 2001. After acquiring MCA, Saliba renamed the firm NMS Capital Securities, LLC ("NMS Securities"), and in October 2011, Saliba filed a continuing membership application ("CMA") with FINRA's Department of Member Regulation ("Member Regulation") requesting FINRA approval of a change in the NMS Securities' ownership. NMS Securities' offices were located in Beverly Hills, California, in the same offices from which Saliba operated his other businesses.

On June 21, 2013, Member Regulation denied NMS Securities' CMA. The denial was affirmed by the National Adjudicatory Council ("NAC") on September 29, 2014, and the firm filed a Form Broker-Dealer Withdrawal ("Form BDW") in October 2015.[1]

Saliba is currently registered with NMS Capital Advisors, LLC ("NMS Advisors"), another FINRA member, which was active during the same period as NMS Securities.[2] Saliba owns approximately 24% of NMS Advisors through a wholly-owned subsidiary of NMS Capital.

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[1] The violations discussed in this decision occurred during the period that NMS Securities' CMA was pending and it operated as a FINRA member broker-dealer.

[2] Saliba is currently registered with NMS Advisors as a general securities representative, a general securities principal, an investment banking representative, an investment banking principal, and an operations professional.

B. Sperry Younger

Younger joined the securities industry in 1996 as a general securities representative. He registered as a general securities principal in 1999, a compliance registered options principal in 2002, and a limited representative-investment banking in 2009. Since 1996, and prior to joining NMS Securities, Younger was associated with nine FINRA members. Younger associated with NMS Securities in October 2012 and served as its CEO from October 2012 to March 2014. Younger also served as the firm's chief compliance officer ("CCO") and the designated supervisor for all NMS Securities registered employees from January 2013 to March 2014. After leaving NMS Securities, Younger was registered with NMS Advisors, Saliba's current firm, from October 2015 to September 15, 2016. Younger is not currently associated with a FINRA member.

C. Arthur Mansourian

Mansourian joined the securities industry in 2006 and was registered as a general securities representative in 2007. Mansourian was associated with NMS Securities from October 2012 to September 2015. In June 2015, he also registered with NMS Advisors and became a registered securities principal. Mansourian is currently registered as a general securities representative and general securities principal with NMS Advisors, where he continues to work with Saliba.

D. The CMA Process and the Interim Restrictions

In or about September 2011, Saliba found MCA on a website listing broker-dealers for sale. MCA was owned by CB and MW, two individuals based in Chicago. In November 2011, Saliba's purchase of MCA closed, and Saliba renamed the firm NMS Securities. CB and MW remained registered with NMS Securities, but apart from a single private placement transaction that was pending at the time of the sale, they were not involved in the firm's operations.

In October 2011, Saliba filed an initial CMA, as required under NASD Rule 1017, to obtain FINRA approval of his ownership of NMS Securities.[3] Saliba hired a consultant, JH, to

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[3] NASD Rule 1017(b) provides that a member firm must file an application for approval of a change of ownership, which includes a "detailed description of the change in ownership, control, or business operations." NASD Rule 1017(c) provides that a CMA must be filed at least 30 days prior to a change in ownership. The change in ownership can be effected prior to the conclusion of the CMA process, but if it is, Member Regulation "may place new interim restrictions on the member based on the standards in [NASD] Rule 1014, pending final [Member Regulation] action." NASD Rule 1017(e) permits Member Regulation to request additional documents and information necessary to its decision, and NASD Rule 1017(d) provides that an application which is "not substantially compete" shall be rejected and deemed not filed. In making a final determination on a CMA application, Member Regulation "shall consider the application, the membership interview, other information and documents provided by the

[Footnote continued on next page]

assist with the CMA process. The initial CMA lapsed when the firm failed to timely respond to a request for information from Member Regulation, and Saliba filed a second CMA on July 10, 2012.

During its consideration of NMS Securities' CMA, Member Regulation learned that NMS Asset, the registered investment advisor owned and operated by Saliba, was being investigated by the Securities and Exchange Commission (the "Commission") and that the Commission had issued a subpoena seeking documents concerning NMS Asset.[4] On August 15, 2012, Member Regulation sent a letter to Saliba indicating that Member Regulation was still reviewing the CMA and had determined to impose "interim restrictions" on the firm. The letter explained that the interim restrictions were being imposed because Member Regulation "lacks sufficient information at this stage of the application review process to determine whether the [f]irm meets each standard . . . in NASD Rule 1014" and that Member Regulation's concerns stemmed, in part, from the Commission investigation of NMS Asset.

The interim restrictions prohibited NMS Securities from: (1) permitting Saliba to act in a principal or supervisory capacity; (2) adding any new lines of business, offices, or personnel; and (3) conducting a securities business on behalf of any affiliated entity owned or controlled by Saliba.

On August 20, 2012, Saliba sent a letter to Member Regulation acknowledging the interim restrictions, and requesting a meeting to discuss them. On September 25, 2012, Saliba and JH met with Member Regulation staff in New York and requested modification of the interim restrictions.

On October 17, 2012, Member Regulation sent Saliba a letter indicating that it would amend the interim restrictions to permit certain limited activities. The amendments included: (1) permitting Saliba to "act in a limited capacity with respect to supporting [certain enumerated] financial functions of the [f]irm," under the supervision of NMS Securities' designated Financial and Operations Principal; and (2) permitting the firm to hire two "additional operational support personnel provided that such personnel will only be permitted to support [f]irm operations, compliance and supervision functions . . . ." The letter reminded Saliba that the interim restrictions "shall remain, in full force and effect, pending a final FINRA action on the [f]irm's [CMA]."

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[a]pplicant or obtained by [Member Regulation], the public interest, and the protection of investors." An applicant can appeal an adverse decision by Member Regulation to the NAC.

[4] A March 11, 2011 letter addressed to Saliba as NMS Asset's CEO and CCO explained that the Commission was "conducting an investigation" of NMS Asset and that Saliba was required to produce the documents requested in the subpoena.

On June 21, 2013, Member Regulation denied NMS Securities' CMA. Member Regulation explained that its denial was based, in part, on information Member Regulation received that indicated Saliba had violated the interim restrictions by acting in a principal capacity. The letter noted that Saliba's principal activities included signing eight engagement agreements on behalf of the firm and negotiating the terms of at least one agreement, hiring Younger as the firm's CEO, and reviewing associated persons' outside brokerage account statements. Member Regulation referred the matter to FINRA's Department of Enforcement ("Enforcement"), which conducted an investigation of respondents' conduct during the CMA process and led to these proceedings.

II. Procedural History

On March 24, 2016, Enforcement filed an eight-cause complaint against Saliba, Younger, Mansourian, and Richard Tabizon, NMS Securities' CCO for part of the relevant period. Cause one alleged that Saliba violated FINRA Rule 2010 when he acted as an NMS Securities principal, thereby causing NMS Securities to violate the interim restrictions.[5] Specifically, cause one alleged that Saliba's principal activities included negotiating and signing engagement agreements on behalf of the firm, hiring and participating in the hiring of a CEO and registered representatives, and reviewing the outside brokerage accounts of the firm's CCO. Cause two alleged that Saliba violated FINRA Rules 8210 and 2010 by failing to cooperate with FINRA's request that he produce any computer he used for NMS Securities business and by making misrepresentations to FINRA about his use of work computers. Cause three alleged that Saliba violated FINRA Rule 2010 by providing false supervisory memos to Member Regulation. Cause four alleged that Younger violated FINRA Rules 8210 and 2010 by making false representations concerning his preparation of certain supervisory memos. Cause five alleged that Saliba violated Rules 8210 and 2010 by providing false supervisory memos to Enforcement during its investigation. Cause six alleged that Saliba, Tabizon, and Mansourian violated FINRA Rule 2010 by participating in the creation of backdated compliance records. Cause seven alleged that Tabizon and Mansourian also violated FINRA Rules 4511 and 2010 by causing NMS Securities to maintain inaccurate books and records by obtaining backdated compliance forms, and that Saliba violated the same rules by causing the firm to maintain certain falsified supervisory approval memos as records. Finally, cause eight alleged that Younger failed to supervise Saliba while he was subject to the interim restrictions, in violation of NASD Rule 3010(a) and (b) and FINRA Rule 2010.

In September 2017, the Hearing Panel conducted a six-day hearing at which 13 witnesses testified and more than 200 exhibits were received in evidence.

The Hearing Panel found that Saliba violated FINRA Rule 2010 by acting as a principal when he was restricted from doing so, thereby causing NMS Securities to violate the interim restrictions (cause one). The Hearing Panel also found that Saliba violated FINRA Rule 2010

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[5] The conduct rules that apply in this case are those that existed at the time of the conduct at issue.

when he provided false supervisory approval memos to Member Regulation (cause three), and that Saliba violated FINRA Rule 8210 and 2010 when he provided false supervisory memos to Enforcement in response to a FINRA Rule 8210 request (cause five). The Hearing Panel further found that Saliba violated FINRA Rules 8210 and 2010 by failing to turn over all his work computers and giving FINRA false information about his use of work computers (cause two). The Hearing Panel also found that Saliba violated FINRA Rule 2010 when he participated in procuring backdated compliance forms that were provided to FINRA (cause six). The Hearing Panel dismissed the allegations that Saliba caused the firm to maintain inaccurate books and records (cause seven).

The Hearing Panel found that Younger violated FINRA Rules 8210 and 2010 by providing false testimony to FINRA concerning his preparation of certain purported supervisory memos. The Hearing Panel also found that Younger failed to supervise Saliba while he was subject to the interim restrictions, in violation of NASD Rule 3010 and FINRA Rule 2010.

The Hearing Panel found that Mansourian and Tabizon violated FINRA Rule 2010 by obtaining backdated compliance documents that were provided to FINRA. The Hearing Panel also found that, through the same misconduct, Mansourian and Tabizon caused NMS Securities to maintain inaccurate books and records, in violation of FINRA Rules 4511 and 2010.

For their violations, the Hearing Panel imposed a single bar in all capacities on each respondent.

Saliba, Younger, and Mansourian filed timely applications for review of the Hearing Panel's decision by the NAC. Tabizon did not appeal the Hearing Panel's decision. On February 7, 2018, Tabizon was sent notice that the Review Subcommittee of the NAC had called his case for review. Notice of this proceeding was sent to Tabizon at the two residential addresses he had listed in FINRA's Central Registration Depository ("CRD®"). Tabizon did not respond or participate in this proceeding in any way. Given Tabizon's lack of participation, the NAC has determined to dismiss its call for review and, accordingly, we do not review the findings of violations and sanctions imposed on Tabizon and they remain in effect.

III. Facts

A. Saliba Hires Employees for NMS Securities

After purchasing NMS Securities, and prior to FINRA imposing the interim restrictions, Saliba hired JM to serve as NMS Securities' CEO. JM had approximately 40 years of experience in the securities industry and previously had been associated with NMS Asset, Saliba's registered investment advisor.

JM was based in Las Vegas, Nevada, and while he traveled occasionally to NMS Securities' Beverly Hills office, he performed most of his work from Las Vegas. JM was paid $1,500 per month by NMS Securities, and Saliba testified that he expected JM to work for the firm approximately 30 hours per month. JM was NMS Securities' CEO when the interim

restrictions were imposed on August 15, 2012, and he remained the CEO until early October 2012.

During the afternoon of September 25, 2012, after their meeting with Member Regulation to discuss the interim restrictions, Saliba and JH met with Younger in New York City. JH knew Younger and introduced him to Saliba. Saliba and Younger met again the next day for breakfast, and during this second meeting, Saliba offered Younger the position as CEO of NMS Securities. Saliba testified that JM was ill and had expressed a desire to leave the firm. Younger did not immediately accept the offer, but later that day, he and Saliba looked at potential office space in New York that Younger could use if he did accept the offer.

On September 28, 2012, Saliba emailed Younger an "Independent Representative Agreement." Saliba dated the agreement October 1, 2012. Younger accepted the CEO position and signed the Independent Representative Agreement sometime between September 28, 2012, and October 8, 2012. JM submitted his resignation as CEO on October 5, 2012.

Younger did not receive a salary as CEO and was expected to be compensated based on the investment banking business he brought to the firm. In January 2013, Younger took over as NMS Securities' CCO when the previous CCO, Tabizon, failed a required exam. Younger served as NMS Securities' CEO and CCO until March 2014, when he left the firm.

In addition to hiring Younger as CEO, and signing Younger's Independent Representative Agreement on behalf of the firm, Saliba was also involved in hiring other employees for the firm while the interim restrictions were in effect. Saliba's activities with respect to hiring included identifying potential employees, interviewing them, and negotiating the terms and compensation for new hires. In October 2012, Saliba hired Mansourian. In January 2013, Saliba signed as "Chairman" an Independent Representative Agreement with MK. In March 2013, Saliba signed as "Senior Managing Director" another Independent Representative agreement with KA.

B. Saliba Signs Investment Banking Agreements

Younger's Independent Representative Agreement limited his ability to contractually bind the firm. The agreement provided that Younger would report "directly to the Board of Directors," which consisted solely of Saliba. The agreement also provided that Younger "shall not have authority to bind NMS [Securities]" to any contracts, even with approval of the board, or to sign any documents on behalf of the firm. Notwithstanding this limitation, the record reflects that Younger did sign some agreements on behalf of the firm. Saliba, however, also continued to sign agreements on behalf of the firm while the interim restrictions limiting his ability to act as a principal were in effect.

During the period from August 30, 2012, through May 1, 2013, while the interim restrictions were in effect, Saliba signed at least 15 agreements on behalf of NMS Securities.[6] Saliba signed these agreements alternatively as NMS Securities' "CEO," "Chairman," "Senior Managing Director," or "Managing Director."

C. The JM and Younger New Business Approval Memos

On June 21, 2013, Member Regulation denied NMS Securities' CMA. As part of the basis for its denial, Member Regulation cited information it had obtained indicating that Saliba had acted as a principal in violation of the interim restrictions. In its letter denying the CMA, Member Regulation referred to eight agreements that Saliba had signed.[7] Member Regulation learned of these agreements as part of an examination of NMS Securities.

Saliba appealed Member Regulation's denial of the CMA to the NAC, and on August 22, 2013, Saliba and his counsel met with Member Regulation to request that Member Regulation reconsider the denial of the CMA. Saliba argued that, although he had signed agreements on behalf of NMS Securities, these activities did not constitute principal activity in violation of the interim restrictions because he had signed each agreement with the verbal approval of the firm's CEO, either JM or Younger.

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[6] Saliba signed the following firm agreements: (1) August 30, 2012 agreement with EBC LLC, signed as "Chairman"; (2) September 12, 2012 agreement with OI, LLC, signed as "Chairman"; (3) September 21, 2012 agreement with MUI, signed as "Chairman"; (4) October 1, 2012 agreement with DC, LLC, signed as "Managing Director"; (5) October 10, 2012 agreement with CRF, LLC, as "Managing Director"; (6) October 22, 2012 agreement with SLP, signed as "Managing Director"; (7) November 14, 2012 agreement with B, Inc., signed as "Senior Managing Director"; (8) January 7, 2013 agreement with DEMD Company, LLC, signed as "Senior Managing Director"; (9) January 10, 2013, agreement with V, LTD, signed as "Senior Managing Director"; (10) January 17, 2013 agreement with PF Corp., signed as "Senior Managing Director – Chairman"; (11) February 5, 2013 agreement with M, Inc., signed as "Senior Managing Director"; (12) February 6, 2013 agreement with KOCV, LLC, signed as "CEO"; (13) March 12, 2013 agreement with EFG, LLC, signed as "Senior Managing Director"; (14) April 18, 2013 agreement with C Capital; and (15) May 1, 2013 agreement with EE Corp., signed as "Senior Managing Director".

[7] At this point, Member Regulation was aware of and cited the following agreements that Saliba had signed on behalf of the firm: (1) the September 21, 2012 agreement with MUI; (2) the October 1, 2012 agreement with DC, LLC; (3) the October 10, 2012 agreement with CRF, LLC; (4) the November 14, 2012 agreement with B, Inc.; (5) the January 7, 2013 agreement with DEMD Company, LLC; (6) the February 6, 2013 agreement with KOCV, LLC; (7) the February 5, 2013 agreement with M, Inc.; and (8) the March 12, 2013 agreement with EFG, LLC. The remainder of the agreements Saliba had signed had not yet been discovered by FINRA.

Member Regulation asked Saliba to provide any written evidence that the firm's CEOs had approved the agreements Saliba had signed. On August 27, 2013, five days after Saliba's meeting with Member Regulation, Saliba sent Younger an email. The email explained that Saliba needed to provide Member Regulation with "whatever documents" Younger had that "paper[ed]" his approval of investment banking deals. The email went on to ask for such documents for seven engagements, including B, Inc., EE Corp, C Capital, DEMD, M Inc., EFG, LLC, and PB, Ltd. Saliba omitted from his request to Younger an agreement for which Member Regulation had requested documentation, KOVC, LLC. Younger responded that it might take him "a while," but he would get the requested documents to Saliba. Approximately eight and a half hours later, Younger emailed Saliba memos for the seven agreements Saliba had listed.

On August 30, 2013, Saliba, through counsel, provided documents in response to Member Regulation's request. In his submission, Saliba provided copies of three additional agreements Saliba had signed, which Saliba's counsel noted Member Regulation "[was] missing"—the March 12, 2013 EFG, LLC agreement,[8] an April 18, 2013 agreement with C Capital, and a May 1, 2013 agreement with EE Corp.

Saliba also provided copies of 11 memos purporting to reflect CEO approval for agreements signed by Saliba. The memos referred to the eight agreements that Member Regulation had identified, two of the additional agreements which Saliba had provided to Member Regulation (C Capital and EE Corp), and approval for another agreement, PB, Ltd.

Three of the memos were purportedly signed by NMS Securities' first CEO, JM (the "JM Memos"). These three memos were relatively short, addressed from JM to Saliba, and indicated that based on "our conversation," each deal was "approved." The JM Memos purported to approve Saliba's execution of the October 10, 2012 CRF, LLC agreement, the September 21, 2012 MUI agreement, and the October 1, 2012 DC, LLC agreement.

Saliba also provided to Member Regulation eight documents entitled "New Business Memo" purportedly signed by Younger (the "Younger Memos"). The Younger Memos set out basic information about the company and details of NMS Securities' engagement, and were signed by Younger under a notation indicating "approved." Each signature was dated shortly before the date the underlying agreement was signed by Saliba.[9] The Younger Memos Saliba produced included the seven memos Younger emailed to Saliba on August 27, 2013, and an additional memo for KOVC, LLC.

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[8] Saliba's counsel appears to have been mistaken about this agreement. Member Regulation had a copy of it and it was included as an exhibit to the denial of the firm's CMA.

[9] The following Younger Memos were provided to Member Regulation: (1) a memo for DEMD dated December 20, 2012; (2) a memo for B, Inc. dated November 1, 2012; (3) a memo for KOVC, LLC dated January 25, 2013; (4) a memo for M, Inc. dated January 25, 2013; (5) a memo for EFG, LLC dated March 1, 2013; (6) a memo for C Capital dated March 15, 2013; (7) a memo EE Corp. dated April 19, 2013; and (8) a memo for PB Ltd. dated May 30, 2013.

On October 7, 2013, after Enforcement began its investigation, it sent a FINRA Rule 8210 request to Saliba's counsel for documents concerning the 11 agreements that Enforcement was at this point aware that Saliba had signed. Enforcement also requested all documents evidencing approval to engage in investment banking deals. In response to this request, Saliba's counsel sent Enforcement the JM Memos and Younger Memos Saliba previously provided to Member Regulation.

D. Saliba's Production of His Work Computer

On June 10, 2014, Saliba appeared for a FINRA Rule 8210 on-the-record interview ("OTR"). During his OTR, Saliba stated that he had used a single computer for all his work since 2012, including work on behalf of NMS Securities. Saliba initially stated that the computer was located in his office. Saliba was then questioned about the JM Memos and Younger Memos, including how they were discovered and where they were stored. At the end of the OTR, Enforcement served Saliba with a FINRA Rule 8210 request for the immediate production of "[a]ny and all computers and/or electronic storage devices used by [Saliba] for [NMS Securities] business." Saliba was told that Enforcement staff would be at his office that day to copy any device produced pursuant to the request.

After receiving the FINRA Rule 8210 request and while still at the OTR, Saliba told Enforcement he had been mistaken and his computer was actually at home. Later that day, a FINRA forensic examination specialist arrived at NMS Securities' Beverly Hills office. He waited some time for Saliba to arrive. Saliba produced a single laptop (the "First Computer") from which the FINRA staff member performed a forensic data capture of the entire hard drive except for email files, which were excluded by Enforcement from the FINRA Rule 8210 request to avoid possibly capturing potentially attorney-client privileged communications.

E. Evidence of a Second Computer

It is undisputed that, on May 10, 2013, Saliba purchased a new computer through NMS Securities (the "Second Computer"). Saliba testified that he did not produce the Second Computer to FINRA because he did not use it for NMS Securities business. Rather, Saliba claimed the Second Computer was used by his wife and later "recycled" by her because it did not work properly.

Enforcement introduced circumstantial evidence that, contrary to Saliba's testimony, the Second Computer replaced the First Computer as Saliba's work computer. First, Enforcement's expert witness, Luke Cats, an expert in forensic computer data analysis, testified that compared to a baseline period of April 25, 2013, through May 25, 2013, use of the First Computer declined dramatically after May 25, 2013. Additionally, Cats testified that the First Computer was completely turned off from July 23, 2013, through September 11, 2013. The record reflects, however, that Saliba worked on documents and sent emails during the period that the First Computer was turned off. The emails Saliba sent during this period included the August 27, 2013 email sent to Younger requesting the Younger Memos.

Enforcement also introduced emails between Saliba and his computer support contractor that indicate that the Second Computer was his replacement workstation. On May 24, 2013, Saliba exchanged emails with his computer support contractor about "transferring files to [Saliba's] replacement laptop." On August 13, 2013, the computer support contractor wrote to Saliba that the "[b]ackup has been successfully installed on your new workstation. I've opted to keep backups of your old workstation until we run into space issues—just in case there is something left behind that you need recovered. Backups will occur once daily at 6pm." Saliba responded to this email asking if there was "[a]ny chance of changing [the backup time] to 9pm to ensure I am out of the office?" The contractor replied that they could change the time and asked when he could "remote in" to Saliba's computer to make the change. On August 14, 2013, the contractor sent Saliba an email confirming that the backup time had been changed. These communications occurred at a time when the First Computer was completely turned off.

F. Backdated Compliance Documents

In April 2013, while the CMA was pending, FINRA conducted an unannounced examination of NMS Securities. As part of the examination, on April 17, 2013, FINRA requested a number of documents, including the most recent Outside Business Activity ("OBA") and Private Securities Transaction ("PST") forms completed by the firm's registered representatives.

Tabizon testified that, while he believed the OBA and PST forms had been completed, he could not locate a number of them. On Friday, April 19, 2013, Tabizon sent an email from his personal email account to Mansourian's personal email account attaching compliance forms, including OBA and PST forms. The versions Tabizon attached had been updated in March 2013 and differed from the versions previously used by the firm. The next day, on Saturday, April 20, 2013, Mansourian emailed the OBA and PST forms, along with two other compliance documents from his personal email to the personal email accounts of several of the firm's registered representatives. In the body of the email, Mansourian wrote:

> Team,
> Please fill out the attached forms ASAP and **send back to this e-mail address ONLY or fax to [the firm's fax number]**. When asked for dates, please indicate dates in February 2013 , [sic] such as February 1st, 4th, 5th, 8th.

The recipients of Mansourian's email returned the signed forms and most backdated their signatures to a date in early February 2013, as Mansourian instructed in the email. On April 25, 2013, Tabizon produced the backdated OBA and PST forms to FINRA, along with other documents, in response to FINRA's April 17, 2013 request for documents.

At the time Tabizon and Mansourian sent these emails from their personal accounts, the firm's Written Supervisory Procedures prohibited the use of non-firm email for business-related communications. Additionally, the fax number in Mansourian's email was a general fax number used by all of Saliba's businesses operated out of the Beverly Hills office, and NMS Securities did not keep a record of faxes that it received.

IV. Discussion

A. The Hearing Panel's Credibility Findings Are Entitled to Deference

The Hearing Panel made detailed credibility findings concerning the respondents and the other witnesses who testified at the hearing. Significantly, the Hearing Panel members "unanimously agreed that none of the [r]espondents was a credible witness." In making this determination, the Hearing Panel cited the respondents' demeanor, the inconsistencies between their OTRs and their hearing testimony, the inconsistencies between their testimony and the "objective, contemporaneous documentary evidence," and the contrary testimony of more credible witnesses.

It is well settled that the "credibility determinations of an initial fact-finder, which are based on hearing the witnesses' testimony and observing their demeanor, are entitled to considerable weight and deference, and can be overcome only where the record contains substantial evidence for doing so." *John Montelbano*, 56 S.E.C. 76, 89 (2003); *see also Eliezer Gurfel*, 54 S.E.C. 56, 62 n.11 (1999) (explaining that "[c]redibility determinations by the fact finder are entitled to substantial deference and can be overcome only where the record contains substantial evidence for doing so"), *aff'd*, 205 F.3d 400 (D.C. Cir. 2000). Accordingly, we will not disturb the Hearing Panel's credibility findings unless there is substantial evidence in the record to the contrary. *See, e.g.*, *Daniel D. Manoff*, 55 S.E.C. 1155, 1161-62 & n.6 (2002); *Dep't of Enforcement v. Elgart*, Complaint No. 2013035211801, 2017 FINRA Discip. LEXIS 9, at *24-25 (FINRA NAC Mar. 16, 2017), *aff'd*, Exchange Act Release No. 81779, 2017 SEC LEXIS 3097 (Sept. 29, 2017), *aff'd*, No. 17-15283, 2018 U.S. App. LEXIS 26627 (11th Cir. Sept. 19, 2018).

After a careful review of the record, we find no reason to disturb the Hearing Panel's credibility determinations. As the Hearing Panel found, the documentary evidence contradicts many of the respondents' self-serving claims, which have shifted over time.

B. The Hearing Panel's and NAC's Findings May Be Based on Circumstantial Evidence

One of respondents' arguments on appeal is that the Hearing Panel's findings are improperly based on circumstantial evidence. As the Commission has noted, however, it is well established that "circumstantial evidence can be more than sufficient to prove a violation of the securities laws." *Joseph Butler*, Exchange Act Release No. 77984, 2016 SEC LEXIS 1989, at *18 n.18 (June 2, 2016) (citing *Keith Springer*, Exchange Act Release No. 45439, 2002 SEC LEXIS 3417, at *18 n.15 (Feb. 13, 2002)). The Commission has found that "there is no impediment to the use of circumstantial evidence in [a FINRA] proceeding." *Dennis Todd Lloyd Gordon*, Exchange Act Release No. 57655, 2008 SEC LEXIS 819, at *68-69 (Apr. 11, 2008). Accordingly, as we evaluate the record in this matter, we will consider whether Enforcement has met its burden by a preponderance of all the evidence, whether direct or circumstantial.

C. Saliba Caused NMS Securities to Violate the Interim Restrictions by Acting as a Principal (Cause 1)

The Hearing Panel found that Saliba violated FINRA Rule 2010 by acting as a principal while the interim restrictions were in effect, thereby causing his firm to violate NASD Rule 1017(c). In his notice of appeal, Saliba argues that he did not violate the interim restrictions. In his brief, however, Saliba focuses on the argument that the imposition of the interim restrictions was arbitrary and capricious and an abuse of discretion. After a de novo review of the record, we reject both these arguments and affirm the Hearing Panel's finding of violation.

1. Saliba Has Waived the Argument that the Interim Restrictions Were an Abuse of Discretion

NASD Rule 1017(c) provides that Member Regulation "may place new interim restrictions on the member based on the standards in [NASD] Rule 1014, pending final [Member Regulation] action" on a CMA. Among the standards in NASD Rule 1014, Member Regulation must consider whether the firm and its associated persons "are capable of complying with the federal securities laws, the rules and regulations thereunder, and [FINRA] Rules, including observing high standards of commercial honor and just and equitable principles of trade." NASD Rule 1014(a)(3). Among the factors relevant to this determination are whether there exist any pending investigations by any regulator. NASD Rule 1014(a)(3)(C)

The Hearing Panel declined to consider the issue of whether the interim restrictions were justified by the Commission's investigation of NMS Asset; rather, it concluded that it was sufficient that Member Regulation was authorized by NASD Rule 1017 to impose restrictions and had a factual basis for doing so. We agree.

Moreover, on July 13, 2013, NMS Capital filed an application for NAC review of Member Regulation's denial of its CMA. Among the arguments made by NMS Securities to the NAC was that the Commission matter on which the interim restrictions were based did not rise to the level of an "investigation." The NAC considered and rejected this argument. The NAC found that NASD Rule 1017 "broadly permits Member Regulation to impose interim restrictions" and that this ability is a "powerful tool for FINRA to limit activities of a firm while an application is reviewed." The NAC found that Member Regulation "appropriately imposed the interim restrictions" based on the Commission investigation and two other reasons unrelated to the Commission investigation. Saliba chose not to appeal the NAC's decision to the Commission, but rather filed a Form BDW for NMS Securities and continued to work with another broker-dealer in which he owns an interest, NMS Advisors.

On these grounds, we agree with the Hearing Panel's decision not to revisit this issue in this case.

2. Saliba Violated the Interim Restrictions

The record supports the finding that Saliba acted as a principal when he was prohibited from doing so by the interim restrictions.

NASD Rule 1021(b) defines principals as sole proprietors, officers, directors, partners, and managers, "who are actively engaged in the management of the member's investment banking or securities business, including supervision, solicitation, conduct of business or the training of persons associated with a member for any of these functions." The Commission has held that the "decisive factor" in determining whether a person is acting as a principal is what that person does for the firm—whether he is "actively engaged in the management of the . . . securities business," rather than on his formal title. *Leslie A. Arouh*, Exchange Act Release No. 62898, 2010 SEC LEXIS 2977, at *35-36 (Sept. 13, 2010). We find that Saliba actively managed the firm, including by negotiating and executing investment banking agreements and by participating in hiring decisions.

First, JM testified that during his tenure as CEO, Saliba effectively ran the firm and made all important decisions. This is consistent with JM's limited work for the firm. JM was paid $1,500 per month for what Saliba himself testified he expected to be about 30 hours of work per month. Although, NMS Securities' office was located in Beverly Hills, JM worked from Las Vegas and occasionally visited the Beverly Hills office. Significantly, JM testified that he had no involvement in hiring and firing for NMS Securities, had no role in the strategic direction or future planning for the firm, and had no role in approving new clients or engagements. JM also testified that he did not supervise private placement activities, and as discussed more fully below, JM categorically denied drafting or signing the JM memos.

The documentary evidence corroborates JM's testimony. While JM was CEO, Saliba hired Younger, and executed at least four investment banking agreements—the August 30, 2012 EBC LLC agreement, the September 12, 2012 OI, LLC agreement, the September 21, 2012 MUI agreement, and the October 1, 2012 DC, LLC agreement.

The Hearing Panel found that JM was a credible witness who "answered all questions directly" and whose "answers appeared candid and [whose] testimony was internally consistent." Based on JM's testimony, the Hearing Panel found that Saliba was "substantially involved in the management of the [f]irm while JM was CEO," including during the period from August 15, 2012, to October 5, 2012, when the interim restrictions were in effect. We agree.

When Younger took over as CEO, and later CCO, he received no compensation for these positions, but was paid solely based on investment banking deals he brought to the firm. Younger also did not work in the Beverly Hills office, but was based in New York City. Younger's Independent Representative Agreement prohibited him from contractually binding the firm and provided that Younger reported to Saliba as the sole member of NMS Securities' Board. While Younger did sign some agreements on behalf of the firm, Saliba described the restriction in his Independent Representative Agreement as an "insurance policy" should Younger enter into a detrimental contract on behalf of the firm.

The record shows that while Younger was CEO, Saliba identified and interviewed candidates for employment, made hiring decisions, negotiated compensation, and in at least two instances, signed the Independent Representative Agreements for two newly hired registered representatives. The Commission and NAC consistently have held that such hiring activities are principal activities. *See, e.g.*, *Arouh*, 2010 SEC LEXIS 2977, at *11-12 (finding that an associated person acted as a principal where he, among other things, participated in discussions about hiring, interviewed candidates, and made recommendations about hiring and firm staff and structure); *Richard Kresge*, Exchange Act Release No. 55988, 2007 SEC LEXIS 1407, at *50 (June 29, 2007) (finding that an associated person was a principal in part because he was "actively involved in hiring" and acted as the leader of hired personnel); *Dep't of Enforcement v. Gallagher*, Complaint No. 200801170120, 2012 FINRA Discip. LEXIS 6, at *8 (FINRA NAC Dec. 12, 2012) (finding that an associated person acted as an unregistered principal where he, among other things, "recruited, hired, and fired" several employees); *Dep't of Enforcement v. Harvest Capital Inv. LLC*, Complaint No. 2005001305701, 2008 FINRA Discip. LEXIS 45, at *26-27 (FINRA NAC Oct. 6, 2008) (finding that an associated person acted as a principal where he interviewed and hired candidates for employment, among other things).

In addition to his hiring activities, Saliba acted as a principal by entering into investment banking agreements on behalf of the firm. Saliba executed at least four such agreements during JM's tenure as CEO of the firm, and at least 10 agreements while Younger was CEO. At various times, Saliba signed these agreements as Chairman, CEO, Senior Managing Director, or Managing Director. Saliba's involvement in entering these agreements is evidence of his substantial involvement in managing the firm and acting as a principal. *See, e.g.*, *Gordon*, 2008 SEC LEXIS 819, at *29 (finding associated person acted as a principal where he negotiated agreements with clearing firms); *Harvest Capital Inv. LLC*, 2008 FINRA Discip. LEXIS 45, at *27-28 (finding that an associated person acted as an unregistered principal where he negotiated agreements with clearing firms and held himself out as the firm's chairman).

Saliba argues that his participation in hiring (other than his hiring of Younger) and his signing of agreements on behalf of the firm were not principal activities, because he was supervised at all times by other designated principals of the firm—JM or Younger.[10] But the

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[10] With respect to hiring Younger, Saliba appears to concede that this constituted principal activity, but argues that his conduct was somehow excused because, on October 5, 2012, he contacted a Member Regulation staff member and disclosed that he had hired a new CEO. While the Member Regulation staff member remembered this conversation differently (she recalled Saliba telling her he had hired a CCO), the record supports that a conversation did occur. We find, however, that it is irrelevant. Saliba's principal activities—offering Younger the position as CEO and sending him the Independent Representative Agreement—occurred prior to the October 5, 2012 call. Moreover, Saliba does not claim that the Member Regulation staff member authorized his principal activities. He simply argues that she never told him he had engaged in prohibited principal activities. Under these circumstances, this conversation is irrelevant to our determination that, by hiring Younger, Saliba acted as a principal in violation of the interim restrictions.

presence of other principals does not change the fact that Saliba himself actively participated in the management of the firm. *See Gallagher*, 2012 FINRA Discip. LEXIS 6, at *10 (rejecting the argument that the presence of other principals of whom FINRA was aware meant an associated person did not act as a principal and explaining that "[t]he presence of other general securities principals at [the firm] has no bearing on [the associated person's] activities at the firm"). The relevant inquiry is whether Saliba was involved in the management of the firm. The record demonstrates that he was.

3. Saliba's Violation of the Interim Restrictions Was Done in Bad Faith

Saliba argued at the hearing that, to the extent his activities constituted acting as a principal, he did not violate FINRA Rule 2010 because the violations were the result of his misunderstanding about what constitutes principal activities and that he did not act in bad faith. We agree with the Hearing Panel that, while a showing of bad faith is not required, the record supports that Saliba acted in bad faith.

It is well settled that the violation of another FINRA rule is a violation of FINRA Rule 2010 and that there is no bad faith requirement in such a case. *See, e.g.*, *Joseph Ricupero*, Exchange Act Release No. 62891, 2010 SEC LEXIS 2988, at *4 (Sept. 10, 2010) (finding that respondent violated NASD Rules 1017 and 2010 by causing to firm to fail to file required reports), *aff'd*, 436 F. App'x 31 (2d Cir. 2011); *Dep't of Enforcement v. Josephthal & Co.*, Complaint No, CAF000015, 2002 NASD Discip. LEXIS 8, at *7-8 (NASD NAC May 6, 2002) (finding there is no requirement of showing unethical or bad faith behavior where a violation of NASD Rule 2010 was based on the violation of another NASD rule).

Saliba had passed the examination and qualified as a general securities principal in November 2011, almost a year before the Interim Restrictions were imposed. Saliba had an ethical obligation to understand the FIRNA rules, including the Interim Restrictions imposed under NASD Rule 1017, and his claimed failure to understand what a principal was is no defense. *See, e.g.*, *Dep't of Enforcement v. McCune*, Complaint No. 2011027993301, 2015 FINRA Discip. LEXIS 22, at *21-22 (FINRA NAC July 27, 2015) (finding that a claimed lack of understanding of certain disclosure rules was no defense to a violation of those rules), *aff'd*, Exchange Act Release No. 77375, 2016 SEC LEXIS 1026 (Mar. 15, 2016), *aff'd*, 672 F. App'x 865 (10th Cir. 2016). Saliba violated FINRA Rule 2010 in violating the interim restrictions imposed under NASD Rule 1017, and there is no requirement that bad faith be established.

In any event, we agree that Saliba acted in bad faith. The Hearing Panel found not credible Saliba's testimony that he thought being a principal meant supervising people. While JM and Younger were hired to be NMS Securities' CEOs, neither of them had the powers and functions one would expect of a CEO. Indeed, Younger was not even paid for his role as CEO and his agreement with the firm gave him no power to contractually bind NMS Securities. The record supports that Saliba continued to run his firm and the presence of the CEOs was an artifice to give the illusion of complying with the interim restrictions.

Based on the foregoing, we find that Saliba violated FINRA Rule 2010 when he acted as a principal in contravention of the Interim Restrictions.

D. Saliba Provided False and Incomplete Information to FINRA (Causes 2, 3, 5)

The Hearing Panel found that Saliba violated FINRA Rule 2010 by providing the JM Memos to Member Regulation and violated FINRA Rules 8210 and 2010 by providing the JM Memos and eighth Younger Memo in response to a FINRA Rule 8210 request. The Hearing Panel also found that that Saliba violated FINRA Rules 8210 and 2010 by failing to fully cooperate with the request for production of any work computer and for providing false and misleading information to FINRA concerning his work computer. We affirm these findings.

1. The JM and Younger Memos

First, we find that the record supports that the JM Memos were forged and that Saliba knew or should have known that. Moreover, we agree that Saliba knew or should have known that at least one of the Younger memos was not a genuine firm document.

JM testified that he did not prepare or sign the JM Memos. JM was unequivocal that he "certainly didn't sign these documents" and was able to point out the ways in which the signatures on the JM Memos differed from his actual signature. The Hearing Panel compared the signature on the JM Memos to documents with JM's genuine signature and found that the signatures differed in the ways JM described. JM also testified that he never authorized Saliba to sign any investment banking agreement and had no knowledge of the transactions referred to in the JM memos. The Hearing Panel credited JM's testimony and found that the signatures on the JM Memos were forged. We find no basis in the record to disturb this finding.

To the contrary, the other record evidence supports that the JM Memos were forged in an attempt to convince Member Regulation to reverse its denial of the CMA. First, Saliba testified that he found the JM Memos, but his testimony about how and where he found them shifted throughout the proceedings. During his first OTR, Saliba stated that he found them in a file, but could not remember which file. At the hearing, Saliba testified that he conducted an exhaustive search of NMS Securities' offices, even though he did not know at the time that the JM Memos existed, and that he found them in some boxes that had been shipped from another broker-dealer in which Saliba held an interest, but which had closed. Most persuasive, however, is the fact that the JM Memos Saliba claims to have found were for the three deals that Member Regulation had discovered Saliba signed during JM's tenure as CEO. No JM Memo was discovered or provided for the August 30, 2012 EBC LLC agreement, which was signed by Saliba while JM was CEO, but which FINRA had not yet discovered at the time of the denial of the CMA.

The Hearing Panel did not credit Saliba's hearing testimony. We find no basis for disturbing this credibility finding and we affirm the Hearing Panel's finding that Saliba created, or had someone create, the JM Memos, and he knowingly produced them to Member Regulation and later to Enforcement in response to its FINRA Rule 8210 request.

2. The Younger Memos

Younger emailed seven of the eight Younger Memos to Saliba in response to Saliba's request for documentation for seven deals listed in Saliba's email. Saliba omitted from his request to Younger one deal identified by Member Regulation. When Saliba sent the Younger Memos to Member Regulation (and later to Enforcement), however, he provided a memo for all eight deals identified by Member Regulation. The Hearing Panel examined the signature on the Younger Memo that was omitted from the email exchange between Saliba and Younger and found that "[i]t was readily apparent to the Hearing Panel from an examination of the Younger Memos that Younger's signature on the eighth Memo was traced or photocopied from Younger's signature on one of the other Memos, rather than being signed by Younger himself." The Hearing Panel found that even the placement of the signature on the page was identical. Moreover, the firm could produce no record of the eighth Younger Memo at all.

3. Saliba Violated FINRA Rules 8210 and 2010

FINRA Rule 8210(a) provides that FINRA staff may "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 Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008) (stating that Rule 8210 "is at the heart of the self-regulatory system for the securities industry"), *aff'd*, 347 F. App'x 692 (2d Cir. 2009); *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). A violation of FINRA Rule 8210 constitutes a violation of FINRA Rule 2010. *See Dep't of Enforcement v. Reichman*, Complaint No. 200801201960, 2011 FINRA Discip. LEXIS 18, at *29 (FINRA NAC July 21, 2011).

It is well settled that providing false or misleading information to FINRA in response to a FINRA Rule 8210 request violates both Rule 8210 and FINRA Rule 2010.[11] *See Geoffrey Ortiz*,

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[11] FINRA Rule 2010 provides that a "member, in the conduct of [its] business, shall observe high standards of commercial honor and just and equitable principles of trade." A violation of any FINRA Rule, including FINRA Rule 8210, is also a violation of FINRA Rule 2010. *See William J. Murphy*, Exchange Act Release No. 69923, 2013 SEC LEXIS 1933, at *26 n.29 (July 2, 2013), *aff'd sub nom.*, *Birkelbach v. SEC*, 751 F.3d 472 (7th Cir. 2014). FINRA Rule 2010 applies to associated persons through FINRA Rule 0140(a), which provides that the rules "shall

[Footnote continued on next page]

Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *23 (Aug. 22, 2008); *Dep't of Enforcement 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 Enforcement 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 where 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.

It is undisputed that Saliba provided the JM Memos and eighth Younger Memo to FINRA in response to a Rule 8210 request. As discussed above, we affirm the Hearing Panel's findings that the JM Memos were falsified and, given the circumstances, Saliba knew or should have known they were false. With respect to the eighth Younger Memo, there is no record that Younger sent this memo to Saliba, and the Hearing Panel found that it contained a signature that had been copied from another memo. Saliba was unable to explain how he obtained the eighth memo, and the Hearing Panel found that he knew or should have known that the eighth memo was falsified. By providing the JM Memos and eighth Younger Memo to FINRA in response to FINRA Rule 8210 requests, Saliba violated FINRA Rules 8210 and 2010. *See Department of Enforcement 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), *appeal docketed*, Admin. Proc. No. 3-18045 (June 26, 2017). Saliba also violated the ethical standards of Rule 2010 by providing the JM Memos and eighth Younger Memo to Member Regulation as part of his effort to persuade Member Regulation to reverse the denial of the CMA.

4. Saliba's Computers

The Hearing Panel found that Saliba violated FINRA Rule 8210 and 2010 when he falsely testified about his use of a single computer for work and when he failed to produce all computers he used for work in response to FINRA's Rule 8210 request. We affirm this finding.

Saliba testified in his OTR that he only used the First Computer for work, and he only produced the First Computer in response to FINRA's request for all work computers and devices. The record, however, supports by a preponderance of the evidence that Saliba used at least one other computer or device for NMS Securities' work. First, Enforcement's expert testified that Saliba's use of the First Computer dropped dramatically after the purchase of the Second Computer, and the First Computer was completely turned off for a period of seven weeks

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apply to all members and persons associated with a member" and that "[p]ersons associated with a member shall have the same duties and obligations as a member under the Rules."

in 2013. While Saliba testified that he was on vacation and "busy" during this period, the record contains ample evidence that Saliba was working on documents and sending emails while the First Computer was turned off. Significantly, the First Computer was turned off during the period that Saliba sent his email to Younger seeking documents reflecting approval of the investment banking deals and Younger sent his response attaching the seven Younger Memos. This was also the same period when Saliba purportedly found the JM Memos.

The record also contains a number of emails between Saliba and his computer support contractor about setting up and backing up his "new workstation." These communications were inconsistent with Saliba's claim that the Second Computer belonged to his wife.

Providing false testimony to FINRA in a Rule 8210 on-the-record interview is a violation of FINRA Rule 8210 and 2010. *See Montelbano*, 56 S.E.C. 76 (finding that respondents violated Rule 8210 by giving false testimony during an OTR); *Dep't of Enforcement v. Hedge Fund Capital Partners, LLC*, No. 2006004122402, 2012 FINRA Discip. LEXIS 42, at *64-68 (FINRA NAC May 1, 2012) (finding that respondents violated NASD Rules 8210 and 2110 by providing false and misleading information and testimony to FINRA). Failure to fully cooperate with a FINRA Rule 8210 request is also a violation. By providing false testimony concerning his use of the Second Computer, and not producing that computer or any other device with which he performed work for NMS Securities, Saliba violated FINRA Rules 8210 and 2010.

E. Younger Gave False Testimony (Cause 4)

Younger's testimony concerning his creation of the Younger Memos shifted throughout the proceedings and was inconsistent with other evidence. At his OTR, Younger stated that he created a memo for every investment banking deal on his computer. He explained that he would print each memo, sign it, scan it, and then email it to NMS Securities' Beverly Hills office. At the hearing, Younger changed his testimony to state that, while it was "highly probable" that he sent the memos for investment banking deals to the Beverly Hills office by email, he could have used another method to send the memos.

In response to a FINRA Rule 8210 request, Younger stated that there were no records of the Younger Memos on his computer and, at the hearing, he could provide no explanation for this response. Nor was the firm able to produce any record of Younger contemporaneously transmitting any such memo to the firm (other than the email responding to Saliba's request concerning the seven transactions). The Hearing Panel did not credit Younger's testimony concerning his creation of the Younger Memos.

Moreover, as with the JM Memos, respondents never produced any Younger Memos for the additional investment banking transactions identified by Enforcement. After Saliba provided the Younger Memos, Enforcement identified four additional agreements Saliba signed while Younger was CEO. Assuming Younger's testimony was truthful, Younger Memos would exist for these transactions and would corroborate Younger testimony. None was ever produced.

Based on this evidence, the Hearing Panel found that the Younger Memos were not genuine firm records reflecting Younger's contemporaneous approvals. The record evidence

supports this finding. Accordingly, Younger's testimony that the Younger Memos were documents that he created and signed contemporaneously with the associated investment banking transactions was false and violated FINRA Rules 8210 and 2010.

F. Younger Failed to Supervise Saliba (Cause 8)

NASD Rule 3010(a) provides that members "shall establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations." NASD Rule 3010(b) provides that members "shall establish, maintain, and enforce written procedures . . . to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations." A member must implement and enforce its supervisory system and written procedures reasonably in light of the circumstances presented. *See Ronald Pellegrino*, Exchange Act Release No. 59125, 2008 SEC LEXIS 2843, at *33 (Dec. 19, 2008). The supervisory duties imposed under NASD Rule 3010 include a responsibility to investigate and act upon "red flags" that reveal potential misconduct. *Id.*

Younger testified that he was Saliba's supervisor during the time Younger served as NMS Securities' CEO and that he was aware of the interim restrictions. Younger also testified that it was his responsibility to maintain the firm's written supervisory procedures. Younger, however, admittedly did not establish any new policies or procedures to ensure compliance with the interim restrictions. Younger testified that he supervised Saliba by reviewing his email and having regular discussions with Saliba, but he could not explain how this allowed him to ensure that Saliba was not acting as a principal. Like Saliba, Younger claimed that he understood acting as a principal to require supervising others.

Younger knew Saliba was participating in hiring and negotiating and signing engagements on behalf of the firm, but he took no steps to prevent this violative conduct. Accordingly, Younger failed to supervise Saliba, in violation of NASD Rule 3010 and FINRA Rule 2010.

G. Saliba and Mansourian Falsified Compliance Records and Provided Them to FINRA (Cause 6)

It is undisputed that Mansourian used a private email address to send an email to the private email addresses of a number of NMS Securities' registered representatives to solicit backdated compliance forms. Nor is it disputed that these backdated forms were subsequently supplied to FINRA examiners in response to their request for documents.

While Saliba testified that he recalled a conversation where Tabizon told him that he would be "replacing or recreating" missing compliance documents, Saliba denied that he directed Tabizon or Mansourian to obtain backdated forms.

Mansourian, however, repeatedly stated in his June 18, 2014 OTR that Saliba directed him to obtain the documents and to use personal email in doing so. Mansourian also offered an

unsolicited statement at the end of his OTR, stating that he "did the personal emails . . . at the direction of Trevor Saliba and did so without asking detailed questions in the fear of losing my job." Mansourian offered this statement after taking a break and consulting with his attorney.

On August 28, 2014, Mansourian reviewed the transcript of his OTR at FINRA's offices, and on September 8, 2014, Mansourian's attorney sent a letter amending Mansourian's OTR testimony. In his letter, Mansourian stated that he suffered a medical condition that prevented him from thinking clearly under pressure and that he had subsequently recalled that, while Saliba was present during the discussion of recreating the compliance forms, it was Tabizon that had directed him to send the email asking for the backdated compliance forms.

At the hearing, Mansourian's testimony about the events suddenly was quite detailed and completely contradicted his OTR testimony. Mansourian testified that Tabizon directed him to send the email, told him to use personal email addresses, and dictated the content of the email to him word for word. Tabizon's testimony differed. Tabizon testified that he could not find the OBA and PST forms and that he asked Mansourian to help him obtain the backdated forms, but denied dictating the content of the email or telling Mansourian to use private email addresses.[12]

The Hearing Panel found, and we agree, that it is unnecessary to resolve the disputes between Saliba, Mansourian, and Tabizon's testimony. Whether or not Tabizon dictated the email, there is no question that Mansourian sent an email from his private email account to private email accounts requesting backdated OBA and PST forms and asked the recipients to return the forms by private email account or fax. And all agree, including Saliba, that Saliba was aware Tabizon and Mansourian were "recreating" compliance documents. Indeed, Saliba himself provided backdated OBA and PST forms to Mansourian and Tabizon that were provided to FINRA.[13]

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[12] Tabizon testified that the FINRA examiner on site for the NMS Securities examination agreed that the firm could submit backdated, "recreated" forms. The Hearing Panel rejected this testimony, as do we. Tabizon could provide no documentation of this alleged conversation and did not mention it in the email he wrote producing the OBA and PST forms to FINRA. While the examiner who allegedly had this conversation with Tabizon was no longer employed by FINRA, her supervisor testified that in 17 years as an examiner, he had never known any FINRA examiner to accept backdated forms. Tabizon's testimony is also inconsistent with the efforts by Mansourian to obtain the backdated forms through fax and private email, rather than firm email, which would have been unnecessary if FINRA had consented to the backdating.

[13] Saliba claimed that he signed his OBA and PST forms on February 1, 2013, the date on the forms. However, the forms Saliba signed were not adopted by the firm until March 2013 and were not in use in February 2013. Saliba's only explanation for this, which the Hearing Panel rejected, was that he might have signed a draft of the new forms. We affirm the finding that Saliba backdated his own OBA and PST forms.

Providing backdated documents to FINRA is unethical conduct that violates FINRA Rule 2010. *See, e.g.*, *Mitchell H. Fillet*, Exchange Act Release No. 75054, 2015 SEC LEXIS 2142, at *50 (May 27, 2015) (finding respondent violated predecessor to Rule 2010 in providing backdated records to FINRA during an examination); *Ortiz*, 2008 SEC LEXIS 2401, at *22 (finding that forgery of documents violated the predecessor to FINRA Rule 2010). Saliba and Mansourian violated FINRA Rule 2010 by participating in obtaining backdated compliance forms and providing them to FINRA.

H. Mansourian Caused NMS Securities to Maintain Inaccurate Books and Records (Cause 7)

Mansourian's participation in obtaining backdated OBA and PST forms also caused NMS to maintain inaccurate books and records, in violation of FINRA Rules 4511 and 2010.[14]

FINRA Rule 4511 provides that members "shall make and preserve books and records as required under the FINRA rules, the [Securities Exchange Act of 1934 (the "Exchange Act")] and the applicable Exchange Act rules" and to preserve those records for certain specified periods. A violation of FINRA Rule 4511 is also a violation of FINRA Rule 2010. *See Dep't Enforcement v. Escarcega*, Complaint No. 2012034936005, 2017 FINRA Discip. LEXIS 32, at *64 (FINRA NAC July 20, 2017). Exchange Act Rule 17a-4(b)(4) requires members to preserve originals of all business-related communications they receive, and copies of all communications they send. FINRA Rule 4511 requires members to preserve their correspondence in accord with SEC Rule 17a-4.

Mansourian's request for backdated OBA and PST forms, and the responses to his request, were business-related communications. By using his personal email address to solicit backdated compliance forms and sending his request to the personal email addresses of the recipients, Mansourian evaded the firm's email archive system and thereby caused NMS Securities to maintain inaccurate and incomplete books and records, in violation of FINRA Rules 4511 and 2010.

V. Sanctions

For their violations, the Hearing Panel barred Saliba, Mansourian, and Younger in all capacities. The Hearing Panel explained that the imposition of a unitary sanction on each respondent was appropriate "because of the interrelated nature of the underlying misconduct." We disagree with this conclusion with respect to Saliba and Younger and consider their violations separately.

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[14] The Hearing Panel dismissed cause 7 as alleged against Saliba. The allegations against Saliba were that he caused the firm to maintain inaccurate books and records consisting of the JM Memos and Younger Memos. The Hearing Panel found that Enforcement failed to prove that Saliba caused the firm to maintain these documents as records.

In assessing the sanctions for respondents' violations, we have considered FINRA's Sanction Guidelines ("Guidelines"), including the Principal Considerations in Determining Sanctions.[15]

A. Saliba's Violations of the Interim Restrictions (Cause 1)

While there are no specific Guidelines for the violation of interim restrictions imposed by Member Regulation during the CMA process, we agree with the Hearing Panel that the Guidelines for membership agreement violations is analogous. The Guidelines recommend a suspension in any or all capacities of up to two years and, in egregious cases, direct us to consider a bar.[16] The principal considerations for member agreement violations include whether the respondent breached a material provision and whether the restriction breached was particular to the firm.[17] Both factors are aggravating here. The prohibition against acting as a principal was a key part of the interim restrictions and it applied specifically to Saliba.

A number of other aggravating factors apply to Saliba's misconduct. Saliba's activities as a principal were intentional and involved numerous acts over a period of approximately 10 months.[18] Moreover, Saliba attempted to conceal his violation of the interim restrictions by providing the false JM Memos and the eighth Younger Memo.[19] Saliba also attempted to conceal his violations from FINRA during its investigation by providing misleading and false testimony at his OTR and by failing to produce all his work computers.[20] Finally, Saliba has failed to take responsibility for his misconduct, instead offering shifting, inconsistent, and incredible explanations and excuses.[21]

Based on the foregoing, we find that Saliba's violations of the interim restrictions were egregious. We have no confidence in Saliba's ability to comply with the rules and regulations applicable to securities industry professionals and find that a bar in all capacities is appropriate.

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15 *See FINRA Sanction Guidelines* (2017), http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf [hereinafter *Guidelines*].

16 *Id.* at 44.

17 *Id.*

18 *Id.* at 7-8 (Principal Considerations in Determining Sanctions, Nos. 8, 9, 13).

19 *Id.* (Principal Considerations in Determining Sanctions, No. 10).

20 *Id.* at 8 (Principal Considerations in Determining Sanctions, No. 12).

21 *Id.* at 7 (Principal Considerations in Determining Sanctions, No. 2).

B. Saliba's False and Misleading Information (Causes 2, 3, 5)

Saliba gave false testimony concerning his use of computers for NMS Securities' business, failed to produce all the computers he used for firm business, and provided false supervisory memos to FINRA. The Guidelines recommend a bar in the case of a partial, but incomplete response to a request.[22] The relevant principal considerations include the importance of the information not provided to FINRA.

The information FINRA was seeking—documentary evidence to support Saliba's claims that his principal activities were approved by the CEOs—was relevant to its investigation of Saliba's violations of the interim restrictions. FINRA's request for Saliba's work computer was relevant to FINRA's investigation concerning whether the JM Memos and Younger Memos were genuine and Saliba's possible attempt to conceal the origin of the memos. Saliba's misconduct consisted of several intentional acts.[23] Again, Saliba has failed to take responsibility for his misconduct.[24]

Providing false information to FINRA is a serious violation for which a bar in all capacities is routinely imposed. *See, e.g.*, *Ortiz*, 2008 SEC LEXIS 2401, at *22 (affirming a bar for providing false information to FINRA); *Dep't of Enforcement v. Harari*, Complaint No, 2011025899601, 2015 FINRA Discip. LEXIS 2, at *34 (FINRA NAC Mar. 9, 2015) (imposing bars in all capacities for providing false documents and information to FINRA). We find that a separate bar in all capacities is appropriate for Saliba's violations.

C. Saliba's Participation in Providing Backdated Compliance Forms (Cause 6)

As discussed above, providing falsified documents to FINRA, including backdated documents, is serious misconduct that warrants a bar. Saliba was aware that Tabizon and Mansourian were obtaining backdated compliance forms and he himself signed backdated compliance forms that were provided to FINRA. The fact that compliance documents sent to FINRA should not be backdated is basic knowledge that every securities industry professional should know. We are troubled by Saliba's willingness to participate in this misconduct and we impose a separate bar in all capacities for this violation.

D. Younger's False OTR Testimony (Cause 4)

A bar is all capacities is likewise appropriate for Younger's violations of FINRA Rules 8210 and 2010. Younger's testimony about his creation and contemporaneous dating of the Younger Memos was false. The Younger Memos were created to conceal Saliba's violations of

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22 *Id.* at 33.

23 *Id.* at 7-8 (Principal Considerations in Determining Sanctions, Nos. 8, 13).

24 *Id.* at 7 (Principal Considerations in Determining Sanctions, No. 2).

the interim restrictions, and Younger's false testimony impeded Enforcement's investigation. The obligation to provide truthful information to FINRA is fundamental to participation in the securities industry, and the appropriate sanction for a failure to provide truthful information is a bar. Younger's conduct here demonstrates that he is incapable of complying with the standards applicable to securities professionals, and we conclude that a bar in all capacities is appropriate for his violations.

E. Younger's Failure to Supervise (Cause 8)

The Guidelines for a failure to supervise recommend suspending a responsible individual in any or all capacities for up two years or barring the responsible individual.[25] The principal considerations specific to a failure to supervise include whether the responsible individual ignored red flags, the nature and extent of the underlying misconduct, and the quality and degree of the supervisor's implementation of procedures and controls.[26] All of these factors are aggravating here and support the imposition of a bar.

Younger knew that Saliba was participating in hiring and signing investment banking deals, yet did nothing to prevent Saliba's principal activities. Younger also knew that Saliba's involvement in the management of the firm was extensive and that his violative activities were numerous and regular. Younger failed to adopt any policies or procedures to ensure that the interim restrictions were followed. To the contrary, by providing the false Younger Memos, Younger helped Saliba conceal his violations. Younger's supervisory violations were egregious and warrant a bar in all capacities.

F. Mansourian's Violations (Causes 6, 7)

We agree that a unitary sanction is appropriate for Mansourian because his violations arise out of the same misconduct—his participation in obtaining backdated compliance documents through the use of his personal email.

For recordkeeping violations, the Guidelines recommend a suspension of up two years or, where aggravating factors predominate, a bar.[27] The principal considerations specifically applicable to recordkeeping violations include the nature and materiality of the missing information, whether the missing information was omitted intentionally, and whether the violations allowed other misconduct to escape detection.[28] All of these factors are aggravating here. The information missing from NMS Securities' books and records because of

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25 *Guidelines*, at 104.

26 *Id.*

27 *Id.* at 29.

28 *Id.*

Mansourian's violation—that the firm was obtaining backdated compliance forms—was important. Mansourian's conduct was intentional and his use of a personal email to obtain the documents was intended to conceal that these compliance documents, which were to be provided to FINRA, had been backdated.

As discussed above, providing falsified documents to FINRA, including backdating documents is serious misconduct that warrants a bar. *See, e.g.*, *Dep't of Enforcement v. Taboada*, Complaint No. 2012034719701, 2017 FINRA Discip. LEXIS 29, at *51-52 (FINRA NAC July 24, 2017) (imposing a bar for backdating an invoice provided to FINRA and then falsely testifying that it was created on the earlier date); *Dep't of Enforcement v. Fretz*, Complaint No. 2010024889501, 2015 FINRA Discip. LEXIS 54, at *82 (FINRA NAC Dec. 17, 2015) (imposing bars on associated persons and expelling a firm for making misleading statements and providing backdated documents to FINRA); *Harari*, 2015 FINRA Discip. LEXIS 2, at *34 (imposing bars on a registered representative and associated person for falsely testifying that a loan from a customer had been repaid and obtaining a false backdated statement from the customer to support this claim).

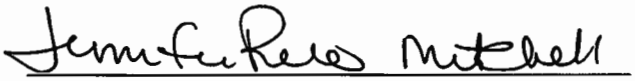
Mansourian participated in obtaining backdated OBA and PST forms knowing FINRA had requested them and that they would be provided to FINRA. Moreover, he obtained the documents in a manner that was designed to minimize the likelihood of detection. His misconduct was intentional and his participation was an integral part of obtaining the backdated documents that were provided to FINRA. Mansourian's assertion that he was following his superiors' instructions does not excuse his conduct and moreover, calls into question his judgement and ability to conduct himself ethically in the securities industry. Accordingly, for his violations, we affirm the bar in all capacities imposed by the Hearing Panel.

VI. Conclusion

Saliba violated FINRA Rule 2010 by acting as a principal in violation of the interim restrictions imposed by Member Regulation (Cause 1). For this violation, Saliba is barred in all capacities. Saliba also violated FINRA Rules 8210 and 2010 by failing to cooperate with FINRA and providing false and misleading documents and information to FINRA (Causes 2, 3, 5). For these violations, Saliba is separately barred in all capacities. Saliba also violated FINRA Rule 2010 by participating in the falsification of compliance forms (Cause 6). For this violation, Saliba also is barred in all capacities. Younger provided false information to FINRA, in violation of FINRA Rules 8210 and 2010. For this violation, Younger is barred in all capacities. Younger also violated NASD Rule 3010 and FINRA Rule 2010 by failing to supervise Saliba. For this violation, Younger is separately barred in all capacities. Mansourian violated FINRA Rule 2010 by participating in obtaining backdated compliance forms that were to be provided to FINRA and caused the firm to maintain inaccurate books and record in violation of FINRA Rules 4511 and 2010 by using his personal email to obtain the backdated forms.

For these violations, Mansourian is barred in all capacities.[29] We affirm the Hearing Panel's order that respondents pay, jointly and severally, $12,184.82 in hearing costs, and we order that respondents Saliba, Younger, and Mansourian pay, jointly and severally, appeal costs in the amount of $1,733.28.

On Behalf of the National Adjudicatory Council,



Jennifer Piorko Mitchell,
Vice President and Deputy Corporate Secretary

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29 The bars are effectively immediately upon the service of this decision.