

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 105568 / May 28, 2026

Admin. Proc. File No. 3-21402

In the Matter of the Application of

JASON LYNN DIPAOLA

For Review of Disciplinary Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION – REVIEW OF DISCIPLINARY
PROCEEDING

Formerly associated person appeals from FINRA disciplinary action finding that he failed to disclose an outside account in which he exercised discretion, submitted false or misleading compliance questionnaires to his employer, and failed to provide on-the-record testimony. FINRA imposed two two-year suspensions, to run consecutively, and \$40,000 in fines. *Held*, FINRA’s findings of violations are *sustained*; and the sanctions imposed are *sustained in part* and *set aside in part*.

APPEARANCES:

Jason Lynn DiPaola, pro se.

Elizabeth Sisul for FINRA.

Appeal filed: May 1, 2023
Last brief received: November 15, 2023

Jason Lynn DiPaola—formerly associated with FINRA member firm Chardan Capital Markets LLC—seeks review of FINRA disciplinary action.¹ FINRA found that DiPaola violated NASD Rule 3050(c) and FINRA Rule 2010 by failing to disclose an outside account in which he exercised discretionary trading authority and violated FINRA Rule 2010 by submitting compliance forms to Chardan that did not disclose the account. FINRA additionally found that DiPaola violated FINRA Rules 8210 and 2010 by failing to provide on-the-record testimony.

For the violations related to his failure to disclose the outside account, FINRA suspended DiPaola for two years and imposed a \$25,000 fine. For his failure to provide on-the-record testimony, FINRA suspended DiPaola for an additional two years (to run consecutively with the former suspension) and imposed a \$15,000 fine. We sustain FINRA’s findings of violations and sustain in part and set aside in part its imposition of sanctions.

I. Background

DiPaola entered the securities industry in 1995. From May 2013 to May 2019, he was registered as a general securities representative with Chardan. DiPaola held the title of Senior Vice President – Institutional Sales and Trading, and he was responsible for meeting with executives of publicly traded companies to determine whether those companies would be suitable investments for Chardan’s institutional customers.

A. DiPaola traded in his mother’s online brokerage account.

In 2013, DiPaola’s mother inherited a brokerage account at a full-service brokerage. After she became disappointed with the returns and fees in the account, she asked for her son’s advice. He recommended she switch to an E*Trade account and, at her request, helped her open such an account. DiPaola’s mother was an inexperienced investor, who testified that she traded about four times per year in blue chip stocks before opening her E*Trade account and that she had “no idea” about any order types. DiPaola’s mother therefore asked DiPaola for his help in managing the account, and DiPaola thereafter used his mother’s username and password to access the account on her behalf from his own computer.

Both DiPaola and his mother testified that they spoke frequently about which stocks to trade in her account and that she approved trades before they were made. They described, for example, that when DiPaola and his mother discussed buying stock in her account, they generally discussed how much money she wanted to spend or the “value” of her position in a particular stock. But they testified that they did not discuss the number of shares or the price per share. Instead, DiPaola’s mother testified how she trusted her son, that “he would have discretion” to make trades for her when necessary, and that she left it to DiPaola to do “whatever he thought was best for me.” Indeed, DiPaola’s mother testified that she wanted DiPaola to trade in her account as he would trade in his own account.

DiPaola acknowledged that he would sometimes buy shares of stock for his mother’s account over multiple days without discussing the purchases with her on each day or every time

¹ *Dep’t of Enf’t v. DiPaola*, Complaint No. 2018057274302, 2023 WL 2683685 (NAC Mar. 23, 2023).

he changed the price of a limit order. DiPaola admitted similarly that, when buying and selling the same stock in his mother's account on the same day, he would not speak with her before putting in the sell order. DiPaola and his mother also both testified that, when she needed cash from the account, she would sometimes rely on DiPaola to determine which stocks to sell.

Although the trading in DiPaola's own account and his mother's was often similar, there were instances in which DiPaola placed a buy order for a security in his own account at or about the same time that he placed a sell order for the same security in his mother's account. There were also instances in which he placed orders in his mother's account for stocks that were on Chardan's restricted list but did not place corresponding orders in his own account.

For example, one of the stocks DiPaola traded most frequently in both his and his mother's E*Trade accounts was the common stock of Advanced Medical Isotope Corporation ("AMIC"), a medical development company. After personally trading AMIC stock for several years, DiPaola, who had a relationship with the company and corresponded with its CEO, introduced AMIC to Chardan. In October 2016, Chardan and AMIC entered into an agreement for Chardan to provide investor relations support to AMIC. Around the time of the engagement, AMIC went onto Chardan's restricted list, which limited Chardan employees' ability to trade the stock. Although DiPaola ceased trading AMIC in his own account during the time it was on the restricted list, he continued to trade the stock in his mother's account.

B. DiPaola did not disclose the trading in his mother's account.

Chardan required its registered representatives to disclose any accounts held outside the firm, including "any securities account in which [they] ha[d] a direct or indirect interest including a financial or fiduciary interest, or which [they] control[led]." But DiPaola did not list his mother's E*Trade account in either 2015 or 2016—the two years described above in which he was trading in his mother's account.

In August 2017, E*Trade notified DiPaola's mother that it appeared that someone else was logging into her account. When she explained that it was her son, E*Trade advised her that DiPaola's access would be terminated unless he was added as a co-owner of the account. DiPaola was added to the account, and for the first time he notified Chardan of the account's existence and E*Trade of his status as an associated person at Chardan. But he did not mention to Chardan that he had been trading in the account for over two years, and he told his employer that his mother added him to her account for estate planning purposes.

In on-the-record testimony before FINRA, DiPaola initially denied trading in his mother's account during the relevant period. But he later acknowledged during that testimony that he "might" have done so, suggested it was just "an order or two," and eventually said that he probably made "at least half" of the trades in her account. Then, at the disciplinary hearing, after he knew that FINRA had evidence of the IP addresses of the computers from which the trades were initiated, DiPaola testified that he personally entered approximately 95% of the trades in his

mother's account. Ultimately, evidence showed that DiPaola's trading consisted of him placing or cancelling over 4,400 orders in his mother's account between March 2015 and March 2017.²

C. FINRA investigated DiPaola's conduct, during which he failed to participate in scheduled on-the-record testimony.

In the summer of 2017, FINRA conducted a cycle examination of Chardan. That examination focused, in part, on Chardan's supervisory procedures and controls over its brokers' personal outside trading accounts. During that process, examiners flagged DiPaola's and his mother's E*Trade accounts, and the matter was referred to FINRA's Department of Enforcement for investigation.

The Department of Enforcement took on-the-record testimony from DiPaola pursuant to FINRA Rule 8210 on three separate occasions, once in April 2019 and twice in July 2019. The April 2019 on-the-record testimony ended early after an attorney advised that, based on DiPaola's testimony, there was a potential conflict of interest in the lawyer's representation of both DiPaola and the firm. Chardan subsequently filed a Form U5 in which the firm stated that DiPaola had been permitted to resign, and FINRA staff questioned DiPaola again over a two-day period in July 2019 after DiPaola obtained new counsel.

FINRA staff testified at DiPaola's disciplinary hearing that, based on DiPaola's testimony, they performed additional targeted searches of the more than one million electronic communications that Chardan provided. During this review, staff uncovered communications that raised additional concerns about DiPaola's trading activity. Staff also further analyzed DiPaola's trading activity in response to DiPaola's claims during his earlier on-the-record testimony that, without further information, he could not answer certain questions about why he made certain trading decisions. The staff conducted this analysis so that they could provide DiPaola additional context when questioning him about his trading.

FINRA subsequently requested that DiPaola appear to provide testimony under FINRA Rule 8210 on March 26, 2021. In response, DiPaola's counsel expressed concerns that additional testimony would be a "rehash" of DiPaola's former testimony, advised that DiPaola was not available on the requested date, and stated that the attorney would provide alternative dates.

On March 26, 2021, FINRA staff sent DiPaola's counsel a second letter requesting that DiPaola provide testimony on April 5, 2021. On the same day they sent the Rule 8210 request, FINRA staff also sent DiPaola's counsel a Wells Notice notifying DiPaola that he was the subject of an investigation and that FINRA's Department of Enforcement had made a preliminary determination to recommend disciplinary action.

A few days later, FINRA emailed DiPaola's counsel, asking him to confirm that DiPaola would appear on April 5, 2021. DiPaola's counsel replied: "Are you serious? You served a Wells Notice, you cannot take another OTR after serving a Wells Notice." DiPaola's counsel

² DiPaola maintains that this number from E*Trade's trading records is misleading because it counts changing the price on a limit order as both a cancellation and a new order.

thereafter sent an email seeking confirmation that FINRA did not intend to withdraw the Wells Notice pending DiPaola's on-the-record testimony, which FINRA confirmed. DiPaola did not appear for the on-the-record testimony on April 5, 2021. FINRA staff then sent a letter to DiPaola's counsel, requesting that DiPaola appear and provide testimony on April 15, 2021. DiPaola did not appear for the April 15, 2021 on-the-record testimony either.

II. Procedural History

On May 3, 2021, FINRA's Department of Enforcement filed a three-count complaint against DiPaola alleging that (1) from March 2015 through March 2017, DiPaola exercised discretionary authority in his mother's E*Trade account without disclosing the account's existence to Chardan or disclosing his status as an associated person of Chardan to E*Trade, in violation of NASD Rule 3050(c) and FINRA Rule 2010; (2) in 2015 and 2016, DiPaola failed to disclose his mother's E*Trade account in Chardan compliance questionnaires and certification forms, in violation of FINRA Rule 2010; and (3) in April 2021, DiPaola failed to appear and provide on-the-record testimony, in violation of FINRA Rules 8210 and 2010.

In March 2022, after a two-day hearing, a Hearing Panel found DiPaola liable on each count of FINRA's complaint. For DiPaola's violations related to his failure to disclose his mother's account, the Hearing Panel imposed a fine of \$5,000. For DiPaola's failure to provide on-the-record testimony, the Hearing Panel suspended him in all capacities for 30 business days.

The Department of Enforcement appealed the Hearing Panel's decision to FINRA's National Adjudicatory Council ("NAC"), and DiPaola cross-appealed. The NAC affirmed the Hearing Panel's liability findings but modified its sanctions to impose (1) a two-year suspension and \$25,000 fine for DiPaola's violations related to the failure to disclose his mother's account; and (2) a consecutive two-year suspension and \$15,000 fine for DiPaola's failure to provide on-the-record testimony. This appeal followed.

III. Analysis

We review FINRA disciplinary action to determine (1) whether an applicant engaged in the conduct FINRA found; (2) whether that conduct violated the provisions specified in FINRA's determination; and (3) whether those provisions are, and were applied in a manner, consistent with the purposes of the Securities Exchange Act of 1934.³ Our review is *de novo* and we apply a preponderance of the evidence standard.⁴ For the reasons that follow, we sustain FINRA's findings of violations.

³ 15 U.S.C. § 78s(e)(1).

⁴ *Richard G. Cody*, Exchange Act Release No. 64565, 2011 WL 2098202, at *1, 9 (May 27, 2011), *aff'd*, 693 F.3d 251 (1st Cir. 2012).

A. DiPaola violated NASD Rule 3050(c) and FINRA Rule 2010 by failing to disclose his mother's account to Chardan and his associated person status to E*Trade.

NASD Rule 3050(c) prohibits associated persons of member firms from opening a securities account with another member without first notifying, in writing, both the employer member and the executing member of his or her association with the other member (here, Chardan and E*Trade, respectively). This rule applies to any account “in which an associated person has a financial interest or with respect to which such person has discretionary authority.”⁵ The Commission has held that one exercises such discretion for purposes of Rule 3050 when the person makes trades in someone else's account without first receiving approval for the trades.⁶ The Commission has also held in other contexts that, even when the representative has communicated with a customer and discussed a general trading strategy, the representative exercises discretion if the representative and customer did not discuss the individual trades.⁷ That was the case here.

Although DiPaola and his mother testified that they frequently communicated with each other about trades and that she gave her approval before trades were made, both also testified that she did not approve every trade. Rather, DiPaola's mother testified that she was an inexperienced investor, who instructed DiPaola to trade in her account as he would his own. She even testified that DiPaola had “discretion” to trade in response to market events during the day, because she did not want to “lose her shirt just because he couldn't make a phone call.” DiPaola himself also admitted that, when he was both buying and selling the same stock in his mother's account, he would not speak with his mother before placing the sell order. And when his mother would ask for cash from the account, DiPaola would also sometimes decide which stocks to sell.⁸

⁵ NASD Rule 3050(e).

⁶ See *Guang Lu*, Exchange Act Release No. 51047, 2005 WL 106888, at *4–5 (Jan. 14, 2005) (finding respondent exercised discretionary trading authority when he made all decisions about which options to buy and sell and changed the passwords on the customer's account); cf. *William J. Murphy*, Exchange Act Release No. 69923, 2013 WL 3327752, at *8 (July 2, 2013) (representative exercised discretionary authority by executing trades for which the customer had not given prior approval), *aff'd sub nom.*, *Birkelbach v. SEC*, 751 F.3d 472 (7th Cir. 2014).

⁷ See, e.g., *Raghavan Sathianathan*, Exchange Act Release No. 54722, 2006 WL 3228694, at *12 (Nov. 8, 2006) (finding that respondent improperly exercised discretion without prior authorization where he and the customer had discussed the “general strategy” of selling a particular stock when the price was high and buying it back when the price was lower but did not discuss specific trades executed in furtherance of the strategy), *aff'd*, 304 F. App'x 883 (D.C. Cir. 2008).

⁸ Cf. *Michael Pino*, Exchange Act Release No. 74903, 2015 WL 2125692, at *7–8 (May 7, 2015) (noting that determining the price at which a trade occurs is an exercise of discretion subject to only a limited exception to discretionary trading requirements under FINRA rules).

DiPaola challenges FINRA’s liability findings by arguing that he was “simply helping his senior citizen mother who did not have access to a computer,” that he had no financial interest in the account, and that his mother did not complain about the trading in her account. We, like FINRA, do not dispute these claims. But none of these factors change that DiPaola was exercising sufficient discretionary authority in his mother’s account that he was required under Rule 3050(c) to disclose the account to Chardan and E*Trade.

DiPaola also contends that he should not be found liable for violating Rule 3050(c) because, he claims, he “traded the same securities in his *disclosed* accounts” as were traded in his mother’s account. But his trading in the two accounts differed. As he testified, DiPaola sometimes placed a buy order in his own account around the same time that he placed a sell order for the same security in his mother’s account, and DiPaola continued to trade AMIC stock in his mother’s account after he stopped doing so in his own accounts when Chardan placed it on a restricted list. But even if his trades had been the same, that would not change for all the reasons above that he was still exercising discretion in his mother’s account. And Chardan’s ability to monitor DiPaola’s trading activity—such as determining whether his trades were similar across various accounts—was greatly reduced by his failure to disclose all the accounts in which he had discretionary trading authority.⁹

By not disclosing his mother’s account, DiPaola thus violated NASD Rule 3050(c). Because DiPaola violated NASD Rule 3050(c), he also violated FINRA Rule 2010,¹⁰ which requires members and associated persons, in the conduct of their business, to “observe high standards of commercial honor and just and equitable principles of trade.”¹¹

These rules also are, and were applied in a manner, consistent with the Exchange Act’s purposes. NASD Rule 3050(c) is intended to prevent associated persons from engaging in improper trading by facilitating “more direct and early detection of the existence of potential rule violations.”¹² The Rule accomplishes this “by providing the employer member with more complete knowledge of its associated persons’ trading activities,” including trading involving potential conflicts of interest.¹³ Rule 3050(c) is thus consistent with the Exchange Act’s purpose of “promot[ing] just and equitable principles of trade” and “protect[ing] investors and the public

⁹ *Braff*, Exchange Act Release No. 66467, 2012 WL 601003, at *6 (Feb. 24, 2012) (explaining that firms rely heavily on the “accurate and comprehensive information about an associated person’s brokerage accounts” provided by Rule 30350(c) in order to effectively monitor and address potentially violative trading activity).

¹⁰ *See Newport Coast Secs., Inc.*, Exchange Act Release No. 88548, 2020 WL 1659292, at *3 n.8 (Apr. 3, 2020) (“A violation of another NASD or FINRA rule constitutes a violation of Rule 2110 and Rule 2010.”).

¹¹ FINRA Rule 2010; *see also* FINRA Rule 0140(a) (providing that FINRA’s rules “shall 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”).

¹² *Braff*, 2012 WL 601003, at *6.

¹³ *Id.* (quoting NASD Notice to Members 91-27).

interest.”¹⁴ And by finding DiPaola liable for failing to disclose an outside account over which he exercised discretionary control, FINRA applied these rules consistently with the Exchange Act’s purposes.

B. DiPaola violated FINRA Rule 2010 by not disclosing his mother’s account on two Chardan annual compliance questionnaires.

We agree with FINRA that DiPaola additionally violated FINRA Rule 2010 by not disclosing his mother’s account on two of Chardan’s annual compliance questionnaires. The Commission has held that not disclosing outside accounts when required to do so on a firm’s disclosure documents undermines a firm’s ability to monitor its registered persons and is thus inconsistent with just and equitable principles of trade.¹⁵ We agree that was the case here.

Chardan’s annual compliance questionnaires required DiPaola to disclose “any securities account in which [he] ha[d] a direct or indirect interest including a financial or fiduciary interest, or which [he] control[led].” In the questionnaires he submitted to the firm in 2015 and 2016, DiPaola failed to disclose his mother’s account in which he had been actively trading. Although DiPaola did not have a financial or fiduciary interest in his mother’s account, the evidence shows that he controlled the account and was thus required to disclose it.

In determining whether DiPaola exercised such control here, FINRA reasonably applied the standard that the Commission has used in other contexts for determining whether a representative controls an account: namely, when the representative either has been granted discretionary authority or exercises de facto control over an account.¹⁶ DiPaola has never disputed that was the appropriate standard for FINRA to use. And because his mother never formally granted him discretionary authority, the question is therefore whether DiPaola exercised de facto control over the account.

The Commission has explained that de facto control over an account can exist when a representative “operates as though he has been delegated discretionary authority (and thus formal control) by [the customer], although he has not been,” “when the customer relies on the representative such that the representative controls the volume and frequency of transactions,” or when “a customer routinely follows a registered representative’s recommendations.”¹⁷ A

¹⁴ *Fuad Ahmed*, Exchange Act Release No. 81759, 2017 WL 4335036, at *17 (Sept. 28, 2017) (citation omitted) (finding that Rule 2010 is consistent with the Exchange Act’s purposes).

¹⁵ *See Braff*, 2012 WL 601003, at *5 & n.10 (finding that falsely representing on firm disclosure forms that one had no outside brokerage accounts was inconsistent with just and equitable principles of trade).

¹⁶ *See, e.g., Ralph Calabro*, Exchange Act Release No. 75076, 2015 WL 3439152, at *5 (May 29, 2015) (defining “control” for purposes of finding that a broker improperly churned a customer’s account as involving “either explicit or de facto” control).

¹⁷ *Id.* at *5 & n.20.

customer's lack of investing sophistication and the trust a customer places in the representative can be relevant in determining such de facto control.¹⁸

Here, DiPaola's mother testified that she had limited investing experience and, before opening her E*Trade account, she traded only about four times per year. She therefore trusted her son to do "whatever he thought was best for me," and DiPaola thereafter executed almost all the trades in his mother's account and employed a trading strategy similar to the one he used in his own account.

DiPaola counters that his mother was "100% in control over her own account." He emphasizes that the "funds in the account were 100% hers" and "she made no complaint to FINRA." But DiPaola's lack of direct financial interest in the account and his mother's lack of complaints does not mean that DiPaola did not control the account. To the contrary, all the evidence discussed above shows that DiPaola plainly exercised de facto control over his mother's account and was thus required to disclose it on Chardan's compliance questionnaires. And his failure to disclose the account undermined his firm's ability to monitor his trading and was thus inconsistent with the high standards of commercial honor and just and equitable principles of trade.¹⁹

In finding that DiPaola violated Rule 2010 by failing to disclose on compliance documents an outside account that he controlled, FINRA applied the rule consistently with the Exchange Act's purposes of protecting investors because the submission of false information to one's member firm reflects "negatively on [a registered representative's] ability to comply with regulatory requirements fundamental to the securities industry."²⁰

C. DiPaola violated FINRA Rules 8210 and 2010 by failing to provide on-the-record testimony when requested.

We also affirm FINRA's finding that DiPaola violated FINRA Rules 8210 and 2010 by not providing on-the-record testimony. Rule 8210(a) requires associated persons to "provide information orally [or] in writing . . . and to testify at a location specified by FINRA staff . . . with respect to any matter involved in [a FINRA] investigation, complaint, examination, or proceeding." A violation of Rule 8210 also establishes a violation of Rule 2010.²¹

¹⁸ *Id.* at *6, *19-20.

¹⁹ *Cf. Braff*, 2012 WL 601003, at *5 (finding that failure to disclose outside accounts on member firm's compliance questionnaires violated just and equitable principles of trade).

²⁰ *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 WL 3891311, at *7 (Aug. 22, 2008); *see also John M.E. Saad*, Exchange Act Release No. 62178, 2010 WL 2111287, at *5 (May 26, 2010) (finding that applicant's entry of false information in firm records violated FINRA Rule 2010's predecessor and noting that "entry of accurate information in firm records is a foundation for FINRA's regulatory oversight of its members"), *pet. granted on other grounds*, 718 F.3d 904 (D.C. Cir. 2013).

²¹ *See, e.g., Robert Juan Escobio*, Exchange Act Release No. 97701, 2023 WL 3948218, at *7 (June 12, 2023).

DiPaola does not dispute that he did not comply with FINRA's requests to appear for on-the-record testimony on April 5 and 15, 2021.²² Rather, DiPaola claims it was improper for FINRA to request his testimony once FINRA issued its Wells Notice. According to DiPaola, the Wells Notice meant that FINRA already had all the information it needed. We disagree.

FINRA Rule 8210 is the principal means by which FINRA obtains information from its member firms and their associated persons for the purpose of an investigation, complaint, examination, or proceeding.²³ The rule provides that "[n]o . . . person shall fail to provide information or testimony . . . pursuant to this rule."²⁴ Rule 8210 expressly contemplates that FINRA can request information throughout a proceeding, including during the investigative stage before a complaint is issued.²⁵

Here, FINRA had not yet issued a complaint when it requested DiPaola's testimony in April 2021. FINRA had issued only a Wells Notice, which is "a preliminary determination to proceed with a recommendation of formal discipline"²⁶ FINRA's issuance of a Wells Notice is "discretionary" and gives potential respondents an opportunity to explain why formal charges are not appropriate.²⁷ As FINRA was still in its investigative phase—before issuing a formal complaint—the issuance of the Wells Notice did not preclude it from continuing to seek DiPaola's testimony relevant to its ongoing investigation.²⁸ Nor, for these same reasons, was

²² In his briefs before the Commission, DiPaola suggests that he was unaware of FINRA's requests for the April 2021 on-the-record testimony, claiming that FINRA's requests went to "only BADWAY [his attorney], not Mr. DiPaola" and that he "was relying solely on his legal representation to schedule this." But DiPaola testified at the hearing that at the time of the requests he "was aware that FINRA wanted another OTR." Furthermore, it was appropriate for FINRA to correspond through DiPaola's counsel about the requests. *See* FINRA Rule 9133(d) (requiring service upon counsel when a respondent is represented by counsel). To the extent DiPaola argues that he lacked notice, he failed to raise this issue before FINRA and thus forfeited it. *See Wilfredo Felix*, Exchange Act Release No. 101733, 2024 WL 4891403, at *5 (Nov. 25, 2024) (holding that claim not raised before FINRA was forfeited).

²³ *See, e.g., Charles C. Fawcett, IV*, Exchange Act Release No. 56770, 2007 WL 3306105, at *6 & n.29 (Nov. 8, 2007) (describing the purpose of Rule 8210).

²⁴ FINRA Rule 8210(c); *see also Escobio*, 2023 WL 3948218, at *7 (noting that the language of Rule 8210(c) is "unequivocal").

²⁵ *See* FINRA Rule 8210(a) (requiring persons to provide information and to testify "with respect to any matter involved in the investigation, complaint, examination, or proceeding").

²⁶ FINRA Regulatory Notice 09-17, <https://www.finra.org/rules-guidance/notices/09-17>.

²⁷ *Id.*; *cf. Edward S. Brokaw*, Exchange Act Release No. 70883, 2013 WL 6044123, at *19 (Nov. 15, 2013) (noting the discretionary nature of FINRA's Wells process and finding no improper conduct by FINRA where it subsequently modified allegations in a Wells Notice).

²⁸ *See* FINRA Regulatory Notice 09-17 (noting that after issuance of a Wells Notice FINRA staff "may ask for additional information or obtain additional evidence in the matter").

FINRA required to withdraw its Wells Notice before it could request DiPaola to appear for testimony.

We also reject DiPaola's suggestion that he did not need to appear because, he claims, the information FINRA sought in its April 2021 requests overlapped with his earlier 2019 on-the-record testimony. Rule 8210 required DiPaola to testify regardless of whether he thought further testimony was unnecessary.²⁹ And the record shows that FINRA reasonably believed that further testimony would provide new information relevant to its investigation after further analyzing DiPaola's trading activity and related electronic communications. We thus find that, by refusing to comply with FINRA's 2021 requests for on-the-record testimony, DiPaola violated Rule 8210.

DiPaola argues that FINRA's Rule 8210 request was a "punitive measure to harass" him and that FINRA staff was on a "crusade" to pursue a "personal vendetta" against him. But DiPaola points to no evidence, nor can we find any, to support a claim of selective prosecution.³⁰

FINRA Rule 8210 is consistent with the purposes of the Exchange Act because it is essential to FINRA's ability to investigate possible misconduct by its members and associated persons.³¹ FINRA Rule 2010, as noted, is also consistent with the purposes of the Exchange Act.³² And we find that FINRA's application of these rules here was consistent with the purposes of the Exchange Act because DiPaola's failure to participate in requested on-the-record testimony hindered FINRA's ability to investigate potential misconduct.³³

²⁹ See *CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 WL 223617, at *6 (Jan. 30, 2009) (holding that, in responding to a Rule 8210 request, an associated person may not "take it upon themselves to determine whether information is material to an . . . investigation of their conduct"); *Morton Bruce Erenstein*, Exchange Act Release No. 56768, 2007 WL 3306103, at *6 (Nov. 8, 2007) (noting that it is "well established" that members and associated persons may not "second guess" Rule 8210 requests or "set conditions on their compliance," and the "belief that [FINRA] does not need the requested information provides no excuse for a failure to provide it" (internal quotation marks omitted)), *aff'd*, 316 F. App'x 865 (11th Cir. 2008); Rule 8210(c) ("No . . . person shall fail to provide information or testimony . . . pursuant to this rule.").

³⁰ See *Terrence Yoshikawa*, Exchange Act Release No. 53731, 2006 WL 1113518, at *7 (Apr. 26, 2006) (noting that to establish a claim of "selective prosecution" a party "must demonstrate that he or she was singled out for enforcement, while others who were similarly situated were not, and that the prosecution was motivated by arbitrary or unjust considerations such as race, religion, or the desire to prevent the exercise of a constitutionally protected right").

³¹ See, e.g., *Escobio*, 2023 WL 3948218, at *12.

³² See *supra* note 14.

³³ See *Escobio*, 2023 WL 3948218, at *12.

IV. Sanctions

Under Exchange Act Section 19(e)(2), if we find, “having due regard for the public interest and the protection of investors,” that a sanction imposed by FINRA “is excessive or oppressive,” or imposes an unnecessary or inappropriate burden on competition, we “may cancel, reduce, or require the remission of such sanction.”³⁴ Under this standard, we consider any aggravating or mitigating factors and whether the sanctions are remedial and not impermissibly punitive.³⁵ Although they are not binding on us, FINRA’s Sanction Guidelines serve as a benchmark in our review.³⁶ We sustain FINRA’s imposition of sanctions for the disclosure-related violations and set aside the sanctions for the FINRA Rule 8210 violation.

A. We sustain FINRA’s sanctions for DiPaola’s failure to disclose his mother’s account.

For the violations related to DiPaola’s failure to disclose his mother’s account, FINRA imposed a two-year suspension in all capacities and a \$25,000 fine.³⁷ These sanctions are within the range that FINRA’s Guidelines recommend imposing for both a violation of NASD Rule 3050 and for “falsification of records,”³⁸ which DiPaola does not dispute are the applicable Guidelines to use here.

Specifically, for violations of Rule 3050, the FINRA’s Guidelines recommend imposing a fine of \$1,000 to \$39,000, and in egregious cases, a suspension in all capacities for up to two years or a bar.³⁹ For falsification of records, the Guidelines recommend imposing a fine of \$5,000 to \$155,000, and in the absence of other violations or customer harm, a suspension of two

³⁴ 15 U.S.C. § 78s(e)(2). Section 19(e)(2) also requires that the action not impose an unnecessary or inappropriate burden on competition. *Id.* DiPaola does not allege, nor does the record show that the sanctions imposed create an unnecessary or inappropriate burden on competition.

³⁵ See *Saad v. SEC*, 718 F.3d 904, 906 (D.C. Cir. 2013); *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1065 (D.C. Cir. 2007).

³⁶ *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 WL 2898033, at *11 & n.68 (June 14, 2013). We look to the Guidelines in force at the time the FINRA hearing panel made its determination in this case, which here are the October 2021 Guidelines. See FINRA Sanction Guidelines (Oct. 2021), https://www.finra.org/sites/default/files/2022-09/2021_Sanctions_Guidelines.pdf (“Guidelines”).

³⁷ According to the Guidelines, it may be appropriate to aggregate related violations for the purposes of imposing sanctions. Guidelines, at 4 (General Principle 4).

³⁸ See *id.* at 16, 37; see also *Braff*, 2012 WL 601003, at *5 (recognizing that “the Guidelines regarding Forgery and/or Falsification of Records” was an appropriate Guidelines provision to use for violations that involve providing false or misleading information about outside accounts on firm compliance documents). The Guidelines reference a violation of FINRA Rule 3210, which superseded NASD Rule 3050.

³⁹ Guidelines, at 16.

months to two years.⁴⁰ When the violation was in furtherance of another violation, or when there is customer harm or significant aggravating factors, the Guidelines advise that a bar is standard.⁴¹

We agree with FINRA that these considerations support the sanctions that FINRA imposed here. DiPaola's misconduct, for example, involved several aggravating factors. DiPaola's trading activity in his mother's account presented a risk of conflicts of interest for his firm, because Chardan was doing business with some of the issuers of the stocks DiPaola traded most frequently.⁴² Indeed, DiPaola bought and sold stocks in his mother's account when they were on Chardan's restricted list. DiPaola's misconduct also extended for several years: from the time he helped open his mother's account in 2015 until E*Trade discovered his activity in the account in 2017.⁴³

DiPaola also demonstrated a troubling lack of candor by repeatedly attempting to conceal his misconduct.⁴⁴ For example, when DiPaola finally notified Chardan that he had been added to his mother's account, he falsely claimed that he was being added to the account for estate planning purposes, without revealing that he had been actively trading in the account for more than two years. DiPaola also continued to conceal his trading activity from Chardan for two more years, when he finally admitted it in his April 2019 on-the-record testimony (which ultimately led to his separation from the firm). Even then, DiPaola still misrepresented to FINRA staff his involvement in his mother's account—initially denying that he had traded in his mother's account at all before becoming a co-owner, and only admitting the full extent of his trading activity when shown evidence that nearly all of the trades had been made from his IP address. We also agree with FINRA that these attempts to conceal his misconduct undercut his claims that he was entitled to mitigation because he mistakenly believed that disclosure was not required.⁴⁵

DiPaola suggests that FINRA's sanctions are nevertheless excessive because the trading in his own accounts was similar to that in his mother's account, and that Chardan thus had the information it needed about potential conflicts from his disclosed accounts. But, as noted, there

⁴⁰ *Id.* at 37.

⁴¹ *Id.*

⁴² *See id.* at 16 (providing that for violations of the successor of NASD Rule 3050 a relevant consideration is whether the violative accounts presented real or perceived conflicts of interest for the employer firm or customers).

⁴³ *See id.* at 7 (Principal Consideration 9) (“Whether the respondent engaged in the misconduct over an extended period of time.”).

⁴⁴ *See id.* at 7 (Principal Consideration 10) (“Whether the respondent attempted to conceal his or her misconduct or to lull into inactivity, mislead, deceive or intimidate a customer, regulatory authorities or, in the case of an individual respondent, the member firm with which he or she is/was associated.”).

⁴⁵ *See id.* at 37 (providing that for “forgery, unauthorized use of signatures or falsification of records,” adjudicators should consider the nature of the falsified documents and whether the respondent had a good-faith, but mistaken, belief of express or implied authority).

were important differences in how DiPaola traded in the accounts, including that DiPaola continued to trade securities in his mother's account that were on Chardan's restricted list. DiPaola's failure to disclose his mother's account thus deprived Chardan of its ability to effectively monitor all of DiPaola's trading activity and to make informed determinations of potential risks associated with DiPaola's trades.

For these reasons, we conclude that the two-year suspension and \$25,000 fine for the violations related to DiPaola's failure to disclose his mother's account are neither excessive nor oppressive. Because of the serious nature of DiPaola's misconduct and the need to prevent further violations, we also conclude FINRA's sanctions for these violations are remedial and not punitive.

B. We set aside FINRA's sanctions for DiPaola's failure to provide on-the-record testimony.

For DiPaola's violation of FINRA Rule 8210, FINRA suspended DiPaola in all capacities for two years and imposed a \$15,000 fine. We set those sanctions aside.

The Guidelines recommend that a bar is the standard sanction for a "partial but incomplete response" to a Rule 8210 request "unless the person can demonstrate that the information provided substantially complied with all aspects of the request."⁴⁶ Where there are mitigating factors, however, the Guidelines recommend suspending the individual in any or all capacities for up to two years.⁴⁷ The recommended monetary sanction for a partial but incomplete response is a fine from \$10,000 to \$77,000.⁴⁸

The Guidelines further provide three principal considerations for assessing the appropriate sanction for a Rule 8210 violation: (i) 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; (ii) the number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response; and (iii) the reasons offered for the deficiencies in the response.⁴⁹

We agree with FINRA that these were the correct Guidelines to apply. DiPaola partially complied with FINRA's Rule 8210 requests—he testified three times in 2019—but he failed to substantially comply by refusing to testify at all in 2021. Because of mitigating circumstances, however, we find it excessive for FINRA to have imposed a \$15,000 fine and a two-year suspension consecutively with the above suspension.

DiPaola testified before FINRA three times in 2019 and did not receive a new request until 2021. FINRA itself recognized that it was responsible for the delay in the investigative process. That almost two-year delay between DiPaola's testimony in 2019 and the later Rule

⁴⁶ *Id.* at 33.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

8210 request calls into question the importance to FINRA of the information it sought. We also find it troubling that when FINRA finally sought DiPaola's additional testimony, it did so while simultaneously issuing a Wells Notice. FINRA's own guidance provides that a Wells Notice comes "[a]t the conclusion of the investigation."⁵⁰ This did not excuse DiPaola's refusal to testify, but the length of this investigation and the time elapsed since the 2019 testimony should have provided FINRA enough time to reach a recommendation on all issues presented. Seeking on-the-record testimony following the delay and the issuance of a Wells Notice thus raises concerns about the fairness of FINRA's investigative process. It is not prohibited, but it should be rare and occur only when FINRA has stated good reason for doing so. FINRA did not adequately justify why it did so here. Nor did FINRA explain why it imposed the suspensions consecutively rather than concurrently.⁵¹

Given the significant mitigating factors here, imposing a consecutive two-year suspension and \$15,000 fine was excessive. Although we could remand to FINRA for further consideration, we exercise our discretion not to do so given the other sanctions we affirm above and the time elapsed in this matter. We thus set aside the sanctions FINRA imposed for DiPaola's Rule 8210 violation.

An appropriate order will issue.⁵²

By the Commission (Chairman ATKINS and Commissioners PEIRCE and UYEDA).

Vanessa A. Countryman
Secretary

⁵⁰ See FINRA Regulatory Notice 09-17.

⁵¹ See, e.g., *Donald R. Gates*, Exchange Act Release No. 36109, 1995 WL 497444, at *2 (Aug. 16, 1995) (noting that "[a] determination to impose a disciplinary sanction must be supported by a statement setting forth, among other things, the . . . reason therefor" and that if a self-regulatory organization fails to "clearly explain the basis for its conclusions . . . applicants are impaired in their ability to defend themselves before us, and we cannot discharge our review function"); cf. *John Edward Mullins*, Exchange Act Release No. 66373, 2012 WL 423413, at *21 (Feb. 10, 2012) (sustaining the imposition of consecutive suspensions when FINRA's decision explained the basis for that determination).

⁵² We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 105568 / May 28, 2026

Admin. Proc. File No. 3-21402

In the Matter of the Application of

JASON LYNN DIPAOLO

For Review of Disciplinary Action Taken by

FINRA

ORDER SUSTAINING IN PART AND SETTING ASIDE IN PART DISCIPLINARY
ACTION TAKEN BY FINRA

On the basis of the Commission's opinion issued this day, it is

ORDERED that FINRA's findings of violation against Jason Lynn DiPaola are sustained;
and it is further

ORDERED that the sanctions FINRA imposed are sustained in part and set aside in part
as set forth in the Commission's opinion.

By the Commission.

Vanessa A. Countryman
Secretary