

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

Department of Enforcement,

Complainant,

v.

Wilfredo Felix (CRD No. 2693672) and
Primex Prime Electronic Execution, Inc.
d/b/a Primex (CRD No. 29394)

Respondents.

Disciplinary Proceeding
No. 2018058286901

Hearing Officer:

COMPLAINT

The Department of Enforcement (“Enforcement”) alleges:

I. SUMMARY

1. From January 2013 to December 2015, Wilfredo Felix—the Chief Executive Officer, Chief Financial Officer, Introducing Broker-Dealer Financial and Operations Principal (“FINOP”), and sole person responsible for financial accounting at Primex Prime Electronic Execution, Inc., d/b/a Primex (the “Firm” or “Primex” or, with Felix, “Respondents”)—used Primex funds to pay for hundreds of thousands of dollars of personal expenses, and concealed the fact that he did so by misclassifying those expenses as business expenses of the Firm. As a result, Felix caused Primex to maintain inaccurate books and records for the years 2013, 2014, and 2015.

2. In connection with this misconduct, Felix made electronic withdrawals from Primex’s bank account and used the Firm’s debit card (issued in Felix’s name) for his personal benefit on more than one thousand occasions. He withdrew tens of thousands of dollars in cash and made hundreds of thousands of dollars in purchases, often at vendors with no business nexus whatsoever, such as clothing, shoe, makeup, jewelry and toy stores, movie theaters, amusement

parks, karate studios, video streaming services, doctors' offices, and his child's school, among others. Felix then misclassified his expenditures of Primex funds for personal purposes as business expenses on the Firm's general ledger.

3. Notably, Felix misclassified his personal expenditures as purported business expenses of Primex even after being specifically warned not to do so by the Firm's independent auditor and corporate income tax return preparer ("Primex's Auditor"), who discovered Felix's misconduct during a 2014 audit. At the end of that audit, Primex's Auditor required the Firm to reclassify approximately \$175,000 in purported business expenses as shareholder distributions to Felix on Primex's 2014 general ledger, and warned Felix not to record his personal expenditures as business expenses in the future.

4. Despite this warning, Felix continued to improperly record his cash withdrawals and personal expenditures as business expenses on the Firm's 2015 general ledger—until he was caught again by Primex's Auditor during the Firm's 2015 audit. At the end of that audit, Primex's Auditor required the Firm to reclassify approximately \$140,000 in purported business expenses as shareholder distributions to Felix on Primex's 2015 general ledger, and also to file a Notice of Material Inadequacy or Material Weakness with the Securities and Exchange Commission ("SEC") under Securities Exchange Act of 1934 ("Exchange Act") Rules 17a-5(h) and 17a-11(e).

5. As a result of Felix's misclassification of expenses, Primex's general ledger for 2013 was false and has not been corrected, and Primex's general ledgers for 2014 and 2015 were false throughout their entire respective calendar years (until Primex's Auditor required that Primex correct them in March 2015 and March 2016, respectively). Moreover, the Firm filed quarterly Financial and Operational Combined Uniform Single ("FOCUS") reports for 2013, 2014, and 2015 that significantly understated the amount of compensation paid to Felix and

overstated the Firm's other expenses. As a result of this misconduct, Felix violated FINRA Rule 2010 by falsifying Primex's books and records; he also violated FINRA Rules 4511 and 2010 by causing the Firm to maintain inaccurate books and records. Primex willfully violated Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-5 thereunder, and violated FINRA Rules 4511 and 2010. Further, because Primex's violations of the Exchange Act were willful, it is subject to statutory disqualification under Article III, Section 4 of FINRA's By-Laws and Section 3(a)(39) of the Exchange Act.

6. Primex also violated FINRA Rules 8210 and 2010 by failing to timely respond to a FINRA Rule 8210 request for information concerning certain expenditures made from Primex's bank account in 2014 and 2015.

7. Felix also violated FINRA Rules 8210 and 2010 by providing false or misleading responses during testimony, by providing false or misleading information in response to a written request for information, and by refusing to respond at all to written requests for information. First, Felix lied in response to a written FINRA Rule 8210 request and during testimony taken pursuant to FINRA Rule 8210 about why Primex's Auditor had required the Firm to reclassify its supposed business expenses. Second, Felix lied during testimony taken pursuant to FINRA Rule 8210 about who prepared Internal Revenue Service ("IRS") Forms 1099 that were purportedly issued by Primex to him. Lastly, when FINRA requested pursuant to FINRA Rule 8210 that Felix produce an IRS tax transcript—which would show whether purported Forms 1099 that Felix produced to FINRA were fabricated or misleading—he refused.

II. RESPONDENTS AND JURISDICTION

8. Felix first became registered as a Corporate Securities Representative in or around 1995. After working for several FINRA member firms, Felix purchased Primex in 2001. Since that time, Felix, who has a college degree in business management that included coursework in

accounting, has been registered with FINRA through Primex as a Corporate Securities Representative and a General Securities Principal, and has served as Primex's CEO and CFO. Additionally, in 2003, Felix became registered through Primex as a FINOP and, in 2011, as an Operations Professional; he is currently registered through Primex in each of the four above-mentioned capacities. As Primex's FINOP since 2003, Felix was the only person at the Firm who made entries in the general ledger and prepared and submitted the Firm's FOCUS reports. In addition, Felix was the only person with signatory authority over Primex's bank account, and all debit cards issued for that account were issued in Felix's name.

9. FINRA possesses jurisdiction over Felix because he currently is registered with FINRA and associated with a FINRA member firm.

10. Primex has been a FINRA member since 1992. Primex currently has approximately fourteen registered representatives at three branches, with its principal location in New York, New York.

11. FINRA possesses jurisdiction over Primex because the firm currently is a FINRA member.

III. FACTS

A. Felix Falsely Classified His Personal Expenses as Business Expenses of the Firm.

12. From 2013 to 2015, Felix did not have any formal compensation agreement with Primex, and did not maintain any bank accounts in his name. Instead, during those years, he used Primex's bank account to pay for his personal expenses, including by taking regular cash withdrawals from Primex's bank account and using Primex funds to pay for a variety of personal expenses.

13. In an attempt to conceal his conduct, Felix entered his personal expenditures on

the Firm’s general ledgers for 2013 to 2015 as purported business expenses of Primex—grouping them into general expense categories such as “miscellaneous expenses,” “office supplies,” and “furniture and fixtures”—and simply reported the total spending per category at the end of each month. Felix then used these inaccurate general ledgers to prepare and file Primex’s quarterly FOCUS reports for the years in question, which significantly understated the amount of his compensation and overstated the amount of Primex’s other expenses.

i. False Expense Reporting in 2013

14. In 2013, Felix withdrew more than \$20,000 in cash from Primex’s bank account at ATMs and routinely used the debit card linked to Primex’s account to make tens of thousands of dollars in personal purchases. For example, Felix used Primex’s account to make:

- a. More than \$10,000 in purchases at a variety of clothing and shoe stores, including more than \$2,700 at Burlington Coat Factory; \$2,500 at a fur store; \$1,900 at Men’s Warehouse; \$600 at DSW (Designer Shoe Warehouse); \$600 at a school uniform store; \$600 at Hugo Boss; \$300 at H&M; and \$300 at Ralph Lauren;
- b. More than \$11,000 in entertainment-related purchases, including more than \$5,500 in purchases at a karate studio; \$2,400 at movie theaters and for streaming video and radio; \$1,000 at amusement parks, including Sesame Place; and \$1,000 at batting cages;
- c. Nearly \$3,000 in purchases at toy and baby supply stores, including Toys ’R Us and Babies ’R Us, the American Girl store, and video game stores;
- d. More than \$1,900 in fitness-related purchases, including gym memberships, diet plans, and at sporting goods stores such as Modell’s and Backcountry.com;
- e. More than \$800 in purchases at makeup retailers, Sephora and Luminess

Air; and

f. More than \$29,000 in other purchases at general retailers and hardware stores such as Costco, Home Depot, Walmart, Marshalls, Macy's, and Target.

15. Felix failed to record these and other items either as compensation or shareholder distributions on Primex's 2013 general ledger. Instead, he falsely recorded these personal expenditures as business expenses of Primex.

16. Felix grouped his personal expenditures into general expense categories on the general ledger—such as “miscellaneous expenses,” “office supplies,” and “furniture and fixtures”—and simply reported the total spending per category at the end of each month. Felix then used this inaccurate general ledger to prepare and file Primex's four quarterly FOCUS reports for 2013, which significantly understated the amount of Felix's compensation and overstated the amount of Primex's other expenses.

17. Felix also sent the inaccurate 2013 general ledger to Primex's Auditor, who incorporated Felix's misclassifications into Primex's year-end financial statements and tax returns.

ii. False Expense Reporting in 2014

18. Felix followed the same practice in 2014 of misclassifying his personal expenditures as business expenses of the Firm and concealing his misconduct by grouping those personal expenditures in broad general expense categories on the Firm's general ledger. However, in the interim period, auditing standards changed, causing Primex's Auditor to request support for many of the expenses underlying the broad general expense groupings that appeared on the Firm's 2014 general ledger.

19. Specifically, on February 28, 2015, Primex's Auditor emailed Felix and explained:

Note that a new day has dawned for BD audits as they converted to [Public Company Accounting Oversight Board (“PCAOB”)] standards effective 06/01/14. Any unsubstantiated amounts or amounts that are deemed to be personal expenses above will be reclassified as distributions. The PCAOB has specifically warned us that distributions is the proper accounting for such items.

20. In 2014, Felix withdrew more than \$60,000 in cash from Primex’s bank account, including at ATMs, and routinely used the debit card linked to Primex’s bank account to pay for tens of thousands of dollars in personal purchases. For example, Felix used Primex’s bank account to make:

- a. More than \$17,000 in purchases at clothing and shoe stores, including more than \$1,700 at a fur store; \$1,700 at Louis Vuitton; \$1,700 at Zulily, an online retailer of women’s and children’s apparel; \$1,500 at Sarar USA, a men’s retailer; \$1,400 at Burlington Coat Factory; \$1,400 at TJ Maxx; \$1,000 at DSW; \$800 at Neiman Marcus; \$600 at Footlocker; \$500 at a uniform store; \$400 at Gap; \$400 at Kenneth Cole; \$300 at Timberland; and \$300 at Northface;
- b. More than \$13,000 in mortgage and car loan payments to Ocwen and Santander;
- c. More than \$11,000 in entertainment-related purchases, including more than \$6,000 at a karate studio; \$1,700 at amusement parks, including Sesame Place, Luna Park in Coney Island, Disney, Epcot, and Seaworld; \$1,200 at movie theaters; \$1,000 at batting cages; and \$200 at Chuck E. Cheese;
- d. More than \$7,000 in purchases at furniture and home goods stores, including more than \$4,000 at Room and Home; \$1,100 at IKEA; and \$900 at H. & M. Rohsler Nursery, a plant nursery;
- e. More than \$5,000 in car-related purchases, including more than \$4,600 in car insurance payments;

- f. More than \$4,100 in purchases at jewelry stores;
- g. More than \$1,700 in pet-related spending, including more than \$1,000 at the Paws and Play Pet Resort;
- h. More than \$1,000 in personal care products, including more than \$400 in purchases at makeup retailer, Sephora; \$200 at the Art of Shaving; and \$300 in dietary supplements;
- i. More than \$800 in purchases at dry cleaners;
- j. More than \$500 in purchases at his child's school;
- k. More than \$400 in purchases at Toys 'R Us; and
- l. More than \$33,000 in other purchases at general retailers, including Costco, Amazon.com, Macy's, Walmart, Target, Sears, Marshalls, and JCPenney.

21. Felix failed to record these and other items either as compensation or shareholder distributions on Primex's 2014 general ledger during the 2014 calendar year. Instead, Felix mischaracterized his personal expenditures as purported business expenses of the Firm.

22. Additionally, as he had done previously, Felix falsely grouped his personal expenditures into general expense categories on Primex's 2014 general ledger, and simply reported the total spending per category at the end of each month. Felix then used this inaccurate general ledger to prepare and file Primex's four quarterly FOCUS reports for 2014, which significantly understated the amount of Felix's compensation and overstated the amount of Primex's other expenses.

23. After the end of 2014, as he did the previous year, Felix also sent the Firm's inaccurate general ledger to Primex's Auditor. Upon Primex's Auditor's request, Felix also provided Primex's Auditor with Excel charts showing how the general expense groupings for certain months were calculated.

24. When Primex's Auditor reviewed the general ledger and Excel charts provided by Felix, he asked Felix to produce "original receipts, invoices, bills, etc. in support of the disbursements," warning that without adequate substantiation, "these items will need to be reclassified to owner's distributions." After reviewing the receipts provided by Felix, Primex's Auditor determined that Felix could not properly substantiate or document any business purpose for \$174,066 in recorded business expenses for 2014, including all of the examples listed in paragraph 20 above, and required him to reclassify those expenses as distributions to Felix.

25. Primex's Auditor provided Felix with the audit adjustments and required him to adjust the Firm's 2014 general ledger; Primex's Auditor also incorporated the audit adjustments into the year-end FOCUS report for 2014. Primex's Auditor also incorporated those same adjustments into Primex's 2014 federal and state corporate income tax returns. Because, for the 2014 tax year, Primex had changed from a C to an S corporation, a flow-through entity whose owner is subject to tax on the corporation's net income, those adjustments increased Felix's taxable income for 2014 in the same amount.

26. At the conclusion of the audit, Primex's Auditor sent Felix a "governance letter" on May 15, 2015, which described "significant misstatements" in Primex's books and records and which explained: "It is imperative that the Company maintain accurate books and records throughout the year. Personal expenses paid by the Company on behalf of the stockholder should be charged to distributions."

iii. False Expense Reporting in 2015

27. In 2015, Felix withdrew nearly \$20,000 in cash from Primex's bank account at ATMs and routinely used the debit card linked to Primex's bank account to pay for tens of thousands of dollars in personal purchases. For example, Felix used Primex's bank account to make:

- a. Roughly \$15,000 in travel-related purchases on Expedia.com;
- b. \$14,900 in purchases at the car dealership, Luxury Haus, Inc.;
- c. More than \$7,000 in purchases at clothing and shoe stores, including over \$3,000 at Zulily; over \$1,500 at Burlington Coat Factory; over \$700 at DSW; and nearly \$400 at Louis Vuitton;
- d. More than \$7,000 in entertainment-related purchases, including more than \$3,500 at a karate studio; nearly \$1,000 at amusement parks, including Luna Park in Coney Island, Seaworld, and Sesame Place; more than \$500 at Comic Con; more than \$500 at the Ringling Brothers Circus; \$300 at batting cages; and \$200 at movie theaters;
- e. Roughly \$2,400 in fitness-related purchases, including more than \$1,200 on dietary supplements, more than \$500 at the Flex Belt; and nearly \$400 at the sporting goods store, Modell's;
- f. More than \$1,600 in payments to physicians;
- g. More than \$1,500 in tuition payments to his child's school;
- h. More than \$900 in purchases at a dry cleaner;
- i. More than \$600 in purchases at makeup retailer, Sephora;
- j. More than \$17,000 in purchases at furniture, household goods, and electronics retailers, including BestBuy, furniture retailer, Lazzoni, Home Goods, and Italian furniture retailer, Tomasella; and
- k. More than \$30,000 in purchases at general retailers, including Costco, Marshalls, Nordstrom, Target, Kate Spade, and online discount retailers, HauteLook and Touch of Modern.

28. Although Felix had been informed by Primex's Auditor how to properly account for his personal expenditures, Felix failed to record any of these items either as compensation or

shareholder distributions on Primex's 2015 general ledger. Instead, he again characterized his personal expenditures as purported business expenses of the Firm.

29. Additionally, as he had done in 2013 and 2014, Felix grouped his personal expenditures into general expense categories on Primex's 2015 general ledger—such as “miscellaneous expenses,” “office supplies,” and “furniture and fixtures”—and simply reported the total spending per category at the end of each month. Felix then used this inaccurate general ledger to prepare and file Primex's four quarterly FOCUS reports for 2015, which significantly understated the amount of Felix's compensation and overstated the amount of Primex's other expenses.

30. After the end of 2015, as he had done in previous years, Felix sent the Firm's inaccurate general ledger to Primex's Auditor, who immediately observed that Felix had continued to misclassify personal expenditures, notwithstanding his prior instructions.

31. When Primex's Auditor reviewed the Firm's 2015 general ledger, he asked Felix to produce “receipts and explanation of business purpose” for various expenditures, again warning that without adequate substantiation, anything personal would “need[] to be reclassified to distributions.” After reviewing the documentation provided by Felix, Primex's Auditor determined that Felix could not properly substantiate or document any business purpose for \$140,491.73 in recorded business expenses for 2015, including all of the examples listed in paragraph 27 above, and required him to reclassify those expenses as distributions to Felix.

32. Primex's Auditor provided Felix with the audit adjustments and required him to adjust the Firm's 2015 general ledger; Primex's Auditor also incorporated the audit adjustments into the year-end FOCUS report for 2015. Primex's Auditor also incorporated those same adjustments into Primex's 2015 federal and state corporate income tax returns. Because Primex remained an S corporation, a flow-through entity whose owner is subject to tax on the

corporation's net income, those adjustments increased Felix's taxable income for 2015 in the same amount.

33. Primex's Auditor also informed Felix on March 11, 2016 that:

The numerous audit entries arising during the audit constitute a material weakness under SEC rules.

Attached are two pages that describe the steps/notifications you must send WITHIN 24 HOURS. Since this is a Friday, you will have until Monday this time to send the notifications. If you do not send us evidence of the notification within the 24-hour period, we must notify the SEC for you.

I have taken the liberty of drafting a Notification that you may use as a template for the notification. . . .

34. The Notice of Material Inadequacy or Material Weakness drafted by Primex's Auditor noted various material weaknesses in Primex's books and records, including "misclassified personal expenses." Felix filed a version of the notification electronically with the SEC that same day, however, he revised that language to state that there was a material weakness in "misclassifications of shareholder distributions."

B. Primex Violated FINRA Rules 8210 and 2010 by Failing to Timely Respond to a Written Request for Information.

35. FINRA Staff opened an investigation in or around October 2014 into whether Primex, and Felix as its CEO and FINOP, made and preserved accurate books and records, properly reported compensation of its registered representatives on IRS Forms 1099, and filed accurate FOCUS reports.

36. On November 3, 2015, in connection with its investigation, FINRA Staff sent Primex a request pursuant to FINRA Rule 8210, requesting that Primex explain by November 10, 2015, the purpose of various withdrawals and charges that Felix effected through Primex's bank account in 2014 and 2015 and to produce "copies of all invoices and/or supporting documentation" for those transactions.

37. When Primex failed to respond, FINRA Staff issued a second, identical request on November 17, 2015, requiring Primex to respond by November 27, 2015.

38. When Primex failed to respond to this request as well, on February 26, 2016, FINRA Staff issued a Notice of Suspension pursuant to FINRA Rule 9552, informing Primex that it would be suspended unless it produced the requested information on or before March 21, 2016.

39. On or about March 17, 2016—just four days before the suspension was to take effect—Felix provided a written response to FINRA Staff on behalf of Primex. Primex's response, authored by Felix, admitted that there was no business purpose for various withdrawals totaling over \$30,000, including payments to Felix's child's school and a loan servicer, and purchases at a pet care center, a karate studio, an amusement park, and jewelry and makeup stores; Primex thus admitted that such expenditures were rightly classified as either compensation or shareholder distributions to Felix. However, Primex also continued to claim that various expenditures reclassified by Primex's Auditor in 2014 and 2015, including purchases at a batting cage, a fur store, the shoemaker, UGG, online clothing and home goods retailers, Zulily and HauteLook, and online home goods retailer, Wayfair, had a business purpose, even though Primex had already adjusted the 2014 and 2015 general ledgers to reclassify those items as shareholder distributions. Further, although Primex provided FINRA with invoices for certain of those expenses, as requested, none of them demonstrated their business purpose.

40. After receiving Primex's response, FINRA withdrew the Rule 9552 proceeding against the Firm on or about March 21, 2016.

C. Felix Violated FINRA Rules 8210 and 2010 by Providing False and Misleading Information to FINRA During Testimony and in Writing, and by Failing to Respond to Certain Requests.

41. As described below, Felix provided false or misleading information to FINRA—in a written response to a FINRA Rule 8210 request and during testimony taken pursuant to FINRA Rule 8210—about the reason why Primex’s Auditor required Primex to reclassify various expenses incurred in 2014 and 2015. Felix also lied during testimony taken pursuant to FINRA Rule 8210 about who prepared Forms 1099 that were purportedly issued by Primex to him. Finally, when FINRA requested pursuant to FINRA Rule 8210 that Felix produce an IRS tax return transcript—which would show whether purported Forms 1099 that Felix provided to FINRA were fabricated or misleading—he refused.

i. Felix Made False or Misleading Statements in a Letter to FINRA Dated January 5, 2018, and Felix Provided False or Misleading Testimony on May 24, 2018, About Why Primex’s Auditor Had Required the Firm to Reclassify Its Supposed Business Expenses.

42. On December 12, 2017, FINRA Staff sent Felix a letter pursuant to FINRA Rule 8210 requesting that he substantiate the business purpose for certain expenditures out of the Firm’s bank account in 2013.

43. Specifically, the Staff’s request noted that a) as part of Primex’s 2014 audit, Primex’s Auditor had required the Firm to reclassify purported business expenses, including ATM withdrawals and purchases at roughly 110 vendors; and b) during 2013, Felix made ATM withdrawals and purchases at those same vendors. The request then required Felix to “indicate if the 100 charges or ATM withdrawals identified . . . represent personal expenditures for Felix” or, if not, to describe the business purpose of the expenses and provide documentation.

44. On January 5, 2018, Felix responded to this request, through counsel, and refused to provide any information about those 100 items on the grounds that he could not recall whether

the items in question were business-related. Further, Felix asserted that he no longer maintained the necessary receipts or documentation for those expenses due to the “passage of time.”

Finally, Felix further claimed, falsely, that there was no need to revisit Primex’s accounting for purported business expenses in 2013 because Primex’s Auditor had required the Firm to reclassify expenses in connection with the 2014 and 2015 audits only because the Firm had changed its corporate tax structure. Specifically, Felix stated:

Primex changed its tax structure in 2014 from a C corporation to an S corporation, which necessitated a change in the manner in which Primex expenses were classified, and the manner in which Mr. Felix’s compensation was noted for accounting purposes. This led to the reclassification of expenses by [Primex’s Auditor] for 2014 noted in your letter. Because this change was implemented in 2014 and on a “going forward” basis, there was no effort to go back in time and “reclassify” expenses for any prior year, as the “reclassification” was done solely in conjunction with the change in tax structure implemented for 2014 and future years. At all times, Primex and Mr. Felix have followed the advice of certified public accountants in the maintenance of the corporate records of Primex.

45. Felix provided similar testimony on May 24, 2018 during an on-the-record (“OTR”) examination with FINRA Staff, requested pursuant to FINRA Rule 8210. Specifically, Felix was asked during the OTR examination whether he “understood that in 2014, [Primex’s Auditor] had you reclassify \$200,000 in expenses?” Felix responded by noting the reclassification occurred because Primex “changed from a C corp. to an S corp.”

46. Felix’s responses were false or misleading. Although Primex in fact changed its corporate tax structure in 2014, Felix—the Firm’s CFO and FINOP—knew that was not why Primex’s Auditor required him to reclassify Primex’s expenses in 2014 and 2015. Rather, as described above, Primex’s Auditor required Felix to reclassify Firm expenses in connection with the 2014 and 2015 audits because Felix had failed to demonstrate that the expenses at issue had a business purpose.

47. Moreover, Felix also knew that these responses—made in 2018—were false or

misleading because, as described above, Primex's Auditor had repeatedly explained to Felix, during both the 2014 and 2015 audits, that expenses had to be reclassified as shareholder distributions if he could not demonstrate that they were business-related.

ii. Felix Provided False or Misleading Testimony on May 24, 2018 About Forms 1099 Purportedly Issued by Primex for Felix.

48. Businesses must file Forms 1099 with the IRS to report non-wage compensation above \$600 and provide a copy of the relevant Form 1099 to the recipient of the payment.

49. In early 2014, Felix directed Primex's Auditor to prepare IRS Forms 1099 for a list of nineteen Primex staff who Felix identified via email as having received payments from the Firm during the 2013 year.

50. Primex's 2013 general ledger reported that Felix received \$42,200 in compensation, a figure that substantially understated Felix's total compensation since Felix had separately used Primex funds to pay for tens of thousands of dollars of personal expenses in 2013, as described above. Nonetheless, Felix did not request Primex's Auditor to prepare a Form 1099 for himself.

51. On March 25, 2014—less than a week before the deadline for filing the Forms 1099 with the IRS—Primex's Auditor emailed Felix copies of the nineteen Forms 1099 that Felix had requested and indicated that he would e-file them with the IRS. Primex's Auditor did not include a Form 1099 for Felix because Felix did not request one.

52. On July 16, 2014, FINRA Staff issued a request pursuant to FINRA Rule 8210, which sought copies of "Form 1099 MISC or W-2 statements provided by Primex to Wilfredo Felix for 2012 and 2013, along with all documents supporting the compensation paid."

53. In response to that request, by letter dated August 4, 2014, Felix attached a Form 1099, purportedly issued by Primex for Felix for 2013, which showed non-employee

compensation in the total amount of \$42,200 (“Version One of the 2013 Form 1099”).

54. On April 24, 2015, FINRA Staff issued a request seeking copies of “all 1099 and W[-]2 Forms issue[d by Primex] to firm employees for the years ending 2013 . . .”

55. On April 30, 2015, Felix produced to FINRA a series of twenty Forms 1099. Nineteen of those forms were for the same individuals, showed the same amounts, and otherwise appeared to be identical to the nineteen Forms 1099 that were emailed by Primex’s Auditor to Felix on March 25, 2014. But, Felix’s submission to FINRA included, on its last page, an additional Form 1099 that was purportedly issued by Primex to Felix for 2013 (“Version Two of the 2013 Form 1099”). Version Two of the 2013 Form 1099 showed non-employee compensation in the total amount of \$42,849, an amount different than what was reflected on Version One of the 2013 Form 1099 that Felix provided to FINRA, and also different than what was reflected on the Firm’s general ledger as the amount of compensation paid by Primex to Felix in 2013. Version Two of the 2013 Form 1099 also contained a different font type than what appeared on the nineteen Forms 1099 prepared by Primex’s Auditor and emailed to Felix on March 25, 2014.

56. During his May 24, 2018 OTR examination, Felix testified that Primex’s Auditor prepared both Version One of the 2013 Form 1099 and Version Two of the 2013 Form 1099. That testimony was false or misleading. Primex’s Auditor did not prepare a Form 1099 for Felix for 2013 (neither Version One nor Version Two nor any other version).

57. As of the dates Felix provided Version One of the 2013 Form 1099 and Version Two of the 2013 Form 1099 to FINRA through at least May 2018, Felix had not yet filed an individual income tax return (Form 1040) for the year 2013 with the IRS reporting his 2013 compensation from Primex, even though his tax return was due no later than October 15, 2014, assuming Felix timely requested an automatic extension.

iii. **Felix Refused to Provide His IRS Wage and Income Transcript to FINRA.**

58. As noted above, Felix provided two separate versions of the 2013 Form 1099 to FINRA—Version One, which showed non-employee compensation in the total amount of \$42,200, and Version Two, which showed non-employee compensation in the total amount of \$42,849.

59. On November 13 and 20, 2014, Felix sent emails to a representative of European Masters, a luxury used car dealership. In the first email, Felix attached an application for a car loan to European Masters, reporting his annual income as “\$250K+,” and in the second email, Felix attached a 2013 Form 1099, purportedly issued by Primex to Felix, in support of his application (“Version Three of the 2013 Form 1099”). Version Three of the 2013 Form 1099 indicated that Felix received income in the amount of \$271,833.08 from Primex in 2013.

60. Neither Version One of the 2013 Form 1099 (provided by Felix to FINRA on August 4, 2014) nor Version Two of the 2013 Form 1099 (provided by Felix to FINRA on April 30, 2015) nor Version Three of the 2013 Form 1099 (emailed by Felix to European Masters on November 20, 2014) indicates that it is a corrected version.

61. On August 17, 2018, pursuant to FINRA Rule 8210, Enforcement issued a request to Felix, through his counsel, requiring him to provide his IRS Wage and Income Transcript for 2013. Alternatively, if Felix did not have this transcript, Enforcement asked Felix to request it from the IRS using an enclosed Request for Transcript of Tax Return, Form 4506-T, or online.

62. IRS Wage and Income Transcripts show, among other data, information the IRS receives from employers, including “Forms W-2, 1099, 1098 and Form 5498, IRA Contribution Information.” As such, Felix’s IRS Wage and Income Transcript for 2013 would show whether Primex filed a Form 1099 reporting Felix’s compensation in 2013 and, if so, in what amount.

63. On August 30, 2018, Felix responded through counsel, stating he did not possess the transcript and objecting to completing the IRS Form 4506-T on the grounds that an IRS Account Transcript “is not a document created, signed, utilized, owned or maintained by Mr. Felix.”

64. On September 7, 2018, pursuant to FINRA Rule 8210, Enforcement sent a second identical request to Felix, through counsel, again requesting that he provide his IRS Wage and Income Transcript for 2013, or if he did not have it, to request it from the IRS through a Request for Transcript of Tax Return, Form 4506-T, enclosed with the request, or online. Along with that letter, Enforcement also included a cover letter responding as follows to Felix’s contentions:

[T]he supplementary material to Rule 8210 provides that a person subject to FINRA’s jurisdiction must make records available when that person “controls [such records] or has a right to demand them.” . . . There is no doubt that Mr. Felix has the right to demand his IRS account transcript; indeed, that is the express purpose of IRS Form 4506-T. Moreover, FINRA’s Office of Hearing Officers (“OHO”) has expressly affirmed FINRA’s right to demand IRS account statements. *See Dep’t of Enforcement v. Graetz*, OHO Order 17-08, Case No. 2014038847602 (Mar. 21, 2017). In that case, OHO ordered a respondent to sign an IRS Form 4506-T, reasoning that IRS account statements are subject to FINRA’s jurisdiction because the respondent could “ask for [them] or more simply grant access to Enforcement.”

65. Although Felix was properly served with these requests, Felix failed to produce the transcript or a completed IRS Form 4506-T to FINRA Staff, thereby hindering FINRA Staff’s effort to determine whether Primex filed a Form 1099 reporting Felix’s compensation in 2013 and, if so, in what amount.

FIRST CAUSE OF ACTION

Falsifying Books and Records

(Respondents Felix)

66. Enforcement realleges and incorporates by reference paragraphs 1 through 65 above.

67. FINRA Rule 2010 requires member firms and associated persons to “observe high standards of commercial honor and just and equitable principles of trade.” Falsifying books and records is inconsistent with high standards of commercial honor and just and equitable principles of trade.

68. As alleged above, Felix falsified Primex’s books and records by misclassifying hundreds of thousands of dollars of his personal expenses as business expenses of the Firm on Primex’s general ledger and in other of the Firm’s books and records for the years 2013, 2014, and 2015.

69. By falsifying the Firm’s books and records, Felix violated FINRA Rule 2010.

SECOND CAUSE OF ACTION

Failing to Make Accurate Books and Records, and Failing to File Accurate FOCUS Reports, in Willful Violation of Section 17(a) of the Exchange Act and Exchange Act Rules 17a-3 and 17a-5, and FINRA Rules 4511 and 2010

(Respondents Felix and Primex)

70. Enforcement realleges and incorporates by reference paragraphs 1 through 69, above.

71. Section 17(a)(1) of the Exchange Act requires firms to create and maintain records of business operations in conformity with any underlying rules set forth by the SEC, including Exchange Act Rules 17a-3 and 17a-5.

72. Exchange Act Rule 17a-3(a)(2) requires member firms to make and keep ledgers or other records reflecting all assets and liabilities, income and expenses, and capital accounts.

73. Exchange Act Rule 17a-5(a)(2)(iii) requires non-carrying, non-clearing member firms such as Primex to file FOCUS reports containing Part IIA of Form X-17A-5 at least on a quarterly basis.

74. FINRA Rule 4511(a) require members and associated persons to make and preserve books and records as required under FINRA rules, the Exchange Act, and the applicable Exchange Act rules.

75. Failing to make and preserve accurate books and records, and failing to file accurate reports, in accordance with the above-cited law and rules, is conduct that is inconsistent with high standards of commercial honor and just and equitable principles of trade and, thus, violates Rule 2010.

76. As alleged above, Felix caused the Firm to misclassify hundreds of thousands of dollars of his personal expenses as business expenses of the Firm on Primex's general ledger and in other of the Firm's books and records for the years 2013, 2014, and 2015. Felix grouped his personal expenses along with apparently legitimate business expenses of the Firm in broad general expense categories such as "miscellaneous expenses," "office supplies," and "furniture and fixtures" on Primex's general ledger for the years 2013, 2014, and 2015, causing Primex's books and records to be inaccurate by significantly overstating its business expenses in those categories and by understating its distributions to Felix.

77. Moreover, Felix caused Primex to file inaccurate quarterly FOCUS reports in 2013, 2014, and 2015 that significantly understated the amount of compensation paid to Felix and overstated the Firm's other expenses.

78. By virtue of the foregoing, Felix violated FINRA Rules 4511 and 2010.

79. By virtue of the foregoing, Primex willfully violated Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-5 thereunder, and violated FINRA Rules 4511 and 2010.

80. Further, because Primex's violations of the Exchange Act were willful, it is subject to statutory disqualification under Section 3(a)(39) of the Exchange Act.

THIRD CAUSE OF ACTION

Failing to Timely Respond to a Written Request for Information Issued Pursuant to FINRA Rule 8210, in Violation of FINRA Rules 8210 and 2010

(Respondent Primex)

81. Enforcement realleges and incorporates by reference paragraphs 1 through 80, above.

82. FINRA Rule 8210(a) provides that for purposes of an investigation, FINRA Staff has the right to require a person or entity subject to FINRA's jurisdiction to "provide information orally [or] in writing . . . with respect to any matter involved in [an] investigation"

83. FINRA Rule 8210(c) provides that "[n]o member or person shall fail to provide information . . . pursuant to this Rule."

84. Failing to timely respond to FINRA Staff's requests for documents and information issued pursuant to Rule 8210 is conduct that is inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of FINRA Rule 2010, as well as FINRA Rule 8210.

85. FINRA Rule 8210(d) specifies that notice under Rule 8210 shall be deemed received by a member firm "by mailing or otherwise transmitting the notice to the last known business address of the member," except that if FINRA Staff "knows that the member . . . is represented by counsel regarding the investigation . . . that is the subject of the notice, then the notice shall be served upon counsel by mailing or otherwise transmitting the notice to the counsel in lieu of the member."

86. On November 3, 2015, FINRA Staff sent Primex a letter pursuant to FINRA Rule 8210, requesting that Primex explain the purpose of various withdrawals and charges that Felix effected through Primex's bank account in 2014 and 2015 and to produce "copies of all invoices

and/or supporting documentation” for those transactions.

87. FINRA Staff sent the November 3, 2015 8210 request to Primex by first class mail at its then-current business address identified in the Central Registration Depository (“CRD”), electronically via Request Manager, and via email to Primex’s counsel. Primex was required to respond to the request by November 10, 2015. The first class mailing, Request Manager transmission, and email were not returned to FINRA Staff. Primex did not provide any documents or otherwise respond to the request by the November 10 deadline.

88. Therefore, on November 17, 2015, FINRA Staff sent Primex a second letter pursuant to FINRA Rule 8210 requesting that Primex provide the documents requested pursuant to FINRA’s November 3, 2015 Rule 8210 request. FINRA Staff sent the November 17, 2015 Rule 8210 request to Primex by first class mail, certified mail, electronically via Request Manager, and via email to Primex’s counsel. Primex was required to provide a response by November 27, 2015. The first class mailing, Request Manager transmission, and email were not returned to FINRA Staff. Tracking information available online indicates that the certified mailing was successfully delivered to Primex on November 23, 2015, and FINRA Staff also received a signed certified mail receipt confirming the delivery. Primex did not provide documents or otherwise respond to the request by the November 27 deadline.

89. The information and documents requested by FINRA pursuant to the November 3 and November 17, 2015 requests were material to FINRA’s investigation of Primex and Felix.

90. Accordingly, on February 26, 2016, FINRA Staff sent Primex a Notice of Suspension pursuant to FINRA Rule 9552 informing the firm that it would be suspended unless it produced the requested information on or before March 21, 2016 because it failed to provide information to FINRA which had been requested in accordance with and pursuant to FINRA Rule 8210. The Notice of Suspension also stated that if Primex took corrective action by

complying with the requests before March 21, 2016, the suspension would not take effect.

91. FINRA sent the Notice of Suspension by first class mail and Federal Express to Primex at its CRD business address, in accordance with FINRA Rules 9552(b) and 9134(b), which require that a Notice of Suspension be sent to a member at “the entity’s business address as reflected in [CRD].” Neither mailing was returned to FINRA Staff.

92. On or about March 17, 2016—just four days before the suspension was to take effect—Felix provided a written response to FINRA Staff on behalf of Primex. After receiving Primex’s response, FINRA withdrew the Rule 9552 proceeding against the Firm on or about March 21, 2016.

93. By failing to timely respond to requests for information and documents issued pursuant to FINRA Rule 8210 on November 3 and 17, 2015, Primex violated FINRA Rules 8210 and 2010.

FOURTH CAUSE OF ACTION

Providing False or Misleading Information to FINRA in a Written Response to a FINRA Rule 8210 Request, in Violation of FINRA Rules 8210 and 2010

(Respondent Felix)

94. Enforcement realleges and incorporates by reference paragraphs 1 through 93, above.

95. Providing false or misleading information to FINRA constitutes conduct inconsistent with just and equitable principles of trade in violation of FINRA Rule 2010, as well as FINRA Rule 8210.

96. As alleged above, on December 12, 2017, FINRA Staff sent Felix a request for information and documents pursuant to FINRA Rule 8210, which requested that he identify

whether purchases made at certain vendors in 2013 represented his personal expenditures (because Primex's Auditor had required Primex to reclassify various purchases made at those same vendors in 2014), or, if not, to describe the business purpose of those expenses and to provide documentation.

97. On January 5, 2018, in response to FINRA's Rule 8210 request, Felix provided a written response indicating that there was no need to revisit Primex's accounting for purported business expenses in 2013 because Primex's Auditor had required the Firm to reclassify expenses in connection with the 2014 and 2015 audits only because the Firm had changed its corporate tax structure. Felix's response to FINRA was false or misleading.

98. By providing false or misleading information to FINRA in a letter dated January 5, 2018 that was in response to a request for information and documents issued pursuant to FINRA Rule 8210, Felix violated FINRA Rules 8210 and 2010.

FIFTH CAUSE OF ACTION

Providing False or Misleading Information to FINRA During Testimony Taken Pursuant to FINRA Rule 8210, in Violation of FINRA Rules 8210 and 2010

(Respondent Felix)

99. Enforcement realleges and incorporates by reference paragraphs 1 through 98, above.

100. As alleged above, on May 24, 2018 during an OTR examination with FINRA Staff, convened pursuant to FINRA Rule 8210, Felix was asked whether he "understood that in 2014, [Primex's Auditor] had you reclassify \$200,000 in expenses?" Felix responded by testifying that the reclassification occurred because Primex "changed from a C corp. to an S corp." Felix's testimony to FINRA was false or misleading.

101. During the same OTR examination with FINRA Staff, convened pursuant to

FINRA Rule 8210, Felix testified that Primex's Auditor prepared both Version One of the 2013 Form 1099 and Version Two of the 2013 Form 1099. Felix's testimony to FINRA was false or misleading.

102. By providing false or misleading information to FINRA during OTR testimony taken pursuant to FINRA Rule 8210 on May 24, 2018, Felix violated FINRA Rules 8210 and 2010.

SIXTH CAUSE OF ACTION

Failing to Respond to a Written Request for Information Issued Pursuant to FINRA Rule 8210, in Violation of FINRA Rules 8210 and 2010

(Respondent Felix)

103. Enforcement realleges and incorporates by reference paragraphs 1 through 102, above.

104. FINRA Rule 8210(a)(2) provides that FINRA Staff has the right 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 that is in such member's or person's possession, custody or control."

105. FINRA Rule 8210(d) specifies that when FINRA Staff is aware that a member or associated person is represented by counsel in connection with an investigation, notice under Rule 8210 "shall be served upon counsel by mailing or otherwise transmitting the notice to the counsel in lieu of the member or person, and any notice served upon counsel shall be deemed received by the member or person."

106. Failing to respond to FINRA Staff's requests for documents and information issued pursuant to Rule 8210 is conduct that is inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of FINRA Rule 2010, as well as

FINRA Rule 8210.

107. On August 17, 2018, FINRA Staff sent Felix a request pursuant to FINRA Rule 8210, requesting that Felix provide a copy of his IRS Wage and Income Transcript for 2013. Alternatively, if Felix did not have this transcript, FINRA Staff asked Felix to request it from the IRS using an enclosed Request for Transcript of Tax Return, Form 4506-T, or online. FINRA Staff sent the request by Federal Express and email to Felix's counsel, and neither mailing was returned to FINRA Staff. Felix's counsel responded to FINRA's request on August 30, 2018, but refused to produce Felix's IRS transcripts, asserting various objections to the request.

108. After Felix refused to produce his IRS transcript, on September 7, 2018, pursuant to FINRA Rule 8210, Enforcement sent a second, identical request to Felix, again requesting that he provide his IRS Wage and Income Transcript for 2013, or if he did not have it, to request it from the IRS through a Request for Transcript of Tax Return, Form 4506-T, enclosed with the request, or online. FINRA Staff sent the request by Federal Express and email to Felix's counsel, and neither mailing was returned to FINRA Staff. Felix's counsel responded to FINRA's request on September 14, 2018, and again refused to produce Felix's IRS transcripts, asserting various objections to the request.

109. The information and documents requested by FINRA pursuant to the August 17 and September 7, 2018 requests were material to FINRA's investigation of Primex and Felix.

110. By failing to produce documents requested pursuant to FINRA Rule 8210 on August 17 and September 7, 2018, Felix violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

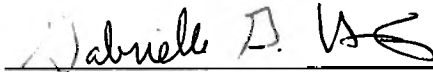
WHEREFORE, the Department of Enforcement respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondents committed the violations charged and alleged herein;

- B. order that one or more of the sanctions provided under FINRA Rule 8310(a) be imposed;
- C. order that Respondents bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330; and
- D. make specific findings that Primex willfully violated Section 17(a) of the Exchange Act and Rules 17a-3 and 17a-5 thereunder.

**FINRA DEPARTMENT OF
ENFORCEMENT**

Date: 7/1/19



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