SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 99940 / April 11, 2024

Admin. Proc. File No. 3-18989r

In the Matter of the Application of

Trevor Michael Saliba

For Review of Disciplinary Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY PROCEEDING

On partial remand for clarification of findings and reconsideration of sanctions, FINRA found that owner of former FINRA member firm knowingly provided false memos to FINRA staff on two occasions and barred him for that conduct. FINRA also imposed a separate bar for owner's false testimony at an on-the-record interview and failure to produce all computers used for firm business in response to a request for them. *Held*, FINRA's findings of violation and sanctions are *sustained*.

APPEARANCES:

Alan M. Wolper and *Heidi VonderHeide* of *Ulmer & Berne LLP*, for Trevor Michael Saliba.

Alan Lawhead, *Jennifer Brooks*, and *Celia L. Passaro*, for FINRA.

Appeal filed: November 4, 2022
Last brief received: March 27, 2023

Trevor Michael Saliba, the owner of former FINRA member NMS Capital Securities, LLC ("NMS" or the "Firm"), seeks review of a FINRA decision barring him for violations of FINRA rules following a partial remand from a 2021 Commission opinion.[1] In that opinion, the Commission sustained FINRA's earlier findings that Saliba provided false testimony at an on-the-record interview about his use of computers and failed to produce all computers he used for Firm business in response to a request from FINRA staff.[2] At the same time, the Commission remanded to FINRA to clarify the basis for its findings that Saliba also violated FINRA rules by providing falsified memos to FINRA staff on two occasions. Because FINRA imposed a single bar for all of this misconduct, the Commission also remanded that bar to FINRA for it to reconsider.

On remand, FINRA found, as it did previously, that Saliba had violated FINRA rules by providing false memos to FINRA staff, except with respect to one such memo, and barred Saliba for these violations. FINRA also imposed a separate bar for Saliba's misconduct related to his computers. Saliba appeals from FINRA's findings that he knowingly provided false memos to FINRA and the bar it imposed for this misconduct. We sustain FINRA's findings and sanctions.[3]

I. Background

A. FINRA found that Saliba violated its rules by providing falsified documents and testimony.

As described in more detail in the Commission's 2021 Opinion, Saliba acquired NMS in 2011 and later filed a continuing membership application ("CMA") seeking FINRA's approval of the acquisition.[4] The CMA did not disclose that the Commission was investigating, and had issued a subpoena to, a registered investment adviser that Saliba owned. FINRA's Department of Member Regulation learned of this and, in August 2012, imposed interim restrictions on NMS that prohibited it from permitting Saliba to act "in any principal and/or supervisory capacity" pending resolution of the CMA (the "Interim Restrictions"). In June 2013, Member Regulation

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1 *Dep't of Enf't v. Saliba*, Complaint No. 2013037522501r, 2022 WL 14519580 (NAC Oct. 6, 2022).

2 *Trevor Michael Saliba*, Exchange Act Release No. 91527, 2021 WL 1336324 (Apr. 9, 2021) (the "2021 Opinion"), *sustaining in part and remanding in part findings made, and sanctions imposed in*, *Dep't of Enf't v. Saliba*, Complaint No. 2013037522501, 2019 WL 158056 (NAC Jan. 8, 2019).

3 In the 2021 Opinion, the Commission also sustained FINRA's findings that Saliba violated its rules by acting as a principal when prohibited from doing so and by participating in an effort to provide it with backdated compliance forms. *Saliba*, 2021 WL 1336324, at *12, *17. The Commission sustained separate bars FINRA imposed for those violations. *Id*. at *18-23. The United States Court of Appeals for the Ninth Circuit denied Saliba's subsequent petition for review to the extent that it sought review of those findings and sanctions, which are not at issue here. *Saliba v. SEC*, 47 F.4th 961, 964, 971 (9th Cir. 2022).

4 *See generally Saliba*, 2021 WL 1336324, at *2–12.

denied the CMA, after finding that, while he was subject to the Interim Restrictions, Saliba had acted as a principal by signing eight engagement agreements on the Firm's behalf.

Saliba testified that he believed that Member Regulation would reverse the decision if he proved that he had permission from the Firm's current and former chief executive officers to enter into the engagement agreements. Saliba subsequently met with Member Regulation staff and stated that he had received verbal authorization from the CEOs to enter into the agreements. Member Regulation requested that Saliba provide documentation supporting his contention.

After the meeting, Saliba provided Member Regulation with copies of memos that purported to authorize him to enter into engagement agreements on the Firm's behalf, including three memos bearing signatures allegedly from the Firm's former CEO, James Miller, and addressed to Saliba (the "Miller Memos"). A few months later, Saliba also provided copies of these memos to FINRA's Department of Enforcement in response to its request under FINRA Rule 8210 for "[a]ll documents evidencing executive management approval or authority to engage in banking deals and placement agent/commission agreements."[5]

To assess the provenance of the Miller Memos, Enforcement took Saliba's testimony in June 2014 at an on-the-record interview ("OTR") pursuant to FINRA Rule 8210. At the OTR, Saliba testified that he had found the Miller Memos "somewhere in the office," but that he had "forgot[ten] where." Enforcement also requested that Saliba produce under Rule 8210 "[a]ny and all computers and/or electronic storage devices used by Trevor Saliba for NMS . . . business." Saliba testified that he used only one computer for Firm business, a laptop he had used since at least 2012 that he produced later that day. But documents produced by NMS showed that Saliba had used an additional computer for Firm business, which he did not produce or disclose in his testimony.

Enforcement brought a disciplinary action against Saliba and others associated with NMS,[6] and a FINRA Hearing Panel held a hearing in September 2017. At the hearing, Saliba testified that he did not know that the Miller Memos existed when he signed the engagement agreements that they addressed, that he first saw the memos shortly before he provided them to Member Regulation, and that he had found the memos without conferring with Miller. Saliba also testified that he found the Miller Memos at NMS's offices under a desk in a box containing, among other things, documents from a closed office of an unrelated broker-dealer. Saliba testified that he found it "confusing" that the memos would be stored there, and he could not explain how the memos came to be located in the box or identify who put them there, although he asserted that he had no reason to question their authenticity.

No evidence corroborated Saliba's account, and Miller testified that he had not signed the memos, that the signatures on them were forgeries, and that he had not authorized Saliba to enter into the agreements referenced in the memos or engaged in the conversations with Saliba that

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5 *See* FINRA Rule 8210(a) (providing that FINRA staff may, for the purpose of an investigation, require persons subject to its jurisdiction to provide information and testimony).

6 The findings against, and sanctions imposed on, those individuals are not at issue here.

they purportedly documented. Considering the witnesses' demeanor, the Hearing Panel found that Saliba was not a credible witness, but that Miller was.

Following the hearing and Saliba's subsequent appeal of an adverse Hearing Panel decision to FINRA's National Adjudicatory Council (the "NAC"), FINRA found, as relevant here, that Saliba had violated FINRA rules:

- by providing to FINRA staff the Miller Memos, and one other memo signed by the CEO who replaced Miller, each of which were falsified; and
- by testifying falsely at his June 2014 OTR regarding his use of computers and failing to produce all computers he used for NMS business as requested.

FINRA imposed a unitary bar for this misconduct, and Saliba appealed the NAC's 2019 decision to the Commission.

B. The Commission sustained in part, and remanded in part, FINRA's findings of violations and associated sanctions.

In its 2019 decision, FINRA found that Saliba violated FINRA Rules 8210 and 2010 by providing falsified memos to Enforcement and violated Rule 2010 by earlier providing the same memos to Member Regulation. Rule 2010 requires members and associated persons to "observe high standards of commercial honor and just and equitable principles of trade."[7] Members or associated persons that fail to provide full and prompt cooperation, or provide false or misleading information, in response to a Rule 8210 request may be found to have violated the rule.[8] By violating Rule 8210, a member or associated person also violates Rule 2010.[9]

In the 2021 Opinion, the Commission sustained FINRA's findings that Saliba violated FINRA Rules 8210 and 2010 by falsely testifying at his June 2014 OTR that he used only a single computer for Firm business[10] and by failing to produce to FINRA "[a]ny and all computers and/or electronic storage devices used by Trevor Saliba for NMS . . . business" that

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7 FINRA Rule 2010; *see also* FINRA Rule 0140(a) (providing that "[p]ersons associated with a member shall have the same duties and obligations as a member under the Rules").

8 *Merrimac Corp. Sec., Inc.*, Exchange Act Release No. 86404, 2019 WL 3216542, at *2 (July 17, 2019) (citing *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 WL 3891311, at *7 (Aug. 22, 2008)) (holding that provision of false or misleading information violates Rule 8210); *CMG Institutional Trading, LLC*, Exchange Act Release No. 59325, 2009 WL 223617, at *5 (Jan. 30, 2009) (explaining that Rule 8210 requires cooperation); *see also* FINRA Rule 8210(c) (providing that no member or associated person shall "fail to provide information or testimony or to permit an inspection and copying of books, records, or accounts pursuant to this Rule").

9 *Meyers Assocs., L.P.*, Exchange Act Release No. 86497, 2019 WL 3387091, at *4 (July 26, 2019) (recognizing that a violation of another FINRA rule "violates FINRA Rule 2010").

10 *Saliba*, 2021 WL 1336324, at *14-15; *see also id.* at *8-10.

were within his "possession, custody, or control" as requested under Rule 8210.[11] The Commission found that Saliba had effectively replaced his first computer with the second computer for conducting Firm business, and that FINRA's findings were supported by expert analysis of Saliba's computer use, his emails regarding the second computer, and his testimony that he "must" have used a computer other than the first computer for Firm business.

In contrast, the Commission remanded FINRA's findings relating to the false memos to it because the Commission could not determine whether FINRA had found Saliba acted intentionally and knowingly or merely negligently in providing the false memos.[12] The Commission also observed that FINRA had devoted only a single sentence to its finding that Saliba had violated Rule 2010 by providing the memos to Member Regulation.

The Commission remanded the unitary bar that FINRA imposed for both Saliba's violations relating to his computers (which the Commission sustained) and violations relating to his production of false memos to FINRA staff (which it remanded).[13]

C. On remand, FINRA found that Saliba knowingly provided false memos to FINRA and imposed two separate bars for Saliba's misconduct related to his computers and the false memos.

On October 6, 2022, FINRA issued a decision on remand finding that Saliba violated FINRA Rule 2010 by acting unethically when he provided the Miller Memos to Member Regulation and violated Rules 8210 and 2010 when he later produced the Miller Memos to Enforcement in response to a Rule 8210 request.[14] FINRA explained that, although the evidence was not sufficient to find that Saliba personally created (or caused the creation of) the Miller Memos, there was "overwhelming" circumstantial evidence that Saliba knew the Miller Memos were false when he provided them to FINRA. FINRA found that Saliba's testimony regarding his discovery of the Miller Memos was "highly implausible" because it required that "some unknown person, for some unknown reason," created and placed the false Miller Memos in boxes in which they were unlikely to be found. Saliba's account, which he provided for the first

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11 *Id.* at *15-17; *see also id.* at *8-10.

12 *Id.* at *14 (explaining that if FINRA "concluded Saliba acted merely negligently, it did not explain why Saliba's negligence would establish violations of FINRA Rules 8210 and 2010 on the facts of this case").

13 *Id.* at *23. Saliba later challenged the Commission's liability findings relating to his computers, but because the Commission had remanded to FINRA to determine the appropriate sanction for those violations, the Ninth Circuit dismissed his petition to the extent he sought review of the Commission's findings with respect to them. *Saliba v. SEC*, 47 F.4th at 964, 968-70, 971.

14 FINRA also concluded that there was insufficient evidence to find that Saliba knew that the additional memo referenced in its earlier decision was false and dismissed the findings of violation with respect to that memo.

time at the hearing, also contradicted his earlier OTR testimony in which he stated that he could not remember where he found the Miller Memos.

By comparison, citing what it previously found to be Miller's credible testimony, FINRA concluded that Saliba knew he had not asked for Miller's approval to enter into the engagement agreements referenced in the Miller Memos and thus knew the memos were false. Finally, FINRA found that Saliba had a motive to submit false documents to FINRA because, as NMS's owner, he had "the most to gain" if Member Regulation reversed its denial of the Firm's CMA.

FINRA concluded that Saliba's violations with respect to his work computers and those connected to the Miller Memos each involved distinct conduct and merited separate bars to address Saliba's lack of integrity and inability to comply with FINRA rules.

II. Analysis

Under Section 19(e)(1) of the Securities Exchange of 1934, we review FINRA disciplinary action to determine (1) whether an applicant engaged in the conduct FINRA found, (2) whether that conduct violated the rules specified in FINRA's determination, and (3) whether those rules are, and were applied in a manner, consistent with the purposes of the Exchange Act.[15] We base our findings on an independent review of the record and apply a preponderance of the evidence standard.[16] Under this standard, we sustain FINRA's findings that Saliba violated FINRA rules by knowingly providing false memos to FINRA staff on two occasions.[17]

A. The record supports FINRA's finding on remand that Saliba knew the Miller Memos were false when he provided them to FINRA staff.

In its 2021 Opinion, the Commission recognized that the Hearing Panel "found Miller to be a credible witness as '[h]e answered all questions directly, his answers appeared candid, and his testimony was internally consistent,'"[18] and found that Miller's testimony established that he

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15 15 U.S.C. § 78s(e)(1); *accord Meyers Assocs.*, 2019 WL 3387091, at *3.

16 *Meyers Assocs.*, 2019 WL 3387091, at *3 (citing *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)). Saliba acknowledges that circumstantial evidence can meet this burden. *See Herman & MacLean v. Huddleston*, 459 U.S. 375, 390-91 n.30 (1983) (noting that "circumstantial evidence can be more than sufficient" to establish scienter).

17 We previously sustained FINRA's findings that Saliba violated its rules by failing to produce all his computers and falsely testifying about them at his OTR. *Saliba*, 2021 WL 1336324, at *13. These liability findings are thus not at issue here. *See John Joseph Plunkett*, Exchange Act Release No. 73124, 2014 WL 4593195, at *6 (Sept. 16, 2014) (declining to revisit findings decided in prior opinion that were not included in remand); *Saliba*, 2021 WL 1336324, at *23 (remanding sanctions, but not liability, determination associated with computer findings).

18 *Saliba*, 2021 WL 1336324, at *7 (quoting *Dep't of Enf't v. Saliba*, Discip. Proc. No. 2013037522501 (OHO Dec. 15, 2017), https://www.finra.org/sites/default/files/OHO-Saliba-2013037522501-121517.pdf).

had not written the memos that Saliba provided to FINRA.[19] In particular, Miller testified not only that the memos were forgeries and did not authorize Saliba to enter into the agreements referenced in them, but also that Miller never had the conversations with Saliba that the memos referenced.[20] We continue to defer to the Hearing Panel's credibility finding and accept this testimony as true. Because the memos documented discussions between Miller and Saliba that never happened, we find that a preponderance of the evidence supports FINRA's finding that Saliba therefore knew the memos were false when he provided them to FINRA.

Saliba's own implausible testimony—in which he claimed that he found the Miller Memos in the Firm's files and had no reason to question their authenticity—further supports this conclusion. As FINRA found, because Saliba owned NMS, he had the most to gain if Member Regulation reversed its decision to deny NMS's CMA. And because Member Regulation had denied the CMA after finding that NMS had improperly allowed Saliba to enter into agreements on the Firm's behalf, Saliba admittedly believed Member Regulation would reverse its decision if he could show the Firm had authorized him to enter into those agreements. But no evidence corroborates Saliba's account of how he discovered the memos, and the Hearing Panel, which observed his testimony, found that Saliba was not a credible witness.[21]

We also agree with FINRA that Saliba's testimony about how he found the memos was "incredible." Although the Miller Memos were addressed to Saliba, he provided them to Member Regulation only after he met with it about its denial of the Firm's CMA. Saliba also acknowledged that he found the memos in a "confusing" location—a box under a desk that principally contained documents received from an unrelated broker-dealer—and that he did so without contacting Miller and without meaningful assistance from the Firm's chief compliance officer, whom Saliba had directed to find any documents authorizing Saliba to enter into agreements on behalf of the Firm. And Saliba could not identify who put the Miller Memos in that location or explain why that person would have put the memos in a place where they would be hard to find. At a minimum, the circumstances under which Saliba claims to have found the memos—which we, like FINRA, find "highly implausible"—should have raised red flags regarding their authenticity.

The testimony that Saliba gave at the 2017 hearing about how and where he found the memos also substantially departed from his earlier, much less certain, 2014 OTR testimony on the same subject. As Saliba concedes in his brief, "the best [he] could do under oath at his OTR was to testify that he found the memos in 'some file,'" and, at the time (less than a year after he

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19 *Id.*; *see also id.* at *16 & n.36 (stating that "we defer to demeanor-based credibility findings" and providing supporting citations); *Kenneth R. Ward*, Exchange Act Release No. 47535, 2003 WL 1447865, at *10 (Mar. 19, 2003), *aff'd*, 75 F. App'x 320 (5th Cir. 2003) (explaining that we do not, however, accept such determinations "blindly"); *see also Saliba v. SEC*, 47 F.4th at 971 (recognizing deference owed to credibility findings).

20 *Saliba*, 2021 WL 1336324, at *5-7.

21 *See id.* at *12 & n.12, *16, *23 n.73 (deferring to Hearing Panel's finding that Saliba was not a credible witness).

first produced the documents to FINRA), "he merely knew that he found the documents in the Firm's information."

Saliba nevertheless disputes that his OTR and hearing testimony were inconsistent; he argues that they "corroborate [his] good faith belief that the documents he retrieved from the Firm's records were authentic." In doing so, Saliba asserts that FINRA had concluded that he testified at his OTR "that he found the [Miller Memos] in a specific deal file." But FINRA did not make this finding; to the contrary, FINRA recognized that Saliba testified at his OTR that he "could not remember where he 'actually found the file[s]' or 'if they were in the deal files or if they were in one specific file.'"

Saliba also argues that there is no evidence "to connect [his] *hope* that the membership application denial would be reversed to his alleged *knowledge* that specific documents found in the Firm's records were falsified" (emphasis in original). We recognize that Saliba's hope for a favorable ruling does not independently establish that he knew the Miller Memos were false. But "motive can be a relevant consideration, and personal financial gain may weigh heavily in favor of a scienter inference."[22] Saliba's motive to reverse the denial of the CMA further supports FINRA's determination that he knew the Miller Memos were false but nonetheless submitted them to its staff.

Saliba additionally contends that, even if Miller's testimony shows that the Miller Memos were false, it does not show that Saliba knew the memos were false when he provided them to FINRA. Instead, Saliba claims, he was entitled to assume that they were genuine, because he found the memos in the Firm's files. But regardless of where he found them, Saliba must have known the memos were false because, as we explain above, the memos documented discussions between Miller and Saliba that did not occur. Moreover, Saliba's account of how and where he found the Miller Memos in the Firm's files was itself implausible—and should have raised its own red flags about the memos' authenticity.

Saliba further claims that he did not know the Miller Memos were false because he "had every reason to believe in 2013 that Mr. Miller was engaged in and took seriously his role as CEO" and that, among other things, he and Miller had "almost daily interactions." But even if true, Saliba does not explain (nor can we find) how his claim establishes that the purported conversations recited in the Miller Memos actually happened or explain the unlikely circumstances surrounding how Saliba supposedly found the memos. For all the reasons above, we thus find that a preponderance of the evidence shows that Saliba knew that the memos were false when he provided them to FINRA.

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[22] *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 325 (2007); *cf. Donald L. Koch*, Exchange Act Release No. 72179, 2014 WL 1998524, at *14-15 (May 16, 2014) (finding that although proof of motive was not required under the circumstances, respondent had motive to engage in market manipulation), *petition denied in relevant part*, 793 F.3d 147 (D.C. Cir. 2017).

B. Knowingly providing false memos to FINRA violates FINRA rules.

1. Saliba violated FINRA Rule 2010 by knowingly providing false memos to Member Regulation.

FINRA members and associated persons violate Rule 2010 if they act "unethically or in bad faith."[23] Unethical conduct is that which is "not in conformity with moral norms or standards of professional conduct," and bad faith means "dishonesty of belief or purpose."[24] Saliba does not dispute that knowingly providing false documents to FINRA is unethical conduct.[25] We agree with FINRA that Saliba acted unethically, in violation of FINRA Rule 2010, when he provided the Miller Memos to Member Regulation knowing they were falsified.[26]

2. Saliba violated FINRA Rules 8210 and 2010 by knowingly providing false memos to Enforcement.

Saliba does not dispute that knowingly providing false information to FINRA in response to a Rule 8210 request violates Rules 8210 and 2010. And here, Enforcement requested under Rule 8210 that Saliba and NMS provide "[a]ll documents evidencing executive management approval or authority to engage in [investment] banking deals." In response, Saliba provided the Miller Memos, which he knew to be false. Saliba thus violated Rules 8210 and 2010.[27]

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[23] *Kimberly Springsteen-Abbott*, Exchange Act Release No. 88156, 2020 WL 605918, at *11 (Feb. 7, 2020) (discussing Rule 2010 violations not predicated on other rule violations (internal citations and quotation marks omitted)), *petition denied*, 989 F.3d 4 (D.C. Cir. 2021).

[24] *Id.*

[25] *Cf. Rooms v. SEC*, 444 F.3d 1208, 1214 (10th Cir. 2006) (observing that "any reasonable person would know that . . . intentional deception of [FINRA] [by providing false information to it] would violate" Rule 2010); *Ortiz*, 2008 WL 3891311, at *9 (finding "an independent violation" of predecessor of FINRA Rule 2010 where applicant represented that customers signed applications in his presence, although he forged their signatures).

[26] *Cf. David Adam Elgart*, Exchange Act Release No. 81779, 2017 WL 4335050, at *7 (Sept. 29, 2017) (finding that applicant acted unethically in violation of Rule 2010 when he knowingly provided false information to FINRA). FINRA also found that Saliba acted unethically by providing the Miller Memos to Member Regulation without doing any investigation into their authenticity. We need not address this additional finding given our finding that Saliba knew the memos were falsified. Nonetheless, we reject Saliba's insistence that he had "no reason" to question the Miller Memos' authenticity.

[27] *Cf. Merrimac Corp. Sec.*, 2019 WL 3216542, at *4 (finding that applicants violated Rules 8210 and 2010 when they provided forms to FINRA that they knew to be false).

C. Rules 8210 and 2010 are, and were applied in a manner, consistent with the purposes of the Exchange Act.

In the 2021 Opinion, the Commission found that Rules 8210 and 2010 were consistent with the purposes of the Exchange Act.[28] Although Saliba challenges FINRA's determination that he violated Rules 8210 and 2010, he does not contest that FINRA applied these rules in a manner consistent with the purposes of the Exchange Act. We find that FINRA applied Rules 8210 and 2010 in this manner because policing compliance with them advanced its interests in protecting the integrity of its investigations and proceedings.[29]

III. Sanctions

Under Exchange Act Section 19(e)(2), we sustain FINRA sanctions for misconduct unless we find that, giving due regard to the public interest and the protection of investors, the sanctions are excessive or oppressive, or impose an unnecessary or inappropriate burden on competition.[30] In reviewing FINRA sanctions determinations, we consider its Sanction Guidelines,[31] which it promulgated to achieve greater consistency, uniformity, and fairness in sanctions, as a nonbinding benchmark for our review.[32] For the reasons below, we sustain the sanctions that FINRA imposed on remand.

A. We sustain the bar that FINRA imposed on Saliba because he provided false testimony and failed to produce all computers used for Firm business.

FINRA applied the Sanction Guidelines related to violations of FINRA Rule 8210 when imposing a sanction addressing Saliba's misconduct relating to his use of computers.[33] FINRA treated Saliba's failure to produce all computers he used for Firm business as a partial, but incomplete, response to a Rule 8210 request. For such violations, the Sanction Guidelines recommend a bar as "standard" unless the individual who violated Rule 8210 can demonstrate that the information the person provided substantially complied with all aspects of FINRA's

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28 *Saliba*, 2021 WL 1336324, at *13 (citing *Merrimac Corp.*, 2019 WL 3216542, at *5).

29 *Cf. Robert Juan Escobio*, Exchange Act Release No. 97701, 2023 WL 3948218, at *12 (June 12, 2023) (finding that FINRA's application of Rules 8210 and 2010 "was consistent with the purposes of the Exchange Act because Escobio's failure to respond to the Rule 8210 requests hindered FINRA's ability to investigate possible misconduct").

30 15 U.S.C. § 78s(e)(2). Saliba does not assert that FINRA's sanctions present any such burden, nor do we find that they do.

31 FINRA applied the 2021 version of its Sanction Guidelines. *See* https://www.finra.org/sites/default/files/2022-09/2021_Sanctions_Guidelines.pdf ("Sanction Guidelines" or "Guidelines"). Saliba does not object to the application of this version.

32 *Jason A. Craig*, Exchange Act Release No. 59137, 2008 WL 5328784, at *5 n.27 (Dec. 22, 2008).

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

request. Where mitigation exists, or the person did not respond in a timely manner to a request, the Sanction Guidelines recommend considering suspending the individual in any or all capacities for up to two years. The Sanction Guidelines also identify the following principal considerations in determining sanctions for a partial but incomplete response to a Rule 8210 request: (1) the importance of the information requested that was not provided, as viewed from FINRA's perspective, and whether the information provided was relevant and responsive to the request; (2) the number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response; and (3) the reasons offered for the deficiencies in the response.

Applying these guidelines, FINRA concluded that a bar was appropriate because Saliba did not substantially comply with all aspects of FINRA's request. Further supporting this conclusion, FINRA found, was that the information it sought from and about Saliba's business computers was critical to its investigation of his violation of the Interim Restrictions and to the origin of the Miller Memos. We agree. Saliba obstructed FINRA's investigation by failing to testify truthfully and produce his first computer. If produced, his first computer could have shown that Saliba was acting as a principal in violation of the Interim Restrictions and could have shed light on the origin of the Miller Memos. Saliba provided false or incomplete responses to both requests for testimony and for production of documents, never remedied those failures, and provided no credible explanation for why they occurred or for the deficiencies they contained. FINRA found that there were no mitigating factors, and Saliba neither identifies any such factors nor challenges the bar that FINRA imposed for his computer-related conduct.

As an alternative basis for the bar, FINRA also stated that the Guidelines provide that a bar should be standard when an individual does not respond truthfully to a Rule 8210 request, and Saliba does not object to this characterization of the Guidelines. In their discussion of suspensions, bars, and certain other sanctions that may be imposed for Rule 8210 violations, the Guidelines state that if an individual does not respond in any manner to a Rule 8210 request, a bar should be standard.[34] That discussion does not mention failures to respond truthfully to requests. But in their discussion of principal considerations in determining sanctions for Rule 8210 violations, the Guidelines group failures to respond truthfully to requests with complete failures to respond to requests, which suggests that the Guidelines treat these violations as equivalent.[35] Notwithstanding the ambiguity of the Guidelines, we have found that actions that subvert FINRA's regulatory processes through the submission of false information may be "more damaging than a refusal to respond to a request for information since they mislead [FINRA] and can conceal wrongdoing."[36] Under the circumstances here, it was appropriate for FINRA to treat Saliba's failure to respond truthfully to Rule 8210 requests as at least tantamount to a complete failure to respond to such requests.

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34 Sanction Guidelines at 33.

35 *Id.*

36 *Michael A. Rooms*, Exchange Act Release No. 51467, 2005 WL 742738, at *5 (Apr. 1, 2005) (sustaining bar imposed on applicant who backdated forms), *aff'd*, 444 F.3d 1208 (10th Cir. 2006).

Saliba's failure to respond appropriately to Rule 8210 requests raises serious concerns regarding the protection of investors. Without subpoena power, FINRA must rely on Rule 8210 to obtain information "to carry out its investigations and fulfill its regulatory mandate" and its "obligation to police the activities of its members and associated persons."[37] Failure to respond to Rule 8210 requests or to respond truthfully "impedes [FINRA]'s ability to detect misconduct that threatens investors and markets."[38] It is therefore "critically important to the self-regulatory system that members and associated persons cooperate with [FINRA] investigations."[39] Saliba's failure to cooperate with FINRA by producing requested documents and providing truthful testimony demonstrates that he "would present a continuing danger to the public interest in securing voluntary cooperation with investigations and, ultimately, detecting and preventing industry misconduct."[40] We agree with FINRA that, through this misconduct, Saliba demonstrated a lack of integrity and ability to comply with regulatory rules and that a bar is an appropriately remedial sanction.[41]

B. We also sustain the bar that FINRA imposed for Saliba's knowing provision of false memos to FINRA staff.

FINRA also applied the Sanction Guidelines applicable to Rule 8210 violations to determine the appropriate sanction for Saliba's knowing provision of the false Miller Memos to Enforcement in response to a Rule 8210 request and to his earlier analogous provision of the memos to Member Regulation. FINRA treated Saliba's provision of false information as akin to a failure to respond to a Rule 8210 request in any manner, for which the Sanction Guidelines recommend a bar as standard. When addressing a failure to respond or to respond truthfully to a Rule 8210 request, the Sanction Guidelines provide that adjudicators should consider the importance of the information requested from FINRA's perspective.

FINRA found that Enforcement's request for documents reflecting NMS's approval for Saliba to enter into engagement agreements on behalf of the Firm was important to its investigation of Saliba's violation of the Interim Restrictions. Saliba produced memos to Enforcement that he knew reflected conversations and approvals that never occurred. Saliba also provided these memos to Member Regulation in the hope that it would reverse its denial of

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37 *CMG Institutional Trading*, 2009 WL 223617, at *5 (citation omitted).

38 *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 WL 4899010, at *4 (Nov. 14, 2008).

39 *Rani T. Jarkas*, Exchange Act Release No. 77503, 2016 WL 1272876, at *13 (Apr. 1, 2016) (internal quotation marks and citation omitted).

40 *David Kristian Evansen*, Exchange Act Release No. 75531, 2015 WL 4518588, at *15 (July 27, 2015).

41 *See Ortiz*, 2008 WL 3891311, at *9 ("Because of the risk of harm to investors and the markets posed by [providing false information to FINRA during an investigation], we conclude that the failure to provide truthful responses to requests for information renders the violator presumptively unfit for employment in the securities industry. Where, as here, there are no factors mitigating the risk of future harm, a bar is an appropriate remedy.").

NMS's CMA. If Member Regulation had done so, Saliba would have benefited as the Firm's owner.

Saliba does not challenge the bar FINRA imposed for his provision of the Miller Memos to its staff, except that he asserts there is insufficient evidence to show that he knew the memos were false. We rejected that argument above. And we agree with FINRA that by knowingly providing the false Miller Memos to FINRA staff Saliba demonstrated dishonesty and a lack of integrity that make him unfit to participate in the securities industry and fully justify the bar.[42]

An appropriate order will issue.[43]

By the Commission (Chair GENSLER and Commissioners PEIRCE, CRENSHAW, UYEDA and LIZÁRRAGA).

Vanessa A. Countryman
Secretary

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[42] *See supra* Section III.A. (explaining that, to protect investors, a bar was appropriate to address Saliba's provision of false testimony and failure to respond completely to FINRA requests); *cf. Springsteen-Abbott*, 2020 WL 605918, at *15 (finding bar to be appropriate remedial sanction to address applicant's violation of FINRA Rule 2010 because "[t]he securities industry presents many opportunities for abuse and overreaching and depends very heavily upon the integrity of its participants") (citation omitted). We recognize that we previously sustained two bars that FINRA imposed in this proceeding and that the Ninth Circuit denied Saliba's petition for review of them. Saliba does not argue that these existing bars render the additional bars that FINRA imposed on remand unnecessary, nor do we so conclude. We find that the additional bars will be relevant to any future determination of whether Saliba should be permitted to associate in the industry.

[43] We have considered all the arguments advanced by the parties. We reject or sustain them to the extent that they are inconsistent or in accord with the views expressed herein.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 99940 / April 11, 2024

Admin. Proc. File No. 3-18989r

In the Matter of the Application of

Trevor Michael Saliba

For Review of Disciplinary Action Taken by

FINRA

ORDER SUSTAINING DISCIPLINARY ACTION TAKEN BY FINRA

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

ORDERED that the disciplinary action taken by FINRA against Trevor Michael Saliba in its decision on remand is hereby sustained.

By the Commission.

Vanessa A. Countryman
Secretary