SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 91527 / April 9, 2021

Admin. Proc. File Nos. 3-18989, 3-18990

In the Matter of the Applications of

TREVOR MICHAEL SALIBA and ARTHUR MANSOURIAN

For Review of Disciplinary Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY PROCEEDING

FINRA found that owner of former member firm violated its rules by causing firm to violate interim restrictions placed on firm; by responding to FINRA's requests for information by providing falsified documents and false testimony and failing to produce all computers he used for firm business; and by participating in the falsification of compliance records that were provided to FINRA. FINRA also found that registered representative of former member firm participated in providing falsified compliance records to FINRA and caused firm to maintain inaccurate and incomplete books and records by evading firm's email retention system through the use of personal email. *Held*, FINRA's findings of violation are *sustained in part* and *remanded in part* and sanctions are *sustained in part*, *remanded in part*, and *modified in part*.

APPEARANCES:

Mark David Hunter, *Jenny D. Johnson-Sardella*, and *Sharifa G. Hunter*, of *Hunter Taubman Fischer & Li LLC*, for Trevor Michael Saliba and Arthur Mansourian.

Alan Lawhead, *Andrew Love*, and *Celia L. Passaro*, for FINRA.

Appeals filed: February 6 and 7, 2019
Last briefs received: July 5, 2019

Trevor Michael Saliba, the owner of NMS Capital Securities, LLC ("NMS" or "the Firm"), a former FINRA member firm, and Arthur Mansourian, formerly a registered representative with NMS, seek review of FINRA disciplinary action.[1] FINRA found that Saliba violated (1) FINRA Rule 2010 by causing the Firm to violate interim restrictions that FINRA imposed under NASD Rule 1017(c) prohibiting him from acting as a principal; (2) FINRA Rules 8210 and 2010 by providing falsified memos to FINRA purportedly authorizing him to enter into engagement agreements on behalf of the Firm, providing false testimony in connection with a FINRA investigation, and failing to produce to FINRA all computers he used for Firm business; and (3) FINRA Rule 2010 by participating in the falsification of compliance records that were provided to FINRA. FINRA found that Mansourian violated (1) FINRA Rule 2010 by participating in providing falsified compliance records to FINRA; and (2) FINRA Rules 4511 and 2010 by causing NMS to maintain inaccurate books and records when he solicited the backdated forms from Firm personnel using his personal email account, with the result that his emails were not preserved in the Firm's email retention system.

FINRA imposed three bars on Saliba for (1) his violations of the interim restrictions; (2) his false testimony, provision of false memos, and failure to respond completely to FINRA's information requests; and (3) his role in providing backdated compliance forms to FINRA. FINRA imposed one bar on Mansourian for all of his misconduct. We sustain the findings of violations in part and remand them in part. We also sustain the sanctions in part, remand them in part, and reduce them in part. We base our findings on an independent review of the record.[2]

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[1] *Dep't of Enf't v. Saliba*, Complaint No. 2013037522501 (NAC Jan. 8, 2019), *available at* https://www.finra.org/sites/default/files/NAC_2013037522501_Saliba_010819_0.pdf. FINRA's decision addressed both Saliba and Mansourian, and they each filed an application for review. Although the applications were assigned separate proceeding numbers, we find it appropriate to issue one decision resolving both applications for review. *See Edward Beyn*, Exchange Act Release No. 88141, 2020 WL 583978, at *1 (Feb. 6, 2020) (stating that, where FINRA issued one disciplinary decision with respect to multiple applicants who filed separate applications for review, "the Commission intends to issue one decision resolving both applications for review").

[2] We deny Saliba's and Mansourian's requests that we order oral argument under Rule of Practice 451 because we do not find that our "decisional process would be significantly aided by oral argument." 17 C.F.R. § 201.451(a); *see also Rules of Practice*, Exchange Act Release No. 35833 (June 9, 1995), 60 Fed. Reg. 32,738, 32,779 (June 23, 1995) (explaining that generally we do not grant oral argument in appeals from the actions of self-regulatory organizations).

I. Background

A. Saliba violated interim restrictions that FINRA imposed on NMS, provided FINRA with falsified memos, and provided false and incomplete responses to FINRA.

1. Saliba violated interim restrictions that FINRA imposed on NMS.

a. Saliba purchased NMS to facilitate the business of an affiliated investment adviser, and FINRA imposed interim restrictions on NMS prohibiting Saliba from acting as a principal or supervisor after he requested that FINRA approve the transaction.

In 2011, Saliba acquired a broker-dealer to facilitate the business of NMS Capital Asset Management LLC, a registered investment advisor that he owned. Saliba changed the broker-dealer's name to NMS, and NMS filed a continuing membership application ("CMA") seeking FINRA's approval of Saliba's acquisition of the Firm. In the CMA, NMS identified Saliba as the Firm's president and a principal. Saliba passed the Series 24 General Securities Principal exam on November 2, 2011. The CMA also identified Saliba's role as non-supervisory. The CMA stated that all employees would report to chief executive officer James Miller. NMS's operations would be overseen by Saliba, Miller, and chief compliance officer ("CCO") Richard Tabizon. The CMA identified Tabizon's role as "Compliance/Supervisor," in which he was "directly responsible for all Compliance, Regulatory, and Supervisory Oversight" for the Firm. The CMA also stated that neither Tabizon nor Saliba would "act in a Supervisory Capacity."

On August 15, 2012, FINRA's Department of Member Regulation sent Saliba a letter acknowledging the CMA and imposing interim restrictions on NMS pursuant to NASD Rule 1017(c). NASD Rule 1017(c)(1) provided that Member Regulation "may place new interim restrictions on [a] member" that files a CMA pending its disposition. Member Regulation prohibited the Firm from (1) permitting Saliba to act "in any principal and/or supervisory capacity"; (2) adding any new lines of business, offices, or personnel; and (3) conducting a securities business on behalf of any affiliated entity directly or indirectly owned or controlled by Saliba (the "Interim Restrictions"). Member Regulation explained that the Interim Restrictions were based on its lack of sufficient information to determine whether NMS met the standards for admission to FINRA membership in NASD Rule 1014. Among other things, Member Regulation noted its understanding that the Commission was investigating the registered investment adviser that Saliba owned and that the Commission had issued a subpoena to Saliba and the investment adviser. Member Regulation stated that neither the subpoena nor the investigation was disclosed when the Firm sought approval of the transfer in control. Member Regulation explained that it would request additional information from NMS necessary to evaluate whether the Firm and its associated persons were capable of complying with the federal securities law, the rules and regulations thereunder, and NASD rules.[3]

Saliba testified that when he received the letter, the "first thing I did was go to the FINRA manual and look up the definition of principal." NASD Rule 1021(b) defined principals to include specified individuals, such as officers and owners, "who are actively engaged in the

3 *See* NASD Rule 1014(a)(3).

management of the member's investment banking or securities business, including supervision, solicitation, conduct of business or the training of persons associated with a member for any of these functions."[4] Saliba testified that "I knew I was an owner, I knew I was an officer, the only thing that remained was supervision." Saliba claimed that he "determin[ed] that under the rules . . . I wasn't acting as a principal," "because I wasn't supervising anyone." Saliba also testified that he did not change "any of the way" he operated after the Interim Restrictions were imposed because he understood that Miller and Tabizon were the Firm's designated principals and "what I was doing by business development, negotiating, bringing in clients and then signing the engagements for the clients that I originated or closed was not a principal activity."

On August 20, 2012, Saliba sent Member Regulation a "formal written request for clarification on [the] contents of the [Interim Restrictions] letter and . . . an in person meeting to discuss and address" its concerns. Among other things, Saliba stated that, as NMS's owner, he oversaw "corporate budgeting, payment of expenses" and provided "100% of all operating capital and continue[d] to do so on an ongoing as needed basis." Saliba also asked Member Regulation staff at that time whether the "addition of qualified personnel can be approved based solely on the basis that they will not serve in any type of marketing or business development capacity, but rather as additional support for Operations, Compliance and Supervision." Saliba signed the letter as "Chairman," a title he considered an officer position. Saliba testified at the hearing that he sought a modification of the Interim Restrictions to permit him to take part in the Firm's financial operations because, based on information received from a consultant, he believed he might be considered a principal as a result of his ownership and financing of NMS.

On September 25, 2012, Saliba and a consultant traveled to New York to discuss the Interim Restrictions with Member Regulation staff, including Stephanie Volkell, a principal examiner in that department. At the meeting, Saliba stated that he believed that he should have some input with regard to the Firm's expenses, budgeting, and related matters given his stake in it. Saliba also stated that he believed that adding more operations, compliance, and supervisory personnel would strengthen the Firm's infrastructure. Member Regulation staff explained that they would consider Saliba's requests and get back to him. The staff also reminded Saliba that NMS was still subject to the Interim Restrictions and would be until FINRA notified the Firm otherwise. The staff did not give Saliba permission to engage in supervisory or principal acts.

b. Saliba hired personnel and entered into engagement agreements on behalf of the Firm while subject to the Interim Restrictions.

i. Saliba hired a new CEO while subject to the Interim Restrictions.

In the afternoon of September 25, 2012, shortly after meeting with Member Regulation, Saliba met with Sperry Younger, to whom Saliba had been introduced by his consultant. The following morning, Saliba offered Younger the position of NMS chief executive officer to replace James Miller. Later that day, Saliba and Younger looked for office space for Younger.

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[4] NASD Rule 1021(b). After the relevant period here, FINRA reorganized and amended its rules regarding continuing membership applications. The definition of principal is now contained in FINRA Rule 1220(a)(1), which became effective October 1, 2018.

Saliba had not discussed the possibility of interviewing or hiring a new CEO, or mentioned that he planned to meet with Younger, during his meeting with Member Regulation the previous day.

On September 28, 2012, Saliba emailed Younger an "Independent Representative Agreement," which set forth the terms of Younger's employment as CEO. Saliba considered the agreement to be a job offer. He signed the agreement on behalf of the Firm as "Chairman." On September 30, 2012, Saliba emailed Volkell, who was reviewing the CMA for FINRA. Although he asked about the requested modifications to the Interim Restrictions, Saliba did not mention that he had extended a job offer to Younger or that the Firm planned to replace its CEO.

By early October 2012, Younger signed the Independent Representative Agreement and became associated with NMS. Despite his title as CEO, the Independent Representative Agreement provided that Younger lacked "authority to bind" NMS to any contracts or to sign documents on behalf of the firm. Saliba described this limitation on Younger's authority as an "insurance policy" intended to "contractually stop" Younger from doing things that might cause Saliba financial harm. The Independent Representative Agreement also provided that Younger would report to the NMS Board of Directors. Saliba, although acknowledging that he was the Firm's "Chairman," denied that Younger "answered" to him.

Saliba testified that, "once it became finalized" that Younger would replace Miller as CEO, he called Volkell on October 5, 2012, to get permission for the change in CEOs and to confirm that it would not affect the CMA process. Saliba explained to Volkell that Miller had health problems. At the hearing, Saliba also attributed Miller's resignation to Miller wanting an increase in compensation and having a strained working relationship with Tabizon.

Saliba testified that Volkell approved NMS's plans to replace Miller and requested only that Saliba "just let her know who [the new CEO] is." But correspondence between Saliba and Volkell indicates that Volkell believed the Firm's proposed personnel change concerned its compliance staff and not its CEO. In an October 5, 2012 letter that Volkell emailed to Saliba following their telephone call, Volkell stated that "[d]uring our conversation today, you indicated that the Firm will be hiring a new Chief Compliance Officer . . . , as well as another individual that will support the CCO." Volkell requested that Saliba identify the new CCO and made no reference to any other proposed changes in NMS personnel. At the time, Saliba did nothing to correct Volkell's apparent misunderstanding of the situation regarding the Firm's CEO.

On October 17, 2012, Member Regulation sent Saliba a letter making minor changes to the Interim Restrictions. The modifications permitted Saliba "to act in a limited capacity with respect to supporting the following financial functions of the Firm: Invoice approval, payment of bills/corporate expenses, check writing, personal contributions of operating capital to the Firm, and oversight of corporate budgeting." This "supporting role" would be subject to the oversight of the Firm's Financial and Operations Principal ("FINOP"). The revisions also allowed NMS to hire two additional "operational support personnel provided that such personnel will only be permitted to support firm operations, compliance and supervision functions, and will not be permitted to serve in any type of marketing, sales, or business development capacity, or in any other capacity." Member Regulation staff cautioned that, other than these limited revisions, the Interim Restrictions remained "in full force and effect" pending final action on the CMA.

On November 2, 2012—approximately two weeks after the Interim Restrictions were revised—Saliba informed Volkell that the Firm had "appointed" Younger as CEO as of October 8, 2012. Volkell responded by requesting that Saliba provide a copy of the Independent Representative Agreement. She also asked Saliba to explain how and when he met Younger and how Younger could adequately perform his role and responsibilities as CEO while operating from an Office of Supervisory Jurisdiction ("OSJ") in New York.[5]

ii. Saliba hired other personnel and entered into engagement agreements on behalf of the Firm while subject to the Interim Restrictions.

Saliba also identified prospective employees, interviewed them, and negotiated the terms of their employment with the Firm while the Interim Restrictions were in place. Between October 2012 and March 2013, Saliba hired Mansourian and executed independent representative agreements with other newly hired representatives, at times identifying himself as the Firm's "Chairman" and/or "Senior Managing Director."

Between August 30, 2012, and May 1, 2013, Saliba also signed at least 15 client engagement agreements on behalf of NMS, including three before his September 2012 meeting with FINRA. He did so as either NMS's "CEO," "Chairman," "Senior Managing Director," or "Managing Director." Although the Interim Restrictions remained in effect, these agreements obligated the Firm to provide services on specified terms.

On April 19, 2013, Allison Miller, a FINRA examiner who was reviewing the Firm's engagement agreements in connection with an examination (and who is not related to NMS's former CEO James Miller), emailed Saliba and Younger about her concern that "Saliba had signed off as Managing Director on [an] engagement agreement even though this appears to be during the period that he was restricted from all principal or supervisory capacity." Allison Miller requested "an explanation for this discrepancy." In response, Saliba asserted that signing the contract was not a "principal" activity, and that all of his activities were under the supervision of NMS's CEOs James Miller and Sperry Younger.

2. Saliba provided FINRA with falsified memos purportedly signed by the Firm's CEOs authorizing him to enter into agreements on behalf of the Firm.

On June 21, 2013, Member Regulation issued a decision denying NMS's CMA. In explaining the denial, the decision stated that the staff had learned that Saliba had signed eight engagement agreements while subject to the Interim Restrictions. The decision noted that pursuant to the engagement agreements the Firm would be providing a range of services, including performing due diligence, providing input on transaction structuring and marketing of investments, providing strategic advisory services, acting as a placement agent, and providing

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[5] Miller had worked from his home in Las Vegas when he was the CEO. Although the Firm was headquartered in Beverly Hills, it established a New York OSJ when Saliba hired Younger. The Interim Restrictions provided that the Firm could not add new offices, but FINRA did not bring charges on this basis.

market and industry research. Citing Commission precedent,[6] FINRA found that these actions constituted principal activity. Member Regulation noted that Saliba signed three of the agreements while the Firm was negotiating with the staff to amend the Interim Restrictions, including one contract four days before his September 2012 meeting with FINRA staff in New York and another agreement less than a week after that meeting.

Member Regulation found that Saliba's role in executing these various agreements was "notably broader" than that contemplated by the Firm's limited request to have the staff modify the Interim Restrictions to permit Saliba to take limited actions in connection with the Firm's finances. These findings supported Member Regulation's conclusion that the Firm's dealings with the staff demonstrated a lack of good faith. Member Regulation also found that Saliba had acted as a principal by hiring Younger as NMS's new CEO. It concluded that Saliba violated the Interim Restrictions by engaging in these principal functions. Member Regulation informed the Firm that it had referred the matter to FINRA's Enforcement staff for investigation.

On July 15, 2013, NMS appealed the denial of the CMA to FINRA's National Adjudicatory Council ("NAC").[7] The Firm also arranged for an August 22, 2013 meeting with Member Regulation staff to discuss whether the Firm could avoid the appeal process by, for example, providing additional information to the staff and filing a new CMA. At the meeting, Saliba asserted that he had not acted as a principal because he had executed each agreement with prior approval from NMS's CEO (either Miller or Younger) and, for the first time, claimed that such approval had been memorialized in a memo from the CEO for each engagement.

On August 30, 2013, Saliba provided Member Regulation eleven documents, described as "Supervisory Approval Memos," that he asserted authorized him to enter into specific engagement agreements on behalf of the Firm. This was the first time that the Firm provided these documents to FINRA, including for the engagement agreement that FINRA's Allison Miller had asked Saliba about in April 2013. At the time Saliba provided the eleven Supervisory Approval Memos to FINRA in August 2013, Saliba did not produce Supervisory Approval Memos for two other agreements that he signed in August and September 2012 while James Miller was CEO, or for two additional agreements that he signed in January 2013 while Sperry Younger was CEO. Member Regulation was not aware of those four agreements, and NMS never produced any additional Supervisory Approval Memos relating to these other engagements.

At the hearing, Saliba testified to his belief "that if I could prove that I had approval, somehow this Enforcement referral would get reversed and somehow [Member Regulation] would change the decision that I violated the [I]nterim [R]estriction[s]." But Saliba admitted he was unaware of the Supervisory Approval Memos when he signed the engagement agreements,

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6 *L.H. Alton & Co.*, Exchange Act Release No. 40886, 1999 WL 3462, at *5 (Jan. 6, 1999) (finding that "[c]ompleting and executing documents obligating the firm to participate in a securities underwriting are clearly among those duties to be performed by a 'principal' enumerated in NASD Membership and Registration Rule 1021(b)").

7 On September 29, 2014, the NAC affirmed Member Regulation's denial of the CMA.

first saw them around the time he produced them to FINRA, and relied on verbal authorization from the Firm's CEOs rather than the memos when signing the engagement agreements. After he produced the eleven Supervisory Approval Memos to Member Regulation, Saliba subsequently also provided them to Enforcement in response to a Rule 8210 request.[8]

a. Saliba provided three Supervisory Approval Memos to FINRA that Miller purportedly signed but that were not genuine.

Three of the Supervisory Approval Memos bore NMS CEO James Miller's signature (the "Miller Memos"), but they were not genuine. Miller testified that he had not signed them, that the signatures on the Miller Memos were forgeries that differed from his genuine signature in identifiable ways, and that he had not authorized Saliba to enter into agreements for the transactions the Miller Memos referenced. Miller testified that he had not approved prospective engagements and that the memos recounted purported conversations that he had not had with Saliba. Miller also testified that he did not view himself as Saliba's supervisor and that Saliba ran the Firm and made all the important decisions. The 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."

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

Saliba's 2017 hearing testimony about the Miller Memos also contradicted what he had said during FINRA's investigation at an on-the-record interview ("OTR") on June 19, 2014. At that interview, Saliba explained that "[t]here were files that we had that were specific to the approval memos for engagement deals that I was working on," and that "I remember looking for

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[8] Under FINRA Rule 8210(a), FINRA may require a member or associated person "to provide information orally, in writing, or electronically . . . and to testify . . . under oath . . . with respect to any matter involved in [a FINRA] investigation, complaint, examination, or proceeding" and may "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." Rule 8210(c) further provides that "[n]o member or person shall fail to provide information or testimony or to permit an inspection and copying of books, records, or accounts pursuant" to Rule 8210.

[the approval memos] and finding them in some file." But Saliba could not remember where he "actually found the file" or "if they were in the deal files or if they were in one specific file."

b. Saliba provided a Supervisory Approval Memo to FINRA that Younger purportedly signed but that was not genuine.

The remaining eight Supervisory Approval Memos bore Younger's signature (the "Younger Memos"). On August 27, 2013, Saliba sent Younger an email requesting "whatever documents you have that 'paper' your approval" of seven specified engagements. That evening, Younger emailed Saliba seven "New Business Memos" bearing signatures from various past dates. Saliba testified that he did not know when these memos were created or when Younger signed or scanned them. Nonetheless, Saliba provided these memos to Member Regulation.

Saliba also provided Member Regulation one additional memo that Saliba had not requested in his email to Younger (the "Eighth Younger Memo"). The Eighth Younger Memo purported to document that Younger had authorized Saliba to proceed with an engagement agreement that Saliba had signed as NMS's CEO. In its decision denying the CMA, Member Regulation had concluded that Saliba had acted as a principal by executing this agreement.

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

3. Saliba responded incompletely to FINRA's request that he produce computers he used for Firm business and testified falsely regarding his computers.

In June and July 2014, after having produced the Supervisory Approval Memos, Saliba appeared for OTRs pursuant to FINRA Rule 8210. At these OTRs, Saliba testified that he used only one computer, a laptop he had used since at least 2012, for NMS business. Saliba added that it was "possible" he might have revised a document from home on his personal computer when he did not have access to his laptop. But Saliba explained that he could not recall any instance when he conducted NMS business on his personal computer. Saliba stated that it was "very rare" for him to access his Firm email from that computer because he lived "literally six blocks" from his office and "usually" would just go to the office to do what he needed to do.

During Saliba's June 19, 2014 OTR, FINRA requested pursuant to Rule 8210 that he produce that same day "[a]ny and all computers and/or electronic storage devices used by Trevor Saliba for NMS . . . business." Saliba had testified earlier in the OTR that the laptop he used for firm business was located at his office. But at the conclusion of the OTR when FINRA began to make arrangements to travel to Saliba's office to collect it, Saliba and his counsel instead asserted that the laptop was not there but rather at Saliba's home. Saliba did not explain the reversal from his testimony earlier in the day. Later that day at NMS's office, Saliba produced a single laptop he had brought from his home to a FINRA staff member (the “First Computer”), who copied the contents of the computer’s hard drive. Saliba did not produce any other computers or devices, including the personal computer he acknowledged he may have used from home for Firm business on occasion, and a subsequent written response to FINRA’s 8210 request reiterated his assertion that he had only one responsive computer.

NMS produced emails showing that Saliba purchased a second laptop in May 2013 (the “Second Computer”). On May 24, 2013, a technician at a network services vendor emailed Saliba to coordinate “transferring files to your replacement laptop” and setting up “your new laptop.” Saliba immediately scheduled the service for later the same day and had the Second Computer set up. He testified that he subsequently decided to give it to his wife rather than use it for Firm business, though he also admitted that he may have used it for NMS business while traveling with his wife. Saliba further testified that the Second Computer later crashed and his wife “recycled” it in an unspecified manner; however, he did not offer any supporting documents or testimony showing a transfer to his wife or any third party, could not recall when or how he transferred the computer to his wife, and did not know when or how she recycled it or whether that had occurred before he received FINRA’s request pursuant to Rule 8210.

FINRA retained an expert to compare the use of the First Computer before and after the setup of the Second Computer. To do so, the expert calculated the level at which the First Computer was used in the baseline period between April 25, 2013, and May 25, 2013. During that period, the First Computer was used on an almost daily basis with a total usage of 62,633 operating system events and 2,844 user activity events. But over the subsequent period from May 25, 2013, through July 22, 2013, total operating system events dropped to 3,227 and user activity events to 190. And from July 23, 2013, through September 11, 2013, the First Computer was completely powered off and never used. During the subsequent period from September 12, 2013, through June 10, 2014, there were 70,922 total operating system events (an average of 7,880 per month) and 633 total user activity events (an average of 70 per month). Saliba did not establish reasons for these declines, although he testified he was out of the office during four non-continuous weeks of the seven-week period the First Computer was turned off.

Firm records show that technicians performed work on Saliba’s “new” computer while the First Computer was turned off. On August 12, 2013, a technician emailed Saliba after Saliba requested that backup software be installed on his work computer. The next day, the technician notified Saliba that the backup had been successfully installed on his “new” computer, that backups of Saliba’s “old” computer would be kept “until we run into space issues,” and that backups of the new computer would occur once daily at 6 p.m.[9] At Saliba’s request, the backup time for his new computer was changed to 9 p.m. “to ensure that I am out of [the] office.” Saliba and the technician exchanged emails later that month about accessing Saliba’s work computer to

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9 The technician also explained in his email to Saliba that installing the backup program would require Saliba to have his “external drive” connected to the computer. In response to a Rule 8210 request, NMS explained that, between August 15, 2012 and early 2014, an external hard drive was used to back up Saliba’s computer but in early 2014 the Firm stopped the backup process and gave the drive to a friend of Saliba’s wife. NMS never produced this hard drive to FINRA.

address backup failures, which the technician promptly addressed. None of these services could have been performed on the First Computer at the times they occurred because it was turned off.

The expert also identified emails that Saliba had created or edited without using the First Computer. Saliba acknowledged that he "must have used another computer" to create or edit them.

B. Mansourian solicited, and Saliba provided, backdated compliance documents.

1. Mansourian solicited backdated compliance documents.

On April 17, 2013, Allison Miller from FINRA emailed Saliba, Younger, and Tabizon to request that the Firm produce attestations by registered representatives of their most recent outside business activities and private securities transactions ("OBA and PST Forms") to FINRA in connection with its examination of the Firm. Two days later, Tabizon sent an email from his personal Yahoo! account to Mansourian at his personal Gmail address attaching blank copies of the OBA and PST Forms. NMS's written supervisory procedures prohibited the use of outside email platforms such as Gmail and Yahoo! for Firm business purposes.

On April 20, 2013, Mansourian sent an email from his Gmail account to five NMS associated persons who worked outside of the Firm's Beverly Hills office, including Younger, at other non-Firm email addresses. The email, entitled "*** VERY IMPORTANT *** NMS Capital Forms," attached copies of the blank forms that Tabizon had sent Mansourian and stated:

> Team,
>
> Please fill out the attached forms ASAP and **<u>send back to this e-mail address ONLY or fax to [unlogged number shared with other of Saliba's businesses]</u>**. When asked for dates, please indicate dates in February 2013, such as February 1st, 4th, 5th, 8th.

(emphasis in original). Because Mansourian sent the email from his Gmail account to non-Firm email addresses, it was not preserved in NMS's email archive system. Nor was a follow-up request that Mansourian made to Younger for the same documents.

Mansourian testified that he feared he would be fired unless he solicited the backdated forms. At his OTR, Mansourian initially testified that he had obtained the backdated forms at Saliba's specific direction, but later withdrew that testimony and blamed Tabizon for his actions. Although Saliba denied that he had directed Mansourian to obtain backdated documents, Saliba admitted that he was present when Tabizon and Mansourian discussed the missing documents and that Tabizon told him that Tabizon planned to replace or recreate them.

2. Saliba and other Firm personnel provided backdated compliance documents.

On April 25, 2013, Tabizon emailed FINRA completed copies of the OBA and PST Forms. These forms included several that were signed with February 2013 dates by recipients of Mansourian's April 20 email as well as similarly dated forms from others who worked in the Beverly Hills office, including Saliba, Mansourian, and Tabizon. At this time, Tabizon was no longer the Firm's CCO because he had failed a required exam at the end of 2012. Younger had replaced him as CCO, and Younger did not submit backdated forms.

At the hearing, Saliba agreed that, based on his experience as the owner of multiple companies and a businessperson for many years, he did not think that it was appropriate to backdate forms. Saliba also denied backdating forms, testified that he "definitely wasn't backdating or signing a prior date" to his OBA and PST Forms, and maintained that he had signed them on February 1, 2013, as they reflected. But Saliba changed his testimony when confronted with the fact that the version of the OBA and PST Forms he signed had not been approved for Firm use in February 2013. Saliba then claimed "no recollection about it," and testified that he did not recall when he signed the OBA and PST Forms. But at the conclusion of the hearing, Saliba's attorney conceded that Saliba signed a form "that was dated February 1, even though the form itself wasn't created until April."

Although Tabizon acknowledged that he provided backdated forms to FINRA, he claimed that these forms were "recreated" versions of original signed documents that he could not locate. But there is no evidence in the record the documents ever existed. NMS never produced any original documents to FINRA in response to FINRA's Rule 8210 requests for such documents. And Tabizon admitted that he never sought original documents from the Firm's associated persons before he asked them to create new backdated documents.

Tabizon asserted that Susan Leong, a FINRA examiner, authorized the Firm to provide backdated compliance documents to FINRA. Specifically, Tabizon testified that he told Leong in a one-on-one conversation that the Firm planned to recreate the missing compliance documents and backdate them to when they originally were created, and that he believed she understood that he "was going to go back and make these documents for her."

Beyond Tabizon's testimony, there is no evidence to support this claim. Tabizon never documented this conversation, no witness testified that Tabizon related it, and Mansourian specifically denied that Tabizon ever made that claim to him.

Susan Leong no longer worked for FINRA at the time of the hearing so FINRA instead offered the testimony of Keith Llorens, who supervised FINRA examiners Leong and Allison Miller during its examination of the Firm. Llorens was on site at NMS on the first day of the examination, communicated with Leong and Miller almost every day of the on-site examination, and subsequently met with the examination team at least once a week in person. No one on the examination team, including Leong and Miller, told Llorens that NMS had or planned to recreate compliance forms or backdate them. And there was no record in FINRA's examination file that NMS told FINRA that it planned to take, or had taken, such action. Llorens explained that he would have expected Leong or Miller to bring such a request to his attention quickly, that backdating or recreating forms is not allowed or expected, and that neither he, Leong, nor Miller was authorized to accept backdated documents. Indeed, Llorens did not recall a single time in his 17 years at FINRA where such conduct was authorized. Finally, Llorens agreed that it was "[E]xaminer 101" not to allow backdated documents, and he testified that both Miller and Leong, who had 16 years of experience at the time of the examination, had sufficient experience and training to know that.

C. FINRA found that Saliba and Mansourian violated its rules and barred them.

On March 24, 2016, Enforcement charged Saliba and Mansourian with violating FINRA Rules 8210, 4511, and 2010.[10] FINRA held a hearing on the charges between September 18 and 23, 2017.[11] Considering their demeanor, among other things, the Hearing Panel found that Saliba, Mansourian, Younger, and Tabizon were not credible witnesses.[12]

The Hearing Panel concluded that Saliba caused NMS to violate the Interim Restrictions by acting in a principal capacity when he was prohibited from doing so, and that Saliba provided falsified documents and false and misleading information to FINRA and failed to cooperate fully with FINRA's investigation. The Hearing Panel also found that Mansourian participated in obtaining falsified documents that were provided to FINRA and caused the Firm to maintain inaccurate books and records. For these violations, the Hearing Panel barred Saliba and Mansourian from associating with any FINRA member firm in any capacity.

Saliba and Mansourian appealed to the NAC. The NAC sustained the findings of violations and unitary bar against Mansourian but modified the sanction against Saliba to impose three separate bars for his violation of the Interim Restrictions; his false testimony, provision of falsified memos, and failure to respond completely to FINRA's information requests; and his role in providing backdated compliance forms to FINRA. This appeal followed.

II. Analysis

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 Securities Exchange Act of 1934.[13] We base our findings on an independent review of the record and apply a preponderance of the evidence standard.[14]

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10 Mansourian was charged in connection with the backdated compliance documents only and was not involved in the violations based on the Interim Restrictions or FINRA's Rule 8210 requests.

11 Enforcement also charged Younger and Tabizon. Subsequently, FINRA found that Younger and Tabizon each violated FINRA rules and barred them for their misconduct.

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

13 15 U.S.C. § 78s(e)(1).

14 *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. Saliba violated FINRA Rule 2010 by acting as a principal in violation of the Interim Restrictions.

FINRA found that Saliba violated FINRA Rule 2010 by acting as a principal while the Interim Restrictions were in effect, thereby causing NMS to violate NASD Rule 1017(c). Saliba acknowledges that he committed this violation. We agree that the record supports this finding.

NASD Rule 1017(c) authorized FINRA to impose the Interim Restrictions on the Firm pending final action on the CMA.[15] The Interim Restrictions prohibited Saliba from acting as a principal. A principal of a firm includes "officers" who are "actively engaged in the management of the member's investment banking or securities business, including supervision, solicitation, conduct of business, or the training of persons associated with a member for any of these functions."[16] Saliba acted as a principal because he concedes he was an officer of NMS and he actively engaged in its management,[17] participated in its hiring process,[18] and entered into engagement agreements on its behalf.[19] Because NMS thus violated the Interim Restrictions,

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[15] NASD Rule 1017(c); *see also WD Clearing, LLC*, Exchange Act Release No. 75868, 2015 WL 5245244, at *1 (Sept. 9, 2015) (stating that "[d]uring its review [of a CMA], FINRA may place interim restrictions on the applicant").

[16] NASD Rule 1021(b). The definition of a principal is now contained in FINRA Rule 1220(a)(1).

[17] *See, e.g.*, *Richard F. Kresge*, Exchange Act Release No. 55988, 2007 WL 1892137, at *13 (June 29, 2007) (finding that individual who "actively engaged in the management of the Firm's securities business" was a principal, although he held no official title).

[18] *See, e.g.*, *Leslie A. Arouh*, Exchange Act Release No. 62898, 2010 WL 3554584, at *8 (Sept. 13, 2010) (finding that actions of individual who advised firm "about positions to fill and the distribution of responsibilities," "helped recruit a branch manager," and "interviewed salespeople in connection with a possible acquisition" "manifest[ed] the active engagement in firm management that defines a principal"); *Kresge*, 2007 WL 1892137, at *13 (concluding that person was a principal in part because he "was actively involved in hiring").

[19] *See, e.g.*, *Dennis Todd Lloyd Gordon*, Exchange Act Release No. 57655, 2008 WL 1697151, at *7 (Apr. 11, 2008) (finding that person who negotiated with clearing firms was a principal and the fact that the third parties with whom he dealt on the firm's behalf understood him to be in a position to act for the firm was "additional evidence of his principal status").

and NASD Rule 1017(c), Saliba violated FINRA Rule 2010.[20] Saliba does not contest that Rules 1017(c) and 2010 are, and were applied in a manner, consistent with the Exchange Act.[21]

B. Saliba violated FINRA Rules 8210 and 2010 by providing false testimony about his computers and by failing to produce all of his computers to FINRA, but we remand the finding that Saliba violated those rules by providing falsified memos to FINRA.

FINRA found that Saliba violated FINRA Rules 8210 and 2010 by providing the falsified Miller Memos and Eighth Younger Memo to FINRA, providing false and misleading testimony about his computers at his OTR, and failing to produce all computers he used for Firm business.

FINRA Rule 8210(a) provides that FINRA "shall have the right to" "inspect and copy the books, records, and accounts" of any member or associated 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."[22] 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."[23] Member firms and associated persons may be found in violation of Rule 8210 when they fail to provide full and prompt cooperation to FINRA.[24]

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[20] FINRA Rule 2010 (requiring members to "observe high standards of commercial honor and just and equitable principles of trade"); *see also* FINRA Rule 0140(a) ("Persons associated with a member shall have the same duties and obligations as a member under the Rules."); *Rani T. Jarkas*, Exchange Act Release No. 77503, 2016 WL 1272876, at *8 (Apr. 1, 2016) (finding that an associated person violated NASD Rule 1017 by taking action inconsistent with the requirements of the rule and that a "violation of NASD Rule 1017 also violates NASD Rule 2110"); *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").

[21] *See, e.g.*, *Jarkas*, 2016 WL 1272876, at *9, *10 (finding that NASD Rules 1017 and 2110 and FINRA Rule 2010 are consistent with the purposes of the Exchange Act).

[22] FINRA Rule 8210(a) & (a)(2).

[23] FINRA Rule 8210(c); *see also Blair C. Mielke*, Exchange Act Release No. 75981, 2015 WL 5608531, at *17 (Sept. 24, 2015) ("We have long recognized that the language of Rule 8210 is 'unequivocal' regarding an associated person's responsibility to cooperate with FINRA information requests and that vigorous enforcement of Rule 8210 'helps ensure the continued strength of the self-regulatory system—and thereby enhances the integrity of the securities markets and protects investors. . . .'" (quoting *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 WL 4899010, at *4 (Nov. 14, 2008), *aff'd*, 347 F. App'x 692 (2d Cir. 2009))).

[24] *CMG Institutional Trading, LLC*, Exchange Act Release No. 59325, 2009 WL 223617, at *5 (Jan. 30, 2009).

Member firms and associated persons also may violate Rules 8210 and 2010 by providing false or misleading information.[25]

We must remand FINRA's determination that Saliba violated FINRA Rules 8210 and 2010 by providing falsified memos to FINRA because we are unable to discharge our review function with respect to it. But we sustain FINRA's determination that Saliba violated those rules by providing false testimony about his computers and by failing to produce all of his computers to FINRA. We find that the record supports those factual findings, that Saliba's conduct in those respects violated FINRA Rules 8210 and 2010, and that those rules are, and were applied in a manner, consistent with the purposes of the Exchange Act.[26]

1. We remand FINRA's determination that Saliba violated FINRA Rules 8210 and 2010 by providing falsified memos to FINRA.

Section 15A(h)(1) of the Exchange Act provides that FINRA's determination to impose a disciplinary sanction must be supported by a statement setting forth "any act or practice in which [the respondent] has been found to have engaged[.]"[27] This requirement ensures that applicants who appeal to the Commission are not "'impaired in their ability to defend themselves before us.'"[28] "Moreover, 'it is important that a self-regulatory organization clearly explain the bases for its conclusions. If it fails to do so, we cannot discharge properly our review function.'"[29]

In this case, we are unable to discharge our review function because the NAC's decision is unclear regarding the basis on which it found Saliba to have violated FINRA Rules 8210 and 2010 with respect to the Miller Memos and Eighth Younger Memo. The NAC stated that the Miller Memos "were forged and that Saliba knew or should have known that" and that "Saliba knew or should have known that at least one of the Younger memos was not a genuine firm document." But the NAC also stated that it "affirm[ed] the Hearing Panel's finding that Saliba created, or had someone create, the [Miller] Memos, and he knowingly produced them to Member Regulation and later to Enforcement in response to its FINRA Rule 8210 request."

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25 *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)).

26 *See Merrimac Corp. Sec.*, 2019 WL 3216542, at *5 ("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.'" (citation omitted)).

27 15 U.S.C. § 78o-3(h)(1).

28 *Kimberly Springsteen-Abbott*, Exchange Act Release No. 80360, 2017 WL 1206062, at *5 (Mar. 31, 2017) (quoting *Donald R. Gates*, Exchange Act Release No. 36109, 1995 WL 497444, at *2 (Aug. 16, 1995)).

29 *Id.* (quoting *Jonathan Feins*, Exchange Act Release No. 37091, 1996 WL 169441, at *2 (Apr. 10, 1996)).

We cannot determine whether the NAC predicated Saliba's liability on a finding that (1) Saliba was responsible for falsifying the memos or knowingly producing falsified memos to FINRA; or (2) the memos were falsified and Saliba should have known that he was providing falsified memos to FINRA. In order for us to properly discharge our review function, we must know whether the NAC concluded Saliba was acting intentionally and knowingly or merely negligently.[30] This is true both with respect to FINRA's finding that Saliba violated Rules 8210 and 2010 by providing the Miller Memos and Eighth Younger Memo to Enforcement in response to a Rule 8210 request, and FINRA's finding that Saliba violated Rule 2010 by providing the Miller Memos and Eighth Younger Memo to Member Regulation.

If the NAC concluded Saliba acted intentionally and knowingly, then it is not clear why it said it was "affirm[ing] the Hearing Panel's finding" that Saliba created or had someone create the Miller Memos and knowingly provided them to FINRA. The Hearing Panel found that "the evidence was not sufficient for the Panel to find that Saliba personally created, or caused the creation of, the [Miller] Memos." And if the NAC 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. FINRA relied on its decision in *Merrimac Corporate Securities, Inc.*, to support liability, but on appeal of that decision we sustained liability because "the record establishe[d] that Merrimac and Nash knew that DSR forms had been falsified at the time the firm and Nash responded to the Rule 8210 requests for information."[31]

We note further that the NAC devoted only a single sentence to its additional finding that Saliba had earlier violated Rule 2010 by providing the memos to Member Regulation. That single sentence did not discuss the case law applicable to violations of Rule 2010 that are not predicated on a violation of another FINRA rule.[32] And although the NAC included the Eighth Younger Memo in its finding, the Hearing Panel explained that the allegations regarding Saliba's provision of the Supervisory Approval Memos to Member Regulation in alleged violation of Rule 2010 were "limited to the [Miller] Memos." Accordingly, for the reasons discussed above,

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30 *See, e.g.*, *KPMG, LLP v. SEC*, 289 F.3d 109, 110 (D.C. Cir. 2002) (finding that a "knew or should have known" standard was "classic negligence language").

31 *Merrimac Corp. Sec.*, 2019 WL 3216542, at *3.

32 *See, e.g.*, *Kimberly Springsteen-Abbott*, Exchange Act Release No. 88156, 2020 WL 605918, at *11 (Feb. 7, 2020) (stating that in determining whether an applicant's conduct violates Rule 2010 "where the alleged violation is not premised on the violation of another FINRA rule, we must determine whether the respondent has acted unethically or in bad faith," and explaining that 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") (internal citations and quotation marks omitted), *petition denied*, 989 F.3d 4 (D.C. Cir. 2021).

we have determined to remand to FINRA for FINRA to clarify the basis for any findings of violations with respect to the Miller Memos and Eighth Younger Memo.[33]

2. We sustain FINRA's finding that Saliba violated FINRA Rules 8210 and 2010 by providing false testimony about his use of computers.

We agree with FINRA that Saliba testified falsely when he testified that he used only the First Computer for Firm business. The record establishes that Saliba acquired the Second Computer and used it for Firm business, notwithstanding his testimony that for Firm business he used only the First Computer. Saliba acquired the Second Computer in May 2013. The Second Computer was delivered to him at his office, and he admits that he intended to use it for Firm business and had it set up for that purpose. Saliba's use of the First Computer then dropped significantly, and it was turned off completely for a seven-week period. Saliba sent and received emails and edited documents while the First Computer was turned off. Indeed, Saliba admitted at the hearing when confronted with emails he sent while the First Computer was turned off that he "must" have used a computer other than the First Computer for Firm business.[34]

Although Saliba argues that he did not knowingly provide false testimony regarding his computers, the record does not support such a finding in light of the evidence discussed above. The only support Saliba offers for his assertion that he "never provided knowingly false testimony regarding his [computer] usage" is that he testified he could "not recall" whether he occasionally used his personal computer to access Firm emails. But our finding that Saliba gave false testimony knowingly is not based on any occasional use of his personal computer but rather on his failure to disclose that he had effectively replaced the First Computer with the Second Computer for the purpose of conducting Firm business during the time period at issue here.

Saliba also argues his OTR testimony was not false or misleading because he testified it was possible that, on "very rare" occasions, he used his personal computer to access Firm emails from home. But Saliba's testimony that he may have accessed his email from home on "very rare" occasions using a personal computer did not render his testimony that he used only one

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[33] *See, e.g., Springsteen-Abbott*, 2017 WL 1206062, at *5 (finding that "we are unable to discharge our review function because [FINRA's] decision is unclear regarding what conduct it found to violate FINRA Rule 2010" and remanding for FINRA to "clarify the basis on which it" found liability and "explain how its findings of violation inform the sanctions imposed"); *Calvin David Fox*, Exchange Act Release No. 48731, 2003 WL 22467374, at *3 (Oct. 31, 2003) (remanding where we could not "complete [our] review function . . . until the NYSE has provided the Commission with clarification and further explanation of the basis of its finding that Fox's conduct was inconsistent with just and equitable principles of trade").

[34] We find irrelevant Saliba's claim that a former employee of his investment adviser, whom he terminated, was biased against him and falsely testified that he acquired a new computer around May 2013. FINRA did not rely on the testimony of Saliba's former employee that he had acquired a new computer. In any case, Saliba's own admission and other evidence in the record establish that Saliba acquired a new computer in May 2013.

computer for Firm business accurate. Saliba did not disclose that he acquired the Second Computer for work and used another computer at work while the First Computer was turned off.

Saliba argues further that he testified at the subsequent hearing that he did not travel with his work computer, he may have used a hotel business center or what he refers to as his wife's computer (i.e., the Second Computer) to check his email, and he did not need a computer to conduct Firm business because he used his phone and email. The testimony Saliba gave at the hearing is not relevant to whether the testimony Saliba gave years earlier at his OTR was false. And although Saliba claimed that he did not need to use computers for his work, it is undisputed that he did so. Indeed, Saliba acknowledges that he used the First Computer for Firm business.

Saliba also asserts that FINRA's computer expert "omitted important considerations and factors that would have most likely changed the outcome of his [expert] report or rendered him unable to reach any expert opinion." Although Saliba contends that the expert should have analyzed a number of additional factors, such as Saliba's daily schedule and various granular measures of his computer usage, he does not offer his own analysis to show that these factors would have made a difference. For example, Saliba asserts that the expert may have compared use of the First Computer against a baseline period that reflected unusually high usage. But Saliba does not identify any alternative baseline period more representative of his use. In any case, Saliba does not challenge the expert's most significant finding—that the First Computer was completely turned off for a seven-week period after Saliba acquired the Second Computer.[35]

3. We sustain FINRA's finding that Saliba violated FINRA Rules 8210 and 2010 by failing to produce all of his computers to FINRA.

We also agree with FINRA that Saliba failed to produce "[a]ny and all computers and/or electronic storage devices used by Trevor Saliba for NMS . . . business" that were within his "possession, custody, or control" as FINRA requested. Saliba did not produce the Second Computer. Nor did he produce his personal computer, although he testified that he may have used it from home for Firm business "very rarely." And Saliba admitted that while the First Computer was turned off, he must have used another computer for Firm business. Because Saliba produced only the First Computer, he violated FINRA Rules 8210 and 2010.

Saliba presents two contrary arguments. First, Saliba contends that the Second Computer was not responsive to FINRA's request because he did not use it for Firm business. But Saliba admittedly purchased the Second Computer with the intent to use it for Firm business and received it at NMS headquarters in May 2013. Saliba's argument that he did not use it for Firm business rests solely on his uncorroborated and inconsistent testimony. FINRA found that Saliba

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35 We also reject Saliba's claim that the expert was "biased" against him. He provides no basis to support this claim or to reject or discount the expert's testimony. *See DiCarlo v. Keller Ladders, Inc.*, 211 F.3d 465, 468 (8th Cir. 2000) (explaining that bias of an expert witness is the province of the factfinder and can usually be addressed through effective cross-examination).

was not a credible witness, and we defer to demeanor-based credibility findings.[36] In any case, when pressed at the hearing, Saliba testified that he may have used the Second Computer for Firm business while on vacation with his wife, that he "honestly d[id]n't recall" if he used the Second Computer for work, and that he could not exclude the possibility that he did.

Second, Saliba contends that when "he received the Rule 8210 request, he was no longer in possession of the [S]econd [C]omputer, but rather had given it to his wife who had recycled it." According to Saliba, Rule 8210 did not give FINRA the "authority to demand that [his] wife provide [the Second Computer] to Mr. Saliba to enable him to produce [it] to FINRA even if such laptop had not been recycled." But Saliba did not lose control of the Second Computer before he received the Rule 8210 request. Rule 8210 requires members and associated persons to comply with requests to produce for inspection and copying books and records within their "possession, custody, or control." FINRA intended "to link this concept to the existing body of case law that has defined possession, custody or control as used in" the Federal Rules of Civil Procedure.[37] "Federal courts construe 'control' very broadly under [Federal] Rule [of Civil Procedure] 34."[38] Saliba's wife's purported possession of the Second Computer does not

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36 *William Scholander*, Exchange Act Release No. 77492, 2016 WL 1255596, at *8 n.45 (Mar. 31, 2016) (recognizing that such determinations "are entitled to considerable deference"), *petition denied sub nom. Harris v. SEC*, 712 F. App'x 46 (2d Cir. 2017); *see also, e.g.*, *Jon R. Butzen*, Exchange Act Release No. 36512, 1995 WL 699189, at *2 & n.7 (Nov. 27, 1995) ("[T]he credibility determination of the initial decision maker [in a FINRA disciplinary proceeding] is entitled to considerable weight and deference, since it is based on hearing the witnesses' testimony and observing their demeanor.").

37 *Gregory Evan Goldstein*, Exchange Act Release No. 68904, 2013 WL 503416, at *4 (Feb. 11, 2013) (order denying stay) (quoting FINRA Regulatory Notice 13-06 at 2 (Jan. 2013), *available at* https://www.finra.org/sites/default/files/NoticeDocument/p197763.pdf); *see also* Order Granting Accelerated Approval of a Proposed Rule Change, Exchange Act Release No. 68386 (Dec. 7, 2012), 77 Fed. Reg. 74,253, 74,254 (Dec. 13, 2012) ("This [possession, custody, or control] language parallels the Federal Rules of Civil Procedure regarding document requests and subpoenas for documents."); Fed. R. Civ. P. 34, 45.

38 *Camden Iron & Metal, Inc. v. Marubeni Am. Corp.*, 138 F.R.D. 438, 441 (D.N.J. 1991).

establish that it had left Saliba's control.[39] In any event, Saliba acknowledges he may have used the Second Computer while traveling with his wife, indicating that he had access to and at times may have had actual possession and control of the Second Computer.

As for Saliba's assertion that his wife no longer had the Second Computer at the time of the 8210 request, Saliba testified that he could not "recall specifically" when he gave his wife the Second Computer let alone when his wife relinquished it. Saliba also offers no corroborating evidence—whether testimony, a donation receipt, or other documentation—showing that his wife actually transferred the computer to a third party. And Saliba could recall neither the circumstances surrounding his wife's purported recycling of the Second Computer nor whether she recycled it before he received the Rule 8210 request.

C. Saliba and Mansourian violated FINRA Rule 2010 by participating in an effort to obtain falsified compliance records from associated persons and provide them to FINRA, and Mansourian caused NMS to maintain inaccurate books and records in violation of FINRA Rules 4511 and 2010 as a result of his conduct.

1. Saliba and Mansourian violated FINRA Rule 2010 by participating in an effort to provide falsified compliance records to FINRA.

Knowingly providing backdated compliance forms to FINRA is unethical conduct that violates FINRA Rule 2010.[40] Saliba and Mansourian admit that they violated this rule with respect to their conduct involving the backdated OBA and PST Forms. Mansourian solicited backdated compliance forms to be provided to FINRA from persons associated with the Firm. Saliba was present for conversations at which the backdating was discussed, and he himself provided backdated forms that he knew were to be submitted to FINRA. FINRA's application of Rule 2010 to Saliba and Mansourian was consistent with the purposes of the Exchange Act. We

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39 *See Hardin v. Belmont Textile Mach. Co.*, No. 3:05CV492-MU, 2007 WL 2300795, at *3, *5 (W.D.N.C. Aug. 7, 2007) (directing production of party's wife's computer in part because it was sufficiently under defendant's control under the Federal Rules of Civil Procedure); *Monroe's Estate v. Bottle Rock Power Corp.*, No. 03–2682, 2004 WL 737463, at *10 (E.D. La. Apr. 2, 2004) (finding that parties had control over and were required to produce documents in possession of spouse and family partnership); *United States v. Freidus*, No. 88 CIV. 6116 (RWS), 1989 WL 140254, at *2 (S.D.N.Y. Nov. 13, 1989) (rejecting claim that defendant in civil suit should not be required to produce documents purportedly in his wife's custody); *see also Duarte v. St. Paul Fire & Marine Ins. Co.*, No. EP-14-CV-305-KC, 2015 WL 7709433, at *5 (W.D. Tex. Sept. 25, 2015) (stating that "[a] party must make a reasonable search of all sources reasonably likely to contain responsive documents," including the party's spouse) (internal citation and quotation marks omitted).

40 *Mitchell H. Fillet*, Exchange Act Release No. 75054, 2015 WL 3397780, at *13 (May 27, 2015) (finding respondent violated predecessor to Rule 2010 by providing backdated records to NASD).

sustain FINRA's finding that Saliba and Mansourian violated FINRA Rule 2010 by participating in obtaining backdated compliance forms and providing them to FINRA.

2. Mansourian caused NMS to maintain inaccurate books and records.

FINRA Rule 4511(a) provides that members "shall make and preserve books and records as required under . . . applicable Exchange Act rules." Exchange Act Rule 17a-4(b)(4) requires broker-dealers to preserve originals of all business-related communications they receive and copies of all communications they send.[41] A violation of Rule 4511 also violates Rule 2010.[42]

Mansourian does not challenge FINRA's finding that he caused NMS to maintain inaccurate books and records in violation of FINRA Rules 4511 and 2010 when he evaded NMS's email retention system by soliciting the backdated OBA and PST Forms using his Gmail account. We find that the record supports FINRA's findings. Mansourian's requests for backdated compliance forms (and the responses he elicited) were business-related communications that NMS was required to preserve. Although NMS would normally have preserved such intra-office communications through its email retention system, Mansourian evaded that system by using his Gmail account to obtain these forms from Firm personnel at outside email accounts. Mansourian also specifically requested that recipients provide their responses to him at his personal address or an unlogged fax number that NMS shared with other businesses that Saliba operated. Because Mansourian's actions caused business-related communications not to be preserved in the Firm's files, he caused NMS to violate FINRA Rules 4511 and 2010. FINRA Rules 4511 and 2010 are consistent with the purposes of the Exchange Act, as was FINRA's application of those rules to Mansourian's conduct.[43]

III. Sanctions

Under Exchange Act Section 19(e)(2), we sustain FINRA sanctions 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.[44] We consider evidence of any aggravating or mitigating factors, as well as whether the sanctions

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[41] 17 C.F.R. § 240.17a-4(b)(4) (providing that every registered broker or dealer shall "preserve for a period of not less than three years . . . all communications received and . . . sent . . . (including inter-office memoranda and communications) relating to its business").

[42] *See supra* note 20.

[43] *See Meyers Assocs.*, 2019 WL 3387091, at *10 & n.82 (finding that FINRA Rule 4511(a) is "consistent with the Exchange Act's purpose of protecting investors and the public interest because [it] 'require[s] that member firms conduct their business operations with regularity and that their records accurately reflect those operations'" (quoting *Mielke*, 2015 WL 5608531, at *16 (internal quotation and citation omitted))).

[44] 15 U.S.C. § 78s(e)(2). Saliba and Mansourian do not assert that FINRA's sanctions present any such burden, nor do we find that they do.

serve remedial rather than punitive purposes.[45] Although they are not binding on us, FINRA's Sanction Guidelines serve as a benchmark in our review.[46]

A. We sustain two of the bars that FINRA imposed on Saliba but remand the third bar since we remand for further clarification of the findings on which it was based.

1. We sustain the bars that FINRA imposed on Saliba as a result of his violations of the Interim Restrictions and his participation in the provision of falsified compliance forms to FINRA.

a. The bar FINRA imposed on Saliba as a result of his violations of the Interim Restrictions is not excessive or oppressive.

In barring Saliba for his violations of the Interim Restrictions, FINRA applied the Sanction Guidelines that address breaches of membership agreements.[47] Saliba does not challenge FINRA's determination that breaches of interim restrictions, for which there are no specific guidelines, are analogous to breaches of membership agreements, and we find that determination reasonable. The Sanction Guidelines recommend imposing a suspension of up to two years in cases involving a serious breach and, in egregious cases, consideration of a bar.[48]

i. Saliba's egregious misconduct establishes that a bar is necessary.

Saliba acted egregiously. Although the Interim Restrictions prohibited him from acting in a principal capacity, Saliba intentionally negotiated and signed at least 15 engagement agreements on behalf of the Firm over a 10-month period.[49] He signed these agreements as, variously, NMS's chairman, CEO, senior managing director, and managing director. While subject to the Interim Restrictions, Saliba also hired Younger to replace Miller as NMS's designated CEO, signed two additional employment agreements on behalf of the Firm, and participated in additional hiring. Saliba also acted as a principal in violation of the Interim

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[45] *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).

[46] *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 WL 2898033, at *11 & n.68 (June 14, 2013). FINRA applied the version of its Sanction Guidelines in place at the time of the hearing. https://www.finra.org/sites/default/files/2017_April_Sanction_Guidelines.pdf ("Sanction Guidelines").

[47] Sanction Guidelines, at 44 (Member Agreement Violations).

[48] *Id.*

[49] *Id.* (calling for consideration of Principal Considerations in Determining Sanctions); *id.* at 7-8 (Principal Considerations in Determining Sanctions, Nos. 8 ("[w]hether the respondent engaged in numerous acts and/or a pattern of misconduct"), 9 ("[w]hether the respondent engaged in the misconduct over an extended period of time"), and 13 ("[w]hether the respondent's misconduct was the result of an intentional act, recklessness or negligence")).

Restrictions when he negotiated the employment agreement with Younger that provided Younger would report to Saliba and could not contractually bind the Firm.

Consistent with the Sanction Guidelines, FINRA found it aggravating that the prohibition on Saliba acting as a principal or supervisor was a material provision of the Interim Restrictions and specifically applied to him.[50] Yet, as James Miller testified, Saliba ran the Firm, and Saliba admitted he did not change his practices after FINRA imposed the Interim Restrictions.

We also agree with FINRA that "Saliba's actions as a principal were intentional." The Supreme Court has recognized that an "important factor" in assessing the likelihood that future violations will occur is "the degree of intentional wrongdoing evident in a defendant's past conduct."[51] Saliba's deliberate violation of the limitations that FINRA imposed to protect the public while the Firm's CMA was under review underscores the need for Saliba to be barred from association with any FINRA member firm in any capacity in the future.[52]

Finally, a bar is necessary to protect the public in light of FINRA's reasons for imposing the Interim Restrictions. FINRA imposed the Interim Restrictions because Saliba's investment advisory firm was under investigation and FINRA needed additional information to determine whether the Firm and its associated persons were capable of complying with the federal securities law, the rules and regulations thereunder, and NASD rules. Rather than acting in a way that would show Saliba and the Firm could comply with the law in the future, Saliba's actions demonstrated that he could not comply with the law even while the Firm's CMA was pending before FINRA. Saliba's actions evidence a profound and troubling disregard for his obligation to comply with FINRA rules. We share FINRA's lack of "confidence in Saliba's

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50 *Id.* at 44 (stating that "Principal Considerations in Determining Sanctions" include "[w]hether the respondent breached a material provision of the agreement," and "[w]hether the respondent breached a provision of the agreement that contained a restriction that was particular to the firm").

51 *Aaron v. SEC*, 446 U.S. 680, 701 (1980).

52 *See Hans N. Beerbaum*, Exchange Act Release No. 55731, 2007 WL 1376365, at *5 (May 9, 2007) (sustaining a bar NASD imposed because "Applicants deliberately ignored the requirements of the registration rule" and "[t]hose requirements, which are intended to protect investors, are rendered meaningless if aspects of them are, as here, disregarded"); *see also Notice of Filing of a Proposed Rule Change to Amend the Membership Application Program ("MAP") Rules to Address the Issue of Pending Arbitration Claims,* Exchange Act Release No. 87810, 2019 WL 7171342, at *9 n.27 (Dec. 20, 2019) ("Interim restrictions are meant for the protection of investors.").

ability to comply with the rules and regulations applicable to securities professionals" and its resulting conclusion "that a bar in all capacities is appropriate."[53]

ii. We do not find the considerations that Saliba cites mitigating.

We reject Saliba's arguments that mitigating factors warrant a reduced sanction. Although he does not challenge FINRA's finding of violation, Saliba asserts that he acted in good faith, attempted to understand the scope of the Interim Restrictions by repeatedly conferring with FINRA, and breached the Interim Restrictions only because he genuinely believed his actions were consistent with them. The record does not support Saliba's account.

FINRA reminded Saliba at their meeting on September 25, 2012, that NMS was subject to the Interim Restrictions and would be until FINRA notified the Firm otherwise. Yet Saliba interviewed Sperry Younger later that day and offered him the position of NMS's CEO to replace James Miller the next day. Saliba did not mention this when he emailed Volkell a few days later on September 30, 2012, and after they later spoke by telephone, he failed to correct Volkell's misunderstanding that the Firm planned to hire a new CCO, not a new CEO, for nearly a month. Saliba also repeatedly signed engagement agreements on behalf of the Firm as the Firm's "CEO," "Chairman" or "Senior Managing Director" despite being subject to the Interim Restrictions that prohibited him from acting as a principal. As a result, we reject Saliba's argument that he acted in good faith and that his violations resulted from a misunderstanding.

We also reject Saliba's argument that it is mitigating that he did not "ignore FINRA warnings." FINRA repeatedly reminded Saliba of the need to comply with the Interim Restrictions, and it is not mitigating that it did not deliver additional specific warnings directed at the particular manner in which Saliba violated them.[54]

We likewise do not find mitigating Saliba's claim that he believed he was not acting as a principal. At the hearing, Saliba testified that after he received FINRA's letter imposing the Interim Restrictions he reviewed the definition of principal in FINRA's handbook and determined that being a principal meant supervising others. But the plain language of Rule 1021(b) provides that the "active[] engage[ment] in the management of [a] member's investment banking or securities business" that makes an individual a principal "*include[es] supervision*, solicitation, conduct of business *or* the training of persons associated with a member for *any of*

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[53] *See Beerbaum*, 2007 WL 1376365, at *5 (finding that applicant's failure to properly register as a principal "evidenced a lack of appreciation for the requirements he was subject to as an associated person of an NASD member firm" and that "allowing [him] to remain in the industry" would not "serve the interests of investors") (citing *Gordon Kerr*, Exchange Act Release No. 43418, 2000 WL 1476174, at *1 (Oct. 5, 2000) (sustaining bar in all capacities of registered representative who acted as principal without being registered)).

[54] *See* Sanction Guidelines, at 8 ("Whether the respondent engaged in the misconduct at issue notwithstanding prior warnings from FINRA, another regulator or a supervisor (in the case of an individual respondent) that the conduct violated FINRA rules or applicable securities laws or regulations.").

these functions."[55] Because the plain language of Rule 1021 establishes that supervision is only one of a number of principal functions, Saliba's claim that he determined that only supervisors are principals by reading the rule is unreasonable. The Interim Restrictions themselves distinguished between acting as a principal and acting as a supervisor because they prohibited Saliba from acting "in any principal *and/or* supervisory capacity" (emphasis added). In any case, Saliba negotiated an employment agreement with Younger that provided that Younger would report to him, which is evidence that Saliba had some supervisory responsibilities.

Saliba also argues that the Interim Restrictions were confusing and that it is mitigating that they did not specifically prohibit him from participating in the hiring process but rather limited "only his ability to act in a principal capacity." But the Interim Restrictions stated explicitly that Saliba could not act as a principal, and he admitted that he looked up the definition of a principal in FINRA's manual. That definition included active engagement in the member's investment banking or securities business. Saliba could not have been confused about the fact that hiring a new CEO and other firm personnel and signing engagement agreements on behalf of the Firm constituted principal activity. As for whether the Interim Restrictions included a specific prohibition against participating in the hiring process, Saliba's extensive involvement in the Firm's hiring process establishes that he acted as a principal.[56] There is no requirement that FINRA catalog in its Interim Restrictions every action that constitutes principal activity.

Saliba argues further that the testimony of the district director for FINRA's New Jersey district office shows that it was unclear if replacing an existing employee, such as replacing Miller with Younger as CEO, violated the prohibition on the Firm hiring new employees contained in the Interim Restrictions. But FINRA found that Saliba violated the Interim Restrictions because he violated the restriction against acting as a principal and not the restriction barring the hiring of new employees. Because Saliba violated the Interim Restrictions by acting as a principal when he replaced Miller as CEO with Younger, it is again irrelevant whether replacing Miller also violated the additional restriction on hiring new employees.

We also reject Saliba's contention that it is mitigating that the Interim Restrictions were unreasonable and unduly burdensome because he needed to manage the Firm, that he viewed FINRA's enforcement of the Interim Restrictions as lax, and that FINRA failed to tell him when he violated them.[57] Saliba cannot blame FINRA for his own failure to abide by the Interim

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55 NASD Rule 1021(b) (emphasis added). In delineating this nonexclusive list of principal functions, Rule 1021(b) provides no exception for engaging in "solicitation, conduct of business," or any other type of active engagement in the management of a firm's business under nominal supervision. Thus, Rule 1021(b) also provides no support for Saliba's claim that he thought he was not violating the Interim Restrictions as long as he apprised others of his actions. In any case, the record reveals a number of instances in which Saliba did not copy his alleged supervisors while engaging in principal functions to facilitate any supervision.

56 *See supra* note 18 and accompanying text.

57 It is also not mitigating, as Saliba appears to suggest, that FINRA did not pursue Saliba for violating the Interim Restrictions by opening the New York OSJ.

Restrictions or shift his compliance burden to FINRA.[58] And FINRA staff testified that owners of member firms can and do hire others to run their businesses; Saliba could have done so with FINRA's consent. Instead, Saliba negotiated a limited modification of the Interim Restrictions to accommodate his involvement in specified financial operations subject to supervision by the Firm's FINOP. But Saliba's hiring of Younger and other personnel, as well as his negotiation and execution of engagement agreements, went far beyond these limited exceptions.[59] Saliba was not free to ignore the Interim Restrictions because he disagreed with them or thought that they were unworkable or contrary to his financial interests, nor are those beliefs mitigating.[60]

b. The bar FINRA imposed on Saliba as a result of his participation in providing backdated compliance forms to FINRA is not excessive or oppressive.

We also agree with FINRA that Saliba's participation in providing it with backdated compliance forms warrants a bar. Saliba executed backdated compliance forms for submission to FINRA and knew that Tabizon and Mansourian planned to obtain and submit additional backdated forms from other personnel at the Firm. As FINRA found, that it is impermissible to submit backdated compliance forms is "basic knowledge that every securities industry professional should know."[61] Saliba agreed at the hearing that, as "a businessman for many years," he knew it was improper to backdate forms. Saliba's willingness to deceive, and

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[58] *See Beerbaum*, 2007 WL 1376365, at *5 & n.22 (rejecting claim that it was mitigating that "Beerbaum is [the Firm]" and "NASD failed to devise a way in which the Firm could remain in business, and in compliance, despite Beerbaum's suspension").

[59] *Cf.* Sanction Guidelines, at 44 ("Whether the firm had applied for, was in the process of applying for, or had been denied a waiver of a restriction at the time of the misconduct.").

[60] *See Beerbaum*, 2007 WL 1376365, at *5 ("Applicants also argue that they sought to remain in compliance but that NASD 'failed to suggest a practical way that [Beerbaum] could have met the firm's compliance responsibilities other than by filing the reports that only he had the power to file.' The appropriate answer to this is that, once Beerbaum was suspended, it was Applicants' obligation to cause these management responsibilities to be carried out by a properly registered principal. He and the Firm had an obligation to comply with all applicable rules.").

[61] *Cf. Heath v. SEC*, 586 F.3d 122, 140 (2d Cir. 2009) (stating that "'[a]s an experienced registered representative, plaintiff may be fairly charged with knowledge of the ethical standards of his profession"') (quoting *Crimmins v. Am. Stock Exch., Inc.*, 368 F. Supp. 270, 277 (S.D.N.Y. 1973), *aff'd*, 503 F.2d 568 (2d Cir. 1974)); *Rooms v. SEC*, 444 F.3d 1208, 1214 (10th Cir. 2006) (stating that based on respondent's "years of experience, he certainly knew that bribery and backdating and altering documents are not ethical and accepted conduct in the securities industry").

participate in an effort whereby others at the Firm deceived, FINRA by providing backdated compliance forms supports FINRA's determination to bar him in all capacities.[62]

Saliba concedes that he "engaged in conduct that violated FINRA Rules," but argues that the bar should be reduced because he "had a good-faith, but mistaken, belief of express or implied authority" to backdate the OBA and PST Forms. According to Saliba, this is so because he signed the forms only after Tabizon advised him that Leong had authorized Tabizon to "recreate" them. But FINRA determined that Tabizon was not a credible witness,[63] and specifically rejected his testimony regarding the conversation with Leong, which it found was uncorroborated and inconsistent with the record. Indeed, Tabizon's testimony is inconsistent with the efforts by Mansourian to obtain the backdated forms through fax and private email, rather than firm email, which would have been unnecessary if FINRA had consented to the backdating. Like FINRA, we are not persuaded by Saliba's claims of reliance. Saliba identifies no hearing testimony supporting his claimed "understanding that Examiner Leong had authorized" the Firm to submit backdated forms, and as discussed above the record does not show that Leong ever provided such authorization to Tabizon.

Saliba observes that, although Leong was no longer employed by FINRA at the time of the hearing, FINRA could have called her to testify pursuant to FINRA Rule 8210 because she was associated with a member firm. Because FINRA did not do so, Saliba asks us to disregard her supervisor's testimony that a FINRA examiner would not have authorized the Firm to submit backdated OBA and OST Forms. But Saliba's argument rests solely on the fact that Leong was not called to testify. Yet FINRA's rules also provided that Saliba could have called her as a

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62 *See Fillet*, 2015 WL 3397780, at *14, *15 (stating that "providing truthful information to regulatory authorities is a fundamental obligation of securities professionals" and that applicant's attempt to subvert a FINRA examination by providing backdated documents "reflect[ed] an attitude toward regulatory oversight incompatible with the principles of investor protection" and showed that he "pose[d] a threat to investors"); *Peter W. Schellenbach*, Exchange Act Release No. 30030, 1991 WL 288493, at *4 (Dec. 4, 1991) (stating that the "deliberate deception" of "regulatory authorities" "reflects strongly on the perpetrator's fitness to serve in any capacity in the securities business"), *aff'd*, 989 F.2d 907 (7th Cir. 1993); *Peter J. Kisch*, Exchange Act Release No. 19005, 1982 WL 529109, at *6 n.23 (Aug. 24, 1982) (concluding that the "deliberate deception that respondents practiced on regulatory authorities reflects just as strongly on their fitness to serve in any capacity in the securities business, and clearly indicates that their continued presence in that business poses a substantial threat to the investing public").

63 *See supra* note 12 and accompanying text. Saliba does not challenge FINRA's determination that Tabizon was not a credible witness.

witness, and Saliba does not explain why he did not do so.[64] Nor does Saliba provide any other basis to reject the testimony of Leong's supervisor or to conclude that Leong necessarily would have testified as Saliba claims.

It also would not have been reasonable for Saliba to have relied on Tabizon's alleged conversation with Leong given Saliba's years of experience, admitted knowledge that backdating was not appropriate, and the inherent implausibility of Tabizon's account.[65] Indeed, in his brief, Saliba characterizes Leong's purported authorization to submit backdated forms as an "atypical act." We also reject Saliba's attempt to bolster his ostensible reliance on Tabizon's account by referring to Tabizon as NMS's CCO since Tabizon resigned from that position around the end of the preceding year after failing a required examination.

Saliba argues that evaluating his misconduct under the specific sanction guidelines applicable to misconduct involving the falsification of records demonstrates that a bar is not warranted. We disagree. The relevant considerations under the guideline Saliba cites are the "[n]ature of the document(s) forged or falsified" and "[w]hether the respondent had a good-faith, but mistaken, belief of express or implied authority." As explained above, Saliba's claim that he had a good-faith belief of express or implied authority to backdate the OBA and PST Forms is not mitigating. And the "[n]ature of the document(s) forged or falsified" is an aggravating factor. By providing backdated compliance forms to FINRA, Saliba misrepresented that he and the firm had been discharging their compliance obligations and timely executing the forms.[66]

c. Saliba's general objections to the sanctions that FINRA imposed are unavailing.

We also reject Saliba's generalized mitigation arguments. First, Saliba argues that we should reduce the bars because he has no other relevant disciplinary history, did not injure anyone through his misconduct, and did not benefit from it. But "'lack of a disciplinary history is not a mitigating factor' under FINRA's Sanction Guidelines because, as we have stated,

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64 *See* FINRA Rule 8210 (providing FINRA with the right to require persons associated with member firms to testify in a proceeding); FINRA Rule 9252(a) (authorizing respondent to "request[] that FINRA invoke Rule 8210 to compel . . . testimony at the hearing"); *see also John Montelbano*, Exchange Act Release No. 47227, 2003 WL 147562, at *13 n.59 (Jan. 22, 2003) (recognizing that "a respondent, in accordance with certain specified conditions, may request the NASD to invoke Rule 8210 and compel associated persons to testify").

65 *Cf. Ivan D. Jones, Jr.*, Exchange Act Release No. 36355, 1995 WL 600035, at *5 n.18 (Oct. 10, 1995) (recognizing that it "would clearly have been unreasonable" to have relied on advice that diversion of funds was acceptable).

66 *Cf. Kenny Akindemowo*, Exchange Act Release No. 79007, 2016 WL 5571625, at *9 (Sept. 30, 2016) (recognizing that the "written disclosure requirement allows member firms to assess the risks of outside business activities of associated persons and raise timely objections to such activities," and concluding that applicant's "failure to provide the written notice required by the rule frustrated [firm's] ability to assess the risks that his outside business activities may cause harm to potential investors and to manage those risks by taking appropriate action").

securities professionals 'should not be rewarded for acting in accordance with [their] duties.'"[67] We have also long stated that "[t]he absence of monetary gain or customer harm is not mitigating, as our public interest analysis focus[es] . . . on the welfare of investors generally."[68] In any case, Saliba harmed FINRA and the general public because his actions were antithetical to FINRA's ability to effectively regulate its members and their associated persons.[69]

Second, Saliba contends that it is mitigating that FINRA did not allege in its complaint that NMS employed unreasonable procedures. But Saliba neither explains how this might be mitigating as to his misconduct nor attributes that misconduct to his reliance on any particular NMS procedure. In any case, we have repeatedly held that "a registered representative is responsible for his actions and cannot shift that responsibility to [his] firm."[70]

Finally, Saliba argues that FINRA failed to tailor the sanctions imposed to his misconduct and that we should modify the bars FINRA ordered to ensure that the sanctions are remedial and

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67 *Blair Alexander West*, Exchange Act Release No. 74030, 2015 WL 137266, at *12 (Jan. 9, 2015) (quoting *Busacca v. SEC*, 449 F. App'x 886, 893 (11th Cir. 2011)), *aff'd*, 641 F. App'x 27, 30 n.6 (2d Cir. 2016) ("[T]he lack of an aggravating factor—such as a prior disciplinary record—does not establish a mitigating factor, *see Rooms v. SEC*, 444 F.3d 1208, 1214 (10th Cir. 2006), as securities professionals are required at all times to comply with FINRA's standards of conduct."); *accord* Sanction Guidelines, at 2, 7 & n.1 (stating that sanctions should be more severe for recidivists but the absence of a disciplinary history is not mitigating).

68 *Fillet*, 2015 WL 3397780, at *15 (quoting *Howard Braff*, Exchange Act Release No. 66467, 2012 WL 601003, at *7 (Feb. 24, 2012)); *see also Ahmed Gadelkareem*, Exchange Act Release No. 82879, 2018 WL 1324737, at *9 (Mar. 14, 2018) ("[W]e have held consistently that the lack of customer harm is not mitigating." (collecting authority)).

69 We recognize that Saliba acknowledged before us that he violated FINRA's rules with respect to the Interim Restrictions and backdated OBA and PST Forms. But we do not find this mitigating because Saliba did not acknowledge these violations until after FINRA issued its decision. *See ACAP Fin., Inc.*, Exchange Act Release No. 70046, 2013 WL 3864512, at *16 (July 26, 2013) ("Because ACAP and Hume did not stipulate to their misconduct until after FINRA had instituted a disciplinary proceeding against them, their stipulations came too late to warrant consideration under the Guidelines."), *petition denied*, 783 F.3d 763 (10th Cir. 2015); Sanction Guidelines, at 7 (identifying as a principal consideration in determining the appropriate sanctions whether the "respondent accepted responsibility for and acknowledged the misconduct . . . prior to detection and intervention" by the firm or a regulator). Saliba's counsel also recognized at the conclusion of the hearing that Saliba had backdated his OBA and PST Forms. But this recognition of his backdating was likewise too late to be mitigating, and in any case Saliba still argued that he had not violated FINRA rules by acting unethically in doing so.

70 *Guang Lu*, Exchange Act Release No. 51047, 2005 WL 106888, at *6 (Jan. 14, 2005) (citing *Rafael Pinchas*, Exchange Act Release No. 41816, 1999 WL 680044, at *4 (Sept. 1, 1999)), *aff'd*, 179 F. App'x 702 (D.C. Cir. 2006).

not punitive.[71] But FINRA addressed Saliba's specific misconduct and found that as a result of it bars were necessary. And we find that the bars are remedial because barring Saliba protects the investing public from future misconduct that he could commit if he remained in the securities industry.[72] We agree with FINRA that Saliba's misconduct provides us with "no confidence in [his] ability to comply with the rules and regulations applicable to securities industry professionals." Given the significance of that misconduct as it relates to his honesty and appreciation of FINRA's role in ensuring regulatory compliance by its members, allowing Saliba to remain in the securities industry would pose an unacceptable risk to the public.[73]

2. We remand the bar that FINRA imposed on Saliba as a result of his provision of false or misleading information in violation of FINRA rules since we remand for FINRA to clarify the basis for its findings of violations.

FINRA imposed a separate bar on Saliba for giving false testimony about his use of computers for NMS business, failing to produce all computers he used for Firm business, and providing false supervisory approval memos to FINRA. But we remand for FINRA to clarify the basis for its findings that Saliba's provision of the memos to FINRA violated FINRA Rules 8210 and 2010. Because FINRA imposed this bar based on the totality of the conduct it concluded

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[71] *See* Sanction Guidelines, at 2 (General Principle 1) (recognizing need to consider whether "the sanctions imposed are remedial and designed to deter future misconduct, but are not punitive"); *id.* at 3 (General Principle 3) ("Sanctions in disciplinary proceedings are intended to be remedial and to prevent the recurrence of misconduct."); *id.* at 4 ("Depending on the facts and circumstances of a case, Adjudicators may determine that no remedial purpose is served by imposing a sanction within the range recommended in the applicable guideline; i.e., that a sanction below the recommended range, or no sanction at all, is appropriate.").

[72] *See John M.E. Saad*, Exchange Act Release No. 86751, 2019 WL 3995968, at *2 (Aug. 23, 2019) ("A FINRA bar may be imposed, not as punishment, but 'as a means of protecting investors.'" (quoting *PAZ Sec.*, 494 F.3d at 1065-66)), *petition denied*, 980 F.3d 103, 107, 108 (D.C. Cir. 2020) (finding that "a sanction may be 'remedial' under section 78s(e)(2) even if it is aimed at protecting the public and not at correcting the effects of wrongdoing" and explaining that "the Commission may approve expulsion not as a penalty but as a means of protecting investors" (internal citation and quotation marks omitted)).

[73] Saliba also argues that a "fair assessment of the mitigating factors" warrants reversing FINRA's finding that he was not credible, which would lead us to view Saliba "as an individual who mis-stepped, but whose conduct does not warrant" a bar. This argument conflates credibility findings with the considerations that would mitigate misconduct. As explained above, we do not find that there are mitigating factors that render two of the bars FINRA imposed excessive or oppressive. As also explained above, we generally defer to demeanor-based credibility findings. Saliba fails to establish that we should set aside that credibility finding here.

violated Rules 8210 and 2010, we remand for FINRA to reconsider the appropriate sanction after it clarifies its findings with respect to Saliba's liability for providing the memos to FINRA.[74]

B. We reduce the bar FINRA imposed on Mansourian to a bar with a right to reapply for association with a FINRA member firm in two years.

FINRA imposed a unitary sanction on Mansourian because his two violations arose out of the same misconduct—his solicitation of backdated OBA and PST Forms to be provided to FINRA. The Sanction Guidelines applicable to recordkeeping violations recommend a suspension in any or all capacities for ten business days to three months, or where aggravating factors predominate, a longer suspension (of up to two years) or a bar. FINRA imposed a bar.

1. We agree with FINRA that aggravating factors predominate here.

We find, as did FINRA, that aggravating factors predominate here. By using his personal email, Mansourian attempted to conceal the fact that the firm was obtaining backdated OBA and PST Forms to provide to FINRA and to minimize the likelihood FINRA would detect this misconduct.[75] Mansourian also intended to provide FINRA with inaccurate information because he directed associated persons to execute compliance forms using arbitrary and misleading past dates.[76] Mansourian knew the Firm would provide the OBA and PST Forms he obtained to FINRA, and his participation in this serious misconduct was integral to it.[77]

We reject Mansourian's argument that he "was only replacing documents that were previously part of [the Firm's] books and records" because the record does not show the forms existed in the first place. Indeed, the forms that in April 2013 Mansourian requested Firm personnel complete and backdate to February 2013 were not created until March 2013.

Mansourian also argues that we should reverse FINRA's determination that he was not a credible witness and reduce the bar FINRA imposed on him as a result. The Hearing Panel found Mansourian not to be credible in part because he testified at his OTR that he solicited the backdated OBA and PST Forms at Saliba's instruction yet revised his testimony to blame

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74 *See Springsteen-Abbott*, 2017 WL 1206062, at *5 ("A remand is therefore necessary so that the NAC can clarify the basis on which it is upholding liability and explain how its findings of violation inform the sanctions imposed.").

75 Sanction Guidelines, at 29 (specifying the "[n]ature and materiality of inaccurate or missing information" and "[w]hether the violations allowed other misconduct to occur or to escape detection" as Principal Considerations in Determining Sanctions).

76 *Id.* (specifying "[w]hether inaccurate or missing information was entered or omitted intentionally, recklessly, or as the result of negligence" as a Principal Consideration in Determining Sanctions).

77 The remaining considerations are neither aggravating nor mitigating. *Id.* (specifying "[t]he nature, proportion, and size of the firm records (e.g., emails) at issue" and "[w]hether the violations occurred during two or more examination or review periods or over an extended period of time, or involved a pattern or patterns of misconduct").

Tabizon after reviewing the transcript. According to Mansourian, a medical condition made him unable to think clearly during his OTR. But Mansourian did not submit any medical evidence to establish his asserted condition. In any case, FINRA did not rely on the credibility determination in sanctioning him. We rely, as FINRA did, on the undisputed facts showing Mansourian intentionally solicited backdated documents for submission to FINRA.

Mansourian argues further that the bar is excessive or oppressive because it exceeds the sanctions FINRA imposed in other cases for what Mansourian contends was similar misconduct. But "the appropriateness of the sanctions imposed depends on the facts and circumstances of the particular case and cannot be determined precisely by comparison with action taken in other cases."[78] In any case, we find the conduct in those cases to be distinguishable.[79]

Mansourian also offers many of the same generalized mitigation arguments that Saliba advanced, which we reject for similar reasons. Although Mansourian argues that he did not profit from his misconduct or injure customers monetarily, a lack of monetary gain or customer harm is not mitigating. Nor is it mitigating that he did not ignore any prior warnings from FINRA because Mansourian should have known not to solicit backdated compliance forms to provide to an examiner. Mansourian references the Sanction Guidelines' discussion of some forms of cooperation as mitigating and asserts that FINRA did not fault the Firm's procedures, but he identifies no way in which he cooperated with FINRA and does not explain why the fact that FINRA did not fault the Firm's procedures would be mitigating as to his misconduct. And despite Mansourian's contention to the contrary, FINRA separately analyzed his misconduct in imposing sanctions on him and did not reflexively bar him along with the other respondents.

2. We find mitigating circumstances that warrant reducing the bar.

Nonetheless, we find an unqualified bar to be excessive under the circumstances. We agree with Mansourian that he was a "largely inexperienced general securities representative at the time" of his misconduct and that he engaged in the misconduct at the behest of his supervisor. Indeed, Mansourian testified that he feared being fired if he did not do as he was

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[78] *Scholander*, 2016 WL 1255596, at *11.

[79] *Dep't of Enf't v. Cohen*, Complaint No. EAF0400630001, 2010 WL 3295149, at *16 (NAC Aug. 18, 2010) (decreasing bars imposed on registered representatives to suspensions where the Hearing Panel had relied on the firm's culture of "gamesmanship" as an aggravating factor, but the registered representatives were not part of the supervisory structure that had established the culture, which the Hearing Panel found was "best evidenced" by an email between third parties regarding a meeting that neither respondent attended); *Dep't of Enf't v. Harrington*, Discip. Proc. No. 2015047303901, 2018 WL 6630196 (OHO Nov. 12, 2018) (decreasing bar imposed on associated, nonregistered person, who committed misconduct at the direction of her supervisor who assured her it was permissible, where she showed "genuine remorse" and appeared "chastened and contrite"). These considerations are not all present here.

told. Although these factors do not excuse his violations,[80] they do mitigate them. Mansourian's violations necessitate a remedial sanction to ensure that the public is protected. FINRA's "ability to police compliance with the federal securities laws and [its] rules is a core component of its self-regulatory functions," and [a]ctions such as those committed by [Mansourian] subvert [FINRA's] regulatory processes" and demonstrate that a bar is necessary to protect the public.[81] But Mansourian need not be barred from associating with a FINRA member firm without a right to reapply for association with a FINRA member firm in the future.[82]

As discussed above, the Sanction Guidelines recommend a suspension of up to two years or a bar when aggravating factors predominate. We believe a bar with a right to reapply for association with a FINRA member firm after two years is an appropriate remedial sanction. The threat that Mansourian poses to the public means that he should not be allowed to reassociate with a FINRA member firm without first having to apply to do so, but under the particular facts and circumstances of this case the fact that Mansourian did not devise or direct the scheme to

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80 *See William J. Murphy*, Exchange Ac Release No. 69923, 2013 WL 3327752, at *12 (July 2, 2013) (stating that "'applicants cannot shift to others the responsibility for their own compliance with applicable rules'") (citation omitted); *Janet Gurley Katz*, Exchange Act Release No. 61449, 2010 WL 358737, at *21 (Feb. 1, 2010) (stating that registered representative "cannot shift the blame for her violations to others"), *aff'd*, 647 F.3d 1156 (D.C. Cir. 2011).

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

82 A firm that wishes to associate with a barred individual may request permission to do so by filing a membership continuance application with FINRA. We have held that "where the Commission [has] previously imposed a bar with a right to reapply, it [is] unfair, in the absence of new information, to deny a membership continuance application, once the right to reapply commence[s], on the sole basis of the underlying misconduct." *May Capital Grp., LLC*, Exchange Act Release No. 53796, 2006 WL 1312955, at *5 (May 12, 2006) (describing the holding of *Paul Edward Van Dusen*, Exchange Act Release No. 18284, 1981 WL 315505, at *3 (Nov. 24, 1981)). We also have recognized that, in the case of an individual subject to a bar with a right to reapply, once the right to reapply commences "it is no less unfair for NASD [now FINRA] to deny a membership continuance application on the sole basis of th[e] [underlying] misconduct where it, rather than the Commission, previously imposed the . . . bar with a right to reapply." *Id*. In weighing an application to associate with a barred individual after a right to reapply commences, FINRA may consider the underlying misconduct "'in evaluating how well the employer firm's proposed scheme of supervision [is] designed to prevent the type of conduct that'" resulted in the bar. *Id*. (alternation in original) (citation omitted); *cf. Reuben D. Peters*, Exchange Act Release No. 51237, 2005 WL 424918, at *2 (Feb. 22, 2005) (stating that, in the case of an "unqualified bar," "[n]othing more than the nature and seriousness of the underlying conduct that led to the . . . bar . . . is necessarily required to deny the application"). *See generally Robert J. Escobio*, Exchange Act Release No. 83501, 2018 WL 3090840, at *5 (June 22, 2018) (stating that in assessing an application to reassociate the Commission "require[s] 'stringent supervision for a person subject to a statutory disqualification'") (citation omitted).

provide the backdated documents to FINRA also means that he should have a right to reapply for association with a FINRA member firm after two years.[83]

Mansourian argues that he has learned from this experience because he "received his Series 24 and completed continuing education since the incident," and "now fully understand[s] the consequences of blindly abiding by a supervisor's request" as a result of the "stress and discomfort that this matter has caused" him. But we agree with FINRA that Mansourian's willingness to encourage others to mislead FINRA by backdating documents "calls into question his judgment and ability to conduct himself ethically in the securities industry." A bar from associating with a FINRA member firm with a right to reapply for association after two years is an appropriate remedial sanction that balances the need to protect the public from Mansourian's demonstrated capacity for deception with the need to ensure the sanction is not excessive.[84]

An appropriate order will issue.[85]

By the Commission (Acting Chair LEE and Commissioners PEIRCE, ROISMAN, and CRENSHAW).

Vanessa A. Countryman
Secretary

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[83] *Cf. Kabani & Co., Inc.*, Exchange Act Release No. 80201, 2017 WL 947229, at *16 (Mar. 10, 2017) (finding that accountants who provided backdated documents to the PCAOB "pose[d] a continuing danger to the investing public" such that "bars are in the public interest" but allowing them to petition the PCAOB to terminate their bars after a period of time because they did not "devise[] the scheme or direct[] the final production of documents to PCAOB's inspectors" and one accountant had a "relatively less senior position of responsibility" and "more limited public accounting experience"), *petition denied*, 733 F. App'x 918 (9th Cir. 2018).

[84] *See, e.g.*, *Kirlin Secs., Inc.*, Exchange Act Release No. 61135, 2009 WL 4731652, at *18 (Dec. 10, 2009) (reducing a bar to a bar with a right to reapply after five years where applicant did not "act[] with the same degree of intent as that of" his co-defendant, "who orchestrated the [manipulative] scheme," and under the circumstances of the case a bar with a right to reapply would sufficiently protect the public).

[85] 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. 91527 / April 9, 2021

Admin. Proc. File Nos. 3-18989, 3-18990

In the Matter of the Applications of

TREVOR MICHAEL SALIBA and ARTHUR MANSOURIAN

For Review of Disciplinary Action Taken by

FINRA

ORDER SUSTAINING IN PART, REMANDING IN PART, AND MODIFYING 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 violations against Trevor Michael Saliba and Arthur Mansourian are sustained, except that FINRA's findings that Saliba violated FINRA Rule 2010 by providing falsified memos to FINRA's Department of Member Regulation, and FINRA Rules 8210 and 2010 by providing falsified memos to FINRA's Department of Enforcement, are remanded to FINRA for further proceedings consistent with our opinion; and it is further

ORDERED that the sanctions imposed by FINRA on Saliba and Mansourian are sustained, except that FINRA's imposition of a bar on Saliba based in part on the violations being remanded by this opinion is also remanded to FINRA for further proceedings consistent with our opinion, and FINRA's imposition of a bar on Mansourian is modified to a bar with a right to reapply for association with a FINRA member firm in two years.

By the Commission.

Vanessa A. Countryman
Secretary