

**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC**

In the Matter of the Application of

Trevor Michael Saliba

For Review of Disciplinary Action Taken by

FINRA

File No. 3-18989r

FINRA'S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW

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I. INTRODUCTION

Trevor Michael Saliba seeks to overturn FINRA’s well-supported findings that he engaged in numerous acts of misconduct in connection with a continuing membership application (“CMA”) for a broker-dealer he had acquired, and his subsequent attempts to conceal that misconduct with further dishonest and unethical acts. The Commission has already established that Saliba violated interim restrictions imposed during the pendency of a CMA that prohibited him from acting in a principal or supervisory capacity on behalf of his firm. The Commission also has established that Saliba obtained backdated compliance records from his firm’s associated persons and provided those records to FINRA staff. For this misconduct, the Commission sustained the NAC’s imposition of two bars.

In addition, the Commission has established that Saliba provided false testimony about computers that he used for firm business to FINRA during on-the-record interviews and failed to

provide FINRA staff with all the computers he had used for firm business in response to FINRA's request for information.

The Commission remanded for clarification of whether Saliba acted knowingly or negligently when he produced false documents that purported to be "supervisory memoranda" to FINRA. On remand, the NAC clarified that Saliba engaged in unethical conduct because he knew that he provided false documents to the Membership Application Program Group ("MAP Group") during the pendency of the CMA and that he violated FINRA rules because he knew that he provided false documents to FINRA's Department of Enforcement ("Enforcement") during its investigation. To persuade FINRA to reverse its denial of the CMA, Saliba provided what purported to be supervisory memoranda signed by the firm's chief executive officer ("CEO") authorizing him to execute certain engagement agreements on behalf of the firm—the "Miller Memoranda." Saliba argued that because he had obtained prior approval from the firm's CEO, he had not engaged in principal activity when he signed the agreements. As the Commission found, however, the memoranda were false and not created or signed by the CEO, and Saliba never obtained the prior approvals the memoranda purported to document. Moreover, when FINRA attempted to investigate the origin of these documents, Saliba thwarted those efforts by failing to produce all his work computers and falsely testifying that he used a single computer for firm work when, in fact, he had used a second computer during the relevant period that he never produced to FINRA.

The NAC's finding that Saliba knew the Miller Memoranda were false when he provided them to FINRA is overwhelmingly established by the evidence, and Saliba makes no persuasive argument to the contrary. Significantly, credible testimony reflects that the approvals and conversations between Saliba and the CEO that the memoranda purport to document never

happened. Saliba knew this and thus knew he was providing false information to FINRA. This conclusion is bolstered by the incredible and contradictory stories Saliba told about his supposed discovery of the memoranda and the fact that Saliba was motivated to produce these false documents as part of his efforts to convince FINRA to reverse the denial of his firm's CMA.

Saliba's knowing submission of false documents and testimony to FINRA is serious misconduct that was aimed at undermining FINRA's ability to perform its regulatory oversight functions. Thus, the NAC determined on remand that twice barring Saliba for his misconduct was warranted under FINRA's Sanction Guidelines. Saliba's repeated acts of unethical misconduct demonstrate that he is a danger to the securities industry. The bars imposed by FINRA are fully supported by the record—and because Saliba cannot provide any legitimate basis for disturbing them or the related findings—the Commission should dismiss Saliba's application for review.

II. PROCEDURAL HISTORY

In prior proceedings, the Commission affirmed the NAC's findings that Saliba violated FINRA Rule 2010 by acting as a principal in violation of interim restrictions imposed during the pendency of his firm's, NMS Capital Securities' ("NMS"), CMA, and affirmed the NAC's bar for this violation. *Trevor Michael Saliba*, Exchange Act Release No. 91527, 2021 SEC LEXIS 865, at *30-31, 44-53 (Apr. 9, 2021). The Commission also affirmed the NAC's findings that Saliba violated FINRA Rule 2010 by obtaining backdated compliance records from NMS's associated persons and by providing those records to FINRA staff, and affirmed the NAC's bar for that violation. *Id.* at *42-44, 52-56. The Commission further affirmed the NAC's findings that Saliba violated FINRA Rules 8210 and 2010 by providing false testimony about his

computers during an on-the-record interview and by failing to provide FINRA staff with all the computers he used for firm business.¹ *Id.* at *36-42.

The Commission remanded to the NAC to clarify its finding that Saliba violated FINRA Rules 8210 and 2010 by providing falsified memoranda to FINRA. *Id.* at *33-36. The Commission directed the NAC to explain whether it “concluded Saliba was acting intentionally and knowingly or merely negligently” when he produced the falsified memoranda. *Id.* at *34. Considering these clarifications, the Commission also instructed the NAC to reconsider the bar the NAC imposed on Saliba as a unitary sanction for Saliba’s violations with respect to his work computers and the falsified memoranda. *Id.* at *57-58.

On remand, the parties submitted briefing to the NAC on the relevant issues. (RP at 6741-6814.)² On October 6, 2022, the NAC issued its decision (the “Remand Decision”). (RP at 6818-35.) After considering the parties’ briefs and record anew on remand, the NAC found that Saliba knew he was providing false information to FINRA when he produced the three false Miller Memoranda to the MAP Group and later to Enforcement in response to a FINRA Rule 8210 request, and that by doing so Saliba violated FINRA Rules 8210 and 2010. (RP at 6826-31.) With respect to its reassessment of sanctions, the NAC: (1) barred Saliba for testifying falsely about his use of computers for work and for his failure to produce a work computer; and

¹ Saliba appealed the portions of the Commission’s decision sustaining the findings of violation and the bars imposed for this misconduct. The United States Court of Appeals for the Ninth Circuit denied Saliba’s appeal on August 31, 2022. *Saliba v. SEC*, 47 F.4th 961 (9th Cir. 2022).

² “RP at ___” refers to the page number in the certified record. “Saliba Br. ___” refers to Saliba’s February 10, 2023 brief in support of his application for review. “Stip. No. ___” refers to the Joint Stipulations of Fact dated April 3, 2017. (R. at 853-61.)

(2) barred Saliba for providing the false Miller Memoranda to the MAP Group and Enforcement. (RP at 6832-34.)

On November 4, 2022, Saliba filed this appeal of the Remand Decision. (RP at 6837-39.)

II. BACKGROUND AND FACTS

A. Saliba and NMS Capital Securities, LLC

In 2011, Saliba purchased MCA Securities, LLC (“MCA”), a FINRA member he had identified for sale on a broker-dealer exchange. (Stip. No. 2; RP at 2522.) Saliba “acquired [MCA] to facilitate the business of NMS Capital Asset Management LLC, a registered investment advisor that he owned[,] . . . changed [MCA’s] name to NMS, and NMS filed a continuing membership application . . . seeking FINRA’s approval of Saliba’s acquisition of the [f]irm.”³ *Saliba*, 2021 SEC LEXIS 865, at *3.

B. The MAP Group Imposes Interim Restrictions on Saliba

On August 15, 2012, the MAP Group sent a letter to Saliba indicating that it was still reviewing the CMA and that it had determined to impose “interim restrictions” on the firm while the CMA was pending.⁴ (RP at 3523-25.) *See Saliba*, 2021 SEC LEXIS 865, at *4-5. The letter explained that the interim restrictions were being imposed because the MAP Group “lacks sufficient information at this stage of the application review process to determine whether the [f]irm meets each standard . . . in NASD Rule 1014” and that the MAP Group’s concerns

³ NASD Rule 1017 provides that a member firm must file an application for approval of a change of ownership at least 30 days prior to the change in ownership.

⁴ NASD Rule 1017(c) provides that the MAP Group “may place new interim restrictions on a member based on the standards in Rule 1014, pending final [MAP Group] action” on the CMA. NASD Rule 1014 sets forth the standards a member must satisfy for its application to be approved.

stemmed, in part, from the Commission’s investigation of Saliba’s investment adviser. (RP at 3524.) The interim restrictions prohibited NMS 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 owned or controlled by Saliba. (*Id.*)

On August 20, 2012, Saliba sent a letter to the MAP Group acknowledging the interim restrictions and requesting a meeting to discuss them. (RP at 3619-21.) *See Saliba*, 2021 SEC LEXIS 865, at *6-7. On September 25, 2012, Saliba and his membership consultant met with MAP Group staff in New York and requested that staff modify the interim restrictions. (RP at 1352.) *See Saliba*, 2021 SEC LEXIS 865, at *7-8. Saliba explained that he wanted to retain some financial control over NMS and that the firm wanted to hire additional operations and compliance personnel. (RP at 1353-54.) Saliba did not mention that he had been, and wished to continue, signing engagement agreements on behalf of NMS. (RP at 1469, 1475.) Nor did Saliba mention that he would be the individual hiring additional firm personnel and negotiating the terms of their employment. (RP at 1366.)

On October 17, 2012, the MAP Group “sent Saliba a letter making minor changes to the Interim Restrictions.” *Saliba*, 2021 SEC LEXIS 865, at *10. The amendments included: (1) permitting Saliba to “act in a limited capacity with respect to supporting [certain enumerated] financial functions of the [f]irm,” under the supervision of NMS’s designated Financial and Operations Principal (“FINOP”); and (2) permitting the firm to hire two “additional operational support personnel provided that such personnel will only be permitted to support [f]irm operations, compliance and supervision functions.” (RP at 3624.) The amendments allowed Saliba to support invoice approval, payment of bills/corporate expenses, check writing, personal

contributions of operating capital to NMS, and oversight of corporate budgeting—all subject to the FINOP’s oversight. (*Id.*) The letter further reminded Saliba that, notwithstanding the limited modifications, the interim restrictions were not otherwise modified and “shall remain, in full force and effect, pending a final FINRA action on the [f]irm’s [CMA].” (*Id.*)

C. Saliba Violates the Interim Restrictions by Executing Investment Banking Agreements on Behalf of NMS

“Between August 30, 2012, and May 1, 2013, Saliba . . . signed at least 15 client engagement agreements on behalf of NMS, including three before his September 2012 meeting with FINRA.” *Saliba*, 2021 SEC LEXIS 865, at *12. The Commission affirmed that NAC’s finding that Saliba’s execution of these agreements constituted principal activity that violated the interim restrictions, and that he thereby violated FINRA Rule 2010. *Id.* at *30-31.

D. The MAP Group Denies the CMA and Refers Saliba and NMS to Enforcement for Investigation

On June 21, 2013, the MAP Group denied NMS’s CMA.⁵ (Stip. No. 33; RP at 3625-36.)

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 [NMS] 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 market and industry research. Citing Commission precedent, FINRA found that these actions constituted principal activity. [The MAP Group] noted that Saliba signed three of the agreements while [NMS] was negotiating with the staff to amend the Interim Restrictions, including one contract four days before

⁵ NMS appealed the denial of the CMA to the NAC. (Stip. No. 34; RP at 1482, 3761-65.) The NAC affirmed the MAP Group’s denial of the CMA in September 2014, finding, among other things, that Saliba had violated the interim restrictions by acting in a principal and/or supervisory capacity. (Stip. Nos. 37, 38.) In October 2014, NMS filed a Form Broker-Dealer Withdrawal, terminating its FINRA membership. (Stip. No. 3.)

his September 2012 meeting with FINRA staff in New York and another agreement less than a week after that meeting.

Saliba, 2021 SEC LEXIS 865, at *13-14. The MAP Group referred the matter to Enforcement, which investigated possible violations of the interim restrictions. (RP at 1482.)

E. Saliba Attempts to Conceal His Violative Principal Activities

The MAP Group's denial of the CMA was based in part on Saliba's violations of the interim restrictions by acting as a principal when he executed agreements on behalf of NMS. (RP at 3627-28.) At the time of the denial, the MAP Group was aware that Saliba had signed eight such agreements on behalf of NMS, which it listed in its denial letter and copies of which were attached to the denial letter. (RP at 3628, 3636-3706.) Saliba did not disclose to the MAP Group that he had signed these agreements on behalf of NMS. (RP at 1474-5, 2102.) Rather, the MAP Group learned of the agreements from FINRA's Los Angeles District Office, which found them during an examination of NMS. (*Id.*)

Three of the eight agreements were signed in September and October of 2012, while James Miller was NMS's CEO. (RP at 1606.) Saliba signed the remaining five agreements during Sperry Younger's tenure as NMS's CEO. (RP at 1694.)

While NMS's appeal of the MAP Group's denial was pending, Saliba requested and was granted a meeting with MAP Group staff. (RP at 1484-86, 2105.) At the August 22, 2013 meeting, Saliba asked the MAP Group to reconsider its denial of the CMA, claimed that he had signed the eight agreements with the prior verbal approval of NMS's CEOs and thus this did not constitute principal activity, and asked if he could provide additional information that could change the MAP Group's denial of the CMA. (RP at 1485-86.) The MAP Group asked Saliba to provide any documentation to support his claim that the CEOs had contemporaneously approved his execution of the engagement agreements on behalf of NMS. (RP at 1489.)

1. Saliba Produces Memoranda to FINRA

“On August 30, 2013, Saliba provided [the MAP Group] eleven documents, described as ‘Supervisory Approval Memos,’ that he asserted authorized him to enter into specific engagement agreements on behalf of [NMS].” *Saliba*, 2021 SEC LEXIS 865, at *15. “This was the first time that [NMS] provided these documents to FINRA.” *Id.*

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 [the MAP Group] 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, 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 [the MAP Group], Saliba subsequently also provided them to Enforcement in response to a Rule 8210 request.

Id. at *16. These memoranda included the three Miller Memoranda purportedly signed by Miller and evidencing Miller’s approval of three engagements for which Saliba signed agreements during Miller’s tenure. (Stip. No. 43; RP at 4077-84, 4148-50.)

2. The Commission Sustains the NAC’s Findings that the Miller Memoranda Saliba Produced Were Falsified

The Commission found that the Miller Memoranda “were not genuine.” *Saliba*, 2021 SEC LEXIS 865, at *16.

Miller testified that he had not signed [the Miller Memoranda], that the signatures on the Miller Memo[randa] 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 Memo[randa] 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 [NMS] and made all the important decisions. The [FINRA] 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.”

Id. at *16-17. The Commission further found that “Saliba could not rebut Miller’s testimony that the Miller Memo[randa] were forged.” *Id.* at *17.

At the hearing, Saliba admitted that he did not know who created the Miller Memo[randa], when they were created, or if Miller signed them. [NMS] could not produce any documents to authenticate the Miller Memo[randa], and Saliba testified that he found them without contacting Miller. Saliba testified that he found the Miller Memo[randa] 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 Memo[randa]. 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 . . . put them there, no witness testified to creating the Miller Memo[randa] or placing them in the box, and no other evidence supported Saliba’s account of his discovery of the Miller Memo[randa]. NMS was also unable to produce electronic copies of the Miller Memo[randa] or any associated metadata bearing on the dates that they were created.

Id. at *17-18.

F. Saliba Conceals the Existence of a Second Work Computer

NMS’s and Saliba’s production of the Miller Memoranda after the denial of the CMA raised questions about the provenance of the memos. On June 19, 2014 and July 16, 2014, Enforcement took Saliba’s sworn on-the-record testimony pursuant to FINRA Rule 8210 (the “OTRs”). (Stip. No. 39.) “At these OTRs, Saliba testified that he used only one computer, a laptop he had used since at least 2012, for NMS business.” *Saliba*, 2021 SEC LEXIS 865, at *20.

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.

Id. at *20-21.

After Saliba produced the First Computer, Enforcement discovered evidence that Saliba had another, undisclosed work 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 [NMS] 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.

[NMS] records show that technicians performed work on Saliba's "new" computer while the First Computer 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.

Id. at *21-24.

The Commission sustained the NAC's findings that Saliba testified falsely about his use of computers for NMS business and that he failed to produce all the computers he used for NMS business, in violation of FINRA Rule 8210 and 2010. *Id.* at *36-42. These findings are not at issue in this appeal.

IV. ARGUMENT

The Commission reviews FINRA disciplinary decisions to determine (1) whether the applicants engaged in the misconduct FINRA found; (2) whether the misconduct violated the rules specified in FINRA's determination; and (3) whether the rules were applied in a manner consistent with the Exchange Act. *See* 15 U.S.C. § 78s(e)(1); *see also* *Richard Allen Riemer*, Exchange Act Release No. 84513, 2018 SEC LEXIS 3022, at *8 (Oct. 31, 2018). FINRA's findings of violation meet this standard and, accordingly, the Commission should affirm them in all respects. Indeed, the record abundantly supports that the NAC correctly found that Saliba

knew the Miller Memoranda were false when he produced them to the MAP Group, in violation of FINRA Rule 2010 and to Enforcement, in violation of FINRA Rules 8210 and 2010.

A. Saliba Knew the Miller Memoranda Were False When He Provided Them to the MAP Group and in Response to FINRA Rule 8210

Throughout the proceedings in the case, Saliba has maintained that he did not commit violations with respect to the Miller Memoranda because he did not know that the memoranda were false. The key issue on appeal is whether there is sufficient evidence that Saliba knew the Miller Memoranda were false when he provided them to FINRA. Indeed, overwhelming evidence establishes that Saliba knew the Miller Memoranda were false, and the Commission should sustain this finding.

The Commission found that the Miller Memoranda were false. Importantly, the Commission upheld FINRA's credibility finding regarding Miller's testimony that he did not prepare the memoranda and neither signed the memoranda nor approved Saliba's execution of the underlying engagement agreements. *Saliba*, 2021 SEC LEXIS 865, at *16-18; (RP at 1621-30, 1681.) Miller's unrebutted testimony reflects that he never authorized Saliba to sign any engagement agreement on behalf of NMS and such approvals were never part of his duties. (RP at 1618.) Moreover, Miller stated that he had no knowledge about the companies to which the Miller Memoranda referred and that he never had discussions with Saliba about the engagements. (RP at 1625-29.)

In the face of the Commission's findings, Saliba nonetheless argues that Miller's credible testimony has no bearing on whether Saliba knew that the Miller Memoranda were false and suggests that any number of other individuals knew about the denial of the CMA and could have falsified that Miller Memoranda. (Saliba Br. at 10-11, 13.) Saliba's argument misses the critical point—if Miller never approved Saliba's execution of the engagement agreements and never

discussed those engagements with Saliba, then Saliba had to know that the information he was providing to FINRA in the Miller Memoranda was false. Put another way, it is not possible for Miller's testimony that he never discussed the engagements with Saliba to be credible and true (as the Commission found) and for it also to be true that Saliba did not know that the memoranda purportedly documenting these conversations were false.

Other evidence supports this logical conclusion. First, as the NAC found, Saliba's description of his search for the Miller Memoranda is "highly implausible." (RP at 6828.) At the hearing, Saliba testified that he alone conducted an exhaustive search of NMS's offices, even though he did not know at the time that the Miller Memoranda existed, and that he found them in boxes that had been shipped from another broker-dealer in which Saliba held an interest, but which had closed. (RP at 2107-08.) As the Commission found, Saliba's account at the hearing "also contradicted what he had said during FINRA's investigation at an [OTR] on June 19, 2014," during which he claimed not to remember in which file he found the Miller Memoranda.⁶ *Saliba*, 2021 SEC LEXIS 865, at *18. The contradictory and incredible nature of Saliba's supposed discovery of the Miller Memoranda further supports that he did not obtain the

⁶ Saliba argues that his OTR and hearing testimony about his discovery of the Miller Memoranda are not contradictory. (Saliba Br. at 6, 8-9.) The record refutes Saliba's claim. At the hearing, Saliba testified, "I found them in a box of files for, actually, NMS Financial Services, the other broker-dealer. And we had closed down an office from Coral Gables, and there were a few boxes of just various documents, mail and whatnot, and they were in there." (RP at 2108.) In his OTR testimony, however, Saliba made no mention of these boxes from another broker-dealer, but rather testified only that he "remember[ed] looking for these and finding them in some file." (RP at 4725-26.)

memoranda in the way he claimed and that he lied about how they were obtained because he knew the memoranda were false.⁷

Finally, Saliba's desire to convince the MAP Group to reverse the denial of the firm's CMA establishes that he had a motive to provide the Miller Memoranda even though he knew they were false. Saliba argues that "hope"—that is, his hope that the denial of the CMA would be reversed—is not evidence of knowledge, but "*pure speculation.*" (Saliba Br. at 12.) But Saliba's motive, along with the fact that in trying to convince the MAP Group to reverse its determination, Saliba provided memoranda that purported to document conversations Saliba knew never happened and Saliba's subsequent incredible and contradictory descriptions of his discovery of those memoranda, establish convincingly that Saliba provided the Miller Memoranda both to the MAP Group and Enforcement despite knowing they were false.

Finally, Saliba suggests in his brief that the evidence that he knew the Miller Memoranda were false is insufficient because it is circumstantial. (Saliba Br. at 8.) But the Commission has repeatedly held that circumstantial evidence is more than sufficient to prove a violation and the lack of direct evidence is no impediment to finding a violation. *See, e.g., Joseph R. Butler*, Exchange Act Release No. 77984, 2016 SEC LEXIS 1989, at *18 n.18 (June 2, 2016) (finding that circumstantial evidence was sufficient to prove conversion of customer funds); *Andrew P. Gonchar*, Exchange Act Release No. 60506, 2009 SEC LEXIS 2797, at *48-50 (Aug. 14, 2009) (explaining that proving a violation with circumstantial evidence is sufficient even when a bar is imposed); *Dennis Todd Lloyd Gordon*, Exchange Act Release No. 57655, 2008 SEC LEXIS 819, at *41 (Apr. 11, 2008) (explaining that "there is no impediment to the use of circumstantial

⁷ The NAC specifically stated that it was not reaching the question of whether Saliba created the Miller Memoranda or directed their creation. (RP at 6826.)

evidence in an NASD proceeding”); *Sidney C. Eng*, 53 S.E.C. 709, 714-16 n. 4 (1998) (stating that “circumstantial evidence “may . . . be more certain, satisfying, and persuasive than direct evidence”). The circumstantial evidence that Saliba knew the Miller Memoranda were false when he provided them to FINRA is strong, persuasive, and sufficient proof.

B. Saliba Violated FINRA Rules 8210 and 2010 When He Provided the False Miller Memoranda to FINRA

Saliba violated FINRA Rules 8210 and 2010 when he produced the false Miller Memoranda in response to a Rule 8210 request during FINRA’s investigation of his possible violations of the interim restrictions. Pursuant to FINRA Rule 8210, Enforcement had requested that Saliba provide documents evidencing “executive management approval or authority to engage in investment banking deals.” Saliba provided the false Miller Memoranda in response.

It is well settled that providing false or misleading information to FINRA in response to a FINRA Rule 8210 request violates Rules 8210 and 2010. *See Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *23 (Aug. 22, 2008). Providing false information to FINRA “can conceal wrongdoing and thereby subvert [FINRA’s] ability to perform its regulatory function and protect the public interest.” *Id.* at *32. Here, FINRA was investigating whether Saliba had violated the interim restrictions.

FINRA Rule 8210 is indispensable to FINRA’s ability to fulfill its regulatory functions. Because FINRA does not have subpoena power, it “must rely on [FINRA] Rule 8210 to obtain information . . . necessary to carry out its investigations and fulfill its regulatory mandate.” *See CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *15 (Jan. 30, 2009); *see also Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008) (stating that Rule 8210 “is at the heart of the self-regulatory system for the securities industry”), *aff’d*, 347 F. App’x 692 (2d Cir. 2009); *PAZ Sec., Inc.*, Exchange

Act Release No. 57656, 2008 SEC LEXIS 820, at *12 (Apr. 11, 2008) (stating that FINRA’s “lack of subpoena power thus renders compliance with Rule 8210 essential to enable [FINRA] to execute its self-regulatory functions”), *aff’d*, 566 F.3d 1172 (D.C. Cir. 2009). A violation of FINRA Rule 8210 also constitutes a violation of FINRA Rule 2010. *See John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at *33-36, n.58 (June 14, 2013).

Saliba produced the Miller Memoranda even though he knew they were false. Saliba provided this false information to FINRA to bolster his claim that he did not act as a principal in violation of the interim restrictions when he signed the engagement agreements because he only did so with the prior approvals of NMS’s CEOs. The evidence shows that Saliba had never received prior approval from Miller or even discussed the engagements with him, as Miller credibly testified. Saliba’s production of the Miller Memoranda thwarted FINRA’s investigation and violated FINRA Rules 8210 and 2010.

C. Saliba Violated FINRA Rule 2010 When He Provided the False Miller Memoranda to the MAP Group

Saliba knew the Miller Memoranda contained false information when he provided them to the MAP Group. And when Saliba provided the falsified memoranda, he acted unethically and violated FINRA Rule 2010.

FINRA Rule 2010 is FINRA’s ethical standards rule. Rule 2010 states that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade,” and is “designed to enable [FINRA] to regulate the ethical standards of its members.” *Heath v. SEC*, 586 F.3d 122, 132 (2d Cir. 2009). When determining if there has been an independent violation of FINRA Rule 2010, the Commission has “long applied a disjunctive ‘bad faith or unethical conduct’ standard to disciplinary action.” *Blair Alexander West*, Exchange Act Release No. 74030, 2015 SEC LEXIS 102, at *20 (Jan. 9, 2015),

aff'd, 641 F. App'x 27 (2d Cir. 2016). When an alleged violation of FINRA Rule 2010 is not premised on the violation of another FINRA rule, “the respondent [must have] acted unethically or in bad faith.” *Kimberly Springsteen-Abbott*, Exchange Act Release No. 88156, 2020 SEC LEXIS 2684, at *28 (Feb. 7, 2020), *petition for review dismissed in part and denied in part*, 989 F.3d 4 (D.C. Cir. 2021). The Commission has stated that “[u]nethical conduct is that which is not in conformity with moral norms or standards of professional conduct, while bad faith means dishonesty of belief or purpose.” *Id.*

Saliba’s providing false information in response to a FINRA request is unethical conduct inconsistent with high standards of commercial honor and just and equitable principles of trade. *See Dep’t of Enf’t v. Elgart*, Complaint No. 2013035211801, 2017 FINRA Discip. LEXIS 9, at *32-33 (FINRA NAC Mar. 16, 2017), *aff’d*, Exchange Act Release No. 81779, 2017 SEC LEXIS 3097 (Sept. 29, 2017). As the Commission has explained, when a respondent provides false information to FINRA, he “subvert[s] [FINRA’s] ability to perform its regulatory function and protect the public interest,” and this misconduct constitutes “an independent violation of” FINRA Rule 2010. *Ortiz*, 2008 SEC LEXIS 2401, at *23-24, 32.

When Saliba met with the MAP Group, he claimed that he had not acted as a principal in violation of the interim restrictions and asked the MAP Group to consider reversing its denial of the firm’s CMA. With respect to the engagement agreements he signed, Saliba argued that his conduct did not constitute principal activity because he signed the agreements with the prior approval of the firm’s CEO. The MAP Group asked Saliba to provide any documentation to support this claim, after which Saliba produced the false Miller Memoranda. Saliba provided the Miller Memoranda to persuade the MAP group to reverse its denial of the CMA, even though he knew that the Miller Memoranda falsely stated he had signed certain engagement agreements

with Miller's prior approval. In fact as Miller's credible testimony reflects, Saliba had never discussed these engagements with Miller and Miller had not approved these or any other engagement agreements. (RP at 1616, 1618, 1621-30, 1681.) Saliba's submission of the false Miller Memoranda constituted unethical conduct meant to subvert the MAP Group's ability to properly evaluate the firm's CMA. Accordingly, the Commission should sustain the NAC's finding that Saliba violated FINRA Rule 2010.

D. The Bars Imposed for Saliba's Misconduct Are Consistent with the Sanction Guidelines and Are Neither Excessive nor Oppressive

On remand, the NAC barred Saliba for providing the falsified Miller Memoranda to the MAP Group and Enforcement and imposed a separate bar for falsely testifying about his use of computers for NMS's business and failing to produce all the computers he used for firm business. Saliba argues that no sanctions are warranted. The bars, however, in this case are appropriate given the gravity of Saliba's conduct and are neither excessive nor oppressive. *See* 15 U.S.C. § 78s(e)(2).

In evaluating the sanctions imposed, the Commission considers any aggravating or mitigating factors, and whether the sanctions are remedial and not punitive. *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). The Commission in its review of sanctions gives weight to whether the sanctions are within the allowable range under FINRA's Sanction Guidelines ("Guidelines").⁸ *See Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *34 n.85 (Nov. 9, 2012) (explaining that the Guidelines serve as a benchmark). The sanctions imposed by the NAC are

⁸ *See FINRA Sanction Guidelines* (Oct. 2021), https://www.finra.org/sites/default/files/2022-09/2021_Sanctions_Guidelines.pdf, (hereinafter "Guidelines").

consistent with the Guidelines and meet the standards of Exchange Act Section 19(e)(2) and, accordingly, the Commission should sustain them.

1. A Bar Is Appropriate for Saliba's Violations Related to the Miller Memoranda

For providing the false Miller Memoranda to the MAP Group in violation of Rule 2010 and to Enforcement in response to a FINRA Rule 8210 request, the NAC, consistent with the Guidelines, imposed a unitary sanction of a bar in all capacities.

In determining a unitary sanction for these two violations, the NAC applied the Guidelines for FINRA Rule 8210.⁹ These Guidelines provide that, when an individual has given a partial but incomplete response, a bar is standard. (*Guidelines*, at 33.) Moreover, when an individual has failed to respond truthfully, the principal consideration is the importance of the information requested from FINRA's perspective. (*Id.*) Untruthful responses are treated like complete failures to respond for purposes of imposing sanctions, and a bar is standard for such violations. (*Id.*); *see also Ortiz*, 2008 SEC LEXIS 2401, at *32-33 (explaining that providing false information, like a complete failure to respond, undermines FINRA's ability to conduct investigations).

Saliba's productions of the falsified Miller Memoranda were serious violations of his obligation to provide truthful information to FINRA. Saliba provided these falsified documents to convince the MAP Group to reverse the denial of the CMA and to conceal his misconduct. Saliba knew the conversations and approvals that the falsified Miller Memoranda purported to document never occurred, and his use of these falsified documents to convince the MAP Group

⁹ Because there are no specific Guidelines applicable to providing falsified documents to the MAP Group, the NAC applied the Guidelines for Rule 8210 violations as the most analogous to Saliba's misconduct.

otherwise demonstrates a dishonesty and lack of integrity that makes Saliba unfit to participate in the securities industry. Moreover, as the NAC identified, Saliba's knowing production of the falsified memoranda in response to Enforcement's Rule 8210 request reflects strongly upon Saliba's unfitness to serve in the securities industry. Saliba's misconduct demonstrates a complete disregard for his obligation to act ethically and honestly as a securities professional and subverted FINRA's ability to regulate NMS's activities.

As the Commission has emphasized, untruthful responses "are more damaging than a refusal to respond to a request for information since they mislead [FINRA] and can conceal wrongdoing." *Michael A. Rooms*, 58 S.E.C. 220, 229 (2005), *aff'd*, 444 F.3d 1208 (10th Cir. 2006). Thus, Saliba's providing false information to FINRA is a serious violation for which a bar in all capacities is appropriate. *See, e.g., Ortiz*, 2008 SEC LEXIS 2401, at *22 (affirming a bar for providing false information to FINRA); *Dep't of Enf't v. Harari*, Complaint No, 2011025899601, 2015 FINRA Discip. LEXIS 2, at *34 (FINRA NAC Mar. 9, 2015) (imposing bars in all capacities for providing false documents and information to FINRA). The Commission should sustain the bar in all capacities imposed on Saliba for these serious violations.

2. A Bar Is Appropriate for Saliba's False Testimony About and Failure to Produce All His Work Computers

The NAC imposed an independent bar for Saliba's false testimony about his use of work computers and failure to produce all his work computers in response to FINRA's Rule 8210 request. When determining sanctions for this misconduct, the NAC again applied the Guidelines for a Rule 8210 violation. The NAC correctly found that Saliba did not substantially comply with all aspects of FINRA's request for information, and he provided false testimony. The NAC

also found no evidence of mitigation. Saliba's misconduct was a serious breach of his obligations to comply with FINRA Rule 8210, and the Commission should sustain the bar.

The requests for information about Saliba's work computers and for production of all his work computers were an important part of FINRA's investigation. The requests were vital to the investigation of whether the Miller Memoranda were genuine firm records or falsified documents meant to conceal Saliba's violations of the interim restrictions and to convince the MAP Group to reverse its denial of the CMA. Instead of testifying truthfully about the Second Computer and promptly turning it over to FINRA when requested (or explaining why he could not), Saliba attempted to thwart FINRA's investigation and falsely informed FINRA that he only used the First Computer for NMS business. To learn at least some of the truth about Saliba's use of work computers, FINRA was forced to conduct a forensic computer analysis. Saliba's dishonesty undermined and obstructed FINRA's investigation, and a bar is appropriate for his misconduct.

V. CONCLUSION

The record demonstrates Saliba's blatant disregard for his ethical obligations to comply with FINRA rules. To conceal his violations of the interim restrictions and to persuade FINRA to reverse its denial of the firm's CMA, Saliba provided documents to FINRA that he knew were false. And when FINRA questioned these documents and sought to investigate their provenance, Saliba lied during an OTR about his use of computers for work and then failed to comply with FINRA's request that he produce all his work computers.

The bars imposed by the NAC for Saliba's dishonest and unethical misconduct are well-supported by the facts and the Guidelines. The Commission, accordingly, should sustain the NAC's findings of violations and sanctions and dismiss Saliba's application for review.

Respectfully submitted,

/s/ 
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CERTIFICATE OF COMPLIANCE

I, Celia Passaro, certify that:

(1) FINRA’s Brief in Opposition to the Application for Review complies with the limitation set forth in SEC Rule of Practice 154(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 6950 words.

(2) FINRA’s Brief in Opposition to the Application for Review complies with SEC Rule of Practice 151(e) because it omits or redacts any sensitive personal information.

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CERTIFICATE OF SERVICE

I, Celia L. Passaro, certify that on this 10th day of March 2023, I caused a copy of the foregoing FINRA's Brief in Opposition to the Application for Review, In the Matter of Trevor Michael Saliba, Administrative Proceeding File No. 3-18989r, to be filed through the SEC's eFAP system.

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