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. 3-18989

FINRA'S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW

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I. INTRODUCTION

This appeal concerns numerous acts of misconduct by Trevor Michael Saliba in connection with a continuing membership application for a broker-dealer he had acquired, and his subsequent attempts to conceal that misconduct with further dishonest and unethical acts. In 2011, Saliba purchased a broker-dealer for the purpose of conducting an investment banking business. Saliba filed a continuing membership application, seeking FINRA's approval for the change in the firm's ownership. While the continuing membership application was pending, FINRA learned that the Commission was investigating an affiliated registered investment adviser owned by Saliba for possible compliance failures. In response, FINRA imposed interim restrictions, prohibiting Saliba from acting in a principal or supervisory capacity on behalf of the firm during the pendency of the continuing membership application.

Almost immediately, Saliba began violating the interim restrictions. While the firm had a nominal chief executive officer other than Saliba, Saliba continued to manage the firm. Saliba

made hiring decisions and executed on behalf of the firm numerous investment banking engagement agreements. FINRA discovered some of Saliba's violative conduct through a firm examination, and it denied the continuing membership application. The matter was also referred to FINRA's Department of Enforcement ("Enforcement"), which discovered additional violations of the interim restrictions.

Instead of taking responsibility for his violations, however, Saliba compounded his misconduct by giving false testimony and submitting falsified documents to FINRA. In an effort to persuade FINRA to reverse its denial of the continuing membership application, Saliba provided what purported to be supervisory memos signed by the firm's chief executive officers authorizing him to execute engagement agreements on behalf of the firm. The record, however, demonstrates that the memos, which were produced to FINRA a second time during its investigation, were falsified. Moreover, when FINRA attempted to investigate the origin of these newly discovered documents, Saliba thwarted those efforts by failing to produce all of his work computers and falsely testifying that he used a single computer for firm work.

Saliba's falsification of documents extended beyond matters related to the continuing membership application. While the application was pending and the firm was under increased regulatory scrutiny for its compliance with industry rules, FINRA conducted a cycle examination. FINRA requested copies of the outside business activities forms and private securities transactions forms signed by the firm's registered representatives. The firm did not have the required forms. Instead of admitting this, however, Saliba directed other associated persons to ask firm registered representatives to sign and backdate copies of the documents. Saliba backdated his own copies of these compliance documents. To avoid detection, the

backdated documents were obtained using non-firm email, which would not be preserved in the firm's books and records. The backdated compliance forms were then produced to FINRA.

FINRA imposed bars in all capacities for Saliba's violations. Saliba engaged in serious dishonest misconduct that undermined FINRA's ability to perform its regulatory oversight functions. Saliba has demonstrated that he is a danger to the industry. The bars imposed by FINRA are supported by the record and should be sustained by the Commission.

II. FACTUAL BACKGROUND

A. Saliba and NMS Capital Securities, LLC

Saliba joined the securities industry in 1995 and has been registered as a general securities representative with various FINRA members. (Stip. No. 4.)[1] During the relevant period, Saliba was the sole owner of a non-registered entity, NMS Capital Group, LLC (the "Holding Company"). (Stip. No. 2; R. 1330, 1539, 2811.) Saliba was also the sole owner, chief executive officer ("CEO"), and managing director of NMS Capital Asset Management, LLC (the "RIA"), a registered investment adviser. (Stip. No. 7; R. at 2211, 2811, 3535-38.)

While operating the RIA, Saliba began working on private placements and other investment banking transactions and associated with various FINRA members in order to conduct these transactions. (R. at 2490-91, 2521.) Eventually, Saliba determined that it would be financially beneficial to purchase his own broker-dealer, rather than continue to pay fees to other firms for investment banking transactions. (*Id.*)

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[1] "R. at __" refers to the page number in the certified record. "Saliba Br. __" refers to Saliba's May 15, 2019 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.)

Effective November 2011, Saliba purchased, through the Holding Company, MCA Securities, LLC ("MCA"), a FINRA member he had identified for sale on a broker-dealer exchange.[2] (Stip. No. 2; R. at 2522.) Saliba renamed MCA NMS Capital Securities, LLC ("NMS"), and in October 2011, Saliba filed a continuing membership application with FINRA's Department of Member Regulation ("Member Regulation") requesting that FINRA approve the change in NMS's ownership.[3] (Stip. No. 19; R. at 1541, 1923.)

On November 2, 2011, shortly after filing the initial continuing membership application, Saliba registered as a general securities principal. (R. at 1541.) The initial continuing membership application lapsed in June 2012 when the firm failed to timely respond to a request for information from Member Regulation. (Stip. No. 19.) NMS filed a second continuing membership application on July 10, 2012 (the "CMA"), again seeking approval of the change in ownership. (Stip. No. 20; R. at 3577-3602.)

During the relevant time period, the Holding Firm owned 100% of NMS and NMS's main office was located in Beverly Hills, California, in the same offices from which Saliba operated his other businesses. (R. at 1540, 2811, 3351-80, 3602.) At all relevant times, Saliba was the chairman of NMS and sole owner of the Holding Firm. (Stip. No. 5.)

B. Member Regulation Imposes Interim Restrictions on Saliba

During its consideration of NMS's CMA, Member Regulation learned that the RIA was being investigated by the Commission. (R. at 1337-39, 1341-42.) The Commission informed

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[2] The Membership Interest Purchase and Acquisition Agreement was executed by Saliba and the sellers in September 2011. (R. at 3603-18.)

[3] NASD Rule 1017 provides that in situations such as here, a member firm must file an application for approval of a change of ownership at least 30 days prior to the change in ownership.

Saliba that its examination of the RIA had "identified [certain] deficiencies and weaknesses" in the RIA's compliance with federal securities laws. (R. at 3527-34.) In March 2011, the Commission informed Saliba that it was "conducting an investigation" of the RIA and issued a subpoena to Saliba and the RIA seeking documents. (R. at 1343-44, 3549-56.)

The Commission's investigation raised red flags for Member Regulation because Saliba owned both NMS and the RIA, and questions were raised about the RIA's compliance with federal laws and regulations. (R. at 1337-39, 1342.) In response, on August 15, 2012, Member Regulation 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.[4] (R. at 3523-25) The letter explained that the interim restrictions were being imposed because Member Regulation "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 Member Regulation's concerns stemmed, in part, from the Commission's investigation of the RIA. (R. at 3524.) The interim restrictions prohibited NMS from: (1) "permitting . . . Saliba from acting 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 Member Regulation acknowledging the interim restrictions, and requesting a meeting to discuss them. (R. at 3619-21.) On September 25, 2012, Saliba and his membership consultant, Jervis Hough, met with Member Regulation staff in New York and requested that staff modify the interim restrictions. (R. at 1352.) During

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[4] NASD Rule 1017(c) provides that Member Regulation "may place new interim restrictions on the member based on the standards in Rule 1014, pending final [Member Regulation] action" on the continuing membership application. NASD Rule 1014 sets forth the standards a member must satisfy in order for its application to be approved.

the meeting, Saliba explained that he wanted to retain some financial control over NMS and that the firm wanted to hire some additional operations and compliance personnel. (R. at 1353-54.) Saliba did not mention that he had been, and wished to continue, signing engagement agreements on behalf of NMS. (R. at 1469, 1475.) Nor did Saliba mention that he would be the individual hiring additional firm personnel and negotiating the terms of their employment. (R. at 1366.)

On October 17, 2012, Member Regulation sent Saliba a letter indicating that it would amend the interim restrictions to permit certain limited activities. (R. at 3624.) 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 . . . ." (*Id.*) 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.*)

On June 21, 2013, Member Regulation denied NMS's CMA. (Stip. No. 33; R. at 3625-36.) Member Regulation explained that its denial was based, in part, on information Member Regulation received that indicated Saliba had violated the interim restrictions by acting in a principal capacity. (R. at 3627-31.) The letter noted that Saliba's principal activities included signing eight engagement agreements on behalf of the firm and negotiating the terms of at least one agreement, and hiring a new CEO for the firm. (R. at 3625-3760.) Evidence of violations of

the interim restrictions was attached to the letter. (*Id.*) Member Regulation referred the matter to Enforcement, which conducted an investigation of possible violations of the interim restrictions. (R. at 1482.)

NMS appealed the denial of the CMA to FINRA's National Adjudicatory Council ("NAC"). (Stip. No. 34; R. at 1482, 3761-65.) A hearing was held in May 2014. (R. at 1483.) The NAC affirmed Member Regulation'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. Nos. 3.) After NMS's termination of its membership, Saliba remained registered with NMS Capital Advisors, LLC ("NMS Advisors"), another FINRA member, which was active during the same period as NMS. (Stip. No. 6; R. at 1539.) Saliba owns approximately 24% of NMS Advisors through a wholly-owned subsidiary of the Holding Company. (R. at 1539.)

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

During the period from August 30, 2012, through May 1, 2013, while the interim restrictions were in effect, and in violation of the prohibition on acting in a principal capacity, Saliba signed at least 15 agreements on behalf of NMS. Eight of these agreements were discovered by Member Regulation prior to its denial of the CMA. (R. at 3628, 3636.) These include:

- A September 21, 2012 placement agent agreement with Mantra United Investments (R. at 3783-85);
- An October 1, 2012 engagement agreement with Drill Capital, LLC (R. at 3793-96);
- An October 10, 2012 engagement agreement with Copper River Funding, LLC (R. at 3805-07);

- A November 15, 2012 selected dealer agreement with Brauvin Securities, Inc. (R. at 3819-21);
- A January 7, 2013 engagement agreement with Das Emerging Markets Development Company, LLC (R. at 3825-28);
- A February 5, 2013 engagement agreement with Medbox, Inc. (R. at 3871-74);
- A February 6, 2013 engagement agreement with KO Café Ventures, LLC (R. at 3859-62); and
- A March 12, 2013 engagement agreement with Equity Funding Group, LLC (R. at 3889-92).

An additional seven agreement signed by Saliba while the interim restrictions were in effect were discovered after the denial of the CMA. These include:

- An August 30, 2012 fee agreement with EB Capital, LLC (R. at 3767-75);
- A September 12, 2012 fee agreement with Odell International, LLC (R. at 3777-79);
- An October 22, 2012 fee agreement with Silver Leaf Partners (R. at 3815-17);
- A January 10, 2013 engagement agreement with Vivaris, LTD (R. at 3833-36);
- A January 17, 2013 consulting and placement agent agreement with Phocas Financial Corporation (R. at 3852-57);
- An April 18, 2013 agreement with Clarius Capital (R. at 4207-12); and
- A May 1, 2012 engagement agreement with Empire Energy Corp. International, Inc. (R. at 3899-3902).

D. Saliba Violates the Interim Restrictions by Hiring Employees

Saliba engaged in additional principal activities in violation of the interim restrictions. During the afternoon of September 25, 2012, immediately after Saliba met with Member Regulation at its New York offices to discuss the interim restrictions and the firm hiring additional operations and compliance personnel, Saliba met with Sperry Younger. (R. 1697.) Hough knew Younger and introduced him to Saliba. (R. 1985, 1987-88.) Saliba and Younger met again the next day for breakfast, and during this second meeting, Saliba offered Younger the position as CEO of NMS. (R. 1699, 1991.) Saliba testified that NMS's CEO at the time, James

Miller, was ill and had expressed a desire to leave the firm.[5] (R. 2576-78.) Saliba had not informed Member Regulation at the previous day's meeting of the possible need to replace Miller. (R. at 1356.) Younger did not immediately accept the offer, but later that day, he and Saliba looked at potential office space in New York that Younger could use if he did accept the offer. (R. at 1702-03.)

On September 27, 2012, Saliba emailed Younger various new hire forms. (R. at 3973-78.) The next day, Saliba emailed Younger an "Independent Representative Agreement," dated October 1, 2012, and an Office of Supervisory Jurisdiction Agreement. (R. at 3979-95.) Younger accepted the CEO position and signed the Independent Representative Agreement sometime between September 28, 2012, and October 8, 2012. (R. 1804, 1808.) Saliba signed both agreements on behalf of NMS. (R. at 3997-4011.) Miller submitted his resignation as CEO on October 5, 2012. (R. at 4089-90.)

Younger was based in New York and did not receive a salary as CEO. (R. 1689, 1702.) He was expected to be compensated based on the investment banking business he brought to the firm. (R. 2661.) In January 2013, Younger took over as NMS's CCO when the previous CCO, Richard Tabizon, failed a required exam. (R. 2338-39.) Younger served as NMS's CEO and CCO until March 2014, when he left the firm.

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[5] Saliba hired Miller to serve as NMS's CEO in 2011. (R. at 1606.) Miller had previously been associated with Saliba's RIA. (*Id.*) Miller was based in Las Vegas, Nevada, and while he traveled occasionally to NMS's Beverly Hills office, he performed most of his work from Las Vegas. (R. 2578.) Miller was paid $1,500 per month by NMS and Saliba testified that he expected Miller to work for the firm approximately 30 hours per month. (R. 1677, 2576.) Miller was NMS's CEO when the interim restrictions were imposed on August 15, 2012, and he remained the CEO until early October 2012. (R. at 1606.)

In addition to hiring Younger as CEO, and signing Younger's Independent Representative Agreement on behalf of the firm, Saliba was also involved in hiring other firm employees while the interim restrictions were in effect. In October 2012, barely two months after the interim restrictions were imposed, Saliba hired Arthur Mansourian as an associate to support Saliba in tracking investment banking deals. (R. at 2188, 2190.) Mansourian testified that he sent an application to Saliba in October 2012. (R. at 2187-88.) He was interviewed by Saliba and Tabizon, and he negotiated his salary and performance bonus with Saliba. (R. at 2188-89.)

In November 2012, Saliba negotiated payouts with an NMS independent representative. (R. at 1976, 4017-25.) That month he also sent an independent representative agreement to another potential hire, and in January 2013, Saliba signed the agreement on behalf of NMS. (R. at 4013-15, 4043-52.) Also in January 2013, he negotiated the employment of a third independent representative. (R. at 1980, 2350, 4027-88.). Finally, in March 2013, Saliba signed a letter confirming the employment terms for a fourth independent representative and in May 2013, he signed the independent representative agreement for this new hire. (R. 1982-83, 4057-68.)

E. FINRA Denies NMS's CMA and Saliba Attempts to Conceal His Violative Principal Activities

Member Regulation'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. (R. at 3627-28.) At the time of the denial, Member Regulation was aware that Saliba had signed eight such agreements on behalf of NMS, which it listed in its denial letter and copies of which Member Regulation attached to the denial letter. (R. at 3628, 3636-3706). Saliba did not disclose to Member Regulation that he had signed these agreements on behalf of NMS. (R. at

1474-5, 2102.) Rather, Member Regulation 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—Mantra United Investments, Drill Capital, and Copper River Funding—were signed in September and October of 2012, while Miller was NMS's CEO. (R. at 1606.) Saliba signed the remaining five agreements–Das Emerging Markets Development Company, Equity Funding Group, Medbox, KO Café Ventures, and Brauvin Securities—during Younger's tenure as NMS's CEO. (R. 1694.)

While NMS's appeal of Member Regulation's denial was pending, Saliba requested and was granted a meeting with Member Regulation staff. (R. at 1484-86, 2105.) At an August 22, 2013 meeting, Saliba asked Member Regulation 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 asked if he could provide additional information that could change Member Regulation's denial of the CMA. (R. at 1485-86.) Member Regulation 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. (R. at 1489.)

1. Saliba Produces the Falsified Supervisory Memos to FINRA

On August 27, 2013, five days after Saliba's meeting with Member Regulation, Saliba sent Younger an email. (R. at 4074.) Saliba explained that, as a follow up to his meeting with Member Regulation, he needed to provide Member Regulation with "whatever documents" Younger had that "paper[ed]" his approval of investment banking deals. (*Id.*) Saliba asked Younger to "provide whatever you have paper wise that documents this," and listed in the email the specific engagements for which he was seeking such documentation. (*Id.*) Saliba, however,

omitted from his email one agreement that had been identified by Member Regulation—KO Café Ventures.

Younger responded the same day, telling Saliba that collecting the documentation might take him "a while." (R. at 4073.) Approximately eight and a half hours later, Younger emailed Saliba memos that purportedly evidenced his approval of the seven investment banking deals. (R. at 4077-84.) Each of the memos Younger provided was a single page with a brief description of the company and engagement. (R. at 4079-84.) The bottom of each memo was marked "approved" and signed by Younger, purportedly on a date prior to the date Saliba signed the referenced engagement agreement. (*Id.*)

On August 30, 2013, Saliba produced to Member Regulation, through counsel, 11 memos which purported to reflect the prior approval by NMS's CEOs for his execution of engagements agreements. (Stip. No. 43; R. at 4148-50.) These 11 memos consisted of: (1) eight memos purportedly signed by Younger (the "Younger Memos"), which included the memos Younger sent to Saliba attached to his August 27, 2013 email, plus a memo purportedly signed by Younger for KO Café Ventures that had not been emailed by Younger; and (2) three memos purportedly signed by Miller (the "Miller Memos").[6] (Stip. No. 43; R. at 4077-84, 4148-50.)

In October 2013, as part of its investigation into possible violations by Saliba of the interim restrictions, Enforcement served a FINRA Rule 8210 request seeking, among other things, all approval memos, including the Younger Memos and Miller Memos. (Stip. No. 44; R. at 3001-04.) On October 28, 2013, Saliba produced the Younger Memos and Miller Memos in response to the FINRA Rule 8210 Request. (Stip. No. 44; R at 3015-66).

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[6] The memos produced included three memos for agreements which were discovered after Member Regulation sent its denial letter.

2. Miller Testifies That He Did Not Sign the Miller Memos

At the hearing, Miller testified that he did not prepare or sign the Miller Memos, stating unequivocally, that he "certainly didn't sign these documents." (R. at 1621-30, 1681.) Miller was able to point out the ways in which the signatures on the Miller Memos differed from his actual signature. (R. at 1624-25.) The Hearing Panel compared the signature on the Miller Memos to documents with Miller's genuine signature and found that the signatures differed in the ways Miller described. (R. at 5939-40.) Miller also testified that he never authorized Saliba to sign any investment banking agreements and had no knowledge of the transactions referred to in the Miller Memos. (R. at. 1616, 1618, 1621.) As described below, the Hearing Panel found Miller's testimony credible and the NAC found no evidence to reverse this finding. (R. at 5938-40.)

3. Younger Gives Inconsistent Testimony About the Younger Memos

Younger gave conflicting sworn statements about his creation of the Younger memos. During his sworn on-the-record testimony, Younger stated that he created a memo for every investment banking deal on his computer. (R. at 1739-41, 1763.) He testified that he would print each memo, sign it, scan it, and then email it to NMS's Beverly Hills office. (R. at 1735-39, 1766.) At the hearing, Younger changed his testimony to state that, while it was "highly probable" that he sent the memos for investment banking deals to the Beverly Hills office by email, he could have used another method to send the memos. (*Id.*)

Younger then responded to a FINRA Rule 8210 request that there were no records of the Younger Memos on his computer and, at the hearing, he could provide no explanation for this response. (R. at 3127-49, 1777, 1780-82.) The firm was also unable to produce any record of Younger contemporaneously transmitting any Younger Memo to the firm. The only record the

firm had of the Younger Memos was Younger's August 27, 2013 email transmitting the Younger Memos to Saliba. Additionally, NMS never produced a memo from Younger for the four additional engagements signed by Saliba during Younger's tenure, which were not discovered until after the CMA was denied, and which were not included in Saliba's August 27, 2013 email requesting documentation.

Based on these facts, the Hearing Panel found not credible Younger's testimony concerning his creation of the Younger Memos, and found the Younger Memos were not genuine firm records reflecting Younger's contemporaneous approvals of Saliba executing the agreements. (R. at 5941-42.)

4. The Hearing Panel Finds That the Signature on One of the Younger Memos Was Falsified

In his email to Younger requesting documentation, Saliba omitted one of the agreements that had been identified by Member Regulation in its letter denying the CMA—KO Café Ventures. (R. at 4074.) Younger's reply email did not attach a memo for this agreement. (R. at 4077-84.) Saliba nonetheless provided to FINRA a memo purportedly signed by Younger for this agreement. (R. at 4148-50.) While Younger claimed to have signed the KO Café Ventures Memo, neither he nor Saliba could adequately explain where Saliba located the approval memo for KO Café Ventures. Tellingly, the firm could produce no record of the KO Café Ventures Younger Memo, other than the copy produced by Saliba's counsel to FINRA.

Further, the Hearing Panel examined the signature on the Younger Memo for KO Café Ventures and found that "[i]t was readily apparent to the Hearing Panel from an examination of the Younger Memos that Younger's signature on the [KO Café Ventures] Memo was traced or photocopied from Younger's signature on one of the other Memos, rather than being signed by Younger himself." The Hearing Panel found that even the placement of the signature on the

page was identical. (R. at 5941.)

5. Saliba Conceals the Existence of a Second Work Computer

NMS's and Saliba's production of the Younger Memos and Miller Memos after the denial of the CMA raised questions about the provenance of the memos. The memos were responsive to previous document requests by Member Regulation but were only produced after Member Regulation denied the CMA, in part, because of its discovery that Saliba was executing firm engagements after the imposition of the interim restrictions. (R. at 1386.)

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.) During his OTRs, Saliba was questioned about his use of computers for NMS work. Saliba testified that he only used one computer for NMS work and had used the same computer for approximately three years. (R. at 1551, 1553-56.) Saliba testified that this laptop was the only computer he used to create and save work documents. (R. at 1557.) Saliba testified that he did not have remote capabilities from any another computer, and because he lived two blocks from the office, he would normally work from the office. (R. at 1559-60.)

During his June 19, 2014 OTR, Saliba was asked where his work computer was located at that moment, and Saliba responded that it was in his office. (R. at 1553.) Saliba was also questioned about the JM Memos and Younger Memos, including how they were discovered and where they had been stored. (R. at 4711-86.)

Enforcement then handed Saliba a FINRA Rule 8210 request seeking, in part, "[a]ny and all computers and/or electronic storage devices used by . . . Saliba for [NMS] business." (Stip. No. 40; R. at 3112.) After receiving the FINRA Rule 8210 request and while still at the OTR, Saliba told Enforcement he had been mistaken and his computer was actually at home. (R. at

1585-86.)

Later that day, a FINRA forensic examination specialist arrived at NMS's Beverly Hills office. (R. at 2133-34.) He waited some time for Saliba to arrive at the office. (*Id.*) Saliba produced a single laptop (the "First Computer") from which the FINRA staff member performed a forensic data capture of the entire hard drive except for email files. (Stip. No. 41.) Saliba subsequently responded in writing to the FINRA Rule 8210 request that sought all of his work computers, indicating that

> FINRA obtained access to and made a copy of the information contained on the responsive computer on June 19, 2014. All information responsive to this request is, therefore, already in FINRA's possession. (Stip. No. 42.)

After Saliba produced the First Computer, Enforcement discovered evidence that Saliba had another, undisclosed work computer. It is undisputed that, on May 10, 2013, Saliba purchased a new computer (the "Second Computer").[7] (R. at 2261, 4159-62.) Saliba testified at the hearing that he did not produce the Second Computer to FINRA because he did not use it for NMS business. (R. at 1583-84.) Rather, Saliba claimed the Second Computer was used by his wife and later "recycled" by her, approximately a year later, because it did not work properly. (R. at 1575.) Saliba never produced the Second Computer to FINRA.

Enforcement introduced evidence at the hearing that, contrary to Saliba's testimony, the Second Computer was Saliba's work computer. Enforcement's expert witness, Luke Cats, an expert in forensic computer data analysis, testified that compared to a baseline period of April 25, 2013, through May 25, 2013, use of the First Computer declined dramatically after May 25,

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[7] Saliba claims that the Holding Company—not NMS—purchased the Second Computer. It is unclear, however, what significance this has here. It is undisputed that Saliba owned 100% of the Holding Company, which, in turn, owned 100% of NMS. Moreover, Saliba testified that he used the same computer for his work for all the entities he owned. (R. at 1555.)

2013—after the purchase of the Second Computer. (R. at 2260-65.) Additionally, Cats testified that the First Computer was completely turned off from July 23, 2013, through September 11, 2013. (R. at 2267-68.) The record reflects, however, that Saliba worked on documents and sent emails during the period that the First Computer was turned off. (R. at 2270, 4207-52.) The emails Saliba sent during this period included the August 27, 2013 email sent to Younger requesting the Younger Memos, and it was during this time period that Saliba supposedly discovered the Miller Memos. (R. at 2109, 4148-50.)

Moreover, the record includes emails between Saliba and his computer support contractor that strongly indicate that the Second Computer was his replacement work computer. On May 24, 2013, Saliba exchanged emails with his computer support contractor about "transferring files to [Saliba's] replacement laptop." (R. at 4189-91.) On August 13, 2013, the computer support contractor wrote to Saliba that the "[b]ackup has been successfully installed on your new workstation. I've opted to keep backups of your old workstation until we run into space issues—just in case there is something left behind that you need recovered. Backups will occur once daily at 6pm." (R. at 4196.) Saliba responded to this email asking if there was "[a]ny chance of changing [the backup time] to 9pm to ensure I am out of the office?" (R. at 4195.) The contractor replied that they could change the time and asked when he could "remote in" to Saliba's computer to make the change. (*Id.*) On August 14, 2013, the contractor sent Saliba an email confirming that the backup time had been changed. (R. at 4193.) All these communications occurred at a time when the First Computer was completely turned off. Saliba has not explained how these email communications are consistent with his claim that he only used the First Computer for NMS business.

F. Saliba and Mansourian Provide Falsified Compliance Documents to FINRA

In April 2013, while the CMA was pending and Saliba and NMS were subject to the interim restrictions, FINRA conducted a cycle examination of the firm. (Stip. No. 46.) As part of the exam, FINRA requested various documents from the firm, including the most recent outside business activities ("OBA") and private securities transactions ("PST") compliance forms completed by the firm's registered representatives. (*Id.*) The firm, however, did not have the forms for a number of its registered representatives. (R. at 2360.) Saliba knew that the FINRA had requested these forms and that the forms did not exist. (R. at 2007-08, 2010.)

Mansourian assisted with the collection of documents requested by FINRA during the exam. (R. at 2200-01.) On Friday, April 19, 2013, Tabizon sent an email to Mansourian attaching blank copies of the firm's compliance forms, including the OBA and PST forms. (Stip. No. 47; R. at 4505-11.) Tabizon sent the email from his personal Yahoo email account to Mansourian's personal Gmail account.[8] (*Id.*) The next morning, on Saturday, April 20, Mansourian sent the blank forms to five NMS registered representatives from his personal Gmail account to non-firm emails for each recipient. (Stip. No. 48; R. at 4513-19.) In the body of the email, Mansourian instructed:

> Team,
> Please fill out the attached forms ASAP and **send back to this e-mail address ONLY or fax to [the firm's fax number].** When asked for dates, please indicate dates in February 2013 , [sic] such as February 1st, 4th, 5th, 8th. [Emphasis in original.] (Stip. Nos. 49, 50; R. at 4513-19.)

All of the recipients signed the OBA and PST forms, backdated them as requested, and the forms

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[8] NMS Securities' written supervisory procedures prohibited the use of non-firm email for business purposes. (Stip. No. 52.)

were then produced to FINRA. (R. at 2370-75, 4549-4611.)

On June 18, 2014, Mansourian gave sworn testimony in a FINRA Rule 8210 on-the-record interview ("OTR"). (R. at 4863-70.) Mansourian was represented by the same counsel as Saliba at the OTR. (R. at 4867-68.) Mansourian testified about his April 20, 2013 email requesting the backdated OBA and PST forms. Mansourian testified that: (1) he asked the recipients to return the backdated compliance forms by facsimile or to his personal email because Saliba "asked him to do it that way"; (2) he sent the email to the recipients' non-firm email addresses because Saliba instructed him to do so; and (3) he instructed the recipients to backdate the forms for dates in February because "[t]hat's what Trevor Saliba had asked me to do." (R. at 4883-89.) When asked if he spoke to Tabizon about his April 20, 2013 email, Mansourian responded that he did not recall. (R. at 4891-92.)

Mansourian testified that while he knew all emails sent on firm email were preserved, he did not know why Saliba instructed him to use personal email. (R. at 4884-85.) Mansourian also testified that the firm did not keep a log of incoming faxes. (R. at 4887.) Mansourian testified that he did not question Saliba when instructed to use non-firm email because he "didn't want to lose [his] job." (R. at 4894, 4899.)

When Enforcement had completed its questioning of Mansourian at the OTR, Mansourian's counsel asked for a break to speak with his client. (R. at 4901.) When he returned from the break, Mansourian asked to make a statement on the record. (R. at 4903.) Mansourian stated:

> I did the personal emails [sic], . . . at the direction of Trevor Saliba and did so without asking detailed questions in the fear of losing my job. . . . [T]he actions I took were in light of what he told me to do. (R. at 4903.)

On August 28, 2014, Mansourian reviewed the transcript of his OTR testimony. (R. at

4907.) On September 8, 2014, almost three months after his OTR, Mansourian submitted, through counsel, a letter which stated that certain of his responses were "incorrect" and that Mansourian "wish[ed] to amend his testimony." (R. at 4907-15.) Mansourian changed his testimony to blame Tabizon—not Saliba—for directing him to use his personal email account to send the April 20, 2013 email requesting the backdated documents.[9] (R. at 2119-2221.) Nonetheless, Mansourian stated that Saliba was present when backdating the compliance documents was discussed and Tabizon told him to engage in this misconduct. (R. at 2222-23, 4915.) After NMS ceased operations, Mansourian continued to work for Saliba at NMS Advisors. (R. at 2186-87.)

III. PROCEDURAL HISTORY

On March 24, 2016, Enforcement filed an eight-cause complaint against Saliba, Mansourian, Tabizon, and Younger. (R. at 6-36.) The complaint alleged that Saliba violated FINRA Rule 2010 when he caused NMS to violate the interim restrictions by acting in a principal and/or supervisory capacity, including by negotiating and signing engagement agreements on behalf of NMS and participating in hiring firm personnel. (R. at 21-22.) The complaint also alleged that Saliba violated FINRA Rules 8210 and 2010 by falsely testifying that he only used one work computer, failing to produce all of his work computers, and producing the falsified Miller Memos and Younger Memos in response to a Rule 8210 request. (R. at 22-23, 25-26). The complaint further alleged that Saliba violated FINRA Rule 2010 by producing the

[9] During the hearing Mansourian completely contradicted his OTR testimony, and claimed Tabizon dictated the message in his April 20, 2013 email. (R. at 2116-21.) Tabizon denied doing so. (R. at 2368-69.)

falsified Miller Memos and Younger Memos to Member Regulation. Finally, the complaint alleged that Saliba violated FINRA Rule 2010 by participating in the falsification of OBA and PST forms that were backdated and provided to FINRA.[10] (R. at 26-27.)

A six-day hearing was held in September 2017, at which 13 witnesses testified and more than 200 exhibits were received in evidence. (R. at 1291-2810.) On December 15, 2017, an Extended Hearing Panel issued its decision. (R. at 5929-70.) The Hearing Panel found that Saliba: (1) violated FINRA Rule 2010 by acting as a principal while he was restricted from doing so by FINRA; (2) violated FINRA Rules 8210 and 2010 by providing the falsified Miller Memos and the falsified Younger Memo for KO Café Ventures to Member Regulation and Enforcement; (3) violated FINRA Rule 8210 and 2010 by providing false testimony concerning his use of work computers and failing to cooperate with the request to produce all work computers; and (4) violated FINRA Rule 2010 by participating in obtaining and producing backdated compliance forms to FINRA during its exam.[11] (*Id.*)

In finding the respondents had engaged in myriad misconduct, the Hearing Panel made detailed credibility findings. The Hearing Panel found that Saliba and the other respondents

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[10] The complaint also alleged that Saliba caused NMS to maintain inaccurate books and records by participating in obtaining backdated OBA and PST forms, but this cause was dismissed. (R. at 28-29, 5963-64.)

[11] The Hearing Panel also found that Younger gave false testimony when he testified that the Younger Memos were created and signed on the dates reflected on the memos, in violation of FINRA Rules 8210 and 2010. (R. at 5941-42, 5960-61.) The Hearing Panel further found that Younger failed to supervise Saliba while he was subject to the interim restrictions, in violation of NASD Rule 3010 and FINRA Rule 2010. (R. at 5961-62.) Finally, the Hearing Panel found that Mansourian and Tabizon participated in obtaining the falsified compliance documents which were provided to FINRA, in violation of FINRA Rule 2010, and through this misconduct also caused NMS to maintain inaccurate books and records, in violation of FINRA Rules 4511 and 2010.

were not credible witnesses. (R. at 5931.) The Hearing Panel explained that this conclusion was based on the respondents' demeanor during the testimony, and inconsistencies between the respondents' hearing testimony and (1) their prior sworn OTR testimony, (2) the contemporary documentary evidence, and (3) the testimony of other, more credible witnesses. (*Id.*)

Saliba, Younger, and Mansourian filed timely applications for review of the Hearing Panel's decision by the NAC. (R. at 5971-92.) The NAC conducted a de novo review, and in a January 9, 2019 decision, affirmed the Hearing Panel's findings of violations by Saliba, Younger, and Mansourian. (R. at 6457-86.) The NAC found, among other things, that Saliba and the other respondents had failed to show that the Hearing Panel's extensive credibility determinations should be set aside. The NAC considered, and rejected, Saliba's argument that he did not violate the interim restrictions because he did not act "in bad faith," and that his execution of agreements on behalf of NMS did not constitute principal activity because he signed agreement with approval from the firm's CEOs. (*Id.*)

Whereas, the Hearing Panel had imposed a unitary bar in all capacities on Saliba for his violations, the NAC imposed three separate bars for Saliba's violations of the interim restrictions, false testimony and failure to cooperate, and participation in the production of backdated compliance documents.[12] (R. at 6481-83.) The NAC explained that it modified the sanctions because it disagreed with the Hearing Panel's conclusion that a unitary sanction was appropriate because of the interrelated nature of the underlying misconduct. (*Id.*) Rather, the NAC found that Saliba's violations related to three separate subject matters.

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[12] The NAC affirmed the bars imposed on Younger and Mansourian. (R. at 6981-83.)

Saliba filed this appeal with the Commission.[13]

IV. ARGUMENT

On appeal, Saliba concedes much of the underlying misconduct, but asserts that he did not violate FINRA Rules. Saliba also argues that FINRA ignored numerous mitigating factors and imposed sanctions that are excessive. Saliba is wrong on all counts.

A. Saliba Caused NMS to Violate the Interim Restrictions by Acting as a Principal

NASD Rule 1017(c) provides that Member Regulation "may place new interim restrictions on the member based on the standards in [NASD] Rule 1014, pending final [Member Regulation] action" on a CMA. Among the standards in NASD Rule 1014, Member Regulation must consider whether the firm and its associated persons "are capable of complying with the federal securities laws, the rules and regulations thereunder, and [FINRA] Rules, including observing high standards of commercial honor and just and equitable principles of trade." NASD Rule 1014(a)(3). Among the factors relevant to this determination are whether there exist any pending investigations by any regulator. NASD Rule 1014(a)(3)(C). It is well settled that the violation of another FINRA rule or causing the violation of another FINRA rule is a violation

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[13] Mansourian also appealed to the Commission. His appeal is pending as Administrative Proceeding No. 3-18990. Saliba and Mansourian continue to be represented by the same counsel.

Saliba requests that the Commission schedule oral argument on his appeal. The Commission should deny this request. Saliba does not explain how the Commission would be significantly aided by oral argument in this matter. *See* Commission Rules of Practice Rule 451, 17 C.F.R. § 201.451 (providing that oral argument may be ordered where "the Commission determines that the presentation of facts and legal arguments in the briefs and record and the decisional process would be significantly aided by oral argument"). This case involves relatively straightforward factual and legal issues that can be decided on the record and the parties' briefs. The Commission's consideration of this case will not be significantly aided by conducting oral argument. Consequently, the Commission should decide this case on the pleadings.

of FINRA Rule 2010. *See, e.g.*, *Joseph Ricupero*, Exchange Act Release No. 62891, 2010 SEC LEXIS 2988, at *13 (Sept. 10, 2010) (finding that a firm's president violated NASD Rules 1017 and 2010 by causing the firm to fail to file required reports), *aff'd*, 436 F. App'x 31 (2d Cir. 2011). By acting in a principal capacity, Saliba caused NMS to violate the interim restrictions imposed by Member Regulation pursuant to FINRA Rule 1017. Saliba thereby violated FINRA Rule 2010.

NASD Rule 1021(b) defines principals as sole proprietors, officers, directors, partners, and managers, "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." The Commission has held that the "decisive factor" in determining whether a person is acting as a principal is what that person does for the firm—whether he is "actively engaged in the management of the . . . securities business," rather than on his formal title. *Leslie A. Arouh*, Exchange Act Release No. 62898, 2010 SEC LEXIS 2977, at *35-36 (Sept. 13, 2010).

The Commission has held that participating in hiring activities constitutes principal activity. *See, e.g.*, *Arouh*, 2010 SEC LEXIS 2977, at *11-12 (finding that an associated person acted as a principal where he, among other things, participated in discussions about hiring, interviewed candidates, and made recommendations about hiring and firm staff and structure); *Richard F. Kresge*, Exchange Act Release No. 55988, 2007 SEC LEXIS 1407, at *50 (June 29, 2007) (finding that an associated person was a principal in part because he was "actively involved in hiring" and acted as the leader of hired personnel). Negotiating agreements and binding the firm by executing them are also principal activities. *See, e.g.*, *Dennis Todd Lloyd Gordon*, Exchange Act Release No. 57655, 2008 SEC LEXIS 819, at *29 (Apr. 11, 2008)

(finding associated person acted as a principal where he negotiated agreements with clearing firms).

The record supports that Saliba acted as a principal in violation of the interim restrictions. It is undisputed that Saliba signed investment banking agreements on behalf of NMS while the interim restrictions were in effect. Saliba admits in his brief that he did so. (Saliba Br. at 5.) Saliba also concedes that he offered Younger the position of CEO during their second meeting, that he signed Younger's independent representative agreement, and that he participated in other hiring decisions. (Saliba Br. at 4-5.) Indeed, the record shows that Saliba negotiated the terms of employment, including payouts, for registered representatives and signed at least three other independent representative agreements in addition to Younger's. (R. at 976, 1980, 1982-83, 2350, 4013-15, 4017-25, 4027-28, 4043-52, 4057-68.)

Notwithstanding conceding that he engaged in these principal activities, Saliba argues that he did not violate the interim restrictions because: (1) the interim restrictions were ambiguous and confusing and "unreasonably commercially oppressive;" (2) he only signed investment banking agreement with the approval of his supervisor; (3) while he participated in hiring, "firm management" had final approval of any hiring decisions; and (4) he did not understand that he was engaging in principal activity. (Saliba Br. at 3-5). None of Saliba's arguments has any basis in the record. Regardless, Saliba's claims are not valid defenses to his violations.

For example, Saliba's claim that the interim restrictions were confusing does not withstand scrutiny. Saliba asserts that even his purported "supervisors," Miller, Younger, and Tabizon "were equally confused by the [i]nterim [r]estrictions on numerous occasions." (Saliba Br. at 15) However, the record demonstrates, and Saliba admitted in his testimony, that he never

disclosed his principal activities to Member Regulation or asked Member Regulation whether his activities were permitted by the interim restrictions. (R. at 1354.) FINRA learned of Saliba's misconduct through an examination of the firm and Enforcement's investigation after the CMA was denied. (R. at 1474.) Similarly, even if Saliba believed that the interim restrictions were unfairly restrictive, the proper course of action would have been to discuss this with Member Regulation openly; not violate the restrictions and concoct excuses when he was caught.

To get around the obvious inconsistency in his failure to discuss his "confusion" with Member Regulation, Saliba also claims that the areas in which he "mis-stepped"—i.e., his participation in hiring and entering investment banking agreements—were areas in which "he felt as though he had a good working understanding of permitted activities," but he simply misunderstood what constituted principal activities. (Saliba Br. at 3-5, 15.) Even if it were true that Saliba did not understand what it meant to act as a principal, ignorance is not a defense to a violation.[14] *See, e.g.*, *Robert L. Burns*, Investment Advisers Act of 1940 Release No. 3260, 2011 SEC LEXIS 2722, at *41 n.60 (Aug. 5, 2011) (stating that the Commission has "repeatedly held that ignorance of the securities laws is not a defense to liability").

Saliba's argument that his principal activities did not violate the interim restrictions because NMS's CEOs approved his signing of each agreement and every person hired is similarly unavailing. Saliba points to no evidence in the record supporting that the CEOs approved his hiring decisions. And, with respect to Saliba's signing agreements on behalf of the

[14] Saliba's argument that he did not understand that the firm changing chief executive officers would violate the interim restrictions misses the point. It was Saliba's extensive participation in hiring a new CEO, in violation of the principal prohibition that violated the interim restrictions. Moreover, Saliba met with Younger on the same day he met with Member Regulation to discuss the firm's desire to hire additional compliance and operational personnel. Yet he conveniently failed to discuss his imminent plan to personally hire a new CEO.

firm, Miller expressly and credibly testified that he did not approve these agreements and did not create the memos purportedly evidencing his approval.[15] (R. at 1622-29.) Moreover, the Hearing Panel found not credible Younger's testimony that he signed the Younger Memo for KO Café Ventures, explaining that Younger's testimony was inconsistent with the fact that the signature appeared to be copied from another memo and the lack of any firm record of the memo. (R. at 5942.) Saliba points to nothing in the record to disturb these credibility findings or to refute evidence showing that the memos purportedly documenting approval for Saliba to sign these agreements were falsified. *See John Montelbano*, 56 S.E.C. 76, 89 (2003); *see also Eliezer Gurfel*, 54 S.E.C. 56, 62 n.11 (1999) (explaining that "[c]redibility determinations by the fact finder are entitled to substantial deference and can be overcome only where the record contains substantial evidence for doing so"), *aff'd*, 205 F.3d 400 (D.C. Cir. 2000).

Contrary to Saliba's claims, the record convincingly demonstrates that he was managing the firm despite the interim restrictions. Miller credibly testified that during his tenure as CEO, Saliba effectively ran the firm and made all important decisions. (R. at 1608-16.) Consistent with this, Miller was paid only $1,500 per month for what Saliba himself testified he expected to be about 30 hours of work per month. (R. at 1677, 2576.). Miller worked remotely from Las Vegas, occasionally visiting NMS's Beverly Hills office. (R. at 1629.) While he was nominally CEO, Miller testified that he had no involvement in hiring and firing for NMS, had no role in the strategic direction or future planning for the firm, and had no role in approving new clients or engagements. (R. at 1608-11.) Miller also testified that he did not supervise private placement activities, and he categorically denied drafting or signing the Miller Memos. (R. at 1622-29.)

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[15] The Hearing Panel found that Miller was a credible witness who "answered all questions directly" and whose "answers appeared candid and [whose] testimony was internally consistent." (R. at 5936.)

The record similarly demonstrates that Younger was little more than a CEO in name only. Younger received no compensation to serve as CEO, but was paid solely based on investment banking deals he brought to the firm. (R. at 2661.) Younger also did not work in the Beverly Hills office, but was based in New York City. (R. at 1684, 1702.) Significantly, Younger's Independent Representative Agreement prohibited him from contractually binding the firm and provided that Younger reported to Saliba as the sole member of NMS's board of directors. (R. at 3998.) While Younger did sign some agreements on behalf of the firm, Saliba described the restriction in his Independent Representative Agreement as an "insurance policy" should Younger enter into a detrimental contract on behalf of the firm. (R. at 2592.)

Saliba argues that "[t]o the extent [he] violated the [i]nterim [r]estrictions he did not do so in bad faith." (Saliba Br. at 18.) The NAC considered and correctly rejected this argument. (R. at 6474.) First, as the NAC explained, there is no bad faith requirement to establish a violation of FINRA Rule 2010 where it is based on the violation of another rule. *See Dep't of Enforcement v. Josephthal & Co.*, Complaint No, CAF000015, 2002 NASD Discip. LEXIS 8, at *7-8 (NASD NAC May 6, 2002) (finding there is no requirement of showing unethical or bad faith behavior where a violation of NASD Rule 2010 was based on the violation of another NASD rule). Notwithstanding this, the NAC affirmed that Hearing Panel's finding that Saliba *did* act in bad faith. The Hearing Panel found not credible Saliba's claim that he thought acting as a principal required supervising people. (R. at 5955.) Moreover, the record demonstrates that while Miller and Younger were nominally NMS's CEOs, neither of them exercised the powers or performed the functions one would expect of a CEO actually managing a firm. Miller credibly testified that Saliba ran the firm. (R. at 1608-16.) Younger was not even paid to serve

as CEO and was prohibited by his independent representative agreement from contractually binding NMS.

The record supports that Saliba managed NMS and engaged in principal activities while he was prohibited from doing so, in violation of FINRA Rule 2010.

B. Saliba Violated FINRA Rules 8210 and 2010

FINRA Rule 8210(a) provides that FINRA staff may "require a member, person associated with a member, or any other person subject to FINRA's jurisdiction to provide information orally, in writing, or electronically . . . with respect to any matter involved in the investigation, complaint, examination, or proceeding" and to "inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in the investigation, complaint, examination, or proceeding that is in such member's or person's possession, custody or control." 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 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).

It is well settled that providing false or misleading information to FINRA in response to a FINRA Rule 8210 request violates both Rule 8210 and FINRA Rule 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.

1. Saliba's Violations Related to the Miller Memos and the KO Café Ventures Younger Memo

The NAC found that Saliba violated FINRA Rule 8210 and 2010 when he provided the Miller Memos and KO Café Ventures Younger Memo to Member Regulation and in response to a FINRA Rule 8210 Request. (R. at 6475-77.) Saliba concedes that the memos were provided, but continues to maintain that he did not commit these violations because he "did not know that any of those memos were falsified in any manner." (Saliba Br. at 5-6. 13.) Saliba's claims do not withstand scrutiny.

Miller credibly testified that he had never seen the Miller Memos before, had not prepared them, and that the signature on the memos was not his. (R. 1622-29.) Miller also credibly testified that he never approved Saliba signing any investment agreement—verbally or in writing. (R. 1618.) Saliba's story about his discovery of the Miller Memos is not believable in light of Miller's credible testimony. To the contrary, the record supports that the Miller Memos were forged in an attempt to convince Member Regulation to reverse its denial of the CMA, and Saliba knew or should have known about this forgery.

In his brief, Saliba claims that he himself found the Miller Memos in NMS's books and records. (Saliba Br. at 6.) But, Saliba's statements about how he found the Miller Memos has

shifted throughout these proceedings and his brief fails to address these inconsistencies. During his June 2014 OTR, Saliba stated that he found the Miller Memos in a file, but could not remember which file. (R. at 2108.) Later, 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 Memos 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. (R. at 2107.)

It is also significant that in his supposedly exhaustive search, Saliba found Miller Memos for the three agreements Member Regulation had identified at the time, but not for the additional agreement signed by Saliba during Miller's tenue that was discovered by FINRA later—EB Capital. No Miller Memo was ever produced for EB Capital.

Younger testified that he created and signed the Younger Memos, including the memo for KO Café Ventures, on the date indicated on each memo. (R. at 1739.) There is no record whatsoever of the KO Café Ventures memo, however, and the Hearing Panel found that the signature on it was identical to Younger's signature on another memo and was copied on the KO Café Ventures memo. (R. at 5942.) The record supports this finding.

Younger Memos were only produced for the engagements identified by Saliba in his August 27, 2014 email, and neither Younger nor the firm could produce any record of the Younger Memos whatsoever, other than Younger's reply email attaching the memos. Consistent with these facts, the Hearing Panel found Younger's testimony that he created and signed the memos contemporaneously not credible. (*Id.*) Saliba has presented nothing on appeal to disturb this finding.

2. Saliba's Violations Related to His Work Computers

The evidence also showed, and the NAC properly found, that Saliba violated FINRA's

rules by testifying falsely that he only used the First Computer for NMS business and by failing to produce all computers he used for NMS business in response to FINRA's request. Saliba continues to maintain that he only used the First Computer for NMS work and that he gave the Second Computer to his wife who "recycled" it. (Saliba Br. at 7.) He further argues that the record does not show that he possessed the Second Computer at the time of Enforcement's request. Saliba further splits hairs by arguing that he did not give false testimony concerning his use of a single computer because he testified that he did use other computers on "rare occasions." (Saliba Br. 14.) The record evidence contradicts Saliba's claims.

First, Saliba's brief completely ignores the substantial documentary evidence of Saliba's communications with his computer support contractor, which contradicts his claim that he gave the Second Computer to his wife (and thus did not "possess" it) and that he did not use the Second Computer for NMS business. The emails Saliba exchanged with computer support referenced his "replacement laptop," "new workstation," and backups of Saliba's "old workstation." (R. at 4189-96.) Saliba discussed changing the time for backing up the new computer so that it would occur after his work hours. (*Id.*) These communications support that Saliba had replaced his work computer and this occurred during the time that the First Computer was completely turned off.

Moreover, even if it is true that Saliba gave the Second Computer to his wife (a claim which is contrary to the documentary and forensic evidence), Saliba did not establish that the Second Computer was not in his custody or control.[16] *See Gregory Evan Goldstein*, Exchange Act Release No. 71970, 2014 SEC LEXIS 4625 (Apr. 17, 2014) (explaining that Rule 8210

[16] Saliba also failed to show that the Second Computer was not in his possession at the time of FINRA's 8210 request. The only evidence is Saliba's self-serving testimony that he had given it to his wife.

requires production of records in a person's custody or control). Finally, even if, as Saliba claims, the Second Computer had been recycled by the time FINRA served its Rule 8210 request, Saliba should have immediately provided a reason why he could not produce all computers he had used for NMS business. Instead, he falsely testified that he used only the First Computer during the relevant time period – a claim that is demonstrably false.

Finally, Saliba's claim that he used computers other than the First Computer on a "rare occasion" is inconsistent with the uncontroverted forensic evidence. The forensic expert testified that the usage of the First Computer dropped significantly shortly after the Second Computer was purchased and that the First Computer was completely tuned off for a period of seven weeks. (R. at 2260-68.) During these seven weeks, Saliba continued to work on documents and send email. (R. at 4207-52.) It is significant that these seven weeks coincided with the time period when Saliba purportedly "found" the Miller Memos and when he obtained the Younger Memos—the provenance of which Enforcement was trying to verify when it requested all Saliba's work computers.

* * *

The evidence establishes that Saliba provided forged Miller Memos and at least one falsified Younger Memo to FINRA, and that he knew or should have known this was the case. The evidence also demonstrates that Saliba gave false testimony concerning his use of a single computer for NMS work and that he failed to produce all work computers in response to FINRA's Rule 8210 request. Accordingly, the Commission should sustain the findings that Saliba violated FINRA Rules 8210 and 2010.

C. Saliba Participated in Providing Backdated Compliance Forms to FINRA

It is undisputed that NMS provided falsified compliance documents to FINRA and that at a minimum, Saliba was aware that Tabizon and Mansourian were "recreating" compliance forms in response to a FINRA examination. Saliba admits that backdated compliance documents were provided to FINRA and that he himself backdated his own OBA and PST forms. (Saliba Br. at 8-9.)

Providing falsified documents to FINRA, including backdated documents, is unethical conduct that violates FINRA Rule 2010. *See, e.g.*, *Joseph R. Butler*, Exchange Act Release No. 77984, 2016 SEC LEXIS 1989, at *24 (June 2, 2016) (stating that "falsifying documents is a practice that is inconsistent with just and equitable principals of trade"); *Mitchell H. Fillet*, Exchange Act Release No. 75054, 2015 SEC LEXIS 2142, at *50 (May 27, 2015) (finding respondent violated predecessor to Rule 2010 in providing backdated records to FINRA during an examination); *Ortiz*, 2008 SEC LEXIS 2401, at *22 (finding that forgery of documents violated the predecessor to FINRA Rule 2010).

Saliba's only defense to this violation is his claim that the FINRA examiner onsite advised Tabizon that it was acceptable to "recreate" the missing compliance documents. (Saliba Br. at 9.) The record does not support Saliba's assertion. The backdated compliance documents were provided to FINRA while the CMA was pending and after Member Regulation had raised concerns about the firm's ability to comply with rules and regulation and imposed the interim restrictions. Saliba produced absolutely no documentary evidence supporting his claim that a FINRA examiner approved backdating the documents. Indeed, the cover memo accompanying the backdated forms that were provided to FINRA makes no mention of this alleged conversation with Tabizon. (R. at 4549.)

Moreover, the examiner's supervisor testified that no examiner would *ever* allow the backdating of documents, and that the prohibition against falsifying documents by backdating is "examiner 101." (R. at 2687-88, 2695.) Further, Mansourian initially testified that he used non-firm email to obtain the backdated documents at Saliba's direction. The use of non-firm email ensured that the email requesting the backdated forms would not be preserved in the firm's books and records. This subterfuge would have been unnecessary had a FINRA examiner authorized the backdating.

Saliba participated in obtaining backdated compliance documents through methods designed to conceal this misconduct and provided these falsified documents to FINRA. Saliba's misconduct was contrary to his obligation to conduct himself in an ethical manner and violated FINRA Rule 2010.

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

FIRNA imposed separate bars in all capacities for (1) Saliba's violation of the interim restrictions, (2) Saliba's violations related to the production of the Miller Memos, the Ko Café Ventures Younger Memo, and his work computer, and (3) Saliba's participation in obtaining and providing backdated OBA and PST forms to FINRA. (R. at 4681-83.) The NAC found that Saliba's violations related to three separate subject matters—his violation of the interim restrictions, his subsequent attempt to cover-up those violations, and the production of falsified compliance documents during the firm's cycle examination—and disagreed with the Hearing Panel's decision to impose a unitary sanction. (*Id.*)

These sanctions are consistent with the FINRA's Sanction Guidelines (the "Guidelines"),

are neither excessive nor oppressive, and are supported by the record.[17] The Commission should therefore sustain them.

1. A Bar Is Appropriate for Saliba's Violations of the Interim Restrictions

In reviewing a disciplinary sanction imposed by FINRA, the Commission considers persuasive the principles articulated in FINRA's Sanction Guidelines (the "Guidelines") and uses them as a benchmark in conducting its review. *See Robert D. Tucker*, Exchange Act Release No. 68210, 2012 SEC LEXIS 3496, at *61 (Nov. 9, 2012) (explaining that the Guidelines serve as a benchmark); *Richard A. Neaton*, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719, at *39 (Oct. 20, 2011) (same).

Because there is no specific Guideline for violations of interim restrictions imposed during the CMA process, the NAC applied the mostly closely analogous Guideline—that for violations of membership agreements. (R. at 6482.) The Guidelines for membership violations recommend a suspension in any or all capacities of up to two years and, in egregious cases, consideration of a bar. (Guidelines at 44.) The principal considerations for membership agreement violations include whether the respondent breached a material provision and whether the restriction breached was particular to the firm. (*Id.*) The prohibition against acting as a principal was a key part of the interim restrictions and it applied specifically to Saliba. Accordingly, both of these considerations are aggravating. Because Saliba was the owner of both NMS and the RIA being investigated by the Commission, Member Regulation was

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[17] Exchange Act Rule 19(e) provides that the Commission must affirm the sanctions imposed by FINRA unless the sanctions are excessive or oppressive or "imposes any undue burden on competition not necessary or appropriate in furtherance of the purposes of this title." *See CMG Inst. Trading, LLC*, 2009 SEC LEXIS 215, at *14. Saliba does not argue that the sanctions impose an undue burden on competition and the record does not demonstrate any such burden.

concerned about his ability to comply with industry rules and regulations. The restrictions on his activities as a principal were key to addressing these concerns until a final determination could be made on the CMA.

The NAC found that a number of other aggravating factors applied to Saliba's misconduct. Saliba's activities as a principal were intentional and involved numerous acts over a period of approximately 10 months. (Guidelines at 7-8.) Moreover, Saliba attempted to conceal his violations of the interim restrictions by providing the falsified Miller Memos and at least one falsified Younger Memo to FINRA. (*Id.*) Saliba also attempted to conceal his violations from FINRA during its investigation by providing misleading and false testimony at his OTR and by failing to produce all of his work computers. (*Id.* at 8.)

Saliba argues that it is mitigating that the interim restrictions are supposedly ambiguous and confusing and unreasonably oppressive. (Saliba Br. at 15.) As with this argument as a defense to liability, however, Saliba cannot explain why he did not simply ask Member Regulation if he was confused. Saliba was able to ask for a meeting and request a modification of the interim restrictions. But, he never disclosed to Member Regulation that he was participating in hiring and signing investment banking agreements and never asked if these activities were permissible or violated the restrictions. Instead, Saliba continued to manage NMS and when his activities were discovered, he provided false testimony and falsified documents to conceal his misconduct.

2. A Bar Is Appropriate for Saliba's Violations Related to Falsified Supervisory Memos and His Work Computers

The Guidelines for a FINRA Rule 8210 violation provide that, where an individual has given a partial but incomplete response, a bar is standard. (Guidelines at 33.) Where 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 by providing false information, like a complete failure to respond, undermines FINRA's ability to conduct investigations).

FINRA's request for information about Saliba's work computer and its request for production of all Saliba's work computers were an important parts of FINRA's investigation. The requests were vital to proving whether or not the Miller Memos and Younger Memos were genuine firm records or falsified documents meant to conceal Saliba's violations of the interim restrictions and to convince Member Regulation 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 falsely informed FINRA that he only used the First Computer for NMS business. In order 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.

Similarly, Saliba's production of the falsified Miller Memos and falsified KO Café Ventures Younger Memo were serious violations of his obligation to provide truthful information to FINRA. Saliba provided these falsified documents in an attempt to convince Member Regulation to reverse the denial of the CMA and to conceal his misconduct. Saliba's misconduct demonstrates complete disregard for his obligation to act ethically and honestly as a securities professional and subverted FINRA's ability to regulate NMS's activities.

Providing false information to FINRA is a serious violation for which a bar in all capacities is routinely imposed. *See, e.g.*, *Ortiz*, 2008 SEC LEXIS 2401, at *22 (affirming a bar

for providing false information to FINRA); *Dep't of Enforcement 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 violations.

3. Saliba's Participation in Providing Backdated Compliance Documents to FINRA Warrants a Bar

There is no specific guideline applicable to Saliba's misconduct in obtaining backdated compliance documents that were provided to FINRA. Falsifying documents, however, is serious misconduct that warrants a bar. *See, e.g.*, *Ortiz*, 2008 SEC LEXIS 2401, at *22 (affirming a bar for providing false information to FINRA).

Saliba participated in obtaining backdated OBA and PST forms knowing FINRA had requested them and that they would be provided to FINRA. Moreover, Saliba directed Mansourian to obtain the documents in a manner that was designed to minimize the likelihood of detection—i.e., by using non-firm emails and asking the recipients to return the documents via facsimile (which the firm did not log) or non-firm email.[18] Saliba himself signed a PST and OBA that he backdated. Saliba should have known that this conduct was patently unethical and violated FINRA's rules. Saliba's statement that the backdated forms were signed by "experienced professionals" is not relevant to, and does not mitigate, his misconduct.

Saliba's misconduct was the result of an intentional act, which is aggravating. (Principal Consideration No. 13, Guidelines at 9; Guidelines at 29.) By using non-firm email to obtain the

[18] As described above, Mansourian, who continued to work for Saliba after the denial of the CMA at NMS Advisors, later changed his testimony and pointed the finger at Tabizon. But even then, Mansourian said Saliba was in the room when the decision to obtain the backdated documents was made. (R. at 2222-23, 4915.) And it is undisputed that Saliba at least was aware that his employees were going to, and did, obtain and produce to FINRA backdated compliance forms.

backdated documents and avoiding the firm's email preservation systems, Saliba attempted to conceal this misconduct. (Principal Consideration No. 13, Guidelines at 9; Guidelines at 29.) The serious nature of Saliba's unethical and dishonest conduct supports a bar.

4. The Purportedly Mitigating Factors Cited by Saliba Are Inapplicable

Saliba argues that FINRA failed to consider numerous purportedly mitigating factors that would have justified a sanctions of less than a bar for Saliba's violations. (Saliba Br. at 11-19.) However, none of the factors Saliba are mitigating.

Saliba lists a number of supposedly mitigating factors in the Guidelines, without any discussion or explanation of their applicability. (Saliba Br. at 11.) These include: (1) whether the firm had reasonable supervisory procedures that were properly implemented (Principal Consideration No. 5); (2) whether other parties were injured (Principal Consideration No. 11); (3) whether the respondent provided substantial assistance to FINRA during its investigation (Principal Consideration No. 12); (4) whether the respondent engaged in the misconduct notwithstanding prior warning from FINRA or another regulator that the conduct violated rules (Principal Consideration No. 13); (5) whether the firm can establish that the misconduct was aberrant and not otherwise reflective of the firm's historical compliance record (Principal Consideration No. 15); and (6) the number, size, and character of the transactions at issue (Principal Consideration No. 17). (Saliba Br. at 11.). None of these considerations help Saliba here. (*Id.*)

First, there is no evidence or allegation concerning the firm's supervisory procedures, and this factor is inapposite here. Saliba does not articulate an argument for why this factor is mitigating because there is none. If anything, this factor weighs against Saliba with respect to his participation in backdating compliance forms, as he intentionally directed Mansourian to use

personal email notwithstanding the firm's policies prohibiting such practice to skirt detection (or, at a minimum, acquiesced in Mansourian's use of personal email).

Second, it is well settled that the lack of injury is not mitigating. *See, e.g.*, *Mayer A. Amsel*, 52 S.E.C. 761, 768 (1996) (affirming a bar despite fact that no customer suffered as a result of any of appellant's actions); *Ronald H. V. Justiss*, 52 S.E.C. 746, 750 (1996) (imposing a bar because even though conduct did not involve direct harm to customers, "it flouts the ethical standards to which members of this industry must adhere"). This is especially true for violations of FINRA Rule 8210. *See PAZ Sec.*, 2008 SEC LEXIS 820, at *17 (stating that a Rule 8210 violation "will rarely, in itself, result in direct harm to a customer" but is nonetheless highly serious because it "undermines [FINRA's] ability to detect misconduct that may have occurred and that may have resulted in harm to investors or financial gain to respondents").

Third, there is no evidence that Saliba provided substantial assistance to FINRA during its investigation. To the contrary, the record supports that Saliba's testimony was false with respect to his work computer and the supervisory memos that were produced and that he actively attempted to impede FINRA's investigation. To the extent Saliba is relying generally on his OTR testimony to establish "substantial assistance," his argument is unavailing. Saliba provided sworn testimony pursuant to a FINRA Rule 8210 request. (R. at 4863-70.) An associated person does not "provide substantial assistance by fulfilling [his] obligations to cooperate with [FINRA] investigations." *Kent M. Houston*, Exchange Act Release No. 71589, 2014 SEC LEXIS 614, at *32 (Feb. 20, 2014).

Fourth, while a prior warning from FINRA or another regulator that conduct is violative is aggravating and can result in a more severe sanction, the absence of such a prior warning is not mitigating. *See Dep't of Enforcement v. Elgart*, Complaint No. 2013035211801, 2017

FINRA Discip. LEXIS 9, at *40 (FINRA NAC Mar. 16, 2017), *aff'd*, 750 F. App'x 821 (11th Cir. 2018). The Sanction Guidelines explain, "the presence of certain factors may be aggravating, but their absence does not draw an inference of mitigation." (Guidelines at 7.)

Finally, Principal Consideration No. 15—whether the firm can establish that the misconduct was aberrant or not reflective of the firm's compliance history—applies, by its terms, to firms; not individuals. And Principal Consideration No. 17—the number, size, and nature of the transactions—also does not apply to mitigate Saliba's misconduct. To the contrary, he repeatedly violated the interim restrictions.

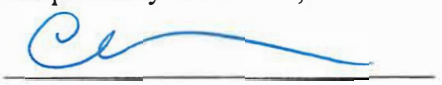
V. CONCLUSION

The record demonstrates Saliba's cavalier and dismissive attitude towards his obligations as a securities industry professional and registered principal. While on the surface appearing to cooperate with Member Regulation during the CMA process, Saliba continued to manage his firm in blatant disregard of the interim restrictions.

When he was caught, rather than admit his misconduct, Saliba compounded his violations by giving false testimony, providing forged and falsified documents, and failing to cooperate with FINRA's Rule 8210 requests. Even on appeal, Saliba continues to ignore inconvenient and uncontroverted facts, and points the finger at others. Saliba's misconduct cuts to the heart of the ethical standards expected of securities industry participants, and demands nothing less than bars

in all capacities. The Commission, accordingly, should sustain the findings of violations and sanctions imposed by FINRA.

Respectfully submitted,



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June 17, 2019

CERTIFICATE OF COMPLIANCE

I, Celia L. Passaro, certify that this brief complies with the length limitation set forth in Commission Rule of Practice 450(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 13,828 words, exclusive of the pages containing the table of contents, table of authorities, and any addendum that consists solely of copies of applicable cases, pertinent legislative provisions, or rules and exhibits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Celia L. Passaro, certify that on this 17th day of June 2019, 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. 3-18989, to be served by messenger and facsimile on:

Vanessa Countryman, Acting Secretary
Securities and Exchange Commission
100 F Street, NE
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and via FedEx on:

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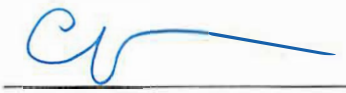
Service was made on the Commission by messenger and on the Applicants by overnight delivery service due to the distance between FINRA's offices and the Applicants.



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VIA MESSENGER AND FACSIMILE

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RE: In the Matter of the Application for Review of Trevor Michael Saliba
Administrative Proceeding No. 3-18989

Dear Ms. Countryman:

Enclosed please find the original and three (3) copies of FINRA's Brief in Opposition to the Application for Review in the above-captioned matter.

Please contact me at (202) 728-8985 if you have any questions.

Very truly yours,

Celia L. Passaro

Enclosures

cc: Mark David Hunter, Esq. (via FedEx and Email)
Jenny D. Johnson-Sardella, Esq. (via FedEx and Email)