

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

In the Matter of the Application of

Arthur Mansourian

For Review of Disciplinary Action Taken by

FINRA

File No. 3-18990

**FINRA'S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW**

Alan Lawhead  
Vice President and  
Director – Appellate Group

Andrew Love  
Associate General Counsel

Celia L. Passaro  
Assistant General Counsel

FINRA  
1735 K Street, NW  
Washington, DC 20006  
(202) 728-8985

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**I. INTRODUCTION**

This appeal concerns the bar imposed by FINRA on Arthur Mansourian for his participation in obtaining backdated compliance documents that Mansourian knew would be produced to FINRA. In 2013, Mansourian was registered with NMS Capital Securities, LLC (“NMS”), working as an associate supporting the firm’s investment banking business. During the relevant period, NMS was under increased regulatory scrutiny because the firm had a new owner—Trevor Saliba—and a pending continuing membership application (“CMA”) seeking FINRA approval for its change in ownership. By the time of Mansourian’s misconduct at issue, FINRA had raised concerns about the firm’s ability to comply with securities rules and regulations, and had imposed interim restrictions limiting the firm’s and Saliba’s activities.

While the CMA was pending and NMS was subject to the interim restrictions, FINRA conducted an onsite cycle examination of the firm. In connection with the exam, FINRA requested copies of certain compliance documents required to be completed by the firm’s

registered representatives. The firm, however, was missing a number of the requested documents. To remedy this deficiency, Mansourian sent blank compliance forms to the registered representatives, using their non-firm email addresses from his own non-firm email address, and directed the registered representatives to sign the forms, backdate them by more than two months, and return them to him via the firm's facsimile (which it did not log) or his personal email account. The firm then provided the backdated compliance forms to FINRA, without disclosing that they had been backdated.

On appeal, Mansourian largely admits his underlying violations, but blames his lack of experience and claims he was just following directions from his supervisor. Mansourian also claims that a FINRA examiner approved the backdating of the compliance forms. He also argues that a bar is excessive and claims that FINRA ignored a number of mitigating factors in determining his sanction. Mansourian's arguments have no merit.

Mansourian obtained backdated compliance documents and did so by evading the firm's email preservation systems and concealing his misconduct from FINRA. Moreover, Mansourian's misconduct involved numerous aggravating factors that support barring him, and he refuses to accept responsibility for his misconduct. Mansourian's conduct demonstrates a fundamental lack of understanding of his obligations as a registered representative. The record abundantly supports FINRA's findings of violation and the bar imposed upon Mansourian. The Commission should therefore sustain FINRA's decision.

## **II. FACTUAL BACKGROUND**

### **A. Mansourian**

Mansourian joined the securities industry in 2006. (Stip. No. 17; R. at 2184, 3459.)<sup>1</sup> In March 2007, Mansourian first registered as a general securities representative. (Stip. No. 17; R. at 3458, 3464.) After a break from the industry and working at one other FINRA member, Mansourian identified an opportunity at NMS through a Craigslist ad. (Stip. No. 17; R. at 2185, 2187-88, 3456.) In October 2012, Mansourian submitted an application and was interviewed by Saliba and NMS's chief compliance officer, Richard Tabizon. (R. at 2187-89.) Saliba hired Mansourian, and Mansourian was registered with NMS as a general securities representative from October 2012 through September 2015, where he worked as an associate supporting Saliba in tracking investment banking deals. (Stip. No. 18; R. at 2186, 2188, 2190.)

After leaving NMS, Mansourian continued to work with Saliba at another FINRA member firm, NMS Capital Advisors, LLC, registered as a general securities representative and general securities principal. (Stip. Nos. 17, 18.) Saliba owned 24% of NMS Capital Advisors. (Stip. No. 6; R. at 1539.) Mansourian is no longer associated with any FINRA member.

### **B. NMS and Saliba**

A year prior to hiring Mansourian, Saliba purchased NMS. (Stip. No. 2.) In July 2012, NMS filed a CMA seeking FINRA approval for the firm's change in ownership.<sup>2</sup> (Stip. No. 20).

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<sup>1</sup> "R. at \_\_\_" refers to the page number in the certified record filed with the Commission on February 19, 2019. "Mansourian Br. \_\_\_" refers to Mansourian'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.)

<sup>2</sup> A prior continuing membership application had been filed, but had lapsed. (Stip. No. 19.)

In an August 15, 2012 letter, FINRA advised NMS and Saliba that it had determined to impose certain interim restrictions on Saliba and the firm until a final decision on the CMA was issued. (Stip. No. 21; R. at 3523-25.) The letter explained that the interim restrictions were being imposed because FINRA had learned that a registered investment adviser wholly owned by Saliba was being investigated by the Commission, and that FINRA “lack[ed] sufficient information” to determine whether the firm met the standards for continued membership, including “whether the [f]irm and its [a]ssociated [p]ersons are capable of complying with the federal securities laws, the rules and regulations thereunder, and [FINRA] [r]ules, including observing high standards of commercial honor and just and equitable principals of trade.” (R. at 3524.)

**C. Mansourian Obtains Backdated Compliance Forms**

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 firms’ registered representatives. (*Id.*) The firm, however, did not have the forms for a number of its registered representatives. (R. at 2360.)

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.<sup>3</sup> (*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 returned the backdated forms to Mansourian or the firm. The forms were then produced to FINRA. (R. at 2370-75, 4549-4611.)

#### **D. Mansourian Gives Sworn Testimony During FINRA's Investigation**

After FINRA denied the CMA, the matter was referred to FINRA's Department of Enforcement ("Enforcement") for possible violations by the firm's associated persons while the CMA was pending. (R. at 1482.) On June 18, 2014, Mansourian gave sworn testimony in the investigation 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.) When Mansourian began his testimony, he was asked by Enforcement whether he suffered from any medical condition or was taking any medication that would interfere with his ability to "testify truthfully and accurately." (R. at 4870.) Mansourian responded "no." (*Id.*)

During his OTR, Mansourian testified about his April 20, 2013 email requesting the

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<sup>3</sup> NMS's written supervisory procedures prohibited using non-firm email for business purposes. (Stip. No. 52.)

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 further testified that while he knew all emails sent through the firm’s email system were preserved, he did not know why Saliba instructed him to use personal emails. (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 questioning 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 reiterated that:

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 he testified at the 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.) In the letter Mansourian stated for the first time that he has obsessive compulsive disorder, for which he takes

medication and which he claimed affected his memory and ability to think clearly. (R. at 4907.) Mansourian also changed his testimony to state that it was Tabizon—not Saliba—who directed him to use his personal email account to send the April 20, 2013 email requesting the backdated documents, but that Saliba was in the room when Tabizon told him to do this. (R. at 4915.)

### **III. PROCEDURAL HISTORY**

On March 24, 2016, Enforcement filed an eight-cause complaint against Saliba, Mansourian, Tabizon, and Sperry Younger, NMS's chief executive officer. (R. at 6-36.) The complaint alleged, in pertinent part, that Saliba, Tabizon, and Mansourian violated FINRA Rule 2010 by participating in the creation of backdated compliance records. (R. at 31-32.) The complaint also alleged that Tabizon and Mansourian violated FINRA Rules 4511 and 2010 by causing NMS to maintain inaccurate books and records by obtaining backdated compliance forms.<sup>4</sup> (R. at 33-34.)

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, Tabizon, and Mansourian provided falsified firm records to FINRA examiners, in violation of FINRA Rule 2010, and that Tabizon and Mansourian caused the firm to maintain

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<sup>4</sup> The complaint further alleged that: (1) Saliba violated FINRA Rule 2010 by violating the interim restrictions imposed during the CMA process; (2) Saliba violated FINRA Rules 8210 and 2010 by failing to cooperate with FINRA's request that he produce his work computers and by making misrepresentations to FINRA about his use of work computers; (3) Saliba violated FINRA Rules 8210 and 2010 by providing falsified supervisory memos to FINRA; (4) Younger violated FINRA Rules 8210 and 2010 by making false representations concerning his preparation of certain supervisory memos; and (5) Younger failed to supervise Saliba while he was subject to the interim restrictions. (R. at 6-36.)

inaccurate books and records, in violation of FINRA Rules 4511 and 2010.<sup>5</sup> (R. at 5929.) The Hearing Panel rejected Mansourian's argument that his medical condition interfered with his ability to testify at his OTR. (R. at 5949-50.) The Hearing Panel also found that it was unnecessary to determine if Saliba or Tabizon directed Mansourian to send the April 20, 2013 email. (R. at 5950.) For their violations, Mansourian and Tabizon were barred from associating with any FINRA member in any capacity. (R. at 5929.)

Saliba, Younger, and Mansourian filed timely applications for review of the Hearing Panel's decision by FINRA's National Adjudicatory Council ("NAC"). (R. at 5971-92.) Tabizon did not appeal the decision. The NAC conducted a de novo review, and in a January 8, 2019 decision, it affirmed the Hearing Panel's findings of violations by Saliba, Younger, and Mansourian. (R. at 6421-49.) For Mansourian's violations, the NAC imposed a unitary bar in all capacities.<sup>6</sup> (R. at 6447.) Mansourian filed this appeal with the Commission.<sup>7</sup>

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<sup>5</sup> The Hearing Panel also found that Saliba and Younger committed the other violations as alleged, and Saliba and Younger were barred from associating with any FINRA member in any capacity. (R. at 5929-70.)

<sup>6</sup> The NAC also affirmed the bars imposed on the other respondents, only modifying Saliba's sanction to change it from a unitary bar to three separate bars for his violations. (R. at 6448.)

<sup>7</sup> Saliba's appeal is pending as Administrative Proceeding No. 3-18989. Saliba and Mansourian continue to be represented by the same counsel.

Mansourian requests that the Commission schedule oral argument on his appeal. The Commission should deny this request. Mansourian 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.

#### IV. ARGUMENT

On appeal, Mansourian largely concedes that he engaged in the underlying misconduct—i.e., that he requested the backdated OBA and PST forms using non-firm email accounts. (Mansourian Br. at 2-3.) Indeed, these facts were the subject of the parties’ stipulations prior to the hearing. (Stip. Nos. 46-50.) Mansourian argues, however, that the NAC ignored a number of mitigating factors and that barring him is excessive. As discussed below, the NAC considered all relevant factors, including aggravating factors, and the bar is conclusively supported by the record.

##### A. Mansourian Falsified Compliance Records That Were Provided to FINRA

FINRA Rule 2010 requires that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.” Rule 2010 applies to associated persons like Mansourian through FINRA Rule 0140, which provides that associated persons shall have the same duties and obligations as members.

It is well settled that providing falsified documents to FINRA, including documents that have been backdated, 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 by providing backdated records to FINRA during an examination); *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at \*22 (Aug. 22, 2008) (finding that forging documents violated the predecessor to FINRA Rule 2010).

Mansourian admits that he sent an email from his private email account to the non-firm email accounts of NMS registered representatives instructing them to sign and backdate the OBA and PST forms. (Mansourian Br. at 2-3; Stip. Nos. 46-50.) It is also undisputed that Mansourian knew that the backdated documents would be sent to FINRA in connection with its examination and that these falsified documents were in fact provided to FINRA. (Mansourian Br. 2.)

In his brief, Mansourian makes passing reference to the claim that Tabizon told one of the FINRA examiners onsite that the forms had been “misplaced” and that she purportedly authorized Tabizon “to have the forms recreated to replace the misplaced forms.” (Mansourian Br. at 2.) Mansourian does not, however, go so far as to explicitly claim that the examiner authorized the backdating of these “replacements.” 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.) Moreover, there is no documentary evidence in the record that such a conversation ever took place. To the contrary, Mansourian’s use of non-firm email to obtain the documents demonstrates that Saliba, Tabizon, and Mansourian were concealing their misconduct. This subterfuge would have been unnecessary had a FINRA examiner authorized the backdating.

The record established that Mansourian participated in obtaining falsified documents that had been backdated and were provided to FINRA, in violation of FINRA Rule 2010.

**B. Mansourian Caused NMS to Maintain Inaccurate Books and Records**

FINRA Rule 4511 provides that members “shall make and preserve books and records as required under the FINRA rules, the [Securities Exchange Act of 1934 (the “Exchange Act”)] and the applicable Exchange Act rules” and to preserve those records for certain specified periods. A violation of FINRA Rule 4511 is also a violation of FINRA Rule 2010. *See John*

*Joseph Plunkett*, Exchange Act Release No. 69766, 2013 SEC LEXIS 1699, at \*36n.58 (June 14, 2013) (explaining that a violation of FINRA rules constitutes a violation of FINRA Rule 2010). Exchange Act Rule 17a-4(b)(4) requires members to preserve originals of all business-related communications they receive, and copies of all communications they send. 17 C.F.R. § 240.17a-4(b)(4). FINRA Rule 4511 requires members to preserve their correspondence in accordance with Exchange Act Rule 17a-4. *See also* FINRA Rule 0140 (providing that associated persons shall have the same duties and obligations as members).

Mansourian's emails concerning the OBA and PST forms were business-related communications. By using his personal email address to solicit backdated compliance forms and sending his request to the personal email addresses of the recipients, Mansourian evaded the firm's email archive system and thereby caused NMS to maintain inaccurate and incomplete books and records, in violation of FINRA Rules 4511 and 2010.

**C. The Sanctions Imposed By FINRA Are Consistent With the Sanction Guidelines and Are Neither Excessive Nor Oppressive**

1. A Bar Is the Appropriate Sanction for Mansourian's Serious Misconduct

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). Under Exchange Act Rule 19(e), the Commission will affirm the sanctions imposed by FINRA unless the sanctions are excessive or oppressive or impose an unnecessary, undue burden on competition. *See CMG Institutional Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at \*14 (Jan. 30, 2009).

There is no specific guideline applicable to Mansourian's misconduct in obtaining backdated compliance documents that were provided to FINRA. For violations of FINRA Rule 4511, the Guidelines recommend a suspension of up to two years or, where aggravating factors predominate, a bar. (Guidelines at 29.) The principal considerations specifically applicable to recordkeeping violations include the nature and materiality of the missing information, whether the missing information was omitted intentionally, and whether the violations allowed other misconduct to escape detection.<sup>8</sup> (*Id.*)

Falsifying compliance documents, including backdating documents provided to FINRA, is serious misconduct that warrants a bar. *See, e.g. Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at \*65-69 (Sept. 24, 2015) (affirming a bar for misstatements on firm compliance forms); *Kevin Eric Shaughnessy*, 53 S.E.C. 692, 699 (1998) (affirming a bar where, among other things, respondent gave false information to FINRA and provided a fabricated, backdated letter to NASD).

Mansourian participated in obtaining backdated OBA and PST forms knowing FINRA had requested them and that they would be provided to FINRA. Moreover, he obtained 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. Mansourian's participation was an integral part of obtaining the backdated documents that were provided to FINRA.

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<sup>8</sup> Mansourian cites the guideline for "Forgery, Unauthorized Use of Signatures, or Falsification of Records." (Guidelines at 37.) That guideline and its principal considerations discuss the forgery or falsification of a signature on documents related to customer transactions and is not applicable here. (*Id.*) The NAC properly considered the General Principles in Determining Sanctions and the Principal Considerations in Determining Sanctions (the "Principal Considerations"), as well as the specific considerations for violations of FINRA Rule 4511, in barring Mansourian.



There are several applicable aggravating factors, including several Principal Considerations, which apply. Mansourian's misconduct was the result of an intentional act. (Principal Consideration No. 13, Guidelines at 8; Guidelines at 29.) By using non-firm email to obtain the backdated documents and avoiding the firm's email preservation systems, Mansourian attempted to conceal his misconduct. (Principal Consideration No. 13, Guidelines at 8; Guidelines at 29.) Mansourian has not taken responsibility for his misconduct and continues to point the finger at his supervisor (first Saliba, and then Tabizon) and to claim ignorance.

Moreover, Mansourian's personal emails concerning the backdated forms caused NMS's books and records to be inaccurate. Mansourian's misconduct helped to create the impression that the firm was in compliance with its obligations under FINRA's rules concerning the OBA and PST forms. (*See* Guidelines, at 29.) The serious nature of Mansourian's unethical conduct, including the aggravating factors discussed above, support barring Mansourian.

2. The Factors Cited by Mansourian Are Not Mitigating

Mansourian argues that FINRA failed to consider numerous mitigating factors that would have justified a sanction of less than a bar for Mansourian's misconduct. (Mansourian Br. at 3-8.) However, none of the factors cited by Mansourian apply.

First, Mansourian points to his lack of disciplinary history. (Mansourian Br. at 1.) The Commission, however, has repeatedly held that the lack of disciplinary history is not mitigating because "an associated person should not be rewarded for acting in accordance with his duties as a securities professional."<sup>9</sup> *Kent M. Houston*, Exchange Act Release No. 71589, 2014 SEC

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<sup>9</sup> Mansourian cites the general principle that sanctions should be more severe for recidivists. (Guidelines at 2-3.) While this principle specifically states that recidivists should get more severe sanctions, because the lack of disciplinary history is not mitigating, it does not follow that sanctions should be reduced because it is a "first offense."

LEXIS 614, at \*30 (Feb 20, 2014); *see also Philippe N. Keyes*, Exchange Act Release No, 54723, 2006 SEC LEXIS 2631, at \*23 (Nov. 8, 2003) (same).

Mansourian argues that it is mitigating that he was simply following the instructions of a more experienced supervisor and that he himself was inexperienced. (Mansourian Br. at 4, 7.) An associated person, however, cannot shift his compliance with applicable FINRA rules to his supervisor. *See, e.g., Scott Epstein*, Exchange Act Release No. 59328, 2009 SEC LEXIS 217, at \*73 (Jan. 30, 2009) (rejecting the argument that a lack of proper supervision was mitigating), *aff'd*, 416 F. App'x 142 (3d Cir. 2010); *Kenny Akindemowo*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769, at \*31 (Sept. 30, 2016) (rejecting an associated person's attempt to shift responsibility with FINRA rules to his supervisors). Nor is lack of experience mitigating. *See, e.g., Epstein*, 2009 SEC LEXIS 217, at \*73 (explaining that participants in the securities industry must take responsibility for compliance with rules and cannot be excused for lack of knowledge or understanding); *Tucker*, 2012 SEC LEXIS 3496, at \*36 (same). At the time of his misconduct, Mansourian had been registered for more than six years. (Stip. No. 17.) As a registered person, he was required to comply with the basic ethical standards of the industry and neither his claimed lack of experience, nor the directions of his supervisors are mitigating factors.<sup>10</sup> Moreover, the requirement that compliance documents should be completed honestly and accurately is a basic principle, which does not require any special experience.

Mansourian attempts to minimize his misconduct by suggesting that he simply replaced documents that allegedly were in existence. (Mansourian Br. at 8.) Mansourian points to no

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<sup>10</sup> Mansourian suggests that the fact that he passed the general securities principal examination since his misconduct somehow mitigates his misconduct. It does not, and the Commission should reject this argument.

credible evidence in the record that these documents previously existed. Regardless, Mansourian's argument underscores his lack of understanding that obtaining backdated documents in response to a FINRA exam, and doing so by using non-firm emails to avoid his regulator's detection, is completely at odds with his obligations as a registered representative to refrain from unethical conduct and comply with FINRA's rules, and demonstrates that he should be barred. *See Michael G. Keselica*, 52 S.E.C. 33, 37 (1994) (affirming bar where applicant demonstrated that he failed to understand the seriousness of his violation).

Finally, Mansourian lists a number of supposedly mitigating factors in the Guidelines, without any discussion or explanation of their applicability. (Mansourian Br. at 4.) 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 firm can establish that the misconduct was aberrant and not otherwise reflective of the firm's historical compliance record (Principal Consideration No. 15); and (5) the number, size, and character of the transactions at issue (Principal Consideration No. 17). (Mansourian Br. at 4.) None of these considerations apply here.

First, there is no evidence or allegation that the firm's recordkeeping procedures were inadequate. The firm's procedures prohibited using non-firm email for firm business. (Stip. No. 52.) Mansourian violated this policy to surreptitiously obtain the backdated OBA and PST forms. Mansourian does not articulate an argument for why this factor is mitigating because there is none.

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”).

Third, there is no evidence that Mansourian provided substantial assistance to FINRA during its investigation. To the extent Mansourian is relying on his OTR testimony to establish “substantial assistance,” his argument is unavailing. Mansourian 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.” *Houston*, 2014 SEC LEXIS 614, at \*38.

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 by its terms apply here.<sup>11</sup>

3. Mansourian’s Claimed Medical Condition Is Neither Mitigating Nor a Basis to Reverse the Hearing Panel’s Credibility Findings

Mansourian argues that the NAC should have reversed the Hearing Panel’s findings that he was not credible because his obsessive compulsive disorder affected his ability to testify. The Commission should reject this argument. Mansourian was not charged with providing false testimony at his OTR, and the NAC found that, regardless of who Mansourian claimed told him to obtain backdated forms, aggravating factors warranted a bar for his serious and unethical

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<sup>11</sup> Even if this factor did apply here, Mansourian does not explain how this would mitigate his misconduct. Mansourian used his personal email and the personal emails of several firm representatives to obtain backdated forms from each representative to intentionally avoid creating a paper trail and to conceal that the forms were backdated.

misconduct. In any event, Mansourian has not presented substantial evidence on appeal to disturb the Hearing Panel's credibility findings.

The Hearing Panel found Mansourian's testimony to be not credible generally, and specifically found not credible his story that his obsessive compulsive disorder impacted his ability to testify at the OTR and caused him to inaccurately and repeatedly testify that Saliba, instead of Tabizon, instructed him to obtain the backdated forms. (R. at 5949-50.) The NAC also found that it did not need to resolve who instructed Mansourian to obtain the backdated forms, and it relied upon factors other than Mansourian's changing story to impose a bar for his role in obtaining and submitting the backdated forms. (R. at 6479-80.)

The "credibility determinations of an initial fact-finder, which are based on hearing the witnesses' testimony and observing their demeanor, are entitled to considerable weight and deference, and can be overcome only where the record contains substantial evidence for doing so." *John Montelbano*, 56 S.E.C. 76, 89 (2003). Mansourian has not shown that the Hearing Panel's credibility findings should be set aside. For instance, he argues that "Enforcement offered no evidence to suggest that . . . Mansourian did not truly suffer from obsessive-compulsive disorder or that such disorder was not responsible for . . . Mansourian's confusion" at the OTR. (Mansourian Br. at 8.) Mansourian's argument misses the mark. It is Mansourian's burden to establish his claimed condition and its effect on his testimony—not Enforcement's. *See, e.g., Ahmed Gadelkareem*, Exchange Act Release No. 82879, 2018 SEC LEXIS 729, at \*29 (Mar. 14, 2018) (finding that respondent had failed establish that his medical condition interfered with his ability to comply with FINRA rules).

Nor does Mansourian's claimed medical condition, even if adequately substantiated and somehow linked to his ability to testify accurately, mitigate the seriousness of his misconduct

related to the backdated forms. A medical condition can mitigate a sanction where the respondent has presented evidence that the condition interfered with his ability to comply with the FINRA rules underlying a respondent's misconduct. *See Id.* (explaining that "a medical disability can be mitigating if it interfered with an applicant's ability to comply with the rule at issue").

Mansourian has presented nothing but his unsubstantiated testimony and has not shown that his medical condition prevented him from testifying accurately at his OTR (for which he was not charged). Mansourian has also presented no evidence that his claimed obsessive compulsive disorder prevented him from complying with the ethical standards expected of securities industry professionals in connection with his underlying misconduct for which he was sanctioned.

\* \* \*

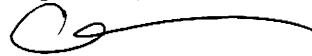
In sum, FINRA considered all the relevant factors in imposing a bar on Mansourian for his serious and unethical misconduct. The Commission should therefore sustain it.

## V. CONCLUSION

Mansourian's dishonest misconduct warrants a bar. As Mansourian himself described it, he participated in falsifying compliance documents without objection, or even asking any questions, in order to keep his job. His conduct demonstrates that he valued serving his boss's interests—and his own—above complying with his obligations as a securities industry professional. Mansourian's willingness to engage in misconduct in a manner calculated to conceal it and his failure to take responsibility throughout this process supports his unfitness to

remain in the securities industry. Accordingly, the Commission should sustain FINRA's findings of liability and the sanction it imposed.

Respectfully submitted,



---

Celia L. Passaro  
Assistant General Counsel  
FINRA  
1735 K Street, NW  
Washington, DC 20006  
(202) 728-8985

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 5923 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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Celia L. Passaro  
Assistant General Counsel  
FINRA – Office of General Counsel  
1735 K Street, NW  
Washington, DC 20006  
202-728-8985 – Telephone  
202-728-8264 – Facsimile



**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 Arthur Mansourian, Administrative Proceeding File No. 3-18990, to be served by messenger and facsimile on:

Vanessa Countryman, Acting Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090  
Fax: (202) 772-9324

and via FedEx on:

Mark David Hunter, Esq.  
Jenny D. Johnson-Sardella, Esq.  
Hunter, Taubman, Fischer & Li, LLC  
2 Alhambra Plaza, Suite 650  
Coral Gables, FL 33134

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



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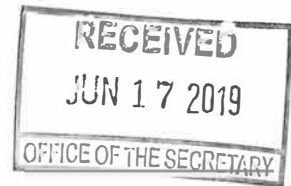
Celia L. Passaro  
Assistant General Counsel  
FINRA  
1735 K Street, NW  
Washington, DC 20006  
(202) 728-8985



Financial Industry Regulatory Authority

**Celia L. Passaro**  
Assistant General Counsel

Direct: (202) 728-8985  
Fax: (202) 728-8264



June 17, 2019

**VIA MESSENGER AND FACSIMILE**

Vanessa A. Countryman, Acting Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090  
Fax: (202) 772-9324

RE: In the Matter of the Application for Review of Arthur Mansourian,  
Administrative Proceeding No. 3-18990

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,

A handwritten signature in blue ink, appearing to be "C. Passaro", written over a horizontal line.

Celia L. Passaro

Enclosures

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