

**BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.**

In the Matter of the Application of
DreamFunded Marketplace, LLC, and Manuel Fernandez
For Review of Disciplinary Action Taken by
FINRA
Administrative Proceeding File No. 3-20639

FINRA'S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW

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I. Introduction

DreamFunded Marketplace, LLC (“DreamFunded”), and Manuel Fernandez (together with DreamFunded, the “Applicants”) appeal a National Adjudicatory Council (“NAC”) decision finding them liable for serious violations of the SEC’s Regulation Crowdfunding rules (the “Crowdfunding Rules”), FINRA’s rules, and FINRA’s funding portal rules (the “Funding Portal Rules”). The NAC found that the Applicants:

- failed to provide banking and accounting records requested by FINRA relating to DreamFunded’s financing and Fernandez’s spending of the investors’ funds;
- distributed a video clip that fraudulently misrepresented the amount they had invested in start-ups, generally, and in an issuer who conducted an offering through DreamFunded;
- fraudulently misrepresented their due diligence on issuers;
- negligently misrepresented real estate transactions advertised on DreamFunded’s website; and

- failed to properly supervise their business, resulting in their failure to (a) cancel an offering that raised investor protection concerns, (b) conduct required background checks on issuers, and (c) provide required notices to investors..

For these violations, the NAC imposed three expulsions and three bars on DreamFunded and Fernandez, respectively. The NAC's findings of violation are amply supported by the record. The expulsions and bars imposed on DreamFunded and Fernandez, respectively, are necessary to protect the investing public, and therefore are appropriately remedial. Accordingly, the Commission should dismiss the application for review.

II. Factual Background

A. Fernandez Raises Capital and Establishes DreamFunded

Fernandez started working to create a funding portal in 2014, when he established DreamFunded, Inc. ("DreamFunded Parent"). (RP 1786-87.) Around this time, Fernandez also set up two special purpose entities to raise capital for the funding portal.¹ In total, Fernandez raised almost \$1 million from about 30 investors through DreamFunded Parent and the special purpose entities. (RP 2739, 2751-55.) In March 2016, Fernandez formed DreamFunded as a wholly owned subsidiary of DreamFunded Parent. (RP 2727, 2731.) Fernandez transferred the investors' funds to DreamFunded. (RP 631.)

In July 2016, FINRA approved DreamFunded's application for funding portal membership. (RP 2721.) Fernandez was DreamFunded's CEO, chief financial officer, and chief compliance officer throughout the time it operated as a funding portal. (RP 2719, 2732.)

¹ The entities were DreamFunded I, LLC, and DreamFunded II, LLC. (RP 2739.)

B. The Applicants Claim to Conduct Extensive Due Diligence on Issuers

The Applicants made extensive representations to investors regarding their due diligence on crowdfunding offerings. For example, on their website, the Applicants claimed that they followed the Angel Capital Association’s (the “ACA”) “strict due diligence guidelines,” the purpose of which was to “mitigate investment risk by gaining an understanding of a company and its market.” (RP 42, 132.) They claimed that their “due diligence and deal flow screening team screen[ed] each company” on DreamFunded’s platform. (RP 42, 132.) And they represented that their “screening process is detailed and time consuming.” (RP 3391, 3396.)

C. The Applicants’ Crowdfunded Offerings for Blurp, Me Tyme, and KBlock

DreamFunded hosted a total of 15 securities-based crowdfunded offerings while operating as a funding portal. (RP 10, 131.) Three of those offerings are at issue here: Blurp, Inc. (“Blurp”), Me Tyme Networks, Inc. (“Me Tyme”), and KBlock Tools, LLC (“KBlock”).²

1. Blurp Lowers Its Target Offering Amount, Closes Its Offering Early, and Asks Fernandez to Wire the Proceeds to Its CEO’s Personal Bank Account

Blurp’s product was an application that would allow users to post content and facilitate streaming across social media platforms. (RP 2961.) Blurp filed its initial Form C in

² The NAC’s decision refers to Blurp, Me Tyme, and KBlock as Issuer A, Issuer B, and Issuer C, respectively.

September 2016.³ (RP 2939-42.) Its target offering amount was \$10,000, and its deadline to reach that amount was September 26, 2017. (RP 2939.)

In May 2017, Bluurp’s CEO, Darrell Austin, Jr., twice inquired about lowering Bluurp’s target offering amount.⁴ In a May 6, 2017 email to Fernandez, Austin wrote that Bluurp “would like to change our campaign funding goal from \$10K to \$4500 at your earliest convenience.” (RP 4029.) Two weeks later, on May 20, 2017, Austin emailed Fernandez again, writing that he “would like to close out my campaign on dreamfunded [sic] at \$4K as the campaign goal!” (RP 3171.) Austin attached to his email a photograph of a check for his personal bank account, and he asked Fernandez to wire the offering’s proceeds to that account. *Id.*

Around this time, Fernandez learned that Austin’s personal bank account was overdrawn. On May 25, 2017, just five days after Austin sought to lower the target offering amount the second time, he forwarded to Fernandez an email exchange he had with DreamFunded’s escrow service, FundAmerica.⁵ In his email, Austin complained that a \$20 fee imposed by FundAmerica had overdrawn his bank account. (RP 3173.) “These surprise fees without proper notice is [sic] really inconveniencing me and now my account is overdrawn[.]” *Id.*

On June 19, 2017, Bluurp amended its Form C to announce that its target offering amount had been lowered to \$4,000. (RP 3056, 3699.) The next week, on June 26, 2017, the

³ Form C is an offering statement containing essential information about the offering, including the names of the issuer’s directors and officers, the target offering amount, and the deadline to reach the target offering amount. *See* 17 CFR § 227.201, 17 CFR § 227.203. The Form C must be filed with the SEC and provided to the funding portal before the offering opens. 17 CFR § 227.201. During the offering, the issuer must amend its Form C to disclose any material changes, additions, or updates to the information that it has provided to investors. 17 CFR § 227.203.

⁴ Austin is identified as “DA” in the NAC’s decision.

⁵ Funding portals are not allowed to handle investors’ funds. 17 C.F.R. § 227.303(e).

offering closed early, and the Applicants released more than \$4,000 of investors' funds to Bluurp.⁶ (RP 10, 131.)

More than three months later, on September 29, 2017 (three days after the offering was supposed to close), Fernandez notified investors that Bluurp had lowered its target amount from \$10,000 to \$4,000. (RP 925-26, 929, 4031-32.) In an email, Fernandez wrote that Austin "suggested to reduce the DreamFunded minimum funding amount from \$10,000 to \$4,000 for his startup offering. After listening to his plans to use the capital to build a prototype and they raise [sic]. We agreed." (RP 4031.) Fernandez asked the investors to confirm their commitment to invest or notify him if they wanted their money back. The investors' funds, however, already had been released to Bluurp.⁷ (RP 4031.)

2. Me Tyme Closes Its Offering Early

Me Tyme was developing an application to provide on-demand health and well-being videos. (RP 2857-72.) Me Tyme filed a Form C in January 2017. (RP 3373.) The target offering amount was \$10,000, and the deadline to meet the target was June 30, 2017. (RP 2874.) The offering closed two months early, in April 2017, after raising the target offering amount, and the Applicants released the investors' funds to the company. (RP 3128.)

⁶ Fernandez claimed that the Applicants released only \$3,200 of the money in June 2017. The Hearing Panel did not find this claim credible (RP 4407), and the NAC deferred to the Hearing Panel's finding on this issue. The Applicants have not identified any basis for the Commission to disturb it.

⁷ At least one investor asked for a refund. (RP 4245.) There is no evidence in the record that the money was returned.

3. The Applicants Post a Video Clip Claiming They Invested More than \$100 Million in Startups and Showing Fernandez Offering to Invest \$1 Million in KBlock

KBlock created a harness for firehoses that would lessen firefighter fatigue and injuries. (RP 2849.) In January 2016, Fernandez and KBlock's CEO participated in the filming of a segment for "Make Me a Millionaire Inventor," a CNBC television program that connects inventors with potential investors. (RP 768, 2289, 2849.)

In anticipation of the episode's airing, the Applicants posted to DreamFunded's website a press release announcing Fernandez's television appearance. The press release's headline read "Manny Fernandez Featured as an Investor on CNBC's TV Show[.]" (RP 768-69, 2835.) The Applicants also hosted a "viewing event" for the show. (RP 772-73.)

Fernandez's episode aired on October 6, 2016. (RP 2835.) During the show, the program's host introduced Fernandez as "the CEO of DreamFunded.com," which the host described as "a crowdfunding platform that's invested over \$100 million in startups." (RP 2849.) The episode showed Fernandez, "on behalf of DreamFunded.com," offering \$1 million for a 30 percent interest in KBlock, and KBlock's CEO accepting Fernandez's offer. (RP 2849.) After the episode aired, the Applicants posted a video clip of Fernandez's appearance to DreamFunded's website and social media (RP 773, 782-83, 849-50, 1834.)

In late October 2016, while conducting routine surveillance, an examiner in FINRA's Membership Application Program ("MAP") group, Stephanie Volkell, saw the video clip on the internet.⁸ (RP 2021.) Volkell was concerned that the Applicants' \$1 million investment in

⁸ Volkell is identified as "SV" in the NAC's decision.

KBlock violated Crowdfunding Rule 300(b).⁹ (RP 2007-08.) Around this time, the MAP group opened a “cause examination” of the Applicants. (RP 2007-08.)

Volkell later learned that the Applicants had not invested in KBlock, but Fernandez had invited KBlock to conduct an offering through DreamFunded. (RP 2037-38, 2839.) This concerned her because the video clip the Applicants had posted to the internet made it appear as if they had invested in KBlock, and therefore the clip was misleading. (RP 2037-38.)

D. The Applicants Replace Crowdfunding Offerings with Real Estate Investment Advertisements

In April 2017, DreamFunded removed all crowdfunding offerings from its website and replaced them with advertisements for real estate investments. (RP 2487-89, 3129, 3235-44.) The advertisements contained pictures of single-family homes and captions claiming that the deals on the homes had yielded ten percent returns, which were favorably compared to certificates of deposit. (RP 3235-44.)

In June 2017, an investigator in FINRA’s Office of Fraud Detection and Market Intelligence (“OFDMI”), Patrick Devero, noticed the changes to DreamFunded’s website.¹⁰ (RP 2487-89.) Devero was concerned because some of DreamFunded’s crowdfunding offerings were still open, but information about the offerings was no longer available on DreamFunded’s website. *Id.*

⁹ Crowdfunding Rule 300(b) prohibits certain persons associated with a funding portal from having a financial interest in an issuer that is selling securities through the funding portal. 17 C.F.R. § 227.300(b).

¹⁰ Devero is identified as “PD” in the NAC’s decision.

E. FINRA Opens an Investigation

In July 2017, OFDMI opened an investigation and Devero issued a FINRA Rule 8210 request to the Applicants. (RP 2491, 3125.) Devero issued two additional requests for documents and information in August 2017. (RP 3149, 3176.) The Applicants largely complied with these requests.

In October 2017, Fernandez gave sworn testimony during an on-the-record interview (“OTR”) with staff from OFDMI and FINRA’s Department of Enforcement (“Enforcement”).¹¹ (RP 3401-04.) Fernandez’s OTR testimony raised several areas of concern for FINRA staff. For example, Fernandez said that he had raised nearly \$1 million from roughly 30 investors to start DreamFunded but had spent almost all of that money, and only about \$100 remained. (RP 3468-69.) When asked how he spent the money, Fernandez struggled to explain. (RP 3468-75.) Fernandez said he did not “have the numbers” with him, but “[u]nder \$50,000” went toward “legal,” about \$300,000 went to marketing, “and the rest in operations.” (RP 3469-70.) He also said he used some of the money to make cash payments to independent contractors, but said he did not keep receipts for most of those payments. (RP 3482-83, 3493). He said he made cash payments to his wife totaling about \$20,000 (RP 3485-86) and paid the same amount in cash to his daughter, who was a teenager at the time. (RP 3486.) And Fernandez said he paid some of the money to his sister, who also was a teenager at the time. (RP 3486-87, 3489.) Based on Fernandez’s testimony, FINRA staff believed there may have been improprieties in his spending of the investors’ money. (RP 943-48.) This was especially concerning because Fernandez said that he was planning to start raising money from investors again. (RP 947-48, 2518-19.)

¹¹ The MAP group closed its cause examination in 2017 out of deference to OFDMI’s investigation. (RP 2491, 2602-04.)

Shortly after the OTR, on October 24, 2017, Devero sent the Applicants a fourth FINRA Rule 8210 request for documents and information (the “Fourth Request”). (RP 3179-80.) Among other things, the Fourth Request asked for documents relating to Fernandez’s spending of the nearly \$1 million that investors had contributed to start DreamFunded. (RP 3179.) Specifically, in Request No. 3, it asked for monthly account statements for all bank accounts of DreamFunded, DreamFunded Parent, and Fernandez from January 1, 2014, through October 24, 2017. *Id.* In Request No. 8, it asked for all accounting or bookkeeping records maintained by DreamFunded and DreamFunded Parent during the same period. (RP 3180.) The response deadline was November 7, 2017.¹²

F. The Applicants Fail to Provide Banking and Accounting Records to FINRA

In early November 2017, FINRA staff and the attorney representing the Applicants at the time, Martin Tate, began discussing a settlement. (RP 3181-82.) In light of those discussions, FINRA staff allowed the response deadline for the Fourth Request to pass. (*See* RP 3181-82, 3185.) By early December, however, the settlement negotiations had fallen apart, and Tate was no longer representing the Applicants. (RP 3187.)

On December 15, 2017, an Enforcement attorney, Edwin Aradi, sent a copy of the Fourth Request to the Applicants’ new attorney, Scott Andersen. (RP 3191.) Aradi and Andersen agreed to a deadline of January 5, 2018, for the Fourth Request. (RP 3199.)

On January 5, 2018, through Andersen, the Applicants produced some of the documents and information responsive to the Fourth Request. (RP 3207.) They did not, however, produce any banking or accounting records responsive to Requests No. 3 or 8, respectively. (RP 3207-

¹² DreamFunded’s FINRA membership terminated on November 3, 2017. (RP 2729.)

08.) Aradi agreed to extend the response deadline to January 19, 2018, and sought to reschedule Fernandez's second OTR for February. (RP 3209.)

On January 19, 2018, through Andersen, the Applicants made another partial production and requested another extension of the deadline. (RP 3211.) The Applicants produced some of the account statements responsive to Request No. 3, but they did not produce any accounting records responsive to Request No. 8. (RP 3211-12.)

In a letter to Aradi that day, Andersen stated that Fernandez had been diagnosed with stomach flu two days earlier, and that a doctor had prescribed bed rest through the weekend. (RP 3211-12.) Andersen provided a note apparently signed by a physician and dated January 17, 2018. (RP 3213.) Aradi agreed to extend the response deadline ten days to January 29, 2018.¹³ (RP 3215.)

That weekend, despite his purported illness, Fernandez attended the Sundance Film Festival in Park City, Utah. (RP 1629-1632.) Over the weekend, Fernandez posted photographs from Park City to his Instagram account. (RP 1627-29, 3285, 3287.) Then, on January 22, 2018, he posted to Facebook a photograph of himself and a former professional athlete on a flight from Salt Lake City to San Francisco. (RP 1630-31, 3289.)

On January 25, 2018, Andersen informed Aradi that he no longer represented the Applicants. (RP 3217.) The same day, Aradi emailed Fernandez and reminded him that the response deadline for the Fourth Request was four days away. (RP 3219.)

The next day, January 26, 2018, Fernandez emailed Aradi claiming he was still sick. (RP 3221.) He attached to his email another doctor's note, and apparently signed by the same

¹³ On January 21, 2018, Fernandez entered into an agreement to sell DreamFunded. (RP 3377-82, 4199-4200.) The agreement was rescinded in April 2018. (RP 4202-06).

physician who had signed the earlier one. (RP 3222.) The note did not describe Fernandez's illness, but it stated that he would be unable to resume a normal workload until February 5, 2018. *Id.*

On January 28, 2018, despite his purported illness, Fernandez traveled to Las Vegas and attended a concert by musician Santana. (RP 1632-34.) He posted a photograph from the concert to his Twitter account. (RP 3291.)

The next day, January 29, 2018, Aradi emailed Fernandez and warned him that Enforcement would file a complaint if Fernandez did not provide a full response to the Fourth Request by February 6, 2018. (RP 3225.) By this time, FINRA staff had seen Fernandez's social media posts from Park City and Las Vegas. Aradi noted in his email that Fernandez had traveled and socialized extensively during the period he supposedly was sick. *Id.*

On February 6, 2018, the day his response was due, Fernandez wrote in an email to Aradi that DreamFunded's CPA and bookkeeper had the banking and accounting records, and he needed more time to collect them. (RP 3229.) Fernandez admitted traveling, but claimed it had made his condition worse. *Id.* The Applicants made no further productions.

III. Procedural History

On February 23, 2018, Enforcement filed a complaint against the Applicants alleging violations of the Crowdfunding Rules, FINRA Rule 8210, and the Funding Portal Rules. (RP 1.) An eight-day hearing was held before an Extended Hearing Panel (the "Hearing Panel") in September and November 2018 during which Fernandez, Devero, Volkell, and Joshua Doolittle, a former Enforcement director, testified. (RP 525-1340, RP 1455-2691.) The Hearing Panel issued a decision in June 2019 finding the Applicants liable for most of the violations alleged in the complaint, including failing to respond completely to FINRA's Rule 8210 request and

misrepresenting material facts. (RP 4357.) The Hearing Panel twice expelled DreamFunded and twice barred Fernandez for those violations. (RP 4511-12.) The Hearing Panel assessed but did not impose lesser sanctions for several other violations, including failing to supervise, failing to conduct required background checks, and failing to provide required notices to investors. (RP 4507-08.) The Applicants appealed and Enforcement cross-appealed. (RP 4515-18, 4525-26.) In September 2021, the NAC issued a decision largely affirming the Hearing Panel’s findings of violation. (RP 4795.) The NAC, however, imposed a third expulsion and bar on DreamFunded and Fernandez, respectively, as an aggregate sanction for the Applicants’ supervisory and other, related violations. (RP 4889, 4978-79.) The Applicants filed an application for review with the Commission.¹⁴ (RP 4985-86.)

IV. Argument

Under Exchange Act Section 19(e)(1), the Commission must dismiss the Applicants’ application if it finds that the Applicants engaged in the conduct FINRA found, such conduct violates the rules specified, and the rules are, and were applied in a manner, consistent with the purposes of the Exchange Act. 15 U.S.C. § 78s(e)(1). That standard is satisfied here.

A. Fernandez’s Hearing Testimony Is Not Credible

Fernandez’s lack of credibility is central to many of the findings of violation. The Hearing Panel found that Fernandez’s hearing testimony generally was not credible, and the NAC properly deferred to that finding. *See William H. Murphy & Co.*, Exchange Act Release No. 90759, 2020 SEC LEXIS 5218, at *28-29 (Dec. 21, 2020). The Hearing Panel described Fernandez’s testimony as “evasive, vague, and inconsistent,” and “vague and evasive to the point

¹⁴ The Commission denied the Applicants’ motion for a stay. *DreamFunded Marketplace, LLC*, Exchange Act Release No. 93566, 2021 SEC LEXIS 3421 (Nov. 12, 2021).

of absurdity.” (RP 4372, 4440.) The Hearing Panel explained that, “[o]n key points, [Fernandez’s] testimony was not credible, lacked corroboration, or was contradicted by other more credible evidence.” (RP 4372.)

The NAC deferred to these credibility findings because the Hearing Panel “meticulously explained the bases of its credibility findings in its decision,” (RP 5038) those findings were “thorough, well-informed, and well founded,” and there was no basis in the record to overturn them (RP 5038-39). Indeed, the record is entirely consistent with the Hearing Panel’s findings about Fernandez’s lack of credibility. As shown below, Fernandez’s testimony on several issues was unbelievable.

1. Fernandez Repudiates His Prior Sworn Testimony

Fernandez’s testimony at the hearing frequently was contradicted by his OTR testimony. (*See, e.g.*, RP 624-25, 633-35, 845-56.) Fernandez responded by repudiating his OTR testimony in its entirety, claiming he did not remember it and none of it was reliable. (*See, e.g.*, 636, 641-44, 688-690, 845-46.) Fernandez laid blame for his purportedly inaccurate OTR testimony on an over-the-counter sleeping pill he took the night before and a prescription muscle relaxant he was taking. (RP 3406-07.) Fernandez, however, told FINRA staff at the outset of the OTR that his ability to testify was not impaired by those medications. (RP 3406-07.) Doolittle, who participated in the OTR, testified at the hearing that Fernandez appeared “lucid and “perfectly fine,” and did not “seem to be impaired or unable to answer questions.” (RP 956, 1072.) The Hearing Panel found that Fernandez’s repudiation of his OTR testimony was not believable.¹⁵

¹⁵ The Hearing Panel generally credited Fernandez’s OTR testimony rather than his hearing testimony. (RP 4438-39.)

2. Fernandez Claims He Never Offered \$1 Million to KBlock and the Video of His Television Appearance Was Manipulated to Make it Look Like He Did

At the hearing, Fernandez denied ever offering to invest in KBlock, and he claimed the producers of the television show manipulated the video to make it appear as if he had. (RP 808-10, 812-14.) He said the idea that he would invest in KBlock was “laughable” because KBlock’s CEO “couldn’t put a couple of words together.” (RP 1843-44.) When Fernandez was asked why he posted the purportedly manipulated video clip of himself to social media, he replied that he had a contractual obligation to promote his appearance and wanted to “keep [his] word,” and he “didn’t see the harm in anything.” (RP 813-14.) When Fernandez was asked why, if he did not make the offer to KBlock, he wrote in a 2017 email to Volkell that he had withdrawn his offer to KBlock (RP 2839), he claimed he did not write the email, even though it was sent from his account. Fernandez said a former employee, a “very talented hacker,” AH, must have written it.¹⁶ (RP 786-97.)

3. Fernandez Claims “Everything” Was in DropBox

Fernandez blamed the Applicants’ former attorneys for their failure to fully comply with the Fourth Request and for the absence of corroborating documentary evidence at the hearing. Fernandez repeatedly claimed that the Applicants uploaded “everything” to DropBox, a cloud-based storage system, gave their attorneys access to it, and assumed the attorneys had produced those documents to FINRA. (*See, e.g.*, RP 656-58, 719, 726-27, 732-33, 751-52, 1281-82, 1299, 1318, 1719-20, 2406.) Fernandez did not explain why, if he collected all of the requested

¹⁶ The Hearing Panel did not believe Fernandez’s testimony about the email to Volkell because “the email chain fits the facts,” and “because the supposed false email does not on its face harm Fernandez. It only harms him because it is inconsistent with his hearing testimony.” (RP 4443.)

documents in DropBox, as he claimed, he did not simply provide them directly to FINRA or introduce them into evidence at the hearing.¹⁷

The Hearing Panel found that Fernandez’s hearing testimony on these and other issues was not believable, and the NAC deferred to the Hearing Panel’s findings. The Applicants have provided no basis for the Commission to disturb those findings.

B. The Applicants Violated FINRA Rule 8210 and Funding Portal Rules 800(a) and 200(a) by Not Providing the Banking and Accounting Records

The NAC found that the Applicants violated FINRA Rule 8210 and Funding Portal Rules 800(a) and 200(a) by failing to produce all of the banking and accounting records responsive to the Fourth Request. The record supports the NAC’s finding of violation.

FINRA Rule 8210 requires FINRA members and their associated persons to provide testimony, documents, and information to FINRA “with respect to any matter involved in the investigation,” and authorizes FINRA to “inspect and copy the books, records, and accounts of [a member and its associated persons] with respect to any matter involved in the investigation” The Applicants are subject to FINRA Rule 8210 by virtue of Funding Portal Rule 800(a), which provides that “all funding portal members shall be subject to the FINRA Rule 8000 Series, unless the context requires otherwise”¹⁸ Funding Portal Rule 800(a) makes clear that FINRA Rule 8210 is applicable to funding portals. *See* Funding Portal Rule 800(a)(3) (explaining how “a

¹⁷ The Applicants apparently submitted some documents via DropBox to their former attorney, Tate, during the membership application process. (*See, e.g.*, RP 2743.) Devero testified that, at some point, he told either Tate or Fernandez that he could not accept productions via DropBox in response to a FINRA Rule 8210 request. (RP 2510-12, 2514-15.)

¹⁸ As an associated person of DreamFunded, Fernandez had the same duties and obligations as DreamFunded. *See* Funding Portal Rules 100(a) and 100(b).

notice under FINRA Rule 8210” should be served on funding portals and their associated persons).

Funding Portal Rule 200(a) is titled “Standards of Commercial Honor and Principles of Trade.” The rule requires funding portal members and their associated persons, “in the conduct of [their] business,” to “observe high standards of commercial honor and just an equitable principles of trade.” Funding Portal Rule 200(a). Funding Portal Rule 200(a) is based on FINRA Rule 2010. *Regulatory Notice 16-06, SEC Approval of FINRA Funding Portal Rules and Related Forms*, 2016 FINRA LEXIS 6 at *8 (Jan. 2016) (the “Approval Order”).

Accordingly, as with FINRA Rule 2010 in the broker-dealer context, any violation of the federal securities laws or FINRA rules also is a violation of Funding Portal Rule 200(a). *Cf. Stephen J. Gluckman*, 54 S.E.C. 175, 185 (1999) (noting the Commission’s “long-standing and judicially-recognized policy that a violation of another Commission or [FINRA] rule or regulation . . . constitutes a violation of [FINRA Rule 2010]”).

1. The Applicants Did Not Produce All of the Requested Banking Records

Under Request No. 3, the Fourth Request asked for monthly account statements for all bank accounts of DreamFunded, DreamFunded Parent, and Fernandez for the period from January 1, 2014, through October 24, 2017. (RP 3179.) The Applicants did not comply fully with this request.

The Applicants had at least seven different bank accounts. (RP 2519-22, 3369). One account belonged to Fernandez.¹⁹ (RP 3805-06, 3814, 3843, 3857.) One account belonged to DreamFunded Parent (Account 888). (RP 2522, 3369.) Three accounts belonged to

¹⁹ The account statements for the second DreamFunded account (Account 204) show multiple transfers to “Fernandez M Everyday Checking.” (RP 3805-06, 3814, 3843, 3857.)

DreamFunded (Accounts 212, 204, 786). (RP 2522, 3369.) Two accounts belonged to the special purpose entities that Fernandez established to raise capital for DreamFunded (Accounts 326, 036). (RP 2522, 3369.)

The Applicants provided no account statements for Fernandez. (RP 2525, 3369.) For the remaining six accounts, for the entire 46-month period, the Applicants provided a total of 40 account statements. The applicants provided most of those account statements to FINRA's MAP group in 2016 as part of the membership application process. (RP 3369.) They provided the remaining account statements in January 2018 in response to the Fourth Request.²⁰ (RP 3369.)

2. The Applicants Did Not Produce Any of the Requested Accounting Records

Under Request No. 8, the Fourth Request asked for all accounting or bookkeeping records maintained by DreamFunded and DreamFunded Parent from January 1, 2014, through October 24, 2017. (RP 3179-80.) The Applicants did not produce any of these records. Fernandez testified that he maintained a general ledger for the DreamFunded entities using QuickBooks and Microsoft Excel. (RP 652-56.) The Applicants, however, did not produce a ledger or any other accounting or bookkeeping records, in any format, for any of the DreamFunded entities.²¹ (RP 2528-29).

²⁰ In September 2018, as part of their pre-hearing disclosures, the Applicants provided to Enforcement several of the account statements they should have produced in response to the FINRA Rule 8210 request. (RP 419, 2525-26, 3771-3909.)

²¹ In September 2018, as part of their pre-hearing disclosures, the Applicants provided to Enforcement three balance sheets (RP 419, 3911-3913) and three profit & loss statements for DreamFunded (RP 419, 3910, 3914, 3915).

3. Fernandez Did Not Provide All of the Requested Records to the Applicants' Attorney

The Applicants argue that they did not violate FINRA Rule 8210 because they relied on their attorney to provide the documents to FINRA. Applicants' Brief at 12. This argument fails because the Applicants cannot shift responsibility for responding to the Fourth Request to their attorney. *See Michael David Borth*, 51 S.E.C. 178, 181 (1992).

In any event, the Hearing Panel did not believe Fernandez's testimony that he provided all of the requested documents to the Applicants' attorney, and the NAC properly deferred to the Hearing Panel's finding because there is no basis in the record to overturn it. (*See* RP 4467-69, 5063-64.) Indeed, the record is entirely consistent with the Hearing Panel's finding. Had Fernandez uploaded all of the requested documents to DropBox, as he claims, he surely would have responded differently when Aradi notified him on January 25, 2018, that his response to FINRA's request for documents and information was due in four days. (*See* RP 3219.) Fernandez would have provided a link to the DropBox at that time, or at least mentioned that he already had provided all of the requested documents to either Tate or Andersen. He did neither. Instead, he stalled for time, claiming he was ill and could not return to work until February 5, 2017. (RP 3221.) Then, after Aradi extended the deadline to February 6, 2018, Fernandez told him that "[t]he banking records and bookkeeping data is with [DreamFunded's] CPA and bookkeeper." (RP 3229.) Fernandez wrote, "Please slow down on that formal complaint and allow us to get the docs that you requested." (RP 3229.) Had Fernandez already provided all of the requested documents to the Applicants' attorney, he would not have needed to ask for more time to gather them. Fernandez's responses to Aradi in January and February 2018 belie his testimony that he provided all of the requested documents to the Applicants' attorney.

Andersen's communications with FINRA staff also contradict Fernandez's testimony because they show Andersen did not have access to all of the requested documents. On January 5, 2018, Andersen wrote that the "search for documents relevant to your requests is continuing." (RP 3208.) Then, on January 12, 2018, Andersen told Aradi by telephone that the Applicants had not yet provided a majority of the requested documents. (RP 3209.) At no point did Andersen suggest that he already had access to them.²²

There is no corroborating evidence in the record indicating that all of the documents were uploaded to DropBox. The only documentary evidence relating to the Applicants' DropBox account does not support the Applicants' assertion. On December 16, 2017, Fernandez apparently provided some of the requested account statements to Andersen via DropBox. In an email to Andersen, Fernandez wrote, "Here is the link for [DreamFunded Parent] bank statement[s] from the opening of the bank account in June 2014-Dec[.] 2014," and "Here is the link for [DreamFunded Parent] bank statement from the opening of the account Jan. 2015-Nov. 2015 when the bank account was closed."²³ (RP 4257.) At the hearing, Fernandez claimed that, notwithstanding what he wrote in his email, these two links actually contained all of the documents FINRA had requested, not just the monthly statements for the accounts and periods that Fernandez specified in his email. (RP 2408-10.)

The Hearing Panel found Fernandez's testimony on this issue was not credible, and the record supports that finding. The wording of Fernandez's email makes clear that he is providing only certain bank statements to Andersen via DropBox. It does not suggest that he is providing

²² Similarly, Tate never suggested to FINRA staff that Fernandez had provided all requested documents to him. (See RP 3181-83, 3187.)

²³ The copy of the email in the record does not include any attachments, such as copies of the documents contained in the links Fernandez provided.

additional documents to an existing repository of documents. Moreover, as discussed above, Fernandez's story about the two links is contradicted by his and Andersen's later communications with FINRA staff. Fernandez never told FINRA staff he had provided all of the requested documents to Andersen, and he specifically told FINRA staff in February 2018 that the "banking records" were "with [DreamFunded's] CPA and bookkeeper," not the Applicants' attorney. (RP 3229.) The NAC properly deferred to the Hearing Panel's credibility finding on this issue (RP 5064), and there is no basis in the record for the Commission to disturb it.

The Applicants also claim that FINRA's MAP group "had all of the documents which FINRA claimed that Fernandez refused to provide." Applicants' Brief at 11-12. This claim is not supported by the evidence, either. As the NAC acknowledged in its decision, the Applicants produced to the MAP group some of the monthly account statements responsive to FINRA's Rule 8210 request. (*See* RP 5062-63.) The Applicants provided these statements prior to July 2016 as part of the FINRA membership application process. There is no evidence that Applicants provided any additional account statements to the MAP group after DreamFunded became a funding portal member, or that they ever provided any accounting or bookkeeping records to the MAP group.

4. FINRA Had Authority to Request the Records

The Applicants' vague assertion that FINRA "did not have the right to ask for the documents" is unfounded. *See* Applicants' Brief at 12. The Commission repeatedly has held that FINRA Rule 8210 is "essential to FINRA's ability to investigate possible misconduct by its members and associated persons." *Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at *39 (Sept. 24, 2015). The rule is at the "heart of the self-regulatory system for the securities industry and is an essential cornerstone of FINRA's ability to police the securities markets and should be rigorously enforced." *Id.* at *49. Under FINRA Rule 8210, FINRA has

authority to obtain documents and information relating to the business-related conduct of its members and their associated persons. *See N. Woodward Fin. Corp.*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867, at *14-15 (May 8, 2015) (stating that FINRA’s authority under FINRA Rule 8210 is “broad enough to encompass business-related conduct that may contravene the high ethical standards to which members and associated persons must adhere, even if that conduct does not involve a security”).

Fernandez’s OTR testimony triggered questions about his spending of the funds he raised from investors to start DreamFunded. Fernandez’s testimony regarding cash payments to contractors and family members, including his teenaged daughter and sister, suggested that his handling of the investors’ funds contravened the high ethical standards to which FINRA members and their associated persons must adhere. The banking and accounting records FINRA sought related directly to Fernandez’s handling of investors’ funds and were critical to FINRA’s investigation. FINRA had authority under FINRA Rule 8210 to obtain those records.

Because the Applicants failed to provide all of the requested banking and accounting records, FINRA was unable to determine whether the Applicants engaged in serious misconduct, including misuse of investors’ funds. The Applicants therefore violated FINRA Rule 8210 and Funding Portal Rule 200(a).

C. The Applicants Violated Crowdfunding Rule 301(c)(2) and Funding Portal Rule 200(a) by Not Canceling Bluurp’s Offering

The NAC found that the Applicants violated Crowdfunding Rule 301(c)(2) by not canceling Bluurp’s offering after Austin twice sought to lower the target offering amount and asked Fernandez to wire the offering’s proceeds to his personal bank account. The Applicants do not address this issue in their brief. The record supports the NAC’s finding of violation.

Under Crowdfunding Rule 301(c)(2), a funding portal must deny access to its platform if it has a reasonable basis for believing that the issuer or the offering presents the potential for fraud or otherwise raises concerns about investor protection. 17 C.F.R. § 227.301(c)(2). If the funding portal becomes aware of such information after granting access to its platform, it must remove the offering from its platform, cancel it, and direct the return of investors' funds from escrow. *Id.* The “reasonable basis” standard is objective and means that a funding portal “may not ignore facts about an issuer that indicate fraud or investor protection concerns such that a reasonable person would have denied access to the platform or cancelled the offering.” *Final Rule: Crowdfunding*, Exchange Act Release No. 76324, 2015 SEC LEXIS 5486, at *216 (Oct. 30, 2015) (“*SEC Crowdfunding Final Rule*”). A violation of Crowdfunding Rule 301(c)(2) also violates Funding Portal Rule 200(a). *Cf. Gluckman*, 54 S.E.C. at 185.

The Applicants violated Crowdfunding Rule 301(c)(2) in May 2017 when they failed to cancel Bluurp's offering. Within the span of a few weeks, Austin twice asked Fernandez to lower the offering's target amount—the first time by more than half—without providing any explanation for his requests.²⁴ (RP 3171, 4029.) Austin also asked Fernandez to close the offering three months early and wire the proceeds to his personal bank account, which Fernandez knew was overdrawn. (RP 1227, 3171, 3173). Austin's actions in May 2017 were red flags suggesting that he was going to use the offering's proceeds for something other than Bluurp's business. A reasonable person in the Applicants' position would have canceled the offering and

²⁴ Fernandez claimed at the hearing that Austin told him he wanted to lower the target offering amount and close the offering because he wanted to build a prototype of Bluurp's application. (RP 1961-62.) The Hearing Panel concluded that Fernandez's story about the prototype was “fabricated after-the-fact” for the notices he sent to Bluurp's investors in September 2017. (RP 4472.) The NAC deferred to the Hearing Panel's credibility finding (RP 5072), and the Applicants have not provided any basis for the Commission to disturb it.

returned investors' funds. Instead of doing that, the Applicants released the investors' money to Bluurp. (RP 10, 131.) As a result, the Applicants violated Crowdfunding Rule 301(c)(2) and Funding Portal Rule 200(a).

D. The Applicants Violated Funding Portal Rules 200(b) and 200(a) by Making False Statements and Engaging in Deceptive Practices

The NAC found that the Applicants violated Funding Portal Rules 200(b) and 200(a) by misrepresenting their prior investments in start-ups, their investment in KBlock, and their diligence on issuers. The record supports the NAC's findings of violation.

Funding Portal Rule 200(b) prohibits a funding portal from effecting any transaction or inducing the purchase of any security "by means of, or by aiding or abetting, any manipulative, deceptive or other fraudulent device or contrivance." The rule is based on FINRA Rule 2020. *Approval Order*, 2016 FINRA Lexis 6, at *8. Accordingly, the NAC determined that the elements necessary to establish fraud under Funding Portal Rule 200(b) are the same as under FINRA Rule 2020. (RP 5078-79.) Those elements are (1) a misrepresentation or omission, (2) of a material fact, (3) made with scienter, (4) in connection with the purchase or sale of a security. *See Dep't of Enf't v. Akindemowo*, Complaint No. 2011029619301, 2014 FINRA Discip. LEXIS 15, at *14-15 (FINRA OHO Jan. 23, 2014) ("To establish a violation of FINRA Rule 2020, the Hearing Panel must find that Respondent made material misrepresentations or omissions in connection with the purchase or sale of a security and acted with scienter."), *aff'd*, 2015 FINRA Discip. LEXIS 58, at *1 (FINRA NAC Dec. 29, 2015), *aff'd*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769, at *1 (Sept. 30, 2016). A violation of Funding Portal Rule 200(b) also violates Funding Portal Rule 200(a). *Cf. Gluckman*, 54 S.E.C. at 185.

1. The Applicants Fraudulently Misrepresented How Much Money They Had Raised for Start-Ups and Their Investment in KBlock

The NAC found that the Applicants violated Funding Portal Rule 200(b) by posting a video clip of Fernandez's appearance on "Make Me a Millionaire Inventor" on DreamFunded's website and social media. (*See* RP 5075-82.) The video clip included the host's description of DreamFunded as "a crowdfunding platform that's invested over \$100 million in startups," showed Fernandez offering a \$1 million investment in KBlock on behalf of DreamFunded, and showed the CEO of KBlock accepting Fernandez's offer. (RP 2849.) The record supports the NAC's finding of violation.

The video clip the Applicants posted misrepresented two facts. First, it misrepresented that the Applicants had "invested over \$100 million in startups." Second, it misrepresented that Applicants were investing \$1 million in KBlock. Neither of those things is true. The Applicants had not invested \$100 million in startups (RP 837-38) and DreamFunded had not invested (and was not going to invest) \$1 million in KBlock. (RP 2845.)

Both misrepresentations were material. Misstated or omitted facts are material if there is a substantial likelihood that a reasonable investor would have considered the misrepresented or omitted fact important in making an investment decision, and if disclosure of the fact "would have been viewed by the reasonable investor as having significantly altered the total mix of information made available." *Basic, Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988). The video clip the Applicants posted to the internet inflated Fernandez's wealth, exaggerated his ability to raise capital, overstated his investment savvy, and implied that KBlock was a quality investment. Any reasonable investor would consider these facts important in deciding whether to invest in KBlock or participate in a crowdfunded offering facilitated through DreamFunded. *See Louis*

Ottimo, Exchange Act Release No. 83555, 2018 SEC LEXIS 1588, at *33 (June 28, 2018) (finding respondent's misrepresentations about his "management abilities" were material).

The Applicants acted with scienter. Scienter is defined as "a mental state embracing an intent to deceive, manipulate, or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 n.12 (1976). Scienter may be established through a heightened showing of recklessness. *See Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 319 n.3 (2007). Reckless conduct includes "a highly unreasonable omission, involving not merely simple, or even inexcusable negligence, but an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it." *Sundstrand Corp. v. Sun Chem. Corp.*, 553 F.2d 1033, 1045 (7th Cir. 1977). The Applicants acted at least recklessly by posting the video clip to the internet.²⁵ Fernandez posted the clip to promote himself and DreamFunded to issuers and investors that wanted to participate in crowdfunded offerings. (RP 844.) The Applicants knew the video clip represented that DreamFunded had invested \$100 million in startups and had invested \$1 million in KBlock when neither of those things was true. Nevertheless, the Applicants allowed the video clip to remain on DreamFunded's website for 11 months until at least September 2017 (RP 2032-33, 2835-36) and on social media for 19 months until May 2018. (RP 2533-34, 2847.) The Applicants acted with scienter because they either knew that the representations in the video clip were materially misleading or were reckless in not recognizing that investors likely would be misled by them.

²⁵ DreamFunded acted with scienter based on Fernandez's acts. *See Kirk A. Knapp*, 50 S.E.C. 858, 860 n.7 (1992) (explaining that FINRA properly attributed scienter of the firm's owner to the firm and thereby found a primary antifraud violation by the firm based on the owner's conduct).

The Applicants posted the misleading video clip in connection with the purchase or sale of securities. A misrepresentation occurs in connection with the purchase or sale of a security if it coincides with the securities transaction. *See Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Dabit*, 547 U.S. 71, 85 (2006) (“Under our precedents, it is enough that the fraud alleged ‘coincide’ with a securities transaction.”) (Interpreting Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Exchange Act Rule 10b-5). The Applicants’ posting of the video clip coincided with securities transactions. The video clip was available on the Applicants’ website and social media from October 2016 until 2018. (RP 2032-33, 2533-34, 2835-36, 2847.) The Applicants hosted offerings on their website from at least November 2016 until April 2017. (RP 3129, 3743-46.) Materials relating to KBlock’s offering, specifically, were available on DreamFunded’s website throughout this time. (RP 2029-31, 3129, 3743.)

The Applicants argue that Enforcement failed to prove that they posted the misleading video clip of his television appearance to DreamFunded’s website or social media for more than a few days in October 2016. *See Applicants’ Brief* at 13-14. They claim that, after those few days, they removed the video clip and from then on posted only a truncated version of the clip that did not show Fernandez’s \$1 million offer or KBlock’s acceptance of that offer.²⁶ Although the Applicants did not introduce the truncated video clip into evidence during the hearing, they submitted the clip to the Commission in June 2022 in connection with this appeal. *See Applicants’ Notice of Manual Filing*.

The Hearing Panel did not believe Fernandez’s testimony regarding the truncated video clip. At the hearing, Fernandez claimed that, shortly after he posted the full-length video clip to

²⁶ Even if this were true, and there is no evidence it is, by posting the truncated video to the internet, the Applicants still would have represented that they had invested more than \$100 million in startups, which they had not.

social media in October 2016, Volkell called him and told him “that wasn’t a good thing to put up there[.]” (RP 782-83.) Fernandez said he then removed the full-length video clip and obtained the truncated version of the clip that did not show his \$1 million offer to KBlock. (RP 1503-07, 1833-36.) Fernandez said he posted only the truncated video to DreamFunded’s website and social media, and that Volkell told him in November 2016 that the truncated video was “okay.” (RP 2297-2300.)

Fernandez’s testimony on this issue was contradicted by Volkell’s, which the Hearing Panel found more credible. (RP 4422). Volkell testified that she did not remember speaking with Fernandez about the video clip in October 2016 (RP 2161) and that she had not heard about the truncated video clip until she was asked about it at the hearing (RP 2178.) She also said that if she had spoken to Fernandez about the clip in October 2016, she would not have told him to take it down because, at that point, she had not determined whether DreamFunded’s apparent investment in KBlock violated any rule. (RP 2161-63.) Volkell also testified that she remembered seeing the full-length video clip on DreamFunded’s website and social media throughout 2017 and as late as September 2017. (RP 2032-34, 2235-36, 2835-36.) The Hearing Panel found Volkell’s testimony on this issue credible. (RP 4422.)

The snippets of Volkell’s testimony that the Applicants’ cite in their brief do not undermine the Hearing Panel’s credibility finding. *See Applicants’ Brief* at 13-14. Volkell candidly testified that she could not remember exactly where or when she saw the video clip on DreamFunded’s website and various social media sites. (*See, e.g.*, RP 2021, 2023.) She also could not be certain that, every time she saw the video clip, she watched the entire thing and saw Fernandez make the investment offer to KBlock. (*See, e.g.*, RP 2169-71.) Volkell, however, said she knew that she saw the video clip several times in several different places in 2016 and

2017, and she believed that each time she watched it she saw Fernandez make the \$1 million offer to KBlock. (RP 2233-34.)

Volkell's testimony, unlike Fernandez's, is corroborated by other evidence. Volkell testified that she saw the video clip on DreamFunded's Facebook page on February 15, 2017, and made a screenshot of the page. (RP 2021-2023, 3713.) The screenshot shows that Fernandez posted the video clip of his television appearance to DreamFunded's Facebook page via a YouTube link. (RP 2021-2023, 3713.) Volkell testified that she believed she watched the entire video clip on Facebook and saw Fernandez make the offer to KBlock. (RP 2023.) Volkell's testimony was accurate. The running time of the video clip Volkell saw on DreamFunded's Facebook page is six minutes and 43 seconds.²⁷ (RP 2024.) The running time of the full-length video clip in the record is exactly the same—six minutes and 43 seconds. (RP 2849.) By contrast, the running time of the Applicants' truncated video clip is only four minutes and 59 seconds. The Applicants introduced no evidence to corroborate Fernandez's testimony that the truncated video clip ever was posted on DreamFunded's website, social media, or anywhere else. The NAC properly deferred to the Hearing Panel's credibility finding on this issue and there is no evidence, much less substantial evidence, that would warrant disturbing it.

As a result of misrepresenting how much money they had raised for start-ups and their investment in KBlock, the Applicants violated Funding Portal Rules 200(b) and 200(a).

²⁷ Fernandez claimed the hacker, AH, must have posted the full-length video clip to YouTube. (RP 1107-11, 1120-21, 1836.) The Hearing Panel did not believe Fernandez's testimony (RP 4422) and the NAC deferred to the Hearing Panel (RP 5081). The Applicants have not provided any reason for the Commission to disturb that finding.

2. The Applicants Fraudulently Misrepresented the Diligence They Performed on Issuers

The NAC found that the Applicants violated Funding Portal Rules 200(b) and 200(a) by fraudulently misrepresenting the due diligence they conducted on issuers. (RP 5082-85.) The Applicants do not address this issue in their brief. The record supports the NAC’s finding of violation.²⁸

On DreamFunded’s website, the applicants made extensive representations to investors regarding the due diligence they performed on issuers. For example, they claimed that they conducted a “detailed and time consuming” screening process for issuers and “thoroughly vet[ted] startups prior to featuring them on [the] platform.” (RP 3391, 3396.) They claimed that their “due diligence and deal flow screening team screen[ed] each company” that applied to be on DreamFunded’s platform. (RP 13-14, 132.) They stressed that the screening team and investment committee “review[ed] the due diligence previously completed by angel groups and [venture capital] partners to assure each deal sourced from a third party meets DreamFunded [Marketplace’s] standards for anticipated investment performance.” (RP 3396.) The Applicants also noted that the screening team and investment committee “recognize[] the best practices guide as outlined by the [ACA],” and followed the ACA’s “due diligence guidelines.” (RP 132, 3392.)

The Applicants’ representations were utterly false. There is no credible evidence in the record that the Applicants had a screening team or a system for evaluating issuers or their offerings. Fernandez’s hearing testimony on this issue was vague and unbelievable. Fernandez said that “everyone” at DreamFunded was a member of the due diligence and deal-flow

²⁸ As a funding portal, DreamFunded was not required to conduct diligence on issuers. Having made representations about its diligence, however, it was required to be honest.

screening teams but that he led the effort. (RP 716-17.) He said there was no list identifying who was on the due diligence or the deal-flow screening teams and that meetings of the team were not documented. (RP 716-18.) Although the applicants claimed to follow an ACA checklist for due diligence guidelines, there is no documentary corroboration for that claim. (RP 713-14.) Fernandez produced a generic template of a due diligence checklist but no examples of its use. Fernandez said he “didn’t keep them,” and “threw them away,” (RP 714) because they were not important (RP 719.) Indeed, Fernandez said that he threw away “[a] lot of paper” related to diligence, and that, to the extent the Applicants kept any of their diligence materials, those materials were in DropBox, and he had given the Applicants’ former attorneys access to them. (RP 719, 724-26.) The lack of any contemporaneous documentary evidence of the Applicants’ purportedly “detailed and time consuming” screening process belies the Applicants’ representations and Fernandez’s testimony on this issue.

The Applicants’ misrepresentations about their due diligence were material. The Applicants falsely represented to investors that they conducted the same type of due diligence as venture capitalists in private offerings, and that they had an experienced due diligence and deal flow screening team and investment committee to review the issuers and offerings posted to DreamFunded’s website. A reasonable investor would consider this information important in deciding whether to invest in one of DreamFunded’s crowdfunding offerings. *See Blank v. TriPoint Glob. Equities, LLC*, 338 F. Supp. 3d 194, 211 (S.D.N.Y. 2018) (finding that the defendant’s misrepresentations about its due diligence were material).

The Applicants acted with scienter. The Applicants knew they did not conduct due diligence in the manner they represented on their website. The Applicants either knew that their

representations about their diligence were likely to mislead investors, or they recklessly disregarded the risk that they would.

The Applicants' misrepresentations about their diligence were in connection with the purchase or sale of a security. The Applicants used the misrepresentations about their diligence to promote themselves to individuals and entities that wanted to participate in crowdfunding transactions. (RP 712.)

As a result of misrepresenting the diligence they performed on issuers, the Applicants violated Funding Portal Rules 200(b) and 200(a).

E. The Applicants Violated Funding Portal Rules 200(c)(2) and 200(a) by Posting Misleading Advertisements for Real Estate Investments on DreamFunded's Website

The NAC found that the Applicants violated Funding Portal Rule 200(c)(2) by making negligent misrepresentations about the real estate transactions the Applicants posted on DreamFunded's website. The Applicants do not address this issue in their brief. The record supports the NAC's finding of violation.

Funding Portal Rule 200(c)(2) prohibits a funding portal from providing or distributing any communication containing "any false, exaggerated, unwarranted, promissory or misleading statement or claim[.]" The NAC held that, because Funding Portal Rule 200(c)(2) is similar to FINRA Rule 2210(d)(1), proof of negligence, rather than scienter, was sufficient to establish a violation. (RP 5074-75.) A violation of Funding Portal Rule 200(c)(2) violates Funding Portal Rule 200(a). *Cf. Gluckman*, 54 S.E.C. at 185.

The real estate advertisements the Applicants posted on DreamFunded's website were misleading in three ways. First, the advertisements made it appear that the real estate investments were part of DreamFunded's crowdfunding business when they were not. (RP 762.) The real estate transactions occurred before DreamFunded began operating as a funding portal.

(RP 763.) Second, the advertisements made it appear that investors could expect a high rate of return when no such guarantee could be made. (RP 3235-80.) Third, the advertisements made it appear that investing in real estate was comparable to purchasing certificates of deposit, which was not true because the real estate transactions depicted in the advertisements were not federally insured. (RP 3235.)

By posting misleading real estate advertisements to DreamFunded's website, the Applicants violated Funding Portal Rules 200(c)(2) and 200(a).

F. The Applicants Violated Crowdfunding Rule 301(c) and Funding Portal Rule 200(a) by Failing to Conduct Background and Securities Enforcement Regulatory History Checks on Issuers

The NAC found that the Applicants violated Crowdfunding Rule 301(c) and Funding Portal Rule 200(a) by failing to conduct required background checks on issuers and certain individuals involved in offerings. The Applicants do not address this issue in their brief. The record supports the NAC's finding of violation.

Under Crowdfunding Rule 301(c), a funding portal must deny access to its platform if it has a reasonable basis to believe that the issuer or any of its officers, directors or certain beneficial owners of its securities is subject to a disqualification under Crowdfunding Rule 503. 17 CFR § 227.301(c)(1). In satisfying this requirement, a funding portal must, at a minimum, conduct a background and securities regulatory enforcement history check on each issuer whose securities it will offer on its platform and on each of the issuer's officers, directors, and certain beneficial owners of its securities. *Id.* A violation of Crowdfunding Rule 301(c) also violates Funding Portal Rule 200(a). *Cf. Gluckman*, 54 S.E.C. at 185.

The Applicants did not conduct the required background checks and securities enforcement history checks for the issuers who offered securities through DreamFunded, nor did they do so for the individuals identified in Crowdfunding Rule 301(c)(1). Fernandez's testimony

about whether the Applicants' conducted the checks was vague, uncorroborated, and unbelievable. At various times during the hearing, Fernandez claimed that (1) he performed the checks on all issuers (RP 1326), (2) a private investigator performed the checks on some issuers (RP 733, 750-51, 757-58), and (3) FundAmerica provided the checks on some issuers (RP 758-59). The Hearing Panel did not believe Fernandez's testimony on this issue because there was no corroborating documentary evidence that the checks were performed on any issuer. (RP 4486.)

Fernandez tried to explain the lack of documentary evidence for the checks he purportedly conducted on every issuer by saying that he documented only some of the checks, and that he kept only some of the documentation for those checks. Fernandez said, "If it wasn't important, I didn't keep it." (RP 732-33). But there is no documentary evidence in the record that Fernandez conducted *any* checks. Moreover, Fernandez's hearing testimony on this issue was contradicted by his OTR testimony. When Fernandez was asked at his OTR whether the Applicants conducted the required checks, Fernandez replied, "I don't believe so." (RP 3544.)

Considering the importance of the background and securities regulatory enforcement history checks, the Hearing Panel found that "[t]he lack of even a scrap of paper or any digital record evidencing any background check or regulatory history renders Fernandez's testimony utterly devoid of credibility." (RP 4490.) The NAC deferred to the Hearing Panel's well-supported credibility finding, and the Applicants have not provided any basis for the Commission to disturb it.

By failing to conduct required background and securities regulatory enforcement history checks, the Applicants violated Crowdfunding Rule 301(c) and Funding Portal Rule 200(a).

G. The Applicants Violated Crowdfunding Rules 303 and 304 and Funding Portal Rule 200(a) by Failing to Provide Required Notices to Investors

The NAC found that the Applicants failed to provide to investors certain notices required under the Crowdfunding Rules. The Applicants did not address this issue in their brief. The record supports the NAC's findings of violation.

1. The Applicants Failed to Provide Material Change Notices to Bluurp Investors

Under Crowdfunding Rule 304(c), a funding portal must give or send notice to all offering investors whenever there is a material change to the offering's terms or the information provided by the issuer to investors. 17 C.F.R. § 227.304(c)(1). The notice must inform investors that their commitments will be cancelled unless they reconfirm their commitments within five business days of receiving the notice. *Id.* If an investor fails to reconfirm, the funding portal must cancel the commitment and direct the refund of the investor's funds. *Id.* A violation of Crowdfunding Rule 304(c) violates Funding Portal Rule 200(a). *Cf. Gluckman*, 54 S.E.C. at 185.

The Applicants failed to provide the required notice of a material change to Bluurp's offering's terms. On June 19, 2017, Bluurp filed an amendment to its Form C disclosing that the target offering amount had been lowered to \$4,000.²⁹ (RP 3055, 3699.) On the Form C amendment, Bluurp checked the box indicating that the "[a]mendment is material and investors must reconfirm within five business days." (RP 3055.) The Applicants, however, did not give or send notice of the change in the offering's terms to Bluurp's investors until September 2017, by which time they already had released the investors' money to Bluurp. The Applicants therefore

²⁹ The amendment did not disclose that the offering was closing early. (RP 3056.)

deprived investors of their right to cancel their commitment before their money was released. As a result, the Applicants violated Crowdfunding Rule 304(c) and Funding Portal Rule 200(a).

2. The Applicants Failed to Provide Early Closing Notices to Bluurp and Me Tyme Investors

Under Crowdfunding Rule 304(b), an issuer may not close an offering before the deadline identified in its Form C unless the funding portal gives or sends notice to investors of (1) the new offering deadline, (2) their right to cancel their investment commitments until 48 hours before the new offering deadline, and (3) whether the issuer will continue accepting investment commitments during the 48-hour period prior to the new offering deadline. 17 C.F.R. § 227.304(b)(2). The new offering deadline must be at least five days after the required notice is given. 17 C.F.R. § 227.304(b)(3). A violation of Crowdfunding Rule 304(b) violates Funding Portal Rule 200(a). *Cf. Gluckman*, 54 S.E.C. at 185.

The Applicants failed to provide the required notice of Bluurp's and Me Tyme's early closings. Bluurp's offering initially was supposed to remain open until September 26, 2017. (RP 2939.) The offering closed three months early in June 2017. Me Tyme's offering initially was supposed to remain open until June 30, 2017. (RP 2874.) The offering closed two months early in April 2017. (RP 3373.) The Applicants did not give investors notice of Bluurp's or Me Tyme's early closings, thereby depriving those investors of the opportunity to cancel their investments before their funds were released. (RP 2501, 3929.) As a result, DreamFunded and Fernandez violated Crowdfunding Rule 304(b) and Funding Portal Rule 200(a).

3. The Applicants Failed to Provide Investment Commitment Notices to Bluurp and Me Tyme Investors

Under Crowdfunding Rule 303(d), upon receipt of an investment commitment from an investor, a funding portal must give or send notice to the investor of (1) the dollar amount of the commitment, (2) the price of the securities, (3) the issuer's name, and (4) the deadline by which

the investor may cancel the investment commitment. 17 CFR § 227.303(d). A violation of Crowdfunding Rule 303(d) also violates Funding Portal Rule 200(a). *Cf. Gluckman*, 54 S.E.C. at 185.

The Applicants failed to provide compliant investment commitment notices to Bluurp and Me Tyme investors. DreamFunded's escrow service, FundAmerica, provided notices to investors after receiving their funds, but these notices did not comply with Crowdfunding Rule 303(d) because they did not inform investors of their right to cancel their commitment up until a certain date and time. (RP 2501-03, 3153, 3158-63.) As a result, the Applicants violated Crowdfunding Rule 303(d) and Funding Portal Rule 200(a).

4. The Applicants Failed to Provide Investment Confirmation Notices to Bluurp and Me Tyme Investors

Under Crowdfunding Rule 303(f), a funding portal must, at or before a crowdfunding transaction closes, give or send to each investor an investment confirmation notice disclosing, among other things, (1) the date of the transaction, (2) the type of security the investor is purchasing, (3) the identify, price, and number of securities purchased by the investor, as well as the number of securities sold and the price(s) at which the securities were sold. 17 CFR § 227.303(f). A violation of Crowdfunding Rule 303(f) violates Funding Portal Rule 200(a). *Cf. Gluckman*, 54 S.E.C. at 185.

The Applicants failed to provide compliant investment confirmation notices to Bluurp and Me Tyme investors. FundAmerica sent Bluurp and Me Tyme investors emails purporting to be investment confirmation notices. The emails confirmed the closing of the offering and the amount of money the investor had invested. (RP 2503-05, 3164-65.) The emails, however, did not contain all of the information required under Crowdfunding Rule 303(f). They did not, for example, disclose the price of the securities or the number of securities sold in the offering. (RP

3164-65.) The emails simply told investors that their funds had been disbursed to the issuer. (RP 3164-65.) As a result, the Applicants violated Crowdfunding Rule 303(f) and Funding Portal Rule 200(a).

H. The Applicants Failed to Implement Policies and Procedures Reasonably Designed to Supervise DreamFunded and Its Associated Persons

The NAC found that the Applicants failed to establish reasonable written policies and procedures to review issuer filings and issue notices to investors. (RP 5098.) The NAC also found that the Applicants failed to implement policies and procedures necessary to supervise DreamFunded’s activities, monitor its associated persons, and ensure DreamFunded’s compliance with the securities laws, SEC rules, and FINRA rules. (RP 5098.) The Applicants do not address this issue in their brief. The record supports the NAC’s findings of violation.

Under Crowdfunding Rule 403(a), a funding portal must “implement written policies and procedures reasonably designed to achieve compliance with the federal securities laws and the rules and regulations thereunder relating to its business as a funding portal.” 17 C.F.R. § 227.403(a). Under Funding Portal Rule 300(a)(1), a funding portal must “establish and maintain a system to supervise the activities of each associated person of the funding portal member that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with [FINRA’s] [f]unding [p]ortal [r]ules.” The funding portal’s supervisory system must, at a minimum, provide for (1) the establishment and maintenance of written supervisory procedures (“WSPs”) to supervise the activities of the funding portal and its associated persons, (2) the designation of a person with authority to carry out the funding portal’s supervisory responsibilities, and (3) reasonable efforts to determine that all supervisory personnel are qualified by virtue of experience or training to carry out their responsibilities. A violation of

Crowdfunding Rule 403(a) or Funding Portal Rule 300(a)(1) also violates Funding Portal Rule 200(a). *Cf. Gluckman*, 54 S.E.C. at 185.

Fernandez was responsible for DreamFunded's supervisory system and WSPs. (RP 2787, 2828.) DreamFunded's WSPs had eight substantive sections. In each of those sections, the WSPs identified Fernandez as the responsible person. (RP 2760, 2765, 2770, 2775, 2782, 2784, 2787, 2788, 2796, 2802, 2806, 2811, 2824, 2826, 2828-29.) DreamFunded's WSPs were not tailored to address the risks associated with a funding portal business. Fernandez admitted that an attorney prepared the WSPs as part of a "package deal," the WSPs were based on "a boilerplate document," and the WSPs were "more like brokerage firm's or something." (RP 1275-77, 1295, 1305.) The WSPs quote sections of the Crowdfunding Rules and Funding Portal Rules without explaining how those rules, or the WSPs more broadly, apply to DreamFunded's business. For example, the WSPs section on due diligence quoted the entirety of Crowdfunding Rule 301. (RP 2824-26.) It provided no criteria to evaluate whether an issuer or offering presented indicia of fraud, and it offered no guidance on what DreamFunded should do when an issuer or offering raised investor protection concerns. (RP 2824-26.)

The Applicants failed to implement the WSPs. Although Fernandez claimed that he conducted supervisory reviews of DreamFunded's activities, the Applicants produced no documentation to support his claims. Fernandez admitted that he did not distribute the WSPs to each of DreamFunded's associated persons. (RP 1280.) He said he kept the WSPs in electronic format in his email and on DropBox, and that WSPs were not a "public document." (RP 1275-76, 1280.) When asked how often he "used" the WSPs, Fernandez answered, "I think infrequently is a pretty good answer." (RP 1275-76.)

The Applicants did not establish or implement the necessary policies and procedures to supervise DreamFunded’s activities or its associated persons. As a result, the Applicants violated Crowdfunding Rule 403(a) and Funding Portal Rules 300(a) and 200(a).

I. FINRA’s Proceeding Was Fair

1. The Applicants Were Not Selectively Prosecuted

The Applicants’ claim that they were selectively prosecuted is unfounded. *See* Applicants’ Brief at 10-11. To establish a claim of selective prosecution, the Applicants must demonstrate that FINRA unfairly singled them out for enforcement action when others similarly situated were not, and that the prosecution was motivated by improper considerations such as race, religion, or the desire to prevent the exercise of a constitutionally protected right. *Fuad Ahmed*, Exchange Act Release No. 81759, 2017 SEC LEXIS 3078, at *48 (Sept. 28, 2017).

The record shows that FINRA’s investigation in this matter arose from irregularities identified during routine surveillance, not any purported bias against the Applicants. FINRA opened its investigation into the Applicants because (a) Fernandez offered to invest \$1 million in KBlock on national television and posted a video clip of it on the internet (RP 2007-08, 2021), and (b) the Applicants removed open crowdfunded offerings from their website and replaced them with fraudulent advertisements for real estate investments (RP 2474-75, 2476-78, 2487-91).

There is no evidence to support the Applicants’ allegation that they were “chosen to be the subject of an investigation” because Doolittle was related to AH, a former DreamFunded employee and purported hacker, whom Fernandez had terminated. Applicants’ Brief at 11. Contrary to the Applicants’ assertion, Doolittle is not related to AH. *See* Declaration of Joshua

Doolittle.³⁰ In fact, Doolittle has never met AH and has never spoken or otherwise communicated with AH. *See id.*

There also is no evidence that Doolittle said anything improper during a telephone call with the Applicants in late October 2017 regarding a possible settlement of FINRA’s allegations of wrongdoing. As an initial matter, the settlement discussions between FINRA staff and the Applicants are not relevant to FINRA’s findings of violation or the sanctions it imposed. *See Richard A. Neaton*, Exchange Act Release No. 2011 SEC LEXIS 3719, at *36 (Oct. 20, 2011) (“[S]ettlement negotiations are irrelevant to our decision here.”); *Kent M. Houston*, Exchange Act Release No. 71589A, 2014 SEC LEXIS 4611, at * 32 (Feb. 20, 2014) (“But [FINRA] had no obligation to settle this proceeding on [applicant’s] terms, and settlement negotiations are irrelevant to the sanctions determination.”).

In any event, the audio recording of the telephone call that the Applicants submitted to the Commission shows that Doolittle did nothing wrong. The Applicants suggest that the telephone call is evidence of Doolittle’s bias because he allegedly stated that “Fernandez would be barred regardless of whether or not he complied with [the FINRA Rule 8210] request.” Applicants’ Brief at 12-13, 16-17. The Applicants mischaracterize what Doolittle said. As evidenced by the audio recording, Doolittle explained that if the Applicants entered into a settlement based on Enforcement’s findings as of that date, the settlement would state that the Applicants committed violations related to crowdfunding offerings and failed to provide records relating to DreamFunded’s finances. DreamFunded and Fernandez would be expelled and barred, respectively, under the terms of the proposed settlement. Doolittle further explained that, if the Applicants waited until later to settle, i.e., after FINRA staff investigated further, a

³⁰ FINRA is filing a motion to adduce Doolittle’s declaration as additional evidence.

settlement might include findings that the Applicants misused investors' funds, too. Doolittle made clear that if that happened, DreamFunded and Fernandez still would be barred and expelled, respectively, and Fernandez might have "potential criminal liability" for his misuse of investors' funds. Doolittle made clear that FINRA staff had "serious concerns" about the Applicants' conduct, and likely would issue a Wells notice if the Applicants did not settle. Doolittle said nothing improper during the telephone call and the Applicants' audio recording proves it.³¹

The Applicants point to no credible evidence that FINRA selectively targeted them because there is none.

2. Fernandez Was Not Impaired During the Proceeding

There is no evidence Fernandez was impaired during his OTR with FINRA staff or during the hearing. The Applicants contend Fernandez's OTR testimony "should not be admissible due to Fernandez's mental state during" the OTR. Applicants' Brief at 15. As noted above, however, at the outset of the interview, Fernandez told FINRA staff that he was not feeling the effects of the medication he was taking (RP 3407), and Doolittle, who participated in the OTR, testified that Fernandez appeared lucid and unimpaired during it (RP 956, 1072). In any event, the Applicants waived their objection to the admission of Fernandez's OTR transcript by not raising it during the hearing. *See Edward C. Farni II*, 51 S.E.C. 1118, 1119 n.4 (1994). In fact, the Applicants' attorney, not Enforcement's, is responsible for moving the entire OTR transcript into evidence. (RP 640.)

³¹ At the hearing, the Applicants' attorney threatened to play the audio recording of the telephone call and said it would prove that Doolittle "perjured himself" when he testified at the hearing. (RP 1587-88; *see also* RP 1100, 1252.) Tellingly, the Applicants never played the audio.

The Applicants cite no evidence to support their claim that Fernandez “did not have the ability to consult and/or assist his lawyer during the hearings” and “was unable to have a rational understanding of what was taking place in those hearings.” Applicants’ Brief at 15. The transcript from the hearing does not indicate that Fernandez could not assist his counsel, nor does it suggest that he did not understand what was happening.

V. Sanctions

The sanctions the NAC imposed for the Applicant’s violations are appropriately remedial and are neither oppressive nor excessive. *See* 15 U.S.C. § 78s(e)(2).³²

A. An Expulsion and Bar Are Appropriate for the Applicants’ Failure to Produce Banking and Accounting Records

The NAC expelled DreamFunded and barred Fernandez for their failure to comply fully with the Fourth Request. (RP 5102-05.) The expulsion and bar are appropriate for these violations.

The NAC considered the Applicants’ failure to produce the requested banking and accounting records as a partial and incomplete response to a FINRA Rule 8210 request. (RP 5103.) For an individual who provides a partial and incomplete response, the FINRA Sanction Guidelines (the “Guidelines”) provide that a bar is standard “unless the [individual] can demonstrate that the information provided substantially complied with all aspects of the request.” *FINRA Sanction Guidelines* 33 (March 2019) (*hereinafter* “*Guidelines*”).³³ For a firm, the

³² The Applicants do not assert that any sanction imposes a burden on competition.

³³ The Guidelines are available online at https://www.finra.org/sites/default/files/2020-10/2019_Sanctions_Guidelines.pdf.

Guidelines recommend an expulsion in egregious cases, or, if mitigation exists, a suspension with respect to any or all activities or functions for up to two years. *Id.*

A bar and expulsion are appropriate here because the Applicants did not substantially comply with all aspects of FINRA's request. The Fourth Request sought 46 months of bank account statements for DreamFunded, DreamFunded Parent, and Fernandez, and accounting and bookkeeping records of DreamFunded and DreamFunded Parent for the same period. The Applicants did not provide any of the requested accounting records nor did they provide any account statements for Fernandez. The Applicants provided only 16 statements for their other six accounts for the entire 46-period.³⁴ They provided another 24 statements for five of their accounts to the MAP group as part of the membership application group.³⁵ The Applicants therefore did not substantially comply with the request.

The Guidelines state that the importance of the information requested, as viewed from FINRA's perspective, is a principal consideration in determining sanctions. *Id.* This factor favors an expulsion and bar. The banking and accounting records the Applicants failed to provide were extremely important from FINRA's perspective. *See id.* FINRA sought the records because Fernandez's OTR testimony raised questions about his handling of almost \$1 million of investors' money. Fernandez admitted to paying more than \$40,000 of the investors' money to his wife, his teenaged daughter, and his teenaged sister. The Applicants' failure to

³⁴ As noted above, the Applicants provided some accounting records and additional account statements in September 2018, after FINRA filed the complaint. The NAC did not give the Applicants mitigation credit for those documents. *Cf. Guidelines*, at 33 (explaining that responses after the filing of a complaint constitute a complete failure to respond).

³⁵ The NAC credited the Applicants with the account statements they provided to the MAP group. (RP 5104.)

produce all of the requested banking and accounting records, however, made it impossible for FINRA staff to further investigate Fernandez's handling of the investors' funds.³⁶

Another principal consideration is the number of requests made, the time it took to respond, and the degree of regulatory pressured required to obtain a response. *Id.* This factor also favors an expulsion and bar. FINRA's request for banking and accounting records was straightforward. The Applicants easily could have obtained any records that existed. Still, FINRA staff had to send multiple requests, repeatedly communicate with the Applicants and their attorneys, and grant several extensions of the response deadline.

The Applicants had no valid reason for the deficiencies in their response. *See id.* Fernandez alternatively claimed personal illness and lack of access to the documents. None of these, however, explains the Applicants' failure to respond fully to FINRA's request.

The expulsion and the bar imposed on DreamFunded and Fernandez, respectively, are appropriately remedial for the Applicants' failure to produce all the banking and accounting records that FINRA requested.³⁷ *See John M.E. Saad*, Exchange Act Release No. Release No.

³⁶ The NAC acknowledged that the monthly account statements the Applicants provided were relevant and responsive to the request. (RP 5104.) *See Guidelines*, at 33 (Principal Considerations in Determining Sanctions No. 1).

³⁷ The Applicants claims of mitigating factors are meritless. The Applicants argue that the brevity of DreamFunded's time as a FINRA member and Fernandez's time as an associated person is mitigating for all violations. Applicants' Brief at 9. It is not. To the contrary, the evidence shows that the Applicants' misconduct occurred throughout DreamFunded's FINRA membership. That is aggravating, not mitigating. *See Guidelines*, at 7 (Principal Considerations in Determining Sanctions Nos. 8, 9). The Applicants also point out that the NAC did not find that Fernandez converted funds and claim "DreamFunded had no investor loss[.]" Applicants' Brief at 9-10. Neither is mitigating. Moreover, whether Fernandez converted funds or any investors lost money is not known because the Applicants' failed to produce the requested banking and accounting records.

86751, 2019 SEC LEXIS 2216, at *19 (Aug. 23 2019) (holding that a bar is remedial if necessary to protect investors), *aff'd*, 980 F.3d 103 (D.C. Cir. 2020).³⁸

B. An Expulsion and Bar Are Appropriate for the Applicants' Misrepresentations

The NAC expelled DreamFunded and barred Fernandez for their fraudulent and negligent misrepresentations. (RP 5106-08.) The expulsion and bar are appropriately remedial for these violations.³⁹

In determining the appropriate sanction for the Applicants' misrepresentations, the NAC considered the Guidelines for misrepresentations in violation of FINRA Rule 2020, and for misleading communications with the public in violation of FINRA Rule 2210. (RP 5106.) For fraudulent misrepresentations in violation of FINRA Rule 2020, the Guidelines advise adjudicators to strongly consider barring an individual unless mitigating factors predominate. *Guidelines*, at 89. For firms, the Guidelines advise adjudicators to consider suspending the firm with respect to any or all activities for up to two years. *Id.* Where aggravating factors predominate, the Guidelines advise adjudicators to "strongly consider expelling the firm." *Id.*

For negligent misrepresentations in violation of FINRA Rule 2210, the Guidelines advise adjudicators to consider imposing a fine of \$1,000 to \$31,000 and, in egregious cases, suspending the responsible individual in any or all capacities for up to six months. *Id.* at 80. For firms, the Guidelines recommend suspending the firm with respect to any or all activities or functions for up to six months or, in egregious cases, up to one year. In all cases, the Guidelines

³⁸ The issues the Applicants raise regarding *Kokesh v. SEC* (see Applicants' Brief at 8-9) were resolved in *Saad v. SEC*, 980 F.3d 103 (D.C. Cir. Nov. 6, 2020).

³⁹ The NAC imposed one sanction for the fraudulent and negligent misrepresentations.

advise adjudicators to consider whether the violative communications with the public were circulated widely. *Id.*

The Applicants' misrepresentations were egregious. The Applicants knew that the video clip of Fernandez's television appearance misrepresented how much they had invested in startups, generally, and also misrepresented how much they had invested in KBlock, specifically. Nevertheless, the Applicants uploaded the video clip to DreamFunded's website and social media and allowed it to remain there for nearly two years. The Applicants' misrepresentations about their issuer due diligence are equally as dangerous. The Applicants represented to investors that they conducted the same type of due diligence as venture capitalists in private offerings, and that they had an experienced due diligence and deal flow screening team and investment committee to review the issuers and offerings posted to DreamFunded's website. None of this was true. These misrepresentations gave investors a grossly inflated sense of the Applicants' experience and the quality of the securities offered through DreamFunded. Although less serious than their other misrepresentations, the Applicants' misrepresentations about the real estate transactions are still quite troubling. The advertisements the Applicants posted made it appear that the real estate investments were part of DreamFunded's crowdfunding business when they were not, that investors could expect a high rate of return when no such guarantee could be made, and that investing in real estate was comparable to purchasing certificates of deposit when it is not.

The Applicants' misrepresentations present a disturbing pattern of misconduct that seems singularly focused on presenting Fernandez as a wealthy, savvy investor that other investors should emulate. The quantity and the nature of the Applicants' misrepresentations strongly suggests that nothing less than an expulsion and bar will prevent their reoccurrence in the future.

The NAC's imposition of the expulsion and bar therefore is appropriately remedial. *See Saad*, 2019 SEC LEXIS 2216, at *19.

C. An Expulsion and Bar Are Appropriate for the Applicants' Supervisory and Related Violations

The NAC aggregated sanctions for the remaining violations because they all arose from the Applicants' supervisory failures. (RP 5108-11.) The expulsion and the bar the NAC imposed for these violations are appropriately remedial.

For systemic supervisory failures, the Guidelines recommend a fine of \$10,000 to \$77,000 for the responsible individual and a fine of \$10,000 to \$310,000 for the firm. Where aggravating factors predominate the individual's or firm's misconduct, the Guidelines direct adjudicators to "consider a higher fine." "Where the deficiency persists," the Guidelines suggest suspending the responsible individual in any or all capacities for a period of 10 business days to six months. Where aggravating factors predominate that individual's misconduct, however, the Guidelines recommend suspending the responsible individual in any or all capacities for a period of 10 business days to two years, or a bar of the individual. For a firm, where aggravating factors predominate the misconduct, the Sanction Guidelines suggest a suspension of the firm with respect to any or all relevant activities or functions for a period of 10 business days to two years, or an expulsion of the firm.

The Applicants abdicated their gatekeeper responsibility, and their supervisory violations were egregious. Supervision was nonexistent at DreamFunded. The WSPs largely quoted the Crowdfunding Rules and the Funding Portal Rules word for word. Moreover, the WSPs were not used because the Applicants did not even distribute them to employees. And the Applicants themselves failed to implement the WSPs. By completely failing to supervise, the Applicants multiplied the risks inherent in crowdfunded offerings. The Applicants failed to comply with

even the most basic rules of the securities industry, and therefore an expulsion and bar are necessary for the protection of investors. *See Saad*, 2019 SEC LEXIS 2216, at *19.

VI. Conclusion

For all of the foregoing reasons, the Commission should dismiss the application for review.

Respectfully submitted,

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Dated: August 9, 2022

CERTIFICATE OF COMPLIANCE

I, Michael M. Smith, certify that:

(1) this brief complies with SEC Rule of Practice 450(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 13,788 words; and

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

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Michael M. Smith, certify that on this 9th day of August, 2022, I caused a copy of the foregoing FINRA’s Brief in Opposition to the Applicant for Review, in the matter of the *Application for Review of DreamFunded Marketplace LLC and Manuel Fernandez*, Administrative Proceeding File No. 3-20639, to be filed through the SEC’s eFAP system and served by electronic mail on:

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Respectfully submitted,

/s/ Michael M. Smith
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