U.S. SECURITIES & EXCHANGE COMMISSION

In the Matter of the Application of

Thomas Lee Johnson,

For Review of

FINRA Disciplinary Action

File No. 3-20646

THOMAS LEE JOHNSON'S BRIEF IN REPLY TO FINRA'S BRIEF IN OPPOSITION TO MOTION TO STAY

Thomas Lee Johnson ("Applicant" or "Mr. Johnson"), by and through undersigned counsel, hereby responds to FINRA's opposition to Applicant's Motion for Stay.

The National Adjudicatory Council ("NAC") erred in affirming the Hearing Panel's decision that Mr. Johnson committed conversion in violation of FINRA Rule 2010. The bar imposed by the NAC on October 6, 2021, was grossly excessive, inherently punitive, and was premised upon a misreading of the law and factual determinations not supported by the record. Mr. Johnson's motion to stay the bar imposed by the NAC should be granted because he meets the factors considered by the Commission in determining whether a stay is appropriate.

I. Legal Standard

The Commission's consideration of requests for a stay is generally governed by a four-factor standard: (1) whether there is a strong likelihood that a party will succeed on the merits in a proceeding challenging the particular Commission action (or, if the other factors strongly favor a stay, that there is a substantial case on the merits); (2) whether, without a stay, a party will suffer irreparable injury; (3) whether there will be substantial harm to any person if the stay were

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granted; and (4) whether the issuance of a stay would likely serve the public interest. *See Order Preliminarily Considering Whether to Issue Stay Sua Sponte and Establishing Guidelines for Seeking Stay Applications*, Exchange Act Release No. 33870 (Apr. 7, 1994), 56 SEC Docket 1189, 1190-91 (Apr. 26, 1994). The evaluation of the factors enumerated by the Commission, according to the release, will vary with the "equities and circumstances" of the case before the Commission. *Id. See also In re Hibbard, Brown & Co. et al.*, Admin. Proc. File No. 3-8418, SEC Press Release No. 94-72 (Aug. 2, 1994) at 4.

As discussed below, Mr. Johnson has demonstrated that the Commission should grant the stay of the NAC's inappropriate and excessive imposition of lifetime bar from the securities industry.

II. Application

i. Likelihood of Success on the Merits

The bar imposed by the NAC against Mr. Johnson is not supported by the law or the record evidence. Conversion is defined as an "intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it." FINRA Sanction Guidelines at 36 & n.2 (2020). Thus, for Mr. Johnson to have converted funds, he was required to exercise ownership over funds that belonged to someone else, which he was not entitled to possess. Specifically, Mr. Johnson was charged by FINRA as having converted funds belonging to RBC Capital Markets ("RBC" or the "Firm"). *See* Enforcement Complaint at ¶ 20 attached hereto.

On this fundamental point of fact and law, the NAC concluded that, "logic dictates that the excess funds that RBC (or its outside vendor) deposited into Johnson's account belonged to RBC. Even assuming the provenance of the funds was unknown, it is immaterial for the finding

that Johnson improperly exercised ownership over funds to which he was not entitled." *See* NAC Decision at 9 fn. 9, attached hereto. The NAC's conclusion was erroneous and based on speculation. The ownership of the funds is not immaterial, it is *critical* to determining whether conversion occurred, especially when the Complaint alleged Mr. Johnson converted RBC funds. There was no record evidence presented at the hearing that the funds in Mr. Johnson's personal account, which resulted from the involuntary liquidation of shares he owned and possessed, belonged to RBC (or any other entity). Mr. Johnson could not have converted funds he rightfully possessed from the liquidation of shares he owned. Moreover, RBC's liquidation of Mr. Johnson's securities was mispriced and was not rebilled until two weeks later. *Id.* at 6. Those funds were rightfully in Mr. Johnson's possession until the transaction was rebilled, at which time, he returned any funds he was not entitled to in less than 24 hours. *Id*. Mr. Johnson did not remove the excess funds into cash or spend any of the funds. The conversion charge in this matter is dubious and the NAC's conclusion that Mr. Johnson committed conversion of funds was based on a misapprehension of the law and was not supported by the record evidence.

As for the NAC's imposition of a bar, under the Securities Exchange Act of 1934 ("Exchange Act"), the Commission may overturn FINRA sanctions that are excessive or oppressive or impose an unnecessary or inappropriate burden on competition. 15 U.S.C. § 78s(e)(2). A bar under the circumstances present in this matter, where no customer or firm was harmed and no funds were spent or misappropriated, is excessive and oppressive. This matter concerns an isolated incident that arose as the result of a transactional error in foreign currency. Mr. Johnson's conduct did not involve any clients, but rather involved his trading account in securities that were involuntarily liquidated. This transaction came upon Mr. Johnson, he did not

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plan or cause it to occur. In the event any sanction is imposed, it should not rise to the level of a punitive bar.

Accordingly, Mr. Johnson is likely to succeed on the merits resulting in a dismissal of the conversion charge and a dismissal or modification of the bar.

ii. Irreparable Harm

If the punitive sanction of a lifetime bar from the securities industry is not stayed, Mr. Johnson will continue to suffer irreparable harm. To be cognizable, an asserted irreparable "injury must be both certain and great; it must be actual and not theoretical." *See, e.g.,* Wisc. Gas Co. v. FERC, 758 F.2d 669, 674 (D.C. Cir. 1985).

Mr. Johnson was the Chief Compliance Officer of Royal Capital Wealth Management, LLC ("RCWM") prior to the NAC's affirmation of the bar. *See* Declaration of Thomas Lee Johnson at ¶ 3. As a result of the NAC's decision, he has vacated that role and was informed by Charles Schwab & Co., Inc ("Schwab")[1], the RIA platform that RCWM uses to custodian their client assets, that he cannot access or utilize its RIA platform.[2] *Id*. at ¶¶ 4-5. Prior to the NAC's decision, Mr. Johnson was responsible for all aspects of the relationships between RCWM's clients and Schwab, from daily account maintenance to portfolio management, including entering securities transactions through Schwab on behalf of RCWM's clients. *Id*. at ¶ 7.

The effect of not being able to enter securities transactions at Schwab has caused irreparable harm to Mr. Johnson in severely impairing his ability to perform work on behalf of RCWM's clients. *Id* at ¶ 14. The harm suffered is great and actual—it has rendered Mr. Johnson essentially useless to his clients and to RCWM.

[1] Charles Schwab & Co., Inc. (CRD#: 5393/SEC#: 801-29938,8-16514).

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Accordingly, the bar should be set aside pending this appeal. Further, based on the irreparable harm, a stay is warranted even if a lesser suspension is later imposed after review because of the potentially months' long review process.

iii. Harm to Others and the Public Interest

If the bar is not stayed, the clients of RCWM will be substantially harmed and the public interest will not be served. RCWM is a two- person firm owned and operated by Mr. Johnson and his brother, Andrew J. Johnson. *Id.* at ¶¶ 1-2. RCWM serves approximately 50 households, all of which are long-standing clients. *Id*. at ¶ 9. Mr. Johnson played a vital role at RCWM for clients of the firm in administering and executing securities transaction on their behalf, which he can no longer do while barred. *Id*. at ¶ 7. As a result, Andrew Johnson has been forced to come out of semi-retirement to serve the clients of RCWM. *Id.* at ¶ 8. Mr. Johnson has no prior disciplinary history, he has not received a single customer complaint in his career, the bar is disclosed on RCWM's Form ADV filed with the Commission, and he has acted in accord with all industry standards, including a 2020 Commission exam of RCWM with no findings of material events. *Id*. ¶¶ 10-13. Mr. Johnson is a trusted advisor of RCWM's clients, and he works diligently to meet their needs on a daily basis. The bar limits his capacity to a point where he cannot serve them in a manner that they are accustomed to and expect.

In sum, Mr. Johnson poses no risk to RCWM's clients and the investing public. Contrary to FINRA's baseless position, the imposition of the bar will certainty have a negative effect on RCWM, RCWM's clients, and the public interest. The equities and circumstances of this matter weigh in favor of granting a stay.

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III. CONCLUSION

For all these reasons, the Commission should grant Applicant's request to stay the NAC's bar pending this appeal.

Dated: November 12, 2021

Respectfully submitted,

/s/Jon-Jorge Aras
Jon-Jorge Aras
Levan Legal LLC
1631 Locust Street
Philadelphia, PA 19103
(484)-431-0250
jjaras@levan.legal

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CERTIFICATE OF COMPLIANCE

I, Jon-Jorge Aras, certify that:

1. (1) Applicant's Reply Brief complies with SEC Rule of Practice 151(e) because it omits or redacts any sensitive personal information; and

2. (2) Applicant's Reply Brief complies with the limitation set forth in SEC Rule of Practice 154(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 1,441 words.

Dated: November 12, 2021

Respectfully submitted,

/s/Jon-Jorge Aras

Jon-Jorge Aras
Levan Legal LLC
1631 Locust Street
Philadelphia, PA 19103
(484)-431-0250
jjaras@levan.legal

CERTIFICATE OF SERVICE

On November 12, 2021, I, Jon-Jorge Aras, certify that I caused a copy of Applicant's Reply Brief in response to FINRA's Opposition to Applicant's Motion to Stay, in the matter of Thomas Lee Johnson, Administrative Proceeding File No. 3-20646, to be filed through the SEC's eFAP system on:

Vanessa Countryman
Secretary Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

and served by email on:

Colleen Durbin
Associate General Counsel
FINRA – Office of General Counsel
1735 K Street, NW
Washington, DC 20006
colleen.durbin@finra.org
nac.casefilings@finra.org
202-728-8816

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Thomas Lee Johnson, Carmel, IN, Respondent.	AMENDED DECISION[1] Complaint No. 2018056848101 Dated: October 6, 2021

Respondent converted funds from his former employer. Held, findings and sanctions affirmed.

Appearances

For the Complainant: Joseph E. Strauss, Esq., and John Luburic, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Jon-Jorge Aras, Esq.

Decision

Pursuant to FINRA Rule 9311, Thomas Lee Johnson ("Johnson") appeals an August 23, 2019 Hearing Panel decision. The Hearing Panel found that Johnson violated FINRA Rule 2010 by converting $1,059,544.98 from his employer, RBC Capital Markets ("RBC" or "Firm"). For this violation, the Hearing Panel barred Johnson from associating with any FINRA member firm in any capacity. After an independent review of the record, we affirm the Hearing Panel's findings of violation and the sanction imposed.

I. Factual Background

A. Johnson's Background

Johnson entered the securities industry in 1983. In 2009, Johnson and his brother, AJ, registered with FINRA member firm RBC. Johnson was registered with RBC as a general securities representative and investment advisor. Both Johnson and AJ worked from RBC's

[1] This decision has been amended to correct a typographical error in the Complaint No. in the caption.

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Indianapolis, Indiana branch office, where Johnson held the title of Senior Financial Associate and AJ held the title of Senior Vice President of Investments.

On December 14, 2017, RBC terminated Johnson's employment for the misconduct at issue here. Johnson has not associated with a member firm since.

B. Johnson's RBC Account

When Johnson registered with RBC in 2009, he transferred securities from a joint brokerage account he and his wife held at his prior firm to a new joint brokerage account with RBC (the "RBC account"). On the account application, Johnson listed his income as between $50,000 and $99,999; his family's net worth as between $500,000 and $999,999; and his family's liquid assets as between $100,000 and $249,999. AJ served as the registered representative on Johnson's account.

On several RBC account forms, Johnson stated he had considerable investment experience. On an account transfer form, he described his 30 years of investment experience as "extensive." Similarly, on an options agreement form, Johnson described himself as having 25 years of experience trading stocks, bonds, options, and commodities.

Johnson characterized the RBC account as his family's primary checking account which they used for "everyday expenses," such as utilities, credit card bills, property taxes, and check deposits. Johnson's family wrote checks from the account and had debit cards associated with it. Johnson also received his salary payments from RBC directly into the account. Johnson was very active in monitoring the RBC account, representing that he consistently had his account information "up" on his work computer. Johnson testified that the account was the first thing he looked at when logging in for work every day.

Between December 2016 and November 2017, the RBC account value varied between $667,000 and $752,000. Johnson was aware of the account value throughout this 11-month period. Johnson held several different foreign and domestic securities positions in the RBC account. In December 2016, Johnson's account contained equities of around 20 domestic issuers valued at over $400,000. The account also held equities of around 17 international companies valued at over $50,000. By October 2017, his domestic portfolio contained equities of 25 issuers valued at about $650,000, and his international portfolio of 11 international stocks and funds was valued at about $72,000. The values of Johnson's international securities were denominated in his account information in U.S. dollars ("USD").

C. Johnson Inherits Shares of a Korean Company

In November 2016, Johnson inherited from his father's estate 60 shares of a South Korean company, Doosan Heavy Industries and Construction ("Doosan"). While Johnson had initially executed the purchase of these shares of Doosan on behalf of his father in the mid-1990s, Johnson testified that he did not know anything about Doosan or its business, as it was his father's decision to purchase the shares. These shares were transferred to Johnson's RBC account on December 14, 2016, priced at $22.673 USD per share. Collectively, at the time of the

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transfer, the Doosan shares were worth $1,360.36 USD. On September 18, 2017, Johnson's account received ten Doosan warrants worth a total of $27.21 USD from a spinoff of the Doosan shares.

Between December 2016 and October 2017, the value of Johnson's Doosan holdings ranged from $896.32 to $1,430.30 USD. Johnson stated that, throughout this time, he was aware of the approximate value of these securities, which was provided to him in his monthly account statements. Johnson attempted to sell his Doosan shares in February and March 2017 but was unsuccessful given the lack of market in the United States.

D. RBC Liquidates Johnson's Doosan Securities and Mistakenly Credits Over $1 Million to Johnson's Account

On August 30, 2017, Johnson's administrative assistant, CM, forwarded an email notice to Johnson stating that RBC would "no longer custody" Doosan securities. RBC gave Johnson three options: 1) liquidate the position; 2) transfer his holdings to another custodian; or 3) complete a "dollar write-off" transaction. The notice further stated that RBC would liquidate the shares and warrants if no action was taken by October 2017. At the time of the notice, the 60 Doosan shares were valued at $1,010.37 USD. Johnson took no action.
RBC sent another notice on September 21, 2017, again stating that Johnson's shares would be liquidated if they remained in the account. Johnson again failed to act. The Doosan shares were valued at $15.655 USD per share, or $939.30 USD collectively, on Johnson's October 2017 account statement.

RBC liquidated the 60 Doosan shares and ten warrants on November 14, 2017. Because of a system error, RBC erroneously priced the securities in U.S. dollars rather than South Korean won ("KRW"). Therefore, RBC mistakenly valued Johnson's stock liquidation at $17,184.58 USD per share, rather than 17,184.58 KRW per share. As a result, Johnson received a total of $1,031,074.80 USD instead of the actual 1,031,074.80 KRW value of the securities. If RBC had properly converted the stock's value to USD, Johnson would have received only $939.30 USD from the sale. The system error also caused RBC to misprice the warrants, each of which was priced at $2,849 USD instead of 2,849 KRW. In total, Johnson erroneously received $28,494 USD for the warrants, although their actual value was only $28.49 USD.

Collectively, RBC's system error resulted in a deposit of $1,059,544.98 USD into Johnson's RBC account as net proceeds from the sale of the 60 Doosan shares and ten warrants. RBC should have deposited only $967.79 USD into Johnson's account.

E. Johnson Discovers the Excess Funds Deposited from RBC's Liquidation

Johnson testified that it was his routine to check his RBC account every morning when logging in to his work computer. During his morning routine on November 14, 2017, Johnson noticed the extra approximately $1 million in his account and asked CM where the funds came from. According to Johnson, CM informed him that the funds were from the liquidated Doosan shares and warrants. Johnson testified that he was initially skeptical of this value and that he "wanted to verify what RBC had told [him]" about the prices for the transactions.

Johnson testified that he first tried to reconcile the value of the transaction on the office Bloomberg terminal. According to Johnson, he searched Bloomberg for Doosan, but there were too many search results and he was unable to quickly find the pricing information. Johnson said that, upon returning to his office, he searched on his computer using Doosan's CUSIP number[2] and found the same 17,184.58 per share figure that CM had mentioned. He then brought CM into his office and used Google to search for information about the company. Johnson found the Doosan website and located a link for investor relations. According to Johnson, this link also corroborated the 17,184.58 per share figure. Johnson said he checked the Bloomberg terminal again later that morning and again saw the 17,184.58 per share figure. Johnson testified that he concluded that the stock price was in fact approximately $17,000 per share because the figure was confirmed for him by three sources—Bloomberg, Doosan's website, and RBC.[3]

In fact, however, Doosan's website denoted the stock value in South Korean won, represented by a "W" with two or three lines through it: ₩. Johnson testified that he did not know what this symbol meant, and that he "didn't pay attention to the W." In addition, the Bloomberg terminal also denoted the share value with the three-letter currency code for the South Korean won—KRW. Johnson testified that he didn't understand what KRW meant when looking at the Bloomberg terminal that morning. Johnson stated that he was just "trying to match what RBC had said. If RBC said 17,000 US dollars, [he] pulled [Bloomberg] up, it said 17,000." Johnson maintains that he didn't understand what KRW stood for and that the 17,000 figure was enough for his liking, given that it was his "second or third confirmation." Johnson

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[2] A CUSIP (Committee on Uniform Securities Identification Procedures) number identifies most financial instruments, including stocks.

[3] At the hearing, Johnson gave confusing testimony about when and how many times he checked the Bloomberg terminal. He initially testified that:

> I go over to the Bloomberg, type in "Doosan." There's about 35 to 50 per page, and it's got eight pages long. Well, this isn't going to work. I go back to my office, pull up my account. I pull up the CUSIP.

Shortly thereafter, one of the Hearing Panelists attempted to clarify whether Johnson had used the Bloomberg terminal to confirm the Doosan price:

> [Hearing Panelist]: I just want to clarify what you said. So you were at the Bloomberg terminal?
>
> Johnson: Yes.
>
> [Hearing Panelist]: And then there was a link to investor relations there?
>
> Johnson: No, no, I'm sorry. After I looked at the Bloomberg and it confirmed $17,000, I went back to my office and Googled, "Doosan" . . .

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admitted, however, that he was surprised when he first saw the extra one million dollars and initially thought it was a mistake:

> My initial reaction was yes, it was a mistake, and RBC would fix it over night [sic] if – I don't know if mistake is the right word. It was probably not correct, if that's the same as a mistake, but I worked for 35 years [in the securities industry]. I've seen things priced incorrectly. They get reversed immediately.

Johnson claimed that RBC's failure to immediately make the correction gave him more confidence in the validity of the transaction because, he believed, if someone was "short $1 million," it would "get corrected immediately." According to Johnson, there was an instance in the past when RBC made a similar error in his sister's account by erroneously crediting the account with $666 million and, according to Johnson, RBC corrected the mistake the following day. Johnson stated that his father was a smart man and a savvy investor, and that when RBC did not make any correction to his account, he believed his father had made another great investment. Johnson said he planned to distribute the after-tax proceeds from the transaction among his siblings.

Johnson testified that he did not believe he was responsible for contacting RBC about the transaction value because RBC had initiated the trade and he "had nothing to do with the trade itself." Johnson said he did not verify the share price with RBC because "RBC had told [him] 17,000." Johnson stated that he "didn't feel like [he] needed to" confirm the price because the price was reflected on Bloomberg, RBC, and Doosan's website. Johnson further stated that "[i]t's not like someone deposited $1 million by mistake." Johnson testified that he did not search for news or any other information to explain Doosan's rapid share price increase.

F. Johnson Removes the Excess Funds from His RBC Account

Johnson testified that he consulted with his accountant, who was a friend of more than 30 years and a former customer, about what to do with the funds. Johnson's accountant was also a registered investment advisor, and Johnson described him as a "long-time trusted advisor." Johnson said he informed his accountant of the possibility the account credit could be a "mistake," and the accountant told Johnson that it would be best to transfer the funds away from RBC but not spend any of the money. The accountant also advised Johnson to speak with an attorney, although Johnson said he failed to do so.

On November 22, 2017, eight days after RBC's liquidation of the shares and warrants, Johnson wrote himself a check for $1,059,544.98 and deposited the check in a personal account he jointly owned with his wife at a bank that was not affiliated with RBC. Johnson testified that he used a check to transfer the funds because it avoided fees that RBC charged to wire funds electronically, and that he was not trying to hide the transfer from RBC. According to Johnson, he assumed that RBC would still see the check transfer, and that the Firm had inquired about much smaller check transfers in the past.

Johnson's manager at RBC, JB, who is a vice president at the Firm, testified that a check would have drawn less scrutiny than a wire transfer. According to JB, no Firm approval was needed for Johnson to write himself a check from his RBC account. On the other hand, in the case of a wire transfer, for anti-money laundering purposes, the Firm required two levels of approval before a customer, including Johnson, could wire out more than $1 million. In this case, Johnson would have had to sign a letter of authorization and explain the reason for the transfer.

Johnson testified that he did not tell anyone about the transfer of funds because he believed at the time that the funds were his:

> By then it had been in my account for seven days. If RBC had made a mistake, they would have reversed it by now.… [M]y confidence said it was a good transaction. It grew every single day that they did not correct it.… It was in my account.

When Johnson was asked at the hearing whether he would have returned the money to RBC had the pricing error never been detected or corrected, he responded "no" and said that he thought it was his money because "nobody asked for it."

G. RBC Rebills Johnson for the Doosan Transactions

On November 28, 2017, 14 calendar days after the Doosan liquidations, RBC canceled the liquidation and rebilled Johnson's account. This correctly repriced the Doosan stock at $15.8102 USD per share and each warrant at $2.6215 USD. In total, after fees and transaction costs, Johnson received $924.79 USD. Given that Johnson had written himself a check worth roughly $1,060,000 from the account a week earlier, this resulted in a negative balance exceeding $1 million in the RBC account.

Johnson almost immediately saw the rebilled transaction when it was applied to his account, as he was logged in on his work computer at the time. That day, Johnson went to the bank where he had deposited the money and obtained a cashier's check for $1,060,000. Although RBC was unaware of Johnson's initial check that he used to transfer the funds away from the Firm, the $1 million check deposit from his bank account to his RBC account generated an exception report on November 29, 2017. The report prompted the Firm's operations manager to ask Johnson's supervisor to talk to Johnson about the business purpose and source of the funds.

On December 1, 2017, four managers, including JB, interviewed Johnson about what had transpired. Johnson acknowledged to them that even though he knew there might have been a pricing error, he removed the money from his RBC account because he felt "more comfortable getting it out of RBC," a sentiment on which he did not elaborate.

H. RBC Terminates Johnson and FINRA Opens an Investigation

On December 14, 2017, RBC terminated Johnson's employment.[4] RBC submitted an initial Uniform Termination Notice for Securities Industry Registration ("Form U5") reporting that Johnson had been discharged for a "[v]iolation of company policy" that was "not client related." The Firm filed an amended Form U5 on September 25, 2019, in which it stated that it had "terminated Mr. Johnson on December 14, 2017 after it concluded that he violated the Firm's Code of Conduct, specifically Section 6.2 Protecting RBC Property (fraud, misappropriation and misuse)."

Johnson's termination from RBC was the impetus for FINRA's investigation. Pursuant to FINRA Rule 8210, FINRA staff requested information and sworn testimony from Johnson as a part of its investigation. Johnson provided a written response to the information request on February 14, 2018 and provided sworn testimony on June 27, 2018.

II. Procedural Background

On January 22, 2019, FINRA's Department of Enforcement ("Enforcement") filed a two-cause complaint against Johnson. Cause one alleged that Johnson violated FINRA Rule 2010 by converting $1,059,544.98 from RBC when he transferred the funds from his RBC account to his outside bank account. Cause two alleged that Johnson violated FINRA Rules 8210 and 2010 by providing false and misleading statements to FINRA staff on two occasions during FINRA's investigation. Johnson filed an answer denying the charges and requesting a hearing.

The Hearing Panel issued its decision on August 23, 2019, in which it found that Johnson violated FINRA Rule 2010 by converting funds from RBC. The Hearing Panel concluded that Johnson lacked a credible basis to believe that he was entitled to take possession of the proceeds from the liquidation of the Doosan securities. For Johnson's conversion, the Hearing Panel barred him from associating with any member firm in any capacity. However, the Hearing Panel found that Enforcement failed to provide sufficient evidence to conclude that Johnson provided false information during FINRA's investigation and dismissed cause two.[5] Johnson then filed the instant appeal.

III. Discussion

A. Johnson Converted Funds in Violation of FINRA Rule 2010

FINRA Rule 2010 provides that members and their associated persons, "in the conduct of [their] business, shall observe high standards of commercial honor and just and equitable principles of trade." Rule 2010 prohibits conduct that "may operate as an injustice to investors or other participants in the securities markets." *Dep't of Enf't v. Doni*, No. 2011027007901, 2017 FINRA Discip. LEXIS 46, at *21 (FINRA NAC Dec. 21, 2017). FINRA Rule 2010

[4] AJ was also terminated on December 14, 2017.

[5] Enforcement did not appeal this finding.

extends beyond the law "because the rule's purpose is to serve as a tool to prohibit dishonest practices." *Dep't of Enf't v. Vedovino*, No. 2015048362402, 2018 FINRA Discip. LEXIS 20, at *16-17 (FINRA Hearing Panel July 5, 2018), *aff'd*, 2019 FINRA Discip. LEXIS 20 (FINRA NAC May 15, 2019). FINRA's authority to enforce Rule 2010 is "sufficiently broad to encompass any unethical, business-related misconduct, regardless of whether it involves a security." *Dep't of Enf't v. Olson*¸ Complaint No. 2010023349601, 2014 FINRA Discip. LEXIS 7, at *7 (FINRA Bd. Governors May 9, 2014), *aff'd*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629 (Sept. 3, 2015).

Conversion is defined as an "intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it." FINRA Sanction Guidelines at 36 & n.2 (2020).[6] Stated another way, conversion is "the wrongful exercise of dominion over the personal property of another." *Dep't of Enf't v. Mullins, Complaint Nos*. 20070094345, 20070111775, 2011 FINRA Discip. LEXIS 61, at *21 (FINRA NAC Feb. 24, 2011), *aff'd* 2012 SEC LEXIS 464 (Feb. 10, 2012). It is well settled that conversion by an associated person constitutes a violation of FINRA Rule 2010.[7] *See Kenny Akindemowo*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769, at *23 (Sept. 30, 2016).

We agree with the Hearing Panel that Johnson converted $1,059,544.98 in funds from RBC. Johnson exercised dominion over more than a million dollars that did not belong to him and to which he had no entitlement. He took possession of the money, moved it to his checking account away from RBC's control, and planned to distribute the money among his siblings. The money had been credited to his RBC account in error; he did not own it and had no right of possession. Indeed, as the Hearing Panel found, Johnson knew he had no right to the money. Yet he treated the money as if he did and admitted that he would have kept it had RBC not caught the error.

Johnson maintains that he did not convert the money because he had a genuine belief that he was entitled to the funds and was not aware that RBC had credited the funds in error. The Hearing Panel, however, found that Johnson's testimony on this issue was not credible. We defer to the Hearing Panel's credibility determinations because they are well supported by the record and there is not substantial evidence to overturn them. *See Manoff*, 55 S.E.C. at 1161-62 & n.6 (explaining that a Hearing Panel's credibility determination is entitled to deference absent substantial evidence to the contrary). Indeed, Johnson acknowledged that he knew the approximate value of the shares before the liquidation because he closely monitored his account. Nevertheless, Johnson intentionally chose not to ask RBC to confirm the accuracy of the transaction. *See Dep't of Enf't v. Reeves*, No. 2011030192201, 2014 FINRA Discip. LEXIS 41,

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[6] *FINRA Sanction Guidelines* (2020), https://www.finra.org/sites/default/files/SanctionsGuidelines.pdf [hereinafter *Guidelines*].

[7] "Because conversion casts doubt on a person's "ability to comply with the regulatory requirements of the securities business and to fulfill his fiduciary duties in handling other people's money," it is well established that conversion is contrary to the mandate of Rule 2010." *Akindemowo*, 2016 SEC LEXIS 3769, at *19-20 (*quoting Daniel D. Manoff*, 55 S.E.C. 1155, 1162 (2002).

at *11-13 (FINRA NAC Oct. 8, 2014) (finding respondent liable for conversion when he transferred funds to himself "without any plausible reason to believe he was entitled to receive them" without first contacting his employer firm or the clearing firm that deposited the funds in his account by mistake), *aff'd*, Exchange Act Release No. 76376, 2015 SEC LEXIS 4568 (Nov. 5, 2015). Finally, the fact that Johnson moved the funds to his personal checking account (which was not his family's primary checking account), where RBC could not access the money, further supports the conclusion that he did not truly believe that he was entitled to the funds and wanted to insulate them from RBC. In light of these facts, we find that Johnson converted funds from RBC in violation of FINRA Rule 2010.

B. Johnson's Arguments Are Without Merit

Johnson makes several other arguments in support of his position that he did not convert RBC's funds.[8] These arguments are without merit. Johnson argues that Enforcement failed to present evidence that the funds he moved to his bank account were actually RBC's funds and that "we do not know RBC's actual relationship to the Doosan Proceeds." In support of this argument, Johnson cites JB's testimony that RBC did not own the securities or funds in Johnson's account and that an outside vendor initiated the redemption which resulted in the conversion error. Johnson's argument fails.[9] There is no dispute that Johnson owned the securities and other property in his RBC account and was entitled to the legitimate profits after the redemption. However, Johnson improperly exercised ownership over the excess funds that were erroneously deposited into his RBC account and to which he was not entitled.

Johnson also maintains that, even though he moved the money from his RBC account to his checking account, he did not spend it, nor did he keep the funds once RBC discovered the error. While these actions could serve to mitigate his misconduct, they are not exculpatory. A person may be liable for conversion even if he returns the property that he improperly took. *See, e.g.*, *Olson*, 2015 SEC LEXIS 3629, at *28 (respondent who used firm's corporate credit card for personal expenses committed conversion, even though she reimbursed the firm after she was caught); *Dep't of Enf't v. Kendzierski*, No. C9A980021, 1999 NASD Discip. LEXIS 40, at *7

[8] In his opening brief, Johnson renews a motion for summary disposition that was denied by the Hearing Panel below. He maintains that he is entitled to summary disposition as a matter of law because Enforcement failed to produce any evidence to support its claim that the funds deposited into Johnson's RBC account from the liquidation were the property of RBC. Johnson also maintains that the shares belonged to him, not to RBC. However, as noted by Enforcement, a motion for summary disposition is procedurally improper on appeal to the NAC. Pursuant to FINRA Rule 9264, motions for summary disposition can only be brought before the conclusion of the hearing before the Hearing Panel. We therefore deny Johnson's motion. Nevertheless, we address the substance of Johnson's arguments in this decision.

[9] Logic dictates that the excess funds that RBC (or its outside vendor) deposited into Johnson's account belonged to RBC. Even assuming the provenance of the funds was unknown, it is immaterial for the finding that Johnson improperly exercised ownership over funds to which he was not entitled.

(NASD NAC Nov. 12, 1999) (representative converted funds when he used customer funds to repay bills, even though he repaid customer).

Johnson asserts that he did not know that the Doosan shares were erroneously priced. He argues that he moved the funds based on discussions with his accountant and after confirming the share prices.[10] He contends that he did not see or understand the South Korean Won designation and the Hearing Panel improperly disregarded testimony that Johnson was never formally trained to use the Bloomberg terminal. Therefore, he argues, the Hearing Panel erred in concluding that the pricing error would have been obvious to Johnson, given the circumstances. This argument fails as well. We agree that the inferences drawn by the Hearing Panel from the evidence, in conjunction with its credibility determinations, support the Hearing Panel's conclusion that Johnson knew that the shares were erroneously priced. Johnson testified that he was "surprised" when he saw the million-dollar credit, and he immediately thought that it was a "mistake." Coupled with the enormous size of the credit relative to Doosan's historical share price and the value reflected for the Doosan position in his account, Johnson's testimony and actions demonstrate that he knew RBC had made an error.

Finally, Johnson claims that because he never "deprived" RBC of the funds he cannot be liable for conversion. He argues that RBC was not deprived of the money because it was unaware that the money was missing until after the funds were returned. We disagree. Johnson did deprive RBC of the funds, and RBC simply was not aware of the deprivation at the time. Regardless, the NAC has stated that conversion does not require deprivation of the property converted. *See Doni*, 2017 FINRA Discip. LEXIS 46, at *27-28. Johnson also maintains that the cases cited by the Hearing Panel—in which the individuals were found liable for the taking the property of another when those individuals knew they received that property by mistake—require that the funds must have been spent. Once again, he is mistaken.[11] Johnson's withdrawing the money from his RBC account and depositing it in his personal checking account at a different bank is the act of conversion—what Johnson did with the money after taking it, or whether RBC knew at the time that the money was missing, is immaterial to liability.

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[10] Johnson maintains that his reliance on his accountant's advice "negates his state of mind that he was doing anything wrong." However, Johnson did not establish that he relied on professional advice, which would have required him to prove that he "made a complete disclosure to the accountant, sought advice as to the conduct in question, received advice, and relied on that advice in good faith." *Dep't of Enf't v. Wood (Arthur W.) Co.*, No. 2011025444501, 2017 FINRA Discip. LEXIS 30, at *29-31 (NAC Mar. 15, 2017). Paradoxically, Johnson didn't follow the purported advice that he testified his accountant gave him—to consult an attorney.

[11] For example, in *Reeves*, the NAC held that the respondent committed conversion by withdrawing money from his bank account that he knew had been mistakenly wired to him by his former firm's clearing firm. In *United States v. Kussair*, the defendant's bank mistakenly credited $1 million to the defendant's account for a $100,000 deposit. No. 95-10100, 1995 U.S. App. LEXIS 37737 (9th Cir. Dec. 22, 1995). The court held that, under 18 U.S.C. § 2113(b), the federal bank larceny statute, the defendant, who knew of the error, wrongfully "took" the erroneously credited money by withdrawing it from his account.

IV. Sanctions

The Hearing Panel imposed a bar for Johnson's conversion. We agree with the Hearing Panel that a bar is the only appropriate remedial sanction, and we therefore affirm.

We have considered the FINRA Sanction Guidelines ("Guidelines") in determining the appropriate sanctions for Johnson's violation. The Guidelines governing sanctions for conversion direct us to "[b]ar the respondent regardless of amount converted."[12] The recommended bar for conversion in the Guidelines "reflects the reasonable judgment that, in the absence of mitigating factors warranting a different conclusion, the risk to investors and the markets posed by those who commit such violations justifies barring them from the securities industry." *See Dep't of Enf't v. Grivas*, Complaint No. 2012032997201, 2015 FINRA Discip. LEXIS 16, at *25 (Jul. 16, 2015).

We have also looked to the Principal Considerations in Determining Sanctions. We find that there are several aggravating factors that further support a bar. The amount of money converted was substantial and Johnson's misconduct was intentional.[13] Johnson had a well-established, daily routine of checking his trading positions and must have known the approximate value of the shares around the time of the liquidation. Furthermore, despite his feeling that there may be something amiss about the transaction, Johnson nevertheless failed to confirm the accuracy of the amount deposited in his account with RBC, which resulted in Johnson's temporary monetary gain.[14]

Johnson argues there are mitigating factors that weigh in favor or a lighter sanction. We disagree.[15] Johnson argues that it is mitigating that he returned the funds the day after RBC detected the mistake, thus lessening his misconduct. However, under the Guidelines, an effort to remedy misconduct is mitigating only when a respondent acts prior to detection.[16] Johnson repaid the money only after RBC caught the pricing error, and Johnson essentially had no choice but to deposit the money back into his RBC account because there was over a million-dollar deficit. We also do not find it mitigating that Johnson consulted his accountant. As previously stated, although Johnson did speak with his accountant, there is no information in the record to

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12 *Guidelines*, at 36.

13 *Id*. at 8 (Principal Guidelines in Determining Sanctions, Nos. 13, 17).

14 *Id.* at 6 (Principal Considerations in Determining Sanctions, No. 11).

15 We are required to consider Johnson's termination as a mitigating factor if it occurred as a result of the misconduct prior to FINRA's detection and investigation of the matter. *Denise M. Olson*, Exchange Act Release No. 75837, 2015 SEC LEXIS 3629, at *9 (Sept. 3, 2015). We find that the presence of this single mitigating factor does not diminish the severity of Johnson's misconduct.

16 *Id*. at 7 (Principal Considerations in Determining Sanctions, No. 4).

suggest that the advice provided was either official or competent or that Johnson followed the purported advice.

Johnson maintains that if we find that he violated FINRA Rule 2010, "his conduct is more closely akin to an improper use of funds, which does not require a bar." As we have discussed, Johnson's actions fully satisfy the elements of conversion and we accordingly apply the Guideline for conversion. Moreover, "[t]he NAC does not have the authority to alter the theory of liability upon which Enforcement based its allegations." *Doni*, 2017 FINRA Discip. LEXIS 46, at *31.

Finally, Johnson maintains that the Hearing Panel based its imposition of a bar on a "hypothetical scenario," because Johnson returned the "erroneously calculated Doosan Proceeds to his brokerage account within 24 hours of the debit notice." However, there is nothing hypothetical about Johnson's actions. Johnson took concrete steps in his attempt to keep the funds. Johnson knew that there was something wrong with the transaction, but rather than alerting RBC, Johnson chose to wait and see what happened. When it appeared that RBC would not catch the error, Johnson moved the money to his outside checking account, admitting that he would have kept the money had RBC not cancelled and rebilled the liquidations. The fact that he was not able to keep the money does not lessen his misconduct.

In sum, Johnson's willingness to disregard his ethical obligations in order to pursue pecuniary self-interest reflects dishonesty incompatible with the integrity required by high standards of commercial honor and just and equitable principles of trade. Therefore, we find it appropriate to affirm the bar.

V. Conclusion

We affirm the Hearing Panel's finding that Johnson converted funds from his former employer, RBC, in violation of FINRA Rule 2010. For his conversion, Johnson is barred from associating with any member firm in all capacities. Johnson is also ordered to pay $3,068.30 in hearing costs and $1,710.30 in appeal costs.

On Behalf of the National Adjudicatory Council,

Jennifer Piorko Mitchell

Jennifer Piorko Mitchell,
Vice President and Deputy Corporate Secretary

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Colleen Durbin
Associate General Counsel

Direct: (202) 728-8816
Fax: (202) 728-8264

October 6, 2021

VIA SEC 19d-1 SYSTEM

Vanessa A. Countryman
Securities and Exchange Commission
100 F Street, NE
Room 10915
Washington, D.C. 20549-1090

Re: Complaint No. 2018056848101: Thomas Lee Johnson

Dear Ms. Countryman:

Enclosed please find the amended decision of the National Adjudicatory Council ("NAC") in the above referenced matter. The decision was amended to correct a typographical error in the caption. The FINRA Board of Governors did not call this matter for review and the attached NAC decision is the final decision of FINRA.

Sincerely,

/s/ Colleen Durbin

Colleen Durbin

Enclosure

cc: Tanya Doctor Nixon

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

Department of Enforcement, Complainant, v. Thomas Lee Johnson (CRD No. 1215434), Respondent.	DISCIPLINARY PROCEEDING NO. 2018056848101 HEARING OFFICER:

COMPLAINT

The Department of Enforcement ("Enforcement") alleges:

SUMMARY

1. In November 2017, while associated with RBC Capital Markets, LLC ("RBC" or the "Firm"), a FINRA-regulated broker-dealer, Thomas Lee Johnson ("Johnson") converted approximately $1 million in Firm funds. The funds were deposited into his Firm brokerage account (the "RBC Account") following the Firm's liquidation of Johnson's shares and warrants of Doosan Heavy Industries & Construction Co. ("Doosan"), a South Korean company. Due to a system error, the Firm incorrectly priced Johnson's Doosan holdings in South Korean won instead of in U.S. Dollars. As a result, on November 14, 2017, Johnson received $1,059,544.98 from the sale of his Doosan securities, when he should have received only $951.01.

2. Because Johnson monitored his RBC Account on a daily basis, he knew the actual value of his Doosan holdings and that he had received the $1,059,544.98 in error. Rather than notify the Firm of the error, on November 22, 2017, Johnson transferred the funds from his RBC Account to his personal checking account held at a bank not affiliated with RBC (the "Bank

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Account") so as to distribute the proceeds between himself and his siblings at a later date. By converting funds belonging to his member Firm employer, Johnson violated FINRA Rule 2010.

3. In addition, in both a written response to a request for information sent by FINRA pursuant to FINRA Rule 8210 and an on-the-record interview ("OTR"), Johnson falsely stated that, at his request, two sales assistants at the Firm researched the transaction and value of his Doosan stock and confirmed that the $1,059,544.98 he received from the sale of his Doosan stock and warrants was accurate. By providing false and misleading information to FINRA, Johnson violated FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

4. Johnson entered the securities industry in August 1983 and has been associated with four FINRA-regulated broker-dealers during his approximately 35 years in the securities industry. In March 2009, Johnson became associated with RBC as a General Securities Representative (Series 7) and Investment Advisor (Series 65).

5. In a Uniform Termination Notice for Securities Industry Registration ("Form U5") dated December 26, 2017, RBC reported the termination of Johnson's employment on December 14, 2017 for a "[v]iolation of company policy, not client related."

6. Although Johnson is no longer registered or associated with a FINRA member firm, he remains subject to FINRA's jurisdiction for purposes of this proceeding pursuant to Article V, Section 4 of FINRA's By-Laws, because (i) the Complaint was filed within two years after the effective date of the termination of Johnson's registration with RBC, namely, December 26, 2017; (ii) the Complaint charges Johnson with misconduct committed while he was registered or associated with a FINRA member firm; and (iii) with providing false and misleading information to FINRA in written responses and OTR testimony provided in connection with requests issued

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pursuant to FINRA Rule 8210 during the two-year period after the date upon which Johnson ceased to be registered or associated with a FINRA member firm.

FIRST CAUSE OF ACTION

Conversion
Violation of FINRA Rule 2010

7. Enforcement realleges and incorporates by reference Paragraphs 1 through 6 above.

8. FINRA Rule 2010 requires FINRA members and their associated persons to "observe high standards of commercial honor and just and equitable principles of trade."

9. Conversion is the intentional and unauthorized taking of, and/or exercise of ownership of, property by one who neither owns the property nor is entitled to possess it. A registered person who engages in conversion violates FINRA Rule 2010.

10. In November 2016, Johnson inherited 60 shares of stock in Doosan from his father's estate.

11. On December 14, 2016, the 60 shares of Doosan stock were deposited into Johnson's RBC Account. At the time of the deposit, the price of Doosan stock was $22.673 per share and the total value of Johnson's shares was $1,360.36.

12. On September 18, 2017, 10 Doosan warrants were deposited into Johnson's RBC Account as a spinoff of his 60 shares. At the time of the deposit, the total value of the warrants was $27.21.

13. As of October 31, 2017, the price of Doosan stock was $15.655 per share and the total value of Johnson's shares was $939.30. As of October 31, 2017, the total value of Johnson's Doosan warrants was $28.04. At all times, Johnson was aware of the value of his Doosan stock and warrants because he monitored his RBC Account balance daily online and received monthly account statements.

14. After advising Johnson that the Firm would no longer custody his Doosan securities, RBC liquidated Johnson's Doosan stock and warrants on November 14, 2017. Due to a pricing error, RBC's system recorded the prices of each Doosan stock share and warrant as $17,184.58 and $2,849.40 when the prices should have been recorded as $15.8102 and $2.6215, respectively. As a result, when liquidated, Johnson's Doosan stock and warrants were valued at the erroneous prices causing the Firm to deposit, after fees were deducted, a total amount of $1,059,544.98 into Johnson's RBC Account as the proceeds from the sale of Johnson's Doosan stock and warrants.

15. Johnson was not entitled to the $1,059,544.98 erroneously deposited by the Firm into his RBC Account. Instead, Johnson should have received only $951.01 in proceeds from the liquidation of his Doosan securities.

16. Although Johnson knew that he had received the $1,059,544.98 in error and had no right to possess the funds, he never notified the Firm of the error.

17. Instead, on November 22, 2017, Johnson wrote a check made payable to himself in the amount of $1,059,544.98 and drawn on his RBC Account and deposited the check in his Bank Account that he held away from the Firm.

18. Johnson planned to distribute the after-tax proceeds to himself and his four siblings; however, on November 28, 2017, RBC cancelled the liquidation of Johnson's Doosan securities and rebilled the transaction at the correct selling price.

19. When Johnson saw that the Doosan transaction had been reversed, he obtained a cashier's check in the amount of $1,060,000 from the Bank and deposited the check into his RBC Account on November 29, 2017.

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20. By transferring the $1,059,544.98 from his RBC Account to his personal Bank Account for his own use and benefit, when he knew he had received the funds in error and that he had no right to possess the funds, Johnson converted RBC's funds in violation of FINRA Rule 2010.

SECOND CAUSE OF ACTION

Providing False and Misleading Statements and Testimony to FINRA
Violation of FINRA Rules 8210 and 2010

21. Enforcement realleges and incorporates by reference Paragraphs 1 through 20 above.

22. FINRA Rule 8210(a) requires a "person subject to FINRA's jurisdiction to provide information orally, in writing … and to testify at a location specified by FINRA staff, under oath or affirmation … with respect to any matter involved in … [an] investigation." Rule 8210 prohibits a person subject to FINRA's jurisdiction from providing false or misleading information to FINRA in connection with an investigation.

23. A violation of FINRA Rule 8210 also constitutes a violation of FINRA Rule 2010.

24. On January 26, 2018, FINRA sent Johnson a written request for documents and information pursuant to FINRA Rule 8210. In his February 14, 2018 written response to that request (the "February 8210 Response"), Johnson stated, among other things, that "on November 14th 2017 … when I pulled up my account that morning there was an extra million dollars plus in it. I asked my assistant [CM] what was going on. She and her coworker [LR] researched my account and told me that the 60 shares of Doosan sold for $17,184.58 each for a total of $1,031,074.80 and that the 10 Doosan warrants sold for $2,849.40 each for a total of $28,494.00."

25. On June 27, 2018, Johnson provided sworn, on-the-record testimony (the "June OTR"). At the outset of the June OTR, Enforcement advised Johnson concerning his obligation

under FINRA Rule 8210 to answer Enforcement's questions completely and truthfully. Johnson testified at his June OTR that when he saw that over $1,000,000 had been deposited into his RBC Account on November 14, 2017: (i) he asked CM where the deposited funds came from; (ii) CM told him that the deposited funds were proceeds from the sale of his Doosan stock and warrants; (iii) both CM and LR checked the Bloomberg Terminal for him and confirmed the price of the Doosan stock and warrants.

26. Johnson's statements to FINRA in his February 8210 Response and his testimony at his June OTR were false in that he never asked CM to research his RBC Account to verify the accuracy of the proceeds from the sale of his Doosan stock and warrants and thus neither CM nor LR took any steps to confirm the price of the Doosan stock and warrants when liquidated from Johnson's account.

27. As a result of the foregoing conduct, Johnson violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

WHEREFORE, Enforcement respectfully requests that the Panel:

A. make findings of fact and conclusions of law that Johnson committed the violations charged and alleged herein;

B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed; and

C. order that Johnson bear such costs of this proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: January 22, 2019

Joseph E. Strauss, Senior Counsel
Tiffany A. Buxton, Director
Richard Chin, Chief Counsel
FINRA Department of Enforcement
One Brookfield Place
200 Liberty Street, 11th Floor
New York, New York 10281
Phone: (646) 315-7335
Fax: (301) 527-4712
Email: joseph.strauss@finra.org

U.S. SECURITIES & EXCHANGE COMMISSION

In the Matter of the Application of

Thomas Lee Johnson,

For Review of

FINRA Disciplinary Action

File No. 3-20646

DECLARATION OF THOMAS LEE JOHNSON

I, Thomas Lee Johnson, declare under 28 U.S.C. 1746 as follows:

1. I am a Managing Director and Co-Founder of Royal Capital Wealth Management LLC ("RCWM").

2. RCWM is a two- person firm owned and operated by Mr. Johnson and his brother, Andrew J. Johnson.

3. Prior to the National Adjudicatory Council's affirmation of the Hearing Panel's decision to impose the sanction of a bar, I was the Chief Compliance Officer of RCWM.

4. As a result of the NAC's decision, I have vacated the role of Chief Compliance Officer for RCWM.

5. Since the NAC's decision, I was informed by Charles Schwab & Co., Inc ("Schwab") the brokerage firm RCWM uses as custodian for its client assets, that I cannot access or utilize its RIA platform to access RCWM's client base.

6. As a result, I am unable to enter securities transactions through Schwab on behalf of RCWM's clients.

7. Prior to the NAC's decision, I was responsible for all aspects of the relationships between RCWM's clients and Schwab, from daily account maintenance to portfolio management, including entering securities transactions through Schwab on behalf of RCWM's clients.

8. As a result of the NAC's decision, Andrew Johnson has been forced to come out of semi-retirement to serve the clients of RCWM.

9. RCWM serves approximately 50 households, all of which are long-standing clients of the firm.

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10. Aside from the FINRA Disciplinary Action, which is the subject of this application, I have no prior disciplinary history.

11. Over the course of my 38 years in the securities industry, I have not received any customer complaints.

12. The bar is disclosed on RCWM's Form ADV filed with the Commission.

13. In 2020, during my time as Chief Compliance Officer for RCWM, the Commission conducted an exam of RCWM with no findings of material events.

14. The bar imposed by the NAC has severely impaired my ability to serve the clients of RCWM.

I, Thomas Lee Johnson, declare under the penalty of perjury under the laws of the United States of America, and in accordance with 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

Thomas Lee Johnson

Dated: November 12TH, 2021

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