BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC

In the Matter of the Application of

Matthew R. Logan

For Review of

FINRA Disciplinary Action

File No. 3-20922

FINRA'S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW

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In the Matter of the Application of Mathew R. Logan For Review of FINRA Disciplinary Action File No. 3-20922

FINRA'S BRIEF IN OPPOSITION TO THE APPLICATION FOR REVIEW

I. INTRODUCTION

Over the course of a year, Matthew Logan directed the administrative assistant in his office to take four online continuing education courses, including the FINRA Regulatory Element, on his behalf. This pattern of misconduct ended only after Logan's firm discovered emails indicating that Logan had directed the assistant to take the courses for him and referred the matter to its parent company for investigation. In their interviews with the company's investigator, Logan and the assistant falsely denied that the assistant had taken continuing education courses for Logan. Following these interviews, the parent company terminated the employment of both Logan and the assistant.

FINRA's National Adjudicatory Council ("NAC") concluded that Logan's use of an impostor to cheat on the FINRA Regulatory Element and three other continuing education

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courses violated FINRA Rule 2010. Considering the deceptive nature of Logan's actions and several aggravating factors—including his decision to lie to his company's investigator—the NAC determined that a bar is the appropriate sanction for his misconduct.

Logan does not dispute that his misconduct violated FINRA Rule 2010, and the Commission should reject his argument that a bar is an excessive or oppressive sanction. Considering Logan's repeated dishonesty, a bar is appropriately remedial in this case and necessary to protect investors. Contrary to Logan's assertions, there are no factors mitigating his misconduct. Indeed, Logan's continued efforts to shift blame to others underscore the need for a bar. The Commission should reject Logan's arguments and affirm the sanction the NAC imposed, which is well-supported by the record.

II. FACTUAL BACKGROUND

A. Logan's Career in the Securities and Insurance Industries

Logan entered the securities industry in 2007. RP[1] 5, 19. Between October 2010 and January 2019, he was registered as a general securities representative and as an investment company and variable contracts products representative of Hornor, Townsend & Kent LLC ("HTK"). RP 5-6, 19-20, 521-22. He is not currently associated with a FINRA member. RP 6, 20, 521.

During the period Logan associated with HTK, he was employed as a life insurance salesman and sales manager by HTK's parent company, Penn Mutual Life Insurance Company

[1] "RP __" refers to the page numbers in the certified record of this case filed with the Commission on July 12, 2022.

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("Penn Mutual"). RP 6-7, 20, 309. Most of Logan's income was generated by his life insurance work with Penn Mutual. RP 312, 318, 382-83.

In 2013, Penn Mutual promoted Logan to the position of sales manager. RP 309. As a sales manager, Logan recruited and trained life insurance salesmen. RP 309, 311. He estimated that he often worked 60 hours per week to meet the company's sales goals for his team, which increased every year. RP 310-11, 387.

While employed with Penn Mutual, Logan voluntarily took courses for the purposes of earning Certified Financial Planner and Charter Life Underwriter designations. RP 320-21. He completed one of these courses during the relevant period, in March 2018. RP 324, 818.

B. Logan Directs the Assistant to Take Three Non-FINRA Continuing Education Courses on His Behalf

In October 2017, Penn Mutual required Logan to complete a company-sponsored ethics continuing education course ("Ethics Course"). RP 697-98. On October 27, 2017, the firm sent Logan an email reminding him that the deadline to complete the course was that day. RP 697. Logan directed the assistant in his office to take the course for him by forwarding the email to her, stating "[W]e need this done today."[2] RP 149, 345-46, 697. The assistant completed the course for Logan by logging into the firm's online training portal using his credentials. RP 149.

In May 2018, Logan again directed the assistant to complete a continuing education course for him after he received emails from Penn Mutual indicating he should take a course entitled "HTK Processing Checks and Securities Training" ("HTK Training"). RP 149-50, 345-48, 701-02, 705. Logan forwarded an email reminder about the course to the assistant, asking "[I]s this completed?" RP 705. The assistant replied, "Not yet will complete today." RP 703.

[2] The assistant was associated with HTK as a non-registered fingerprinted person. RP 545. Logan was not the assistant's supervisor, although he assigned her daily tasks. RP 329, 377.

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The assistant completed the course for Logan by using his credentials to log into HTK's online training portal.[3] RP 150.

In October 2018, Logan asked the assistant to complete an anti-money laundering continuing education course for him. RP 150, 345-46, 715-16. The training was provided by the Life Insurance and Market Research Association ("LIMRA") and was required for Logan to sell certain life insurance products. RP 150, 716. The assistant took the training for Logan by logging onto LIMRA's online testing portal with Logan's credentials. RP 150, 713-15.

C. Logan Directs the Assistant to Take the FINRA Regulatory Element on His Behalf

1. The FINRA Regulatory Element

Logan was required to take the FINRA Regulatory Element by November 23, 2018. RP 148. The Regulatory Element is a course created and administered by FINRA that focuses on compliance, regulatory, ethical, and sales practice standards, and registered individuals must complete the course periodically to maintain their registration with FINRA.[4] Any registered person who fails to timely complete the course is placed in inactive status—rendering that person ineligible to engage in activities requiring registration and receive compensation for the purchase or sale of securities. FINRA Rule 1240(a)(2).

In 2015, Logan took the Regulatory Element at a testing center, where he complied with identification and security protocols. RP 326-28. Later that year, FINRA amended its rules to

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[3] Logan actually was not required to take the HTK Training, but he believed that he was required to do so because emails he received indicated that he must complete the course. RP 149, 301-02, 347-48, 705-06.

[4] FINRA, *Registration, Exams & CE*, *Continuing Education: Overview*, https://www.finra.org/registration-exams-ce/continuing-education#regulatory (last visited Sept. 21, 2022); FINRA Rules 1240(a)(1)-(2), (5).

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provide for web-based delivery of the Regulatory Element.[5] FINRA announced this rule change to its members and associated persons, noting that those who cheat on the Regulatory Element may face sanctions including a bar.[6]

2. Logan Directs the Assistant to Impersonate Him on the FINRA Regulatory Element

Logan received emails from HTK's compliance department reminding him of his requirement to take the Regulatory Element by November 23, 2018. RP 148, 362-69, 711-12, 717-20. Logan received such an email on September 24, 2018, with the subject line "Second Notice – FINRA Regulatory Element Continuing Education." RP 711. The email explained that the Regulatory Element is required by FINRA, that the course is now administered online (and not in a testing center), and that Logan's failure to timely complete the course would cause his registration to become inactive. RP 362-64, 711-12.

Logan forwarded the email to the firm's licensing director, asking "Do I have to schedule [an appointment] or do I just hop online anytime to take it? And where do I go online to take it?" RP 365, 711. The licensing director responded, "Go online before 11/23/2018. See the BLUE CE link below." RP 365-66, 709. After receiving this response, Logan forwarded the email chain to the assistant. RP 148, 346, 709.

On October 24, 2018, Logan received an email from HTK's compliance department with the subject line "Third Notice – FINRA Regulatory Element Continuing Education." RP 367-68,

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5 *Order Approving a Proposed Rule Change to Provide a Web-based Delivery Method for Completing the Regulatory Element of the Continuing Education Requirements* (hereinafter "*Approval Order for Web-based Delivery*"), 80 Fed. Reg. 47018, 47018-19 (July 31, 2015); FINRA Rule 1240(a)(6).

6 *FINRA Regulatory Notice 15-28*, 2015 FINRA LEXIS 22, at *5-6 & n.9 (Aug. 2015).

718-20. Like the prior reminder, this email advised that the FINRA Regulatory Element is no longer administered at testing centers and, instead, is offered online. RP 719. Logan forwarded the email to the assistant, stating "Let's discuss today." RP 370, 717. The assistant responded, "I have been working on this in between my work but I'm almost done." RP 370, 717. On October 30, 2018, the assistant completed the Regulatory Element on Logan's behalf by using Logan's credentials to log in to FINRA's CE Online System. RP 149, 370-71.

After the assistant completed Logan's Regulatory Element course, Logan received an email from FINRA with the subject line "Continuing Education Regulatory Element Completion." RP 721-23. The email included Logan's completion certificate, which Logan forwarded to the assistant for printing. RP 149, 374, 721. It was Logan's understanding that the assistant would provide the certificate to HTK's compliance department as proof that Logan had completed the course himself. RP 149, 375.

D. Logan Lies to Penn Mutual's Investigator and the Firm Terminates His Employment

During an email review, HTK's supervision department discovered emails indicating that Logan had asked the assistant to complete continuing education courses on his behalf. RP 284. In November 2018, HTK brought the emails to the attention of Ricardo Núñez, the head of Penn Mutual's special investigations unit. RP 280-81, 284. Núñez arranged to interview separately Logan and the assistant. RP 291-93.

Núñez first interviewed the assistant, who falsely denied taking the Regulatory Element and other continuing education courses on Logan's behalf. RP 292-94, 299, 335. Instead, the assistant stated that she would sign Logan into online training portals on her computer and then

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bring her computer to him so he could complete continuing education courses between meetings.[7] RP 294-95.

Logan also lied to Núñez, denying that he instructed the assistant to take the Regulatory Element and other continuing education courses for him.[8] RP 295-98, 378-79. Logan falsely told Núñez that he would ask the assistant to "initiate training" for him. RP 295-96, 378-79. Logan explained that this meant that the assistant would sign him into online training portals on her computer so that he could complete continuing education courses from that computer. RP 296. Núñez read aloud to Logan the emails between him and the assistant concerning the Regulatory Element. RP 296. In response, Logan again denied that he asked the assistant to complete this course for him. RP 296.

Penn Mutual terminated the employment of both Logan and the assistant in January 2019. RP 299, 337-38. In a Uniform Termination Notice for Securities Industry Registration ("Form U5") filed with FINRA, HTK disclosed that Logan's employment was terminated because he instructed the assistant "to complete his required [R]egulatory [E]lement and other continuing education requirements." RP 535-36.

E. FINRA Investigates Logan's Misconduct

FINRA investigated Logan's misconduct after HTK filed the Form U5. RP 331-32, 725. In response to a FINRA Rule 8210 request, Logan admitted that he had instructed the assistant to

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[7] The assistant admitted to Núñez that she completed an anti-money laundering training for Logan but otherwise denied taking continuing education courses on his behalf. RP 293-95.

[8] Logan told Núñez that the assistant may have completed an anti-money laundering course for him, but otherwise denied asking the assistant to complete continuing education requirements on his behalf. RP 295-98.

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complete continuing education courses on his behalf. RP 725, 731. This was the first time Logan admitted his misconduct. RP 299, 346-47.

III. PROCEDURAL HISTORY

A. FINRA Brings a Disciplinary Proceeding Against Logan

FINRA's Department of Enforcement commenced a disciplinary proceeding against Logan on October 7, 2020, when it filed a single-cause complaint alleging that he used an impostor to cheat on the FINRA Regulatory Element and three other continuing education courses, in violation of FINRA Rule 2010. RP 1-11. In his answer, Logan conceded that he violated FINRA Rule 2010 and requested a hearing on the issue of sanctions. RP 19-25.

Before the Hearing Panel, Logan testified that professional and personal stress led him to "recklessly" forward continuing education emails to the assistant without reading past the subject lines. RP 330, 345-48, 355, 369. According to Logan, he did not "have time to distinguish" between the Regulatory Element and other courses and did not realize that the Regulatory Element was one of the courses he forwarded to the assistant for completion. RP 331, 333, 339, 371. Logan also testified that he was unaware the Regulatory Element is now administered online and would have been more mindful if he had realized that this was the same course he completed at a testing center in 2015. RP 329, 389. With respect to the lie he told to Penn Mutual's investigator, Logan stated: "I was evasive with Mr. Núñez. I shouldn't have been." RP 335.

B. The Hearing Panel Bars Logan

The Hearing Panel issued a June 29, 2021 decision barring Logan for the FINRA Rule 2010 violation. RP 895-909. The Hearing Panel applied the FINRA Sanction Guidelines

("Guidelines") for using an impostor to cheat on the Regulatory Element, which provide that a bar is standard.[9] RP 904-05. The Hearing Panel determined that a bar is appropriate considering several aggravating factors, including Logan's attempt to deceive Penn Mutual about his misconduct. RP 905-06.

C. The NAC Affirms the Hearing Panel's Sanction

The NAC affirmed the Hearing Panel's findings, and the sanction it imposed, in a June 2, 2022 decision. RP 1108-23. The NAC concluded that a bar is the appropriate sanction considering the dishonest nature of Logan's misconduct. RP 1118. Like the Hearing Panel, the NAC determined that Logan's misconduct was aggravated by several factors, including his decision to lie to Penn Mutual's investigator and his reluctance to accept full responsibility for his actions. RP 1118-19.

Logan timely appealed the NAC's decision to the Commission.[10] RP 1125-27.

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[9] *FINRA Sanction Guidelines* (2021), at 40, *available at*: https://www.finra.org/sites/default/files/2022-09/2021_Sanctions_Guidelines.pdf (Oct. 2021). As discussed below, the Hearing Panel (and, subsequently, the NAC) applied the 2021 Guidelines, which were in effect at the time the decision was pending before it. *See infra* at 12 n.13.

[10] Logan requested oral argument in his application for review. RP 1127. This request is procedurally improper, as a request for oral argument must "be made by separate motion accompanying the initial brief on the merits." 17 C.F.R. § 201.451(b). In any event, because the issues have been thoroughly briefed and can be adequately determined on the basis of the record, Logan's request for oral argument should be denied. *See* 17 C.F.R. § 201.451(a) (providing for Commission consideration of appeals based on the "papers filed by the parties" unless the "decisional process would be significantly aided by oral argument").

IV. ARGUMENT

The Commission should dismiss this application for review. Logan engaged in conduct that violated FINRA rules, FINRA applied its rules in a manner consistent with the purposes of the Securities Exchange Act of 1934 ("Exchange Act"), and FINRA imposed a sanction that is neither excessive nor oppressive and does not impose an unnecessary or inappropriate burden on competition. 15 U.S.C. § 78s(e).

The NAC's liability finding is uncontested, and the sanction it imposed—a bar—is remedial. Logan repeatedly engaged in dishonest conduct by asking the assistant in his office to impersonate him on continuing education courses. He further demonstrated dishonesty by lying to Penn Mutual's investigator about his misconduct. This pattern of deceptive behavior demonstrates that Logan does not belong in the securities industry, where the integrity of FINRA members and their associated persons is of paramount importance. Accordingly, a bar is necessary to protect investors and serve the public interest. Logan fails to identify a basis on which the Commission should modify the sanction, which is supported by the record. Therefore, the Commission should uphold the NAC's findings and sanction.

A. Logan Violated FINRA Rule 2010 by Using an Impostor to Complete Continuing Education Courses

Logan does not dispute that he violated FINRA Rule 2010 by using an impostor to complete continuing education courses. Nevertheless, FINRA addresses Logan's liability for this violation to provide a basis for discussing the sanction imposed.

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FINRA Rule 2010 provides that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade."[11] The rule covers a broad range of unethical conduct, "encompass[ing] business-related conduct that is inconsistent with just and equitable principles of trade, even if that activity does not involve a security." *Daniel D. Manoff*, 55 S.E.C. 1155, 1162 (2002). It "applies when the misconduct reflects on the associated 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." *Id.*

As the NAC explained, Logan's decisions to use an impostor to complete the Regulatory Element and other continuing education courses violated FINRA Rule 2010. Like other forms of cheating, such misconduct is deceptive, unethical behavior that reflects negatively on an associated person's ability to comply with regulatory requirements. *See Ronald H.V. Justiss*, 52 S.E.C. 746, 750 (1996) (observing, in the context of a case involving cheating on a qualification exam, that cheating "flouts the ethical standards to which members of this industry must adhere"); *cf. Ernst & Young LLP*, Exchange Act Release No. 95167, 2022 SEC LEXIS 1601, at *2-3 (June 28, 2022) (observing that audit professionals' cheating on exams and continuing education courses "violated ethics and integrity standards").[12] Moreover, by cheating on the Regulatory Element, Logan demonstrated an inability to comply with FINRA's rules

[11] FINRA Rule 0140 provides that FINRA rules apply with equal force to member firms and associated persons. Thus, an associated person violates FINRA Rule 2010 when he or she engages in unethical conduct.

[12] *See also Dep't of Enf't v. Holloway*, Complaint No. 2016050025401, 2019 FINRA Discip. LEXIS 21, at *43 (FINRA Hearing Panel Apr. 11, 2019) (finding that the respondent violated FINRA Rule 2010 by using an impostor to complete continuing education courses required to maintain a state license); *Dep't of Enf't v. Kennedy*, Complaint No. 20090192761-05, 2012 FINRA Discip. LEXIS 18, at *7 (FINRA Hearing Panel Apr. 17, 2012) (finding that the respondent violated FINRA Rule 2010 by cheating on the Firm Element).

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specifically, which require the periodic completion of that course for an individual's registration to remain active. FINRA Rule 1240(a)(1)-(2). Accordingly, Logan violated FINRA Rule 2010 when he directed the assistant to complete the Regulatory Element and three other continuing education courses on his behalf. *See Manoff*, 55 S.E.C. at 1162; *Justiss*, 52 S.E.C. at 750.

B. A Bar is Necessary to Protect Investors Given Logan's Repeated Dishonesty

The Commission should affirm the sanction the NAC imposed. Section 19(e)(2) of the Exchange Act provides that the Commission may eliminate, reduce, or alter a sanction if it finds that the sanction is excessive, oppressive, or imposes a burden on competition not necessary or appropriate to further the purposes of the Exchange Act. *Wedbush Sec., Inc.*, Exchange Act Release No. 78568, 2016 SEC LEXIS 2794, at *43 (Aug. 12, 2016), *aff'd*, 719 F. App'x 724 (9th Cir. 2018). To determine whether a sanction is excessive or oppressive, the Commission considers whether it serves a remedial purpose by protecting investors and the public interest. *John M.E. Saad*, Exchange Act Release No. 86751, 2019 SEC LEXIS 2216, at *10-11 (Aug. 23, 2019) (explaining that FINRA may impose sanctions for a remedial purpose), *aff'd*, 980 F.3d 103 (D.C. Cir. 2020). The Commission gives significant weight to whether the sanction reflects the framework provided in FINRA's *Guidelines*. *Wedbush Sec.*, 2016 SEC LEXIS 2794, at *43 (stating that although the Guidelines are not binding on the Commission, they serve as a "benchmark" in the Commission's review).

The bar the NAC imposed on Logan is neither excessive nor oppressive.[13] This sanction is consistent with the applicable Guidelines, which provide that a bar is standard for using an

[13] Logan does not assert, and the record does not demonstrate, that FINRA's bar imposes an unnecessary or inappropriate burden on competition.

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impostor to cheat on the Regulatory Element.[14] *Guidelines*, at 40; *see Wedbush Sec.*, 2016 SEC LEXIS 2794, at *43. Furthermore, the bar is appropriately remedial. *See Saad*, 2019 SEC LEXIS 2216, at *10-11. Logan acted in a deceptive manner by directing the assistant to take the Regulatory Element and three other continuing education courses on his behalf. RP 148-50, 345-46. Such deception poses a risk to investors, as the "[t]he securities industry presents continual opportunities for dishonesty and abuse [] and depends heavily on the integrity of its participants." *See Conrad P. Seghers*, Investment Advisers Act Release No. 2656, 2007 SEC LEXIS 2238, at *28 (Sept. 26, 2007), *aff'd*, 548 F.3d 129 (D.C. Cir. 2008). A bar serves the remedial purpose of protecting the public and investors from any recurrence of dishonest behavior by Logan. *See Se. Invs., N.C., Inc.*, Exchange Act Release No. 86097, 2019 SEC LEXIS 1370, at *19 (June 12, 2019) (denying the applicant's motion to stay his bar and observing that his demonstrated "propensity for dishonesty pose[d] a risk to investors and the

[14] The applicable version of the Guidelines is the version in effect when this case was before the NAC. *See Guidelines* at 8 ("These guidelines are effective as of the date of publication, and apply to all disciplinary matters, including pending matters."); *Meyers Assoc., L.P.*, Exchange Act Release No. 86193, 2019 SEC LEXIS 1626, at *42 n.75 (June 24, 2019) (explaining that "the NAC properly applied . . . the guidelines in effect while this matter was pending before it"); *Dep't of Enf't v. Ottimo*, Complaint No. 2009017440201r, 2020 FINRA Discip. LEXIS 34, at *12 n.2 (FINRA NAC Mar. 27, 2020) (explaining that, on remand, the NAC would apply the version of the Guidelines in effect at the time it issued its initial decision), *aff'd*, Exchange Act Release No. 95141, 2022 SEC LEXIS 1578 (June 22, 2022).

FINRA published a new version of the Guidelines on September 29, 2022. *FINRA Sanction Guidelines* (Sept. 2022), *available at*: https://www.finra.org/rules-guidance/oversight-enforcement/sanction-guidelines. Although the new Guidelines do not provide that a bar is standard for cheating on the Regulatory Element, they provide that a bar should be considered for this misconduct when aggravating factors predominate, as is the case with Logan. *Id.* at 99; RP 1118-19.

public"); *Bruce Paul*, 48 S.E.C. 126, 128 (Feb. 26, 1986) (noting the need to protect investors "against any recurrence" of dishonesty by the applicant).[15]

The factors aggravating Logan's misconduct leave no doubt that a bar is necessary. After directing the assistant to take continuing education courses on his behalf, Logan again acted dishonestly when he lied to Penn Mutual's investigator about his misconduct. RP 378-79. His attempt to obstruct his firm's investigation is aggravating and further demonstrates that a bar is needed to protect investors.[16] *Cf. Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *26 (Dec. 22, 2008) (observing that the applicant's failure to disclose material information and obfuscation when his firm questioned him about the omissions "raise[d] serious doubts about [his] ability to meet the high standards of those employed in the securities industry").

Moreover, Logan's decisions to use an impostor to complete continuing education requirements were intentional and amounted to a pattern of behavior in which he involved another associated person (the assistant).[17] While Logan characterizes his actions as negligent, the record fully supports the NAC's observation that he acted intentionally. *See* Op. Br. at 8, 10;

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15 *See also Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *29 (Aug. 22, 2008) ("The public interest demands honesty from associated persons of NASD members; anything less is unacceptable.").

16 *See Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 10) (whether the respondent attempted to conceal his misconduct or mislead his member firm); *cf. Ronald Pellegrino*, Exchange Act Release No. 59125, 2008 SEC LEXIS 2843, at *25 (Dec. 19, 2008) ("Assuring proper supervision is a critical component of broker-dealer operations.").

17 *See Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 8) (Whether the respondent engaged in numerous acts and/or a pattern of misconduct); *id.* at 8 (Principal Considerations in Determining Sanctions, No. 13) ("Whether the respondent's misconduct was the result of an intentional act, recklessness or negligence.")

RP 1117 (explaining that the Hearing Panel found that "Logan intentionally engaged in a pattern of forwarding continuing education courses to the [a]ssistant to take on his behalf"). Logan knowingly forwarded multiple emails concerning his continuing education requirements to the assistant for the purpose of directing her to complete those courses on his behalf. RP 148-50, 345-48, 370-75, 697, 701-05, 709, 713-17, 721. He followed up with the assistant to ensure she completed those courses for him. RP 701-05, 713-16, 717. And, Logan admitted that he forwarded the Regulatory Element completion certificate to the assistant for the purpose of falsely representing to his firm that he completed the course himself. RP 149, 375, 721. Thus, even if Logan did not realize some of the continuing education emails specifically pertained to the Regulatory Element, the record demonstrates that he intentionally directed the assistant to take continuing education courses on his behalf.[18] *Cf. Michael C. Pattison*, Exchange Act Release No. 67900, 2012 SEC LEXIS 2973, at *37 & n.56 (Sept. 20, 2012) (observing that scienter includes "knowing or intentional" misconduct).

Logan's reluctance to accept responsibility for his misconduct is an additional aggravating factor. In his testimony before the Hearing Panel, Logan shifted blame to others and minimized the seriousness of the lie he told the investigator.[19] RP 319-20, 335, 339. He continues to do so on review, shifting blame to Penn Mutual (for imposing demanding sales goals) and to FINRA (for moving to web-based administration of the Regulatory Element which,

[18] Logan's characterization of his conduct as negligent is also undermined by his own testimony, in which he described his actions as "reckless." RP 345-47, 369. As discussed above, however, Logan's decisions to direct the assistant to complete continuing education courses for him were intentional, not reckless.

[19] On review, Logan continues to minimize his lie to Penn Mutual's investigator, stating that he "was initially not honest during his firm's investigation." Op. Br. at 13. But Logan never admitted his misconduct to his firm. Rather, he did not admit his misconduct until FINRA investigated the matter. RP 299, 346-47, 725, 731.

in Logan's view, caused the course to appear to be less important). Op. Br. at 5-6, 9. Logan's persistence in refusing take full responsibility for his actions provides further support for the bar, as it demonstrates his failure to appreciate the serious nature of his misconduct. *See Robert Tretiak*, 56 S.E.C. 209, 234 (2003) (observing that the applicant's argument that his misconduct was excusable "indicate[s] [] that he fails to appreciate the seriousness of his misconduct and his own responsibility").

Logan's repeated decisions to use an impostor to complete continuing education courses—as well as his decision to lie to his firm to conceal this misconduct—are antithetical to the high standard of integrity required from those in the securities industry. *See Ortiz*, 2008 SEC LEXIS 2401, at *29; *see also Saad*, 2019 SEC LEXIS 2216, at *45 & n. 97 (observing that "[t]here is no identifiable segment of the securities industry whose ethical conduct is more crucial to the attainment of Congress' goals than the ethical conduct of broker-dealers"). Because Logan's misconduct demonstrates a disregard for the honesty and integrity required of broker-dealers, a bar serves the public interest. *See Se Invs.*, 2019 SEC LEXIS 1370, at *19.

C. Logan's Arguments Are Unpersuasive

Logan argues that several factors mitigate the seriousness of his misconduct, and that a lesser sanction or a new hearing is warranted due to a purported misunderstanding by a Hearing Panel member. The NAC addressed each of Logan's arguments and, for the reasons discussed below, appropriately rejected them.

1. Logan Misapprehends the Basis for the NAC's Sanction

Logan asserts that a bar is excessive because he was unaware that one of the courses he sent to the assistant for completion was the Regulatory Element. Op. Br. at 7-8. This argument misapprehends the basis for the NAC's sanction. RP 1117-19. Regardless of whether Logan

knew the precise nature of the relevant continuing education courses, he acted dishonestly by using an impostor to complete them and by lying to Penn Mutual when the company investigated his misconduct. *Id.* As the NAC explained, Logan's sanction was based on this troubling pattern. *Id.*

As the NAC also explained, Logan's assertion that he did not realize one of the courses was the Regulatory Element underscores his inattention to his obligations as a member of the securities industry. *See* RP 1118. Logan was a registered representative for more than 11 years and should have been familiar with his periodic obligation to complete the Regulatory Element—which was required to keep his FINRA registration active. *See* FINRA Rules 1240(a)(1)-(2).[20] Yet, he testified that he could not distinguish the Regulatory Element from other courses and did not have time to keep track of continuing education requirements, including those prescribed by FINRA. RP 331, 333, 339, 371. Even accepting as true Logan's statements that he did not realize he was cheating on the Regulatory Element, his disregard for his obligations as a member of the securities industry and the dishonest means he used to avoid them demonstrate that a bar is necessary to protect investors.[21] RP 1118; *see Se. Invs.*, 2019 SEC LEXIS 1370, at *19; *Ortiz*, 2008 SEC LEXIS 2401, at *29.

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[20] *See also David Adam Elgart*, Exchange Act Release No. 81779, 2017 SEC LEXIS 3097, at *16-17 (Sept. 29, 2017) (explaining that "participants in the securities industry must take responsibility for compliance and cannot be excused for lack of knowledge, understanding or appreciation of these requirements") (quoting *Craig*, 2008 SEC LEXIS 2844, at *16), *aff'd*, 750 F. App'x 821 (11th Cir. 2018).

[21] The record undermines Logan's assertion that he did not realize the Regulatory Element was one of the courses he forwarded to the assistant for completion. While Logan testified that he did not realize the emails about the Regulatory Element concerned the same course he took at a testing center in 2015 (RP 329, 389), his September 24, 2018 email to his firm's licensing director indicated differently. Notably, in that email, Logan asked the director if he needed to

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2. It Is Not Mitigating that Logan Cheated On Unmonitored Courses

Logan also argues that the online context of his misconduct is mitigating. Op. Br. at 9-10. Specifically, Logan asserts that FINRA caused the Regulatory Element to appear less serious by moving to web-based delivery, a context where the course is not proctored. *Id.*

The Commission should reject Logan's assertion that a bar is not warranted for cheating on unmonitored courses. Logan's decisions to cheat on continuing education courses were dishonest regardless of whether the courses were proctored. Indeed, the online context presents an even greater need to rely on the honesty of registered persons.[22] Logan's apparent belief that cheating is less serious when a course is unmonitored reflects a continued failure to appreciate that the "highest ethical standards prevail in every facet of the securities industry." *Donald L. Koch*, Exchange Act Release No. 72179, 2014 SEC LEXIS 1684, at *86 (May 16, 2014), *pet. granted in part on other grounds*, 793 F.3d 147 (D.C. Cir. 2015). Furthermore, it is not mitigating that Logan acted dishonestly in a context in which he did not believe he would be barred for doing so. *See* Op. Br. at 7-8. Rather, Logan's willingness to resort to dishonesty in a context that, in his view, is not "serious" underscores the need to protect investors from the risk of recurring deceitful acts. *See Paul*, 48 S.E.C. at 128.

[cont'd]

schedule an appointment to take the course. RP 365, 711. Logan did not make a similar inquiry regarding any of the other continuing education courses. *See* RP 697, 704-05, 713-16. Regardless, even assuming Logan did not realize the Regulatory Element was involved, a bar is necessary to protect investors for the reasons discussed herein.

[22] *See Approval Order for Web-based Delivery*, 80 Fed. Reg. at 47020 n.22 (explaining that the Commission "expects both FINRA and its member firms to take appropriate measures to avoid any abuse that could be associated with Web-based delivery of [continuing education]").

In any event, it is not true, as Logan asserts, that web-based delivery of the Regulatory Element causes the course to lack "indicia of seriousness." *See* Op. Br. at 9. Logan received multiple emails explaining that this was the same course previously administered at testing centers, and that his failure to complete it would cause his FINRA registration to become inactive. RP 709-12, 719-20. In a Notice to Members addressing the move to web-based delivery for the Regulatory Element, FINRA warned that a registered person's failure to comply with the Continuing Education Rules of Conduct ("CE Rules of Conduct") when taking the course could result in disciplinary sanctions, including a bar. *FINRA Regulatory Notice 15-28*, 2015 FINRA LEXIS 22, at *5-6 & n.9.[23] The CE Rules of Conduct specifically provide that a participant may not use an impostor or accept assistance from any person to complete the Regulatory Element. RP 803.[24] Before beginning the Regulatory Element, the participant is required to certify that he has read and agrees to these rules. *FINRA Regulatory Notice 15-28*, 2015 FINRA LEXIS 22, at *5 ("[B]efore commencing a CE Online session, FINRA will require that each participant agree to the Rules of Conduct for CE Online."); RP 792. It is not mitigating that Logan did not review these rules because he used an impostor to complete the course. It also is not mitigating that Logan failed to stay apprised of changes to the Regulatory Element. *See Elgart*, 2017 SEC LEXIS 3097, at *16-17; *see also Philippe N. Keyes*, Exchange Act

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[23] This document is included in the record at RP 791-800. FINRA's warning that cheating on the online Regulatory Element could result in a bar undermines Logan's unsupported assertion that this recommended sanction is merely a vestige of the course's former in-person administration. *See* Op. Br. at 3, 6.

[24] The CE Rules of Conduct also are available online. *See* FINRA*, Registration, Exams, and CE*: *Continuing Education Rules of Conduct*, *available at*: https://www.finra.org/registration-exams-ce/continuing-education/rules-conduct (last visited Sept. 15, 2022).

Release No. 54723, 2006 SEC LEXIS 2631, at *21 (Nov. 8, 2006) (finding claimed ignorance of the law not mitigating); *Prime Inv., Inc.*, 53 S.E.C. 1, 13 (1997) (same).

Finally, Logan may not mitigate the seriousness of his misconduct by attempting to shift blame to FINRA. *See James Lee Goldberg*, Exchange Act Release No. 66549, 2012 SEC LEXIS 762, at *18 n.20 (Mar. 9, 2012) (rejecting the applicant's attempt to blame FINRA for his continuing education deficiency). Logan alone bears responsibility for his repeated choices to avoid continuing education requirements by using an impostor to complete courses for him. *See Tretiak*, 56 S.E.C. at 234 (observing that it was the applicant's "own responsibility, as a securities principal and industry participant, for his compliance with essential regulatory requirements that serve to protect public investors").[25]

3. Logan's Deceptive Misconduct Is Not Mitigated by Stress

Logan also argues that his misconduct is mitigated by personal and professional stress. Op. Br. at 5-6. But, as the Commission has recognized, stress may be a mitigating factor only when the misconduct is of "the type that one might associate with stress." *Saad*, 2015 SEC LEXIS 4176, at *20 (distinguishing between conduct attributable to an "unthinking reaction" to stress and repeated deception). Here, stress is not a mitigating factor because it cannot explain Logan's repeated decisions to act in a deceptive manner. *See id.*, at *21.

[25] For all of these reasons, the Commission also should reject Logan's attempt to rely on a FINRA blog post addressing cheating in the context of remote qualification examinations. *See* Op. Br. at 9 & n.1. Logan's view that this post demonstrates that the online context mitigates his cheating is misguided. If anything, the post confirms that cheating is a serious matter, regardless of the context. *See* Jessica Hopper, *Working on the Front Lines of Investor Protection - Test Cheaters Beware*, FINRA Media Center (Sept. 14, 2020), *available at*: https://www.finra.org/media-center/blog/working-front-lines-investor-protection-test-cheaters-beware (last visited Oct. 12, 2022) ("Regardless of the testing environment, Enforcement will pursue disciplinary action against the individual and, in most instances, seek to bar them from the broker-dealer industry.").

Moreover, as the NAC explained, the record provides little support for Logan's attempt to attribute his misconduct to stress. RP 1120. Logan did not ask Penn Mutual for more time to complete the continuing education courses, nor did he ask to be excused from any work duties. RP 345. To the contrary, Logan continued his efforts to earn Certified Financial Planner and Chartered Life Underwriter designations by taking at least one non-mandatory course during the relevant period. RP 320-21, 324, 818. While Logan's effort in this respect generally would be commendable, his decision to voluntarily add to the demands on his time undermines his assertion that his cheating on required courses was mitigated by time constraints. In addition, his misconduct began before some of the circumstances causing him personal stress.[26]

4. Logan's Reliance on Settled Cases is Misplaced

Logan also contends that a bar is excessive because respondents in settled cases received lesser sanctions. Op. Br. at 10-13. His argument contravenes well-settled precedent that comparisons to sanctions in settled cases are inappropriate. *Newport Coast Sec., Inc.*, Exchange Act Release No. 88548, 2020 SEC LEXIS 917, at *34 (Apr. 3, 2020) ("We have observed repeatedly that comparisons to sanctions in settled cases are inappropriate."). As the Commission has explained, "pragmatic considerations such as the avoidance of time-and-manpower-consuming adversary proceedings justify imposing lower sanctions in negotiating a settlement." *William Scholander*, Exchange Act Release No. 77492, 2016 SEC LEXIS 1209, at *43 (Mar. 31, 2016) (quoting *Kent M. Houston*, Exchange Act Release No. 71589, 2014 SEC LEXIS 614, at *33 (Feb. 20, 2014)). Moreover, "litigated cases typically present a fuller, more

[26] Logan testified that his second son was born with health problems in December 2017, and that this circumstance contributed to the stress leading to his misconduct. RP 319, 383-84. Yet, Logan's pattern of misconduct began in October 2017, when he forwarded the Ethics Course to the assistant for completion. RP 149.

developed record of facts and circumstances for purposes of assessing appropriate sanctions than do settled matters." *Scholander*, 2016 SEC LEXIS, at *43 (quoting *Houston*, 2014 SEC LEXIS 614, at *33).

The NAC must determine an appropriate sanction based on the circumstances of the case before it, and that is precisely what it did here. *See Craig*, 2008 SEC LEXIS 2844, at *24-25 ("[B]ecause the appropriate remedial action depends on the facts and circumstances of each particular case, the proper sanction cannot be precisely determined by comparison with action taken in other cases") (quoting *Pac. On-Line Trading & Sec., Inc.*, 56 S.E.C. 1111, 1123 (2003)). Specifically, the NAC considered the dishonest nature and extent of Logan's misconduct, along with the aggravating factors that permeate the case. *See* RP 1117-23. As discussed above, the NAC's determination that a bar is needed to protect investors is well-supported by the record.

While Logan contends that his sanction is an outlier, he acknowledges that FINRA Hearing Panels have imposed bars in cases involving cheating on continuing education requirements. Op. Br. at 12-13 (citing *Holloway*, 2019 FINRA Discip. LEXIS 21 & *Kennedy*, 2012 FINRA Discip. LEXIS 18). His attempts to distinguish those cases are unpersuasive. *See* Op. Br. at 12-13. While Logan asserts that *Holloway* involved a broader range of misconduct than his case, the Hearing Panel in *Holloway* imposed each sanction on a per-cause basis, explaining that a bar was appropriate for the respondent's use of an impostor to complete continuing education courses. 2019 FINRA Discip. LEXIS 21, at *56-57. And, while Logan points out that the respondent in *Kennedy* defaulted, the Hearing Panel did not consider this as a factor when determining an appropriate sanction. *See* 2012 FINRA Discip. LEXIS 18, at *9-10. Instead, the Hearing Panel explained that a bar was appropriate to protect investors because the respondent's cheating on the Firm Element demonstrated dishonesty. *Id.* While the sanction in

this case must depend on its unique facts and not comparisons to sanctions in other cases, *Holloway* and *Kennedy* undermine Logan's assertion that his sanction is an aberration. *See* Op. Br. at 10.

5. Logan Cannot Demonstrate Prejudice from a Purported Misunderstanding by a Hearing Panelist

Finally, Logan contends that a purported misunderstanding by a Hearing Panelist undermined the fairness of his disciplinary hearing. Op. Br. at 13-15. Specifically, he asserts that a Hearing Panelist mistakenly believed that he asked the assistant (who is female) to impersonate him at a testing center. Op. Br. at 14. As a remedy for this supposed error, Logan requests that the Commission either reduce the sanction or remand this matter for a new hearing. Op. Br. at 15.

The Commission should reject Logan's argument. Even assuming the Hearing Panelist mistakenly believed that Logan asked the assistant to impersonate him at testing center (and, as discussed below, FINRA does not agree that such a misunderstanding occurred), any such error was not prejudicial. The Commission reviews the decision of the NAC, not the Hearing Panel. *Morton Bruce Erenstein*, Exchange Act Release No. 56768, 2007 SEC LEXIS 2596, at *27 (Nov. 8, 2007), *aff'd*, 316 F. App'x 865 (11th Cir. 2008). The NAC conducted an independent review of the record, and its decision was based on an accurate understanding of the facts. *See* RP 1109-14, 1116. Logan does not contend otherwise, nor does he explain how the Hearing Panelist's purported misunderstanding could have impacted the NAC's decision.[27] *See* Op. Br. at 13-15; *Erenstein*, 2007 SEC LEXIS 2596, at *27-28 & n.28 (explaining that the applicant

[27] Indeed, Logan has not demonstrated that the purported error impacted the Hearing Panel's decision, which also was based on an accurate understanding of the facts. RP 896-903.

failed to demonstrate that an error by the Hearing Panel caused prejudice, especially considering the NAC's and the Commission's subsequent review). And, considering that the NAC based Logan's sanction on its own review of the record, Logan's requested remedies for the purported error are inappropriate. *See* Op. Br. at 15; *Erenstein*, 2007 SEC LEXIS 2596, at *27-28.

Furthermore, Logan has not demonstrated that the purported misunderstanding took place. He relies on the following exchange between himself and the Hearing Panelist:

> Hearing Panelist: You testified that . . . you were unaware that FINRA had changed the FINRA regulatory exam to one that could be taken remotely, from the comfort of your home or from your office, wherever you might be, but you no longer had to go to Prometric[] or Pierson or one of those sites, correct?
>
> [Logan]: That's correct.
>
> Hearing Panelist: When you asked [your assistant] in 2018 to take that exam for you, and I believe you testified there was a series of email chains back and forth to her, then let me understand correctly, you were asking her to go to an offsite location, Prometric, Pierson, something like that and to impersonate you; is that correct?
>
> [Logan]: No, that's not correct.
>
> Hearing Panelist: Help me understand. You said you – you did not understand –
>
> [Logan]: I was confusing the online CE courses. Again, in the couple hundred emails [] I was getting per day [], I was recklessly forwarding emails. And I saw FINRA CE, I forwarded the email to [my assistant]. And [I] understood that was an online course . . . I was certainly not asking her to go to a testing center.
>
> Hearing Panelist: Thank you for that clarity.

RP 388-89.

This exchange reflects the Hearing Panelist's attempt to clarify potentially inconsistent testimony—that Logan directed the assistant to take the Regulatory Element for him online while

he simultaneously was unaware that the course is now administered online. *See* RP 329, 331, 346, 388-89. Logan clarified his testimony in response to the Hearing Panelist's question, and the panelist acknowledged the clarification. RP 389. To the extent Logan's counsel believed that further clarification was needed, he could have taken steps to make that clarification for the record.[28] *Cf. Blair v. CBE Grp. Inc.*, No. 13-CV-00134-MMA, 2015 U.S. Dist. LEXIS 67920, at *26 (S.D. Cal. May 26, 2015) (explaining that asking clarifying questions of a client is a "major part of counsel's role" at a deposition).

In sum, the Commission should reject Logan's arguments, which misapprehend the basis for his sanction and lack legal and factual support. Logan's decisions to use an impostor to cheat on continuing education courses were dishonest, regardless of whether he paid attention to the precise nature of the courses involved and regardless of whether those courses were monitored. The NAC properly focused its analysis on the deceptive nature of Logan's misconduct and the aggravating factors, carefully explaining why a bar is needed to protect investors and the public interest. Because this sanction is well-supported by the record, the Commission should dismiss the application.

[28] On review, Logan indicates that further clarification would have been difficult because the exchange occurred near the end of the hearing. Op. Br. at 15. Nothing prevented Logan's counsel from seeking further clarification. Notably, after the Hearing Panelists asked their questions of Logan, the Hearing Officer provided both parties with the opportunity to ask follow-up questions. RP 396. Logan's counsel declined the opportunity to ask further questions at that time. *Id.*

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V. CONCLUSION

Logan repeatedly directed the assistant in his office to take continuing education courses on his behalf and lied to his firm when it investigated his misconduct. The bar that FINRA imposed for Logan's deceptive misconduct is supported by the record and FINRA's Guidelines, and it is necessary to protect investors and the public interest. The Commission should affirm the NAC's decision in its entirety and dismiss the application for review.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Ashley Martin, certify that:

(1) this Brief in Opposition to the Application for Review complies with the limitation set forth in SEC Rule of Practice 154(c). I have relied on the word count feature of Microsoft Word in verifying that this brief contains 7,560 words.

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

Respectfully Submitted,

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Dated: October 12, 2022

CERTIFICATE OF SERVICE

I, Ashley Martin, certify that on this 12th day of October 2022, I caused a copy of FINRA's Brief in Opposition to the Application for Review, in the matter of Matthew R. Logan, Administrative Proceeding File No. 3-20922, to be filed through the SEC's eFAP system on:

Vanessa A. Countryman, Secretary
Securities and Exchange Commission
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On this date, I also caused a copy to be served by email on:

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