FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. PARTHO S. GHOSH (CRD No. 1983427), Respondent.	Disciplinary Proceeding No. 2016051615301 Hearing Officer–DRS **EXTENDED HEARING PANEL DECISION** Date: August 7, 2019

For engaging in outside business activities without providing prior written notice to his member firm employer, Respondent Partho S. Ghosh is fined $25,000, suspended for six months from associating with any FINRA member firm in any capacity, and ordered to requalify. Respondent is also ordered to pay costs.

Appearances

For the Complainant: Michael Perkins, Esq., Jessica L. Brach, Esq., Jackie A. Wells, Esq., and Kay Lackey, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondent: Scott M. Andersen, Esq., Andersen, P.C., New York, New York.

DECISION

I. Introduction

FINRA Rule 3270 prohibits registered persons from serving as the sole proprietor, officer, or director of an outside business without providing prior written notice to the person's FINRA member firm employer. The respondent in this case, Partho S. Ghosh, is charged with violating that rule by failing to properly notify his firm employer about his relationship with a consulting company he founded and operated. Based on that conduct, Ghosh is also charged with violating FINRA's ethical conduct rule, FINRA Rule 2010.

Ghosh is a former registered representative of NYLife Securities, Inc. ("NYLife Securities" or "Firm") and a former insurance agent with its affiliate, NYLife Insurance, Inc. ("NYLife Insurance") (collectively referred to as "the NYLife entities"). Before joining the NYLife entities, Ghosh formed a company, Trans Global, Inc. ("Trans Global"). Its purpose was

to provide corporate finance advisory services to financial technology companies regarding financing contingent liabilities. Later, during the hiring process at the NYLife entities, their Corporate Compliance Department ("CCD") told Ghosh that he must seek and obtain their approval to operate Trans Global as an outside business activity ("OBA"). Ghosh then filed an OBA request with the CCD. The CCD, however, denied the request and instructed Ghosh to dissolve the company as a condition of joining the NYLife entities. Ghosh complied and was hired as an insurance agent for NYLife Insurance and as an associated (non-registered fingerprint) person at NYLife Securities.

Although Ghosh dissolved Trans Global at the direction of the CCD, a few months later he started, and began conducting business activities under, an identically purposed company, P.S. Ghosh Inc. ("P.S. Ghosh"). Ghosh was its sole owner and director. Several months after forming P.S. Ghosh—and just before he became registered with NYLife Securities—a Firm manager discovered P.S. Ghosh's existence and directed Ghosh to file an OBA request for that company with the CCD.

This time, however, Ghosh did not immediately comply. Instead, after registering with the Firm, he resisted filing the request while trying, without success, to convince Firm management that P.S. Ghosh was not an OBA. Meanwhile, Ghosh provided financial advice and sold NYLife Insurance products through P.S. Ghosh. When he finally submitted the OBA request several months later, the CCD denied it. But Ghosh continued conducting business through P.S. Ghosh. Then within a few weeks, he resigned when the Firm told him that his business model was not compatible with the NYLife entities' business.

The Department of Enforcement filed a Complaint against Ghosh, charging him with the above-referenced violations. Ghosh denied committing these violations and requested a hearing. For his defense, Ghosh mainly argued, first, that Enforcement failed to prove that P.S. Ghosh was a business activity outside the scope of his relationship with NYLife Securities. And, second, even if it were, according to Ghosh, his pre-registration written communications with Firm management, and the instructions he received in response, satisfied the notice requirement of FINRA Rule 3270.

A five-day disciplinary hearing was held before a FINRA Extended Hearing Panel. After considering the evidence, the Extended Hearing Panel rejects Ghosh's defenses and concludes that Enforcement proved that he violated FINRA Rules 3270 and 2010. We set forth below our findings of fact, conclusions of law, and impose appropriate remedial sanctions.

II. Findings of Fact[1]

A. Respondent Partho S. Ghosh and Jurisdiction

Ghosh first became registered as a General Securities Representative through his association with a FINRA-regulated broker-dealer in 1989.[2] Afterward, he was registered with several FINRA member firms.[3] In late 2015, Ghosh joined affiliated companies[4] NYLife Securities and NYLife Insurance.[5] On December 9, 2015, NYLife Securities made a Non-Registered Fingerprint (NRF) filing with FINRA, which caused Ghosh to become associated with the Firm.[6] On May 20, 2016, Ghosh became registered with NYLife Securities as a General Securities Representative and Investment Company and Variable Contracts Products Representative.[7] On September 8, 2016, Ghosh voluntarily resigned from the NYLife entities.[8] And on October 7, 2016, NYLife Securities filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") stating that Ghosh had voluntarily resigned.[9]

At the time of the hearing, Ghosh was not registered with another FINRA member firm.[10] Nevertheless, based on Article V, Section 4 of FINRA's By-Laws, FINRA retains jurisdiction over Ghosh for the purposes of this disciplinary proceeding because (1) Enforcement filed the Complaint on September 27, 2018, which was within two years after the effective date of termination of his registration from the Firm (October 7, 2016); and (2) the Complaint charges Ghosh with misconduct committed while he was registered with a FINRA member.

Although Ghosh is charged with misconduct occurring while registered at NYLife Securities, the events leading to this disciplinary action began when Ghosh first became associated with the NYLife entities and before he was registered with the Firm. So, that is where we start our factual discussion.

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[1] While most of the factual findings in this decision are contained in this section, the Hearing Panel makes additional findings in both the Conclusions of Law and Sanctions sections when necessary to address certain legal and sanctions issues.

[2] Answer ("Ans.") ¶ 4.

[3] Joint Exhibit ("JX-") 1, at 3, 5, 18–20; Hearing Transcript ("Tr.") 61–64.

[4] Tr. 65.

[5] Ans. ¶ 8.

[6] JX-1, at 9.

[7] JX-1, at 3.

[8] Ans. ¶ 29.

[9] Joint Stipulations (Feb. 22, 2019) ("Stip.") ¶ 10.

[10] Tr. 74.

B. Ghosh Joins the NYLife Entities and Agrees to Be Bound by Their Rules, Including Their OBA Rules

On or about November 8, 2015, NYLife Insurance preliminarily hired Ghosh as an insurance agent.[11] Because NYLife Insurance required Ghosh to also register with NYLife Securities,[12] Ghosh started that process by completing a Uniform Application for Securities Industry Registration or Transfer ("Form U4") on November 11, 2015.[13] Ghosh was assigned to the Manhattan General Office,[14] where Dominick Kortkamp was the managing partner.[15] Ghosh's direct supervisor was Chandler Goel, a senior partner,[16] who also worked in the Manhattan General Office.[17] Kortkamp was Goel's direct supervisor and became Ghosh's supervisor after Goel's employment was terminated on June 30, 2016.[18]

On November 10, 2015, Ghosh signed an Agent/Registered Representative Acknowledgment Page in which he acknowledged reading and understanding the NYLife Insurance and Securities Agent/Registered Representative's handbook ("Handbook").[19] He also agreed to observe and abide by the rules and policies contained in the Handbook and any other NYLife rules or policies.[20]

Further, when Ghosh joined the NYLife entities, he signed an Agent's Contract.[21] In that contract, Ghosh acknowledged receiving the Handbook.[22] One of the policies in the Handbook pertained to OBAs. That policy required insurance agents and registered representatives to

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[11] Stip. ¶ 2.

[12] Tr. 66.

[13] Complainant's Exhibit ("CX-") 1, at 15. NYLife Securities filed the Form U4 on January 12, 2016. CX-1, at 1. Ghosh, however, did not become registered with NYLife Securities until May 20, 2016. JX-1, at 3.

[14] Stip. ¶ 2.

[15] *Id.*

[16] *Id.*; Tr. 483.

[17] Tr. 76.

[18] Stip. ¶ 2; Tr. 483.

[19] CX-4.

[20] CX-5, at 3.

[21] CX-5, at 14.

[22] CX-5, at 3, Section 8. Even though every agent was required to read the Handbook, Tr. 525, Ghosh denied reading it. Tr. 754. In what became a recurring theme in this proceeding, Ghosh blamed the Firm. He claimed he never received a hard copy of the Handbook, never received training about its contents, and never received training about how to access the information contained in the Handbook on the NYLife agency portal. Tr. 692–93. While the evidence showed that the Handbook was not provided to new hires in hard copy, it was available online through the portal and could be printed in hard copy if the agent requested. Tr. 525–27, 602, 853–54, 1179–80.

comply with an online OBA submission process.[23] That process figures prominently in this case, so we address it in detail, below.

C. The NYLife Entities' OBA Submission and Approval Process and Other Relevant Policies

The Handbook contained an extensive section addressing agents' obligations regarding OBAs. The Handbook defined "Agents" as including "individuals whose sales activities are limited to traditional insurance products, as well as those individuals who are appropriately licensed as Registered Representatives selling securities . . . ."[24] It stated that the NYLife entities applied FINRA Rule 3270 "to both registered and non-registered Agents, and written approval is required prior to engaging in any OBA."[25] The Handbook gave examples of activities requiring prior review and approval under the OBA policies. Those examples included situations where an agent acted "as a director, officer, partner, consultant, employee, a passive owner or a board member of a for profit or non-profit organization; whether the position is paid or unpaid" or had an ownership interest in any business entity.[26]

The following is an overview of the OBA submission and approval process. The CCD oversaw compliance for the NYLife entities.[27] The OBA Unit, a division of the CCD,[28] processed, reviewed, and made determinations regarding OBAs for the NYLife entities' agents, registered representatives, investment advisers, and employees of the NYLife entities.[29] The OBA Unit had the final say in determining whether to approve or deny an OBA.[30]

To seek approval of an OBA, insurance agents and registered representatives went to the agency online portal (available for the NYLife entities) and completed an OBA disclosure/request form.[31] The Handbook required that the form be submitted to and signed by the managing partner ("MP") before it was sent to the OBA Unit.[32] Upon completion, the form was sent electronically to the MP, among others.[33] (Kortkamp was the MP during the relevant

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[23] Tr. 1374.

[24] JX-2, at 14.

[25] JX-2, at 27. All registered representatives of NYLife Securities were also agents of NYLife Insurance. Tr. 863.

[26] JX-2, at 28.

[27] Tr. 851–52, 1369.

[28] Tr. 1181–82, 1368.

[29] Tr. 1369–70.

[30] Tr. 555, 866, 891, 1181.

[31] Tr. 858–59.

[32] JX-2, at 27.

[33] Tr. 857, 860, 1375.

period).[34] The MP would either deny the OBA or acknowledge and submit it for review to the OBA Unit.[35]

After receiving an OBA submission, the OBA Unit would decide whether to approve or deny it.[36] The unit would then notify the MP and the Agency Standards Consultant ("ASC")—in this case, Amy Gentile[37]—of the approval or denial of the OBA.[38] If the OBA Unit approved the OBA, it routed the form back to the agent, supervisor, or MP,[39] who would then acknowledge the OBA Unit's approval and agree to adhere to any conditions the unit imposed.[40] If the OBA Unit denied the OBA, it would return the form to the MP for acknowledgment, and the submitter would be notified of the denial by email.[41] Before acknowledging the denial, the MP could appeal the decision.[42]

In addition to the OBA provisions discussed above, the Handbook contained certain other policies relevant to this case:

- Agents were required to submit all "doing business as" names ("DBA") "to the DBA Unit for approval prior to use."[43] The submissions had to "include copies of the Agent's DBA letterhead and business card," among other things.[44]

- Agents were "only permitted to use a Company-provided email address or an approved DBA email address provided through the Company's web site vendor . . . in the course of carrying out their New York Life business activities."[45]

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[34] Tr. 534.

[35] Tr. 1017, 1375.

[36] Tr. 1376.

[37] Tr. 534–35. Gentile was employed by NYLife Insurance and registered with NYLife Securities. Tr. 1171–72. She reported to the Agency Standards Department, which was not a part of the CCD. Tr. 1182, 1277. Gentile did not approve OBAs. Tr. 1294. Instead, she helped the MP supervise and train insurance agents and registered representatives, Tr. 1173, 1175–76, 1294; educated and assisted agents regarding OBAs and DBAs, Tr. 1280; dealt with their OBA and DBA questions; conducted annual reviews on all agents and registered representatives, Tr. 1277; and informed the MP of any red flags or potential issues about an agent, Tr. 1201–02.

[38] JX-2, at 27.

[39] Tr. 1376.

[40] Tr. 1376.

[41] Tr. 1376.

[42] Tr. 1376.

[43] JX-2, at 49, 51.

[44] JX-2, at 49, 51.

[45] JX-2, at 52.

- Agents were prohibited from "independently establishing web sites pertaining to their association with NYLife or New York Life, or soliciting business on the Internet."[46]

- "All communications and correspondence that relate to the offer or sale of a security . . . [had to] be submitted to or approved by the SMRU [Sales Materials Review Unit] of CCD before use."[47]

- "Any OBA disclosures identified by the Agency Standards Consultant through the Supervisory Interview/Inspection [had to] be immediately submitted to the CCD OBA Unit for review."[48]

D. Ghosh Files an OBA Request for Trans Global, Which Is Denied

On or about October 5, 2015, Ghosh incorporated Trans Global.[49] The next month, during his onboarding at the NYLife entities, the OBA Unit informed him that Trans Global was a potential OBA that required vetting and instructed him to submit an OBA form for that entity.[50] Ghosh complied with that directive and submitted the request on or about November 18, 2015.[51]

On that form, Ghosh described Trans Global and his relationship to it in several ways:

- He characterized Trans Global as a "Consulting" firm.[52]

- He described its business as "Corporate Finance advisory."[53]

- He represented that Trans Global engaged in "Corporate Finance advisory services to FinTech companies regarding financing of contingent liabilities," and did not sell insurance or sell securities.[54]

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[46] JX-2, at 53.

[47] JX-2, at 37.

[48] JX-2, at 27.

[49] Stip. ¶ 1; Tr. 127–28.

[50] Tr. 135–36; CX-15, at 3. According to David Long, the head of the OBA Unit, Tr. 1366, Ghosh "was required to submit for an OBA [for Trans Global] because it is an ownership in an outside entity . . . [a]nd the fact that he was president and CEO of a business that we do not, a business activity that is not normally conducted through our firm, which is corporate finance advisory services." Tr. 1381.

[51] Stip. ¶ 3; Tr. 140; JX-7, at 1.

[52] JX-7, at 1; Tr. 144–45.

[53] JX-7, at 1.

[54] JX-7, at 2.

- He stated that it did not pertain to insurance, real estate, banking, securities, or commodities.[55]

- He listed its business address as 14 Wall Street, 20th Floor, New York, New York.[56]

- He identified himself as Trans Global's President and CEO.[57]

- He disclosed that he had an ownership interest in Trans Global.[58]

- He described his role in connection with the entity as "Strategy, Business Development, Corporate Finance advisory."[59]

- He represented that he neither received compensation from Trans Global-related activity nor expected to do so.[60]

The CCD denied Ghosh's OBA request for Trans Global and explained the basis for the denial on the OBA form:[61] "Acting in this capacity is a service that encompasses an individual's primary role as an Agent/Registered Representative of New York Life and therefore the individual cannot charge an additional fee for this service." (The CCD did not explain why it reached this determination even though Ghosh had represented that he did not receive, and did not expect to receive, compensation in connection with his Trans Global-related activities).

At the hearing, the head of the OBA Unit, David Long, elaborated on the CCD's decision to deny Ghosh's OBA request. Corporate finance advisory services is not a business normally conducted through NYLife, he said.[62] According to Long, these types of services "are generally affiliated with investment banking services. The only advisory services or those type of services where you're charging a fee or providing investment advice, is only allowed if you're an investment advisor with a registered investment" adviser.[63] While the agent could perform those

[55] JX-7, at 2.

[56] JX-7, at 1.

[57] JX-7, at 1.

[58] JX-7, at 1.

[59] JX-7, at 2.

[60] JX-7, at 1.

[61] JX-7, at 1, 3.

[62] Tr. 1381.

[63] Tr. 1385.

activities through NYLife's registered investment adviser affiliate, the agent could not conduct the business through an OBA, Long said.[64]

Because the CCD denied the OBA request, it instructed Ghosh to "take the necessary steps to cease and desist from this OBA. For OBAs in which the Agent has ownership in a legal entity," it continued, "the Agent is required to either dissolve or transfer complete ownership in the legal entity." Finally, the CCD warned Ghosh that "[p]articipation in this activity is prohibited and failure to comply with this decision is a violation of Company policy."[65]

Ghosh disagreed with the CCD's determination. And on November 19, 2015, he sent his supervisor, Goel, an email complaining that the CCD was "making assumptions which [were] wrong." He asked if they could "re-approach compliance" and clarify that Trans Global's sole purpose was "to source prospects for [his] role as an Agent for New York Life" and therefore "it [did] not constitute a conflict with [his] role as an Agent." He also pointed out that the entity would not charge fees.[66]

Goel tried to intercede with the CCD on Ghosh's behalf, but to no avail. Gentile, the ASC, emailed Goel on December 1,[67] informing him that she had spoken with Long,[68] the head of the OBA Unit, and Trans Global was not approved as a DBA, saying, "[the] name Trans Global is not allowed as it alludes he is working international."[69] Gentile reiterated that Ghosh must "cease and desist" using the name Trans Global and provide documentation that he had dissolved the business. She went on to write that Ghosh "may complete a general OBA for Brokering via various carriers" and could also create and submit for approval a DBA with a different name than Trans Global (such as "Ghosh Insurance Services") along with letterhead and business cards.[70] Finally, she noted that before Ghosh could be an adviser, he needed "to meet certain criteria and be eligible to affiliate with" NYLife's affiliated investment adviser.[71] Later that day, Goel forwarded Gentile's email to Ghosh and apologized that despite his best efforts, he "couldn't pull it off."[72]

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[64] Tr. 1385–86.

[65] Stip. ¶ 3; JX-7, at 3.

[66] Respondent's Exhibit ("RX-") 1, at 1. At the hearing, Ghosh said Trans Global's purpose was to serve as a DBA for his NYLife Insurance business. Tr. 778.

[67] Tr. 159; CX-19, at 2–3.

[68] CX-19, at 3.

[69] CX-19, at 3.

[70] CX-19, at 3.

[71] CX-19, at 3.

[72] RX-1, at 2.

Ghosh then dissolved Trans Global[73] and provided proof that he had done so.[74] Undeterred, one month later, Ghosh formed a new, identically purposed company—P.S. Ghosh. Ghosh's relationship with that entity, the activities he conducted through it, and the disclosures he made about it, are at the core of this proceeding.

E. Before Registering with the Firm, Ghosh Forms and Conducts Business Through P.S. Ghosh

Early on, Ghosh concluded that holding himself out as a NYLife agent would hinder his business-generation efforts. Ghosh explained that he wanted potential customers "to have an open mind," and "walking around with a NYLife card that said agent closes people's minds . . . ," he testified. "I [was] trying to create a new way of doing business with life insurance . . . . I needed a brand to keep their minds open."[75] Therefore, on January 15, 2016, Ghosh incorporated P.S. Ghosh and served as its sole owner and director from inception until at least July 30, 2016.[76] He intended P.S. Ghosh to engage in the same activity as Trans Global;[77] in fact, it operated with a substantially similar business model as Trans Global.[78]

After establishing P.S. Ghosh, Ghosh engaged in various start-up activities. He entered into a "virtual lease" for a "virtual office" located at 14 Wall Street, New York, New York;[79] created a website, PSGhosh.com;[80] printed business cards[81] bearing P.S. Ghosh's name; and set up an email address, CEO@PSGhosh.com.[82] Ghosh was not transparent with NYLife about these activities. As of January 2016, he did not inform anyone in the CCD that he had incorporated P.S. Ghosh;[83] did not seek prior approval from anyone at the NYLife entities to

[73] Tr. 160.

[74] Stip. ¶ 4; Tr. 173.

[75] Tr. 781–83.

[76] Ans. ¶¶ 16, 35; Stip. ¶ 5; Tr. 177–78.

[77] Tr. 183; *see also* JX-17, at 4 (Ghosh stating that P.S. Ghosh was formed to "replicate [Trans Global's] Business Model" and "had EXACTLY THE SAME BUSINESS MODEL AS [Trans Global]").

[78] Ans. ¶ 16.

[79] Tr. 179–80; Ans. ¶ 17.

[80] Tr. 180; Ans. ¶ 17.

[81] Ans. ¶ 17; Stip. ¶ 6.

[82] Tr. 178; Ans. ¶ 17; Stip. ¶ 6.

[83] Tr. 183.

have a website;[84] did not obtain approval from the CCD to use the P.S. Ghosh email address;[85] and knew that the NYLife entities did not have access to that email address.[86]

Over the next few months before he became registered at the Firm, Ghosh actively conducted business through P.S. Ghosh. Marketing materials reflect that its business was not limited simply to marketing and selling insurance products; it included providing financial advice relating to other instruments. For example, on February 4, 2016, P.S. Ghosh hosted a "meet and greet" event at the Cornell Club.[87] Beforehand, Ghosh drafted an "open letter" intended for attendees. In that letter, Ghosh explained "[w]hat we do at [P.S. Ghosh]":

> We are a corporate finance advisory boutique which creates innovative structured finance solutions for FinTech companies. Our business model is to leverage a global network of "partnerships" with blue-chip institutions which have successfully sailed through the shoals of time. For example, for trust design and management we are affiliated with a white shoe Trust company founded in 1853; for our financial guarantees we have a partnership with a AAA Balance Sheet NYC financial institution founded in 1842. This provides us with a deep bench on our team, consisting of Tax lawyers, Trust attorneys, CPAs, actuaries, PhDs in Physics, Investment Bankers and Ivy League MBAs. An example of one of our proprietary structured finance vehicles is the TFCF (Tax Free Cash Flow) Plan. This is a "synthetic" defined benefits pension plan which FinTech companies use to attract and retain the red hot programmers and talent in short supply . . . .[88]

Ghosh created a slide presentation, entitled "FinTech Presentation" dated May 1, 2016, reflecting the breadth of P.S. Ghosh's proffered services.[89] One slide explained P.S. Ghosh's business model: "Designs General Strategies across Asset Classes and then uses Partner Institutions, licensed in the respective Asset Class, for solicitation and execution of the particular financial instruments in question."[90] Underneath that description, the slide contained a spoked wheel-type diagram. The center of the wheel was labeled "Combination of Financial Vehicles + Financial Instruments." Spokes emanating outward were labeled with the names of financial

[84] Tr. 182.

[85] Tr. 178.

[86] Tr. 179.

[87] Tr. 576, 905–07, 1061–62, 1072, 1092, 1100, 1711; RX-53, at 2.

[88] RX-53, at 2.

[89] RX-85, at 1; Tr. 1637–38.

[90] RX-85, at 6.

instruments, including not only "Life Insurance" and "Re-Insurance," but also "Bonds," "Equity," "Annuities," and "OTC Derivative."[91]

Finally, in addition to the marketing materials described above, emails (using the P.S. Ghosh email address) between Ghosh and his prospects also show that P.S. Ghosh provided services beyond selling insurance. These services included "using the NYL Securities hat to set up a financing vehicle for a prospect who wants to raise a real estate investment fund";[92] private placement-related activity for a real estate investment fund that included "helping them raise capital for the fund";[93] and devising the structure of a real estate investment fund.[94]

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During the spring of 2016, Ghosh conducted business unabated through P.S. Ghosh without filing an OBA request form. But the situation changed abruptly one day in mid-May. Just days before Ghosh became registered with NYLife Securities, something Gentile saw on Ghosh's desk triggered the key events in this proceeding.

F. Gentile Discovers the P.S. Ghosh Business Card

On May 16, 2016, while visiting the NYLife entities' Manhattan General Office in connection with a corporate compliance audit, Gentile walked by Ghosh's workspace. She looked at his desk and spotted a business card lying in plain view. [95] This is how it appeared:

P.S. Ghosh, Inc.
Corporate Finance Advisory

Partho S. Ghosh
M.B.A. - Finance (Cornell), M. Phil. (Cambridge)
President & CEO

	14 Wall Street
	20th floor
Office phone direct line: (212) 618 - 1859	New York, NY
Email: CEO@psghosh.com	10005

[91] RX-85, at 6. At the hearing, Ghosh explained that this slide did not suggest he was selling these products, but because he "had experience in these silos," he would find "strategies that offer value that none of these other cubicles offer." Tr. 1643. Ghosh went on to say he would eventually tell prospects "that life insurance is that vehicle that offers solutions that the other vehicles don't offer but I don't state that now." Tr. 1643.

[92] JX-11, at 1.

[93] JX-12; CX-32.

[94] CX-34.

[95] Tr. 192, 928–29, 1213–15; CX-24. Gentile did not remember the exact date of her visit but testified that she sent her May 17 email to Goel the day after she found the business card. CX-69; Tr. 1300.

The card concerned Gentile for several reasons. She was unaware that P.S. Ghosh existed or that Ghosh was its CEO; she was unfamiliar with the term "corporate advisory"; all designations had to be approved, and she did not know what "M. Phil" meant or if Ghosh had submitted it for approval; and she noticed that the address on the card was not NYLife's address.[96] While Gentile was looking at the card, Ghosh approached her and she showed it to him. Ghosh handed the card back to Gentile, telling her that Goel was aware of it.[97]

Gentile showed the card to Kortkamp.[98] At the hearing, Kortkamp recalled she told him that day that Ghosh was operating an OBA and a DBA and must submit an OBA request to the OBA Unit for approval.[99] The next day, May 17, Gentile emailed Goel, notifying him that Ghosh was using business cards identifying him as the CEO of an "unapproved OBA and DBA."[100] According to Goel, after receiving her email, he told Kortkamp that they had a problem, saying "[We] need this thing approved. The guy is already working here five, six months so we need to get this resolved ASAP."[101]

The problem, however, would not get resolved quickly. Instead, it would fester over the next several months.

G. Ghosh Becomes Registered at NYLife Securities but Resists Submitting an OBA Request

On May 20, 2016, four days after Gentile discovered the P.S. Ghosh business card, Ghosh became registered with NYLife Securities.[102] Also on that date, Ghosh's Registered Representative Agreement with NYLife Securities took effect.[103] Under that agreement, Ghosh agreed to, among other things, "comply with all rules, regulations, and procedures as set forth by the SEC, FINRA, the Company," and the Handbook.[104] As discussed earlier, the Handbook required registered representatives and insurance agents to follow a prescribed process for seeking prior approval of an OBA that included filing a written submission with the OBA Unit. Ghosh, however, had not followed that process; by the time he became registered, he was already operating P.S. Ghosh.

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[96] Tr. 1217–18.

[97] Tr. 1220–21.

[98] Tr. 930–31.

[99] Tr. 931; *see also* Tr. 1388–89 (Long testifying that Ghosh was required to file an OBA request for P.S. Ghosh).

[100] CX-69, at 1.

[101] Tr. 622.

[102] Stip. ¶ 7.

[103] JX-5.

[104] JX-5, at 2, Section 6.A.

Nor did Ghosh file an OBA submission for P.S. Ghosh promptly after becoming registered. Instead, on May 21 and 24, Ghosh, Kortkamp, Goel, and Gentile exchanged a series of emails about Ghosh's need to make that filing. From the outset, Ghosh balked. On May 21, he emailed Goel telling him that he had told Gentile that "P.S. Ghosh Inc. was a DBA not an OBA . . . because [P.S. Ghosh] is a marketing name. It does not generate any revenue or do business independent of NYL. Instead," Ghosh continued, "[P.S. Ghosh] develops structured solutions, the pieces of which are subsequently given to a NYL Agent. . . ."[105] In that email to Goel, he asked for guidance on the "best way to handle this" but, Ghosh emphasized, he "want[ed] to have . . . little to do with NYL compliance or standards bureaucrats." Goel responded by email later that day. Taking no position on whether P.S. Ghosh was a DBA rather than an OBA, he reassured Ghosh that he had spoken with Gentile. "She will work on getting your DBA/OBA approved" by Monday, May 23, he said.[106]

But the "DBA/OBA" was not approved by May 23. Instead, email discussions regarding the subject continued the next day. On May 24, Gentile emailed Ghosh (and copied Kortkamp and Goel) with detailed instructions about the steps he needed to take by June 1 to have his "OBA and DBA submitted for approval." In the email, Gentile told Ghosh that she understood he was "using DBA business cards" but did "not have an approved OBA or DBA currently"; therefore, she said, he must cease using the cards until he filed a request and obtained permission to use them.[107] Further, Gentile instructed him to submit a "mockup" of his "DBA business card and letterhead with [his] non NYL email address to the DBA unit." Her email also said he could not use his "M.Phil designation" because it "was not approved by NYL."[108]

Later on May 24, Kortkamp emailed Ghosh (copying Goel and Gentile) that Gentile would assist him. "We just need to make sure the OBA you have and the DBA you would like to operate as, is approved and filed," he wrote.[109] Ghosh, however, continued to resist. He emailed Kortkamp and Goel, maintaining that P.S. Ghosh was not an OBA because "it is used solely for NYL business" and because he had selected the name "based on input from the kind of names which work for compliance for DBAs."[110] Ghosh also emailed Gentile, reasserting that "the issue concerns a DBA not an OBA."[111] Notwithstanding Ghosh's repeated arguments about how to classify P.S. Ghosh, Gentile did not rescind her directive that he file an OBA submission for that entity by June 1.

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[105] RX-6, at 1.

[106] RX-6, at 1.

[107] JX-14, at 2–3; RX-7.

[108] JX-14, at 2–3; RX-7.

[109] JX-14, at 2. Kortkamp testified that "any entity that you want to become outside of NYLife, you have to get it pre approved through the company." Tr. 940.

[110] CX-70, at 1.

[111] RX-8, at 1.

Ghosh was required to follow Gentile's instructions.[112] Nevertheless, Ghosh did not meet the June 1 deadline to file an OBA submission for P.S. Ghosh.[113] Nor did he submit a mockup of his P.S. Ghosh business card or letterhead[114] (although, according to Ghosh, he did stop using this business card and switched back to his NYLife business cards after receiving Gentile's May 24, 2016 email).[115] At the hearing, Ghosh explained why he disregarded Gentile's request: "[B]ecause compliance never asked me. Amy Gentile was not compliance," he said.[116] Instead of complying with Gentile's instructions, Ghosh continued to conduct business under P.S. Ghosh.[117]

H. Ghosh Completes the Firm's Annual Compliance Questionnaire

As discussed above, Ghosh failed to meet the June 1 deadline Gentile set for him to submit an OBA submission for P.S. Ghosh. On that date, however, he took other compliance-related action relevant to this proceeding: he completed and filed the Firm's annual compliance questionnaire. On that questionnaire, Ghosh certified[118] he understood and had complied with rules requiring that he do the following:

- Disclose in writing to his MP any/all OBAs before engaging in the activities.[119]
- Obtain prior written approval from the OBA Unit before engaging in any OBA.[120]
- Disclose to the OBA Unit all board or officer positions.[121]
- Not represent to customers or the public that the NYLife entities or affiliates are in any way connected to his OBA.[122]

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[112] JX-2, at 27; Tr. 937.

[113] Tr. 211, 1229–30.

[114] Tr. 197, 210–11.

[115] Tr. 194–95.

[116] Tr. 197.

[117] Tr. 195.

[118] CX-9, at 9. When asked at the hearing to confirm that he completed and certified the accuracy of the answers on the questionnaire, Ghosh was evasive; he did not admit completing and certifying the questionnaire—conceding only that he "filled out some questionnaire." Tr. 110–13. He then said he was "not suggesting" he had any reason to believe he had not completed it. Tr. 127. We find that Ghosh completed the annual compliance questionnaire, as there was no evidence that anyone else may have completed it or had a motive to do so.

[119] CX-9, at 3, No. 23.

[120] CX-9, at 3, No. 24.

[121] CX-9, at 4, No. 28.

[122] CX-9, at 3, No. 25.

The questionnaire contained other questions relevant to how Ghosh conducted business through P.S. Ghosh. Responding to those questions, Ghosh certified that he understood and complied with certain rules:

- "[A]ll sales promotion/advertising material must be approved in advance by the Sales Material Review Unit . . . ."[123]

- "[W]hen using e-mail to communicate with clients, prospects, other agents or Company employees on business related matters, [he] must use a Company provided/approved e-mail address to do so and all e-mails must contain required opt out language."[124]

- If he had "ANY agent staff, they must use a Company provided/approved e-mail address to communicate via email and all e-mails must contain required opt out language."[125]

As we discuss later, Ghosh violated these certifications in connection with his P.S. Ghosh-related conduct.

I. Ghosh Continues to Resist Filing an OBA Submission for P.S. Ghosh

Four days after completing the annual compliance questionnaire, Ghosh resumed his efforts to convince the Firm that he did not need to submit an OBA request for P.S. Ghosh. On June 5, Ghosh emailed Goel and broadened his argument: now he claimed that P.S. Ghosh was neither a DBA nor an OBA.[126] The entity "conducts no 'insurance' or 'securities' or any other 'financial services' business," he represented, adding that it was simply a "'business advisory' entity which designs 'structured financing strategies' and—if and when appropriate—refers businesses and Ultra High Net Worth individuals to Agents of NY Life and/or Registered Representatives of NY Life Securities LLC."[127] Continuing, Ghosh said he hoped he had clarified the issue but offered to meet with Kortkamp and/or Gentile to discuss it further.[128]

The next month, Gentile followed up regarding Ghosh's use of the name "P.S. Ghosh," referring to it as "his DBA." As of July 7, 2016, he had not submitted the name "P.S. Ghosh" to the DBA submission requirements unit for review and approval.[129] Therefore, on that date, Gentile emailed Ghosh (copying Kortkamp) and requested he confirm that he was no longer

[123] CX-9, at 5, No. 37.

[124] CX-9, at 5, No. 41.

[125] CX-9, at 5, No. 41.

[126] RX-11.

[127] RX-11, at 1.

[128] RX-11, at 2.

[129] Tr. 222.

using the name "for business [or] advertising" on "Business cards/Letterhead etc." She added: "Once you have it properly submitted and approved you may use it. Below are the required steps."[130] She went on to define the term DBA and explain how to make a DBA submission.[131]

Still, Ghosh resisted. On July 11, 2016, he sent Gentile an email (copying Kortkamp and Goel), forwarding his June 5 email to Goel and explained why "[u]nder . . . the NYL policy P.S. Ghosh . . . is neither a DBA nor an OBA."[132] He also wrote that the entity "does not represent that it solicits the sale or purchase of any 'insurance' or 'security' as defined by the SEC and NY State Banking and Insurance Commission. . . . [P.S. Ghosh's] business model is purely as a referring entity to NYL Agents and RRs with NYL Securities."[133] Ghosh volunteered to meet with Gentile and Kortkamp to answer any of their questions. He also said Goel had agreed with him: "[B]ased on my rather unique (for NYL) business model, along with NYL's written DBA/OBA policy, it is not necessary for me to go through the NYL DBA/OBA registration process." But, Ghosh added, "I'm open to any alternate interpretation or requirements which you or [Kortkamp] might have."[134] After receiving Ghosh's July 11 email, Kortkamp again instructed Ghosh to submit an OBA form for P.S. Ghosh.[135]

J. Ghosh Files an OBA Request for P.S. Ghosh and the CCD Denies It

Finally, on or about July 30, 2016—over two months after he became registered with the Firm—Ghosh submitted an OBA request for P.S. Ghosh.[136] On the OBA request form, Ghosh:

- Represented that P.S. Ghosh was a corporation[137] in which he held a 100% ownership interest.[138]
- Listed its address as 14 Wall Street, 20th Floor, New York, New York.[139]
- Described the nature of its business and the type of business it would engage in as "Analyzing data for general business consulting purposes."[140]

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[130] CX-71, at 1.

[131] CX-71, at 1.

[132] JX-15.

[133] JX-15, at 1.

[134] JX-15, at 2.

[135] Tr. 263–64.

[136] Stip. ¶ 8; JX-16, at 1; Tr. 161–62, 191–92, 266, 278–79.

[137] JX-16, at 2.

[138] JX-16, at 2.

[139] JX-16, at 1.

[140] JX-16, at 1.

- Stated that the OBA did not in any way pertain to insurance, real estate, banking, securities or commodities, and did not relate to insurance and/or financial products/services.[141]

- Described his functions and responsibilities as "Conduct Analysis."[142]

- Stated he did not expect to receive compensation from the OBA.[143]

On August 1, 2016, after reviewing the form, Kortkamp approved it, which then caused the form to be transmitted automatically to the CCD.[144] Later that day, an analyst in the OBA Unit[145] requested that Ghosh provide additional information about P.S. Ghosh.[146]

Ten days later, on August 11, Ghosh submitted a lengthy response. Ghosh stated, in part, that P.S. Ghosh provides "Strategy Consulting" and included a description of its services. It was evident from the description that those services encompassed more than just selling insurance. Ghosh said that the nature of its business was to "[d]esign Structured Finance Solutions for FinTech StartUps" that "combine Life Insurance and Securities (hence why I have a Series 7)." Elaborating, Ghosh wrote, "The data I analyse consist of statistical data for bond, equity, commodity and foreign exchange markets. I do this under PS Ghosh . . . [which] is set up as a 'referral' machine for NY Life/Securities Agents/RRs." Finally, Ghosh represented that "[t]he ONLY compensation which PS Ghosh . . . derives is from NY Life/Securities as an agent and RR."[147]

Before deciding whether to approve the OBA request, Long reviewed P.S. Ghosh's website—and several things concerned him:[148]

- The website's content constituted sales and marketing material whose purpose was to solicit the sale of a product through NYLife. Therefore, the content

[141] At the hearing, Ghosh explained that the OBA did not in any way pertain to insurance, real estate, banking, securities or commodities because he "was doing concepts," i.e., general strategies without reference to insurance. Tr. 267–68.

[142] JX-16, at 2.

[143] JX-16, at 1.

[144] Tr. 963–65; JX-16, at 1.

[145] Tr. 1390–91.

[146] JX-16, at 3; Tr. 966–67.

[147] JX-16, at 3.

[148] Tr. 1395–96.

required approval through the sales marketing unit prior to its use with the public through the website.[149]

- The website referenced structured finance solutions, which he interpreted as combining life insurance and securities, and analyzing data for bond, equity, commodity and foreign exchange markets. Such approaches would not be allowed as an OBA.[150]

- The website's references to proprietary general structured finance solutions raised selling away issues.[151]

- Terms used on the website, such as "indicative pricing" and "firm pricing," were potentially misleading.[152]

On or about August 12, 2016, the CCD denied the OBA request.[153] The denial included the basis for the CCD's decision: "New York Life prohibits its Agents from conducting activities related to business consulting while employed with New York Life."[154] Therefore, the CCD stated, "[e]ffective immediately," Ghosh was "required to take the necessary steps to cease and desist from this OBA. For OBAs in which [he had] ownership in a legal entity, [he was] required to either dissolve or transfer complete ownership in the legal entity."[155] And, "[i]n the case of a sole proprietorship or employment," Ghosh was required to "provide contracting with a letter stating that this business has been discontinued." Finally, the CCD warned, "Participation in this activity is prohibited and failure to comply with this decision is a violation of Company policy."[156]

On August 12, the OBA Unit informed Ghosh that the CCD had denied his OBA request and the unit directed him to cease and desist from engaging in that activity.[157] That day, Gentile and Kortcamp exchanged emails about the denial and next steps. Kortkamp wrote that he (i.e. Kortkamp) could not "accept a 'deny'" and that "someone needs to figure out a way for this to

[149] Tr. 1395–96.

[150] Tr. 1395–97.

[151] Tr. 1397–98.

[152] Tr. 1398.

[153] JX-16, at 1, 3.

[154] JX-16, at 3.

[155] JX-16, at 3.

[156] JX-16, at 3.

[157] CX-74.

work."[158] Gentile, in turn, informed Kortkamp that he could appeal the decision and speak about it with Long.[159]

K. Kortkamp Appeals the OBA Denial, Then Withdraws the Appeal Amid Troubling Revelations

Three days later, on August 15, 2016, Kortkamp appealed the denial.[160] In connection with his appeal, Kortkamp wrote on the OBA submission form that "this came up during the contracting process." He went on to write—referring to Trans Global—that Ghosh "had another corporation that we had him close. Then we didn't like the name, and someone recommended we use 'P.S. Ghosh Inc.' and he did." Further, Kortkamp asked: "What can we do that will surface [sic] our compliance rule, as well as have him operate in a way that he is being referred to high net worth companies/individuals?"[161] Afterward, Kortkamp spoke with the OBA Unit regarding "how [they] could go ahead and see whatever [he was] trying to operate as, if it could work with the NYLife structure."[162] But after Kortkamp spoke with Long, he told Ghosh that "in order to be employed he needed to cease and desist business" under P.S. Ghosh.[163]

Meanwhile, the CCD, Gentile, and others conducted additional investigation and research into, among other things, P.S. Ghosh's business model and website.[164] This led to new, troubling revelations about the website, which a NYLife officer brought to Long's attention on or about August 18, 2016.[165] The officer noted, in an email to Long, that among other things, the website listed three NYLife agents as P.S. Ghosh "Directors, with DBA e-mail addresses. None has an approved OBA or DBA."[166] (The NYLife Insurance agents included on the website—JJS, KM, and JH—[167] were part of Ghosh's team and helped him provide certain P.S. Ghosh-related services.[168]) The email also pointed out that "[t]he site reflects a business address [14 Wall

[158] RX-73, at 1.

[159] RX-73, at 1.

[160] JX-16, at 1; Tr. 277–78, 963.

[161] JX-16, at 2.

[162] Tr. 970.

[163] Tr. 973–74.

[164] Tr. 974.

[165] CX-76.

[166] CX-76, at 1. The attachment to the email, however, identified not three but two agents as "Director—Transaction Execution" (JJS and KM) and one as "Associate—Transaction Execution" (JH). CX-76, at 2.

[167] Stip. ¶ 2.

[168] RX-96; CX-90; RX-95. *See also* Tr. 738, 997.

Street, 20th floor] that is not the address of record for any of these agents. . . ."[169] Long and Gentile then notified Kortkamp that Ghosh had falsified "credentials on websites, adding other agents from [the] general office on to those websites, falsify[ing] their titles, their education as well as misrepresenting products and manipulating our sales process."[170]

After reviewing the website "and other details" with Long and Gentile, Kortkamp withdrew his appeal on the morning of August 19, 2016.[171] Minutes later, Gentile sent Ghosh's LinkedIn page to Kortkamp.[172] It identified Ghosh as "President & CEO" of P.S. Ghosh, listed his current employment as P.S. Ghosh, and his "Industry" as "Investment Banking." Neither of the NYLife entities was in the investment banking business, according to Kortkamp.[173] The LinkedIn page did not mention that Ghosh was affiliated with the NYLife entities. Later on August 19, Kortkamp emailed Ghosh and directed him to remove the P.S. Ghosh website because it contained unapproved material, titles, and representations.[174] That evening, Ghosh confirmed to Kortkamp that he had removed all references to the three junior NYLife Insurance agents.[175]

But as of August 22, Ghosh's LinkedIn page still reflected his current employment as President and CEO of P.S. Ghosh, not the NYLife entities, and described his company as a "Corporate Finance Advisory Boutique which helps FinTech companies finance assets."[176] It continued: "We design and structure the capital solutions and procure the financing from an exclusive relationship with the AAA-rated balance sheet of a major New York City headquartered financial institution founded in 1842."[177]

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[169] CX-76, at 1; Tr. 1250–52. While registered with NYLife Securities, the P.S. Ghosh website reflected its address as 14 Wall Street, 20th Floor, NY, NY. Tr. 1544; CX-66, at 1. Ghosh testified that the address was a virtual office. Tr. 1545–46.

[170] Tr. 978–79.

[171] CX-77, at 2.

[172] CX-77, at 1. Gentile discovered Ghosh's LinkedIn page by performing a Google search. Tr. 1254–55.

[173] Tr. 977–78.

[174] Tr. 279–80; CX-80, at 2. After sending this email to Ghosh, Kortkamp spoke with two of the three agents mentioned on the website. According to Kortkamp, the two agents told him that they were not aware that information about them was posted on the P.S. Ghosh website and verified that their credentials and titles, as they appeared on the website, had been falsified. CX-79; Tr. 986. On August 25, one of the two agents also submitted a signed statement to Gentile and Kortkamp stating, among other things, that he "was unaware of the publishing of any titles to [Ghosh's] website and . . . was also unaware of the biography published." CX-90.

[175] Tr. 281–82; CX-80, at 1. Ghosh saw no problem with listing these titles on the website. "[T]hey are [P.S. Ghosh] titles," he testified. "I am not saying they have those titles at NYLife. So I didn't know there was a problem." Tr. 1581.

[176] CX-81, at 1.

[177] CX-81, at 1.

L. Ghosh Resigns from the Firm

By early September 2016, Ghosh had been registered with the Firm for three and a half months. During that time, he had conducted business activities continuously through P.S. Ghosh.[178] But this was about to end. Looking for a new job, on September 5, 2016, Ghosh sent his resume to Goel, who was now working for another insurance company.[179] His resume identified Ghosh as President and CEO of P.S. Ghosh, contained a description of P.S. Ghosh nearly identical to the one appearing on Ghosh's LinkedIn page,[180] and likewise did not mention that Ghosh was affiliated with the NYLife entities. Three days later, on September 8, 2016, after being "advised that his sales strategy was not compatible with NY Life policies," Ghosh voluntarily resigned from the Firm.[181]

III. Conclusions of Law—Respondent Ghosh Violated FINRA Rules 3270 and 2010 by Engaging in Undisclosed Outside Business Activities

A. Overview

The Complaint charges Ghosh with violating FINRA Rule 3270, which governs registered persons' outside business activities.[182] The rule states that:

> [n]o registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member.

FINRA Rule 3270 "addresses the securities industry's concern about preventing harm to the investing public or a firm's entanglement in legal difficulties based on an associated person's unmonitored outside business activities."[183] It "ensures that member firms may raise objections to an associated person's outside business activities at a meaningful time and exercise

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[178] CX-45; CX-47; CX-48; CX-49; CX-50; CX-59; CX-62; CX-63; CX-64.

[179] CX-82.

[180] CX-82, at 3.

[181] Stip. ¶¶ 9, 10; Ans. ¶ 29; JX-1, at 11. The filing of the Form U5 upon Ghosh's termination prompted FINRA to begin the investigation leading to this proceeding. Tr. 1704–05.

[182] *Dep't of Enforcement v. Seol*, No. 2014039839101, 2019 FINRA Discip. LEXIS 9, at *37 (NAC Mar. 5, 2019).

[183] *Dep't of Enforcement v. Connors*, No. 2012033362101, 2017 FINRA Discip. LEXIS 2, at *32 (NAC Jan. 10, 2017); *see also Joseph Abbondante*, Exchange Act Release No. 53066, 2006 SEC LEXIS 23, at *46 (Jan. 6, 2006) (referencing NASD Rule 3030, predecessor to FINRA Rule 3270, and finding that in addition to protecting the investing public, the rule enables firms to avoid "entanglement in legal difficulties based on an associated person's unmonitored outside business activities"), *petition for review denied*, 209 F. App'x 6 (2d Cir. 2006).

appropriate supervision."[184] This rule is "prophylactic" and "designed to assure that an employee engages in conduct consistent with his duties to his employer and its clients."[185] Thus, it "is intentionally broad [and requires] registered persons 'to report any kind of business activity engaged in away from their firms.'"[186] A showing of intent is not required to establish a violation of the rule.[187]

Registered persons must make the required notification when they take steps to begin a business activity unrelated to their relationship with their firm.[188] The written disclosure must be "fulsome,"[189] as it plays an important role in member firms' discharge of their regulatory obligations under FINRA Rule 3270, Supplementary Material .01. This provision requires member firms to

> consider whether a proposed outside business activity will "interfere with or otherwise compromise the registered person's responsibilities to the member and/or the member's customers" or "be viewed by customers or the public as part of the member's business" and then "evaluate the advisability of imposing specific conditions or limitations on a registered person's outside business activity."[190]

The Complaint also charges that by violating FINRA Rule 3270, Ghosh violated FINRA Rule 2010, which provides that "[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." This rule also applies

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[184] *Bernard G. McGee*, Exchange Act Release No. 80314, 2017 SEC LEXIS 987, at *36 (Mar. 27, 2017), *petition for review denied*, 733 F. App'x 571 (2d Cir. 2018); *Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at *45 (Sept. 24, 2015).

[185] *Wanda P. Sears*, Exchange Act Release No. 58075, 2008 SEC LEXIS 1521, at *26 (July 1, 2008); *Dep't of Enforcement v. Giblen*, No. 2011025957702, 2014 FINRA Discip. LEXIS 39, at *26–27 (NAC Dec. 10, 2014) ("When adhered to, [the OBA rule] is prophylactic and allows FINRA [member] firms to oversee their employees' outside business activities, or to prohibit the activities altogether.").

[186] *Dep't of Enforcement v. Connors*, No. 2012033362101, 2016 FINRA Discip. LEXIS 1, at *24 (OHO Jan. 15, 2016) (quoting NASD Notice to Members 01-79, 2001 NASD LEXIS 85, at *7 (Dec. 2001)) *aff'd*, 2017 FINRA Discip. LEXIS 2 (NAC Jan. 10, 2017); *see also Dep't of Enforcement v. Akindemowo*, No. 2011029619301, 2015 FINRA Discip. LEXIS 58, at *39 (NAC Dec. 29, 2015) (FINRA Rule 3270 "extend[s] to all outside business activity"), *aff'd*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769 (Sept. 30, 2016).

[187] *Dep't of Enforcement v. McGuire*, No. 20110273503, 2015 FINRA Discip. LEXIS 53, at *39 (NAC Dec. 17, 2015).

[188] *Dep't of Enforcement v. Mathieson*, No. 2014040876001, 2018 FINRA Discip. LEXIS 9, at *16 (NAC Mar. 19, 2018); *accord Dep't of Enforcement v. Schneider*, No. C10030088, 2005 NASD Discip. LEXIS 6, at *13–14 (NAC Dec. 7, 2005).

[189] *Akindemowo*, 2015 FINRA Discip. LEXIS 58, at *44.

[190] *Connors*, 2017 FINRA Discip. LEXIS 2, at *32–33 (citing FINRA Rule 3270, Supplementary Material .01; Order Granting Accelerated Approval of a Proposed Rule Change, Exchange Act Release No. 62762, 2010 SEC LEXIS 2768, at *26 (Aug. 23, 2010)) (explaining that FINRA Rule 3270 requires firms "to implement a system to assess the risk that . . . outside business activities may cause potential harm to investors and to manage these risks by taking appropriate actions").

to persons associated with a member firm.[191] A violation of another FINRA rule constitutes a violation of FINRA Rule 2010.[192] And, specifically, "[a] violation of FINRA Rule 3270 constitutes a violation of FINRA Rule 2010."[193]

B. Legal Standard Under FINRA Rule 3270

The Complaint does not allege a violation based on the compensation provision of FINRA Rule 3270. Rather, the charge is based solely on the first part of the rule, which requires prior written notice if a registered person intends to become "an employee, independent contractor, sole proprietor, officer, director or partner of another person." The parties do not dispute, and the evidence clearly established, that Ghosh became the sole proprietor and director of P.S. Ghosh without providing prior written notice to his member firm employer in the form specified by the member. Enforcement contends that these facts are sufficient to establish an OBA violation "under the clear language of Rule 3270."[194] Ghosh, however, maintains that Enforcement must also prove that he engaged in activities outside the scope of his responsibilities with the Firm, and that Enforcement failed to do so because he merely sold NYLife Insurance through P.S. Ghosh. This disagreement leads us directly to a discussion of the elements of a FINRA Rule 3270 violation.

We begin by examining the plain language of the rule.[195] In doing so, "we have not isolated any single word or phrase. Rather, we considered the provision in its entirety and the object of and policy behind the interpretation."[196] The plain language of FINRA Rule 3270 reflects two separate routes to liability. Registered persons violate the rule if, before providing appropriate written notice to a firm, they (1) have a specified relationship with "another person," or (2) are "compensated or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm."

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[191] *See* FINRA Rule 0140, which imposes on persons associated with a member the same duties and obligations as a member under the rules.

[192] *Mielke*, 2015 SEC LEXIS 3927, at *2.

[193] *Seol*, 2019 FINRA Discip. LEXIS 9, at *37 n.20; *see also Dep't of Enforcement v. McGee*, No. 2012034389202, 2016 FINRA Discip. LEXIS 33, at *62 n.34 (NAC July 18, 2016), *aff'd*, Exchange Act Release No. 80314, 2017 SEC LEXIS 987 (Mar. 27, 2017), *aff'd*, 733 F. App'x 571 (2d Cir. 2018).

[194] Department of Enforcement's Post-Hearing Brief ("Enforcement's Post-Hrg. Br.") at 20.

[195] *Dep't of Enforcement v. Bullock*, No. 2005003437102, 2011 FINRA Discip. LEXIS 14, at *19 (NAC May 6, 2011).

[196] *Dep't of Enforcement v. Respondent Firm*, No. CAF000013, 2003 NASD Discip. LEXIS 40, at *14 n.11 (NAC Nov. 14, 2003); *see also Dep't of Enforcement v. Morgan Stanley*, No. CAF000045, 2002 NASD Discip. LEXIS 11, at *27 (NAC July 29, 2002) ("We are also mindful of the maxim that adjudicators should 'construe the details of an act in conformity with its dominating general purpose.'") (quoting *Herman & MacLean v. Huddleston*, 459 U.S. 375, 387 n.23 (1983)).

Read literally, it appears that the "business activity outside the scope" clause modifies only the "compensation" clause and not the preceding language addressing the registered person's role with "another person." That said, "[w]hile the plain language of the [Rule] is an important guide, [FINRA's] 'manifest intent' will prevail over a strict construction of the [R]ule's letters."[197] Here, a strict construction—reading the first clause as though it were untethered from the "outside the scope" clause—may lead to an interpretation contrary to FINRA's intentions when it enacted the rule.

FINRA Rule 3270 became effective on December 15, 2010, when it superseded NASD Rule 3030.[198] NASD Rule 3030 provided, in relevant part:

> No person associated with a member in any registered capacity shall be employed by, or accept compensation from, any other person as a result of any business activity, other than a passive investment, outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member. Such notice shall be in the form required by the member.

Unlike its successor rule (FINRA Rule 3270), NASD Rule 3030 clearly required that the notice-triggering employment "by any other person" be outside the scope of the registered person's relationship with the member firm employer. Elimination of this nexus would be a significant change. And we find no basis for concluding that FINRA intended to make that change.

In 2009, as part of an effort to consolidate FINRA's rules with those of the NYSE, FINRA proposed a rule change to adopt NASD Rule 3030 as FINRA Rule 3270 "with moderate changes."[199] "The proposed rule change would delete NYSE Rule 346 (Limitations -- Employment and Association with Members and Member Organizations) and its interpretations,"[200] according to the Securities and Exchange Commission ("SEC"). "However, . . . the proposed rule change would incorporate certain provisions of NYSE Rule 346 into new FINRA Rule 3270."[201] The SEC went on to explain:

> The proposed rule change would expand the obligations imposed under NASD Rule 3030, which prohibits any registered person from being employed by or accepting any compensation from any person as a result of any outside business activity, other than passive investment, unless he has provided prompt written notice to his

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[197] *Dep't of Enforcement v. Sisung Sec.*, No. C05030036, 2006 NASD Discip. LEXIS 16, at *41–42 (NAC Aug. 28, 2006 (citing *United States v. Stewart*, 104 F.3d 1377, 1388 (D.C. Cir. 1997) ("While the plain language of the statute is an important guide, manifest intent prevails over the letter.")).

[198] *See* FINRA Regulatory Notice 10-49 (Oct. 2010), https://www.finra.org/sites/default/files/NoticeDocument/p122270.pdf.

[199] SR-FINRA-2009-042, 2009 SEC LEXIS 2205, at *2 (June 30, 2009).

[200] *Id.*

[201] *Id*. at *3.

> member firm. In contrast, NYSE Rule 346(b) generally prohibits any member . . . or employee of a member organization from being engaged in any other business, or being employed or compensated by any other person, or serving as an officer, director, partner or employee of another business organization or owning any stock or having any direct or indirect financial interest in any other organization engaged in any securities, financial or kindred business unless such person has made a written request to, and received prior written consent from, his or her member organization employer.

The SEC viewed "[t]he primary difference between the existing NASD and NYSE rules [as] the timing of the required notice and the requirement in the NYSE rule for a member's prior written consent."[202] The new rule added a "prior written notice" requirement but not a "prior written consent" provision, as FINRA decided that was "unnecessary."[203]

The new rule also included several additional changes in order to "harmonize[] and simplif[y] the standards for what constitutes an outside business activity."[204] But in addressing the effects of these changes, the SEC did not indicate that prior notice was now required even if the registered person's relationship with another person was within the scope of his relationship with the member firm employer.[205] Nor did FINRA's Regulatory Notice announcing the approval and effective date of the rule make this point.[206]

Similarly, the case law does not support the conclusion that FINRA Rule 3270 jettisoned the business-activity-outside-the-scope requirement under any circumstance. Rather, FINRA's National Adjudicatory Council ("NAC") has emphasized that FINRA Rule 3270—like its predecessor, NASD Rule 3030—prohibits any business activity outside the scope of the person's relationship with his or her employer firm unless the person has properly notified the member.[207] In this regard, *Department of Enforcement v. KCD Financial, Inc.*[208] is especially instructive. There, the NAC set forth the "key requirements" for establishing a violation under both NASD Rule 3030 and FINRA Rule 3270: "(1) employment or compensation criteria; (2) 'business activity' criteria; and (3) criteria that the activity be outside the scope of the relationship with the

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[202] *Id*. at *5.

[203] *Id*. at *7.

[204] *Id*. at *8.

[205] *See* SR-FINRA-2009-042, 2010 SEC LEXIS 2768, (Aug. 23, 2010) (SEC adoption release).

[206] FINRA Regulatory Notice 10-49.

[207] *Akindemowo*, 2015 FINRA Discip. LEXIS 58, at *39 ("FINRA Rule 3270 and NASD Rule 3030 prohibit associated persons from engaging in any business activity outside the scope of their relationship with their employer firm, unless they have provided prompt written notice to the member. Rules 3270 and 3030 extend to all outside business activity, not just securities-related activity.").

[208] No. 2011025851501, 2016 FINRA Discip. LEXIS 38 (NAC Aug. 3, 2016), *aff'd*, Exchange Act Release No. 80340, 2017 SEC LEXIS 986 (Mar. 29, 2017).

member firm."[209] Thus, according to the NAC, any activity that serves as the basis for the violation must be outside the scope of the relationship with the member firm.[210]

C. Discussion

1. Ghosh Violated FINRA Rules 3270 and 2010

Applying the test set out in *KCD Financial, Inc.*, we find that Ghosh violated FINRA Rule 3270. As discussed above, Ghosh's roles with P.S. Ghosh fell within the notice-triggering provisions of FINRA Rule 3270.[211] Also, he was involved in business activity through that entity.[212] And he failed to provide prior written notification to the Firm in the form required under its policies.

We further find that Ghosh's business activity was outside the scope of his relationship with NYLife Securities. Ghosh was the owner and an officer of a company. The Handbook specifically identifies these activities as OBAs requiring prior review and approval under the NYLife entities' OBA policies. Moreover, NYLife's CCD—which was well positioned to determine if Ghosh's activities were outside the scope of his relationship with the Firm—twice determined that Ghosh was involved in an OBA, twice required him to file an OBA form, and twice denied him permission to engage in those activities. The NYLife entities even required Ghosh to dissolve P.S. Ghosh's predecessor, Trans Global, as a condition of his employment.[213]

The manner in which P.S. Ghosh held itself out and the activities it conducted support the CCD's determination that P.S. Ghosh was a business activity outside the scope of Ghosh's relationship with the Firm. P.S. Ghosh portrayed itself as a "corporate advisory boutique" that "creates innovative structured finance solutions for FinTech companies" and designs "General Strategies across Asset Classes and then uses Partner Institutions . . . for solicitation and

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[209] *KCD Fin., Inc.*, 2016 FINRA Discip. LEXIS 38, at *30.

[210] *KCD Fin., Inc.* did not involve an alleged violation of either NASD Rule 3030 or FINRA Rule 3270. Instead, Enforcement charged the member firm respondent with violating NASD Rule 2210—the member communications rule—based on an allegedly misleading newspaper advertisement placed by two of the firm's registered representatives. The NAC reversed the hearing panel's liability finding, concluding that the advertised services were outside, non-securities business and did not constitute "member communications" by the firm. In reaching this conclusion, the NAC looked for guidance to the definitions of OBA found in Rules 3030 and 3270. Therefore, the NAC's recitation of the elements of an OBA violation is dicta. Nevertheless, we found *KCD Financial, Inc.* helpful here.

[211] *See Kenny Akindemowo*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769, at *29–30 (Sept. 30, 2016) (finding that respondent "operated an outside business as [an entity's] owner and chief investment officer and thereby acted as [that entity's] officer or director under Rule 3270").

[212] Ghosh conceded that Enforcement established the first two requirements under *KCD Financial, Inc. See* Partho S. Ghosh's Post-Hearing Brief ("Ghosh's Post-Hrg. Br.") at 8.

[213] *Cf. Giblen*, 2014 FINRA Discip. LEXIS 39, at *13–15 (rejecting respondent's argument that he was not engaged in an activity outside the scope of his employment when he conducted research analyst activities because, among other reasons, the firm had expressly declined to hire him as a research analyst).

execution of the particular financial instruments in question." Ghosh explained that the solutions combined "Life Insurance and Securities (hence why I have a Series 7)" and were proprietary to P.S. Ghosh (rather than proprietary to the NYLife entities).[214] These services cannot fairly be viewed as simply selling insurance on behalf of NYLife Insurance. Hence, they were outside the scope of Ghosh's relationship with the Firm.

More fundamentally, forming a consulting services firm to solicit business for an affiliate of a member firm employer is an OBA. In reaching this conclusion, we found the NAC's decision in *Department of Enforcement v. Schneider*[215] instructive. There, a registered person formed, and was president and CEO of, a consulting services business. The respondent used the business "as a vehicle for soliciting and obtaining hedge fund execution business that he would then direct to his employing broker-dealer." In turn, he "would earn a commission on the execution business that the hedge funds conducted with his broker-dealer."[216] The NAC held that the respondent violated the predecessor to FINRA Rule 3270 (NASD Rule 3030) by failing to provide notice to his firm of this activity.

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Rather than provide prior written notice to the Firm before becoming an owner and director of a person outside his relationship with the Firm, Ghosh first assumed those roles with P.S. Ghosh and then became registered with the Firm. And, after becoming registered, he refused to provide the required notice for over two months, even after management repeatedly instructed him to do so. Worse yet, he continued engaging in his OBA after the CCD denied his OBA request. Thus, we conclude that Ghosh violated FINRA Rule 3270 and, by virtue of that violation, FINRA Rule 2010.

In reaching these conclusions, we rejected Ghosh's defenses, which we address below.

2. Ghosh's Defenses

a. Ghosh's Defense That Enforcement Failed to Prove P.S. Ghosh was a Business Activity Outside the Scope of His Relationship with the Firm

Ghosh asserts that P.S. Ghosh's activities were not outside the scope of his relationship with the Firm. The arguments he makes in support of this position, however, are meritless. First, Ghosh claimed that while registered at NYLife Securities, he received no compensation for any securities-related activities and that all his income was from NYLife Insurance.[217] Indeed, the record reflects that the only products Ghosh sold were customized whole life insurance and fixed

[214] *See e.g.*, CX-42, at 2 (stating in a draft PowerPoint slide for a June 11, 2016 presentation that the materials include "proprietary structured finance solutions which are the property of P.S. Ghosh, Inc."); Tr. 333–36.

[215] No. C10030088, 2005 NASD Discip. LEXIS 6 (NAC Dec. 7, 2005).

[216] *Id.* at *3.

[217] Tr. 1633–34.

annuities offered through NYLife Insurance.[218] But the mere fact that Ghosh sold only NYLife Insurance products as part of his advisory services, and earned compensation solely through those sales, is not inconsistent with a finding that P.S. Ghosh was an OBA under FINRA Rule 3270.[219] FINRA Rule 3270 covers an array of non-securities-related activities, transactions, and relationships that take place outside of the registered person's employment with the member firm.[220]

Second, Ghosh argues that P.S. Ghosh was the primary way he attracted customers to sell NYLife Insurance products. And, he continues, because he only conducted NYLife business and sold NYLife Insurance products through P.S. Ghosh, it was a DBA, not an OBA. Ghosh testified at length about why he believed P.S. Ghosh was a DBA for NYLife that he used to market customized whole life insurance and fixed income annuities. Ghosh said he originally viewed P.S. Ghosh as neither an OBA nor a DBA, but later concluded it was a DBA.[221] According to Ghosh, P.S. Ghosh was "used solely for NYL business." [222] Specifically, he planned to use it to "design[] general strategies which would then be executed by me as an agent using life insurance."[223] Ghosh emphasized that, through P.S. Ghosh, he never mentioned products to prospects; he dealt in "concepts," i.e., he talked "about the solution … not [] about the instruments that get you the solution."[224] He claimed that because he used life insurance and fixed income annuities as "vehicles," P.S. Ghosh "was not a separate business."[225] Put a bit differently, Ghosh asserted that he was not involved in an OBA because he "didn't do any securities" and was only using the name "P.S. Ghosh" as a trading name to "to find applications

[218] Tr. 612–13, 664; JX-24. Ghosh offered what he termed a "proprietary [P.S. Ghosh] structured finance solution, Sunrise PIN and Sunset PIN." Tr. 227. Originally, PIN meant "protected income note," according to Ghosh. Tr. 339. Concerned, however, that the use of the word "note might make it a security," he changed the meaning to "protected income and notional." Tr. 339–40. The Sunrise PIN was customized whole life insurance, while the Sunset PIN was a lifetime income annuity. Tr. 615–16, 1674.

[219] Selling insurance was not, per se, outside the scope of Ghosh's responsibilities at the Firm. According to Long, there was nothing that prevented a registered representative from selling a customer both an insurance product (including customized whole life) and a securities product. Tr. 1440–41.

[220] *McGee*, 2016 FINRA Discip. LEXIS 33, at *64; *see also Harry Friedman*, Exchange Act Release No. 64486, 2011 SEC LEXIS 1699, at *20 (May 13, 2011) (explaining that "[NASD] Rule 3030 [the predecessor to FINRA Rule 3270] applies only to transactions involving non-securities products") (citing NASD Notice to Members 01-79, 2001 NASD LEXIS 85, at *2–3 (Dec. 2001)).

[221] Tr. 709, 769.

[222] JX-14, at 1.

[223] Tr. 218.

[224] Tr. 1589.

[225] Tr. 771–72.

for whole life as a financing vehicle . . . ."[226] He thus thought his conduct "fell under the category of regular registered NYLife," Ghosh said.[227]

This testimony oversimplifies and mischaracterizes the purpose of P.S. Ghosh and the nature of its business. Ghosh did not hold out P.S. Ghosh as a name under which he sold insurance products on behalf of NYLife Insurance. Instead, as part of a carefully conceived marketing strategy, he assiduously avoided portraying himself as merely an insurance agent or registered representative.[228] In reality, P.S. Ghosh was a consulting firm that offered structured finance solutions. As it turned out, those solutions always involved selling insurance offered by NYLife Insurance, from which Ghosh earned commissions. But this did not render P.S. Ghosh a DBA rather than an OBA.[229]

Finally, Ghosh maintains that his supervisors were generally aware of, encouraged, and oversaw his P.S. Ghosh-related activities. We find that this position also misses the mark. The evidence did show that Goel and Kortkamp were aware of P.S. Ghosh's existence before Ghosh became registered and encouraged him to generate business through it. But while their knowledge about P.S. Ghosh mitigates sanctions (as we discuss below), it does not preclude us from finding that Ghosh's activities were outside the scope of his responsibilities to the Firm. Indeed, the NAC and the SEC have found registered persons to have engaged in OBAs even when they had notified their supervisors about the activity.[230]

b. Ghosh's Defense That He Satisfied the Written Notice Requirement Under FINRA Rule 3270

Ghosh argues that before he became registered with NYLife Securities, he provided written notification about P.S. Ghosh. This notification, he asserts, consisted of the following:[231]

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[226] Tr. 771–72.

[227] Tr. 1589.

[228] Indeed, at times he even referred to himself as an investment banker and his industry as investment banking.

[229] Gentile referred to P.S. Ghosh in several emails to Ghosh as both an OBA and DBA, and informed Ghosh that he would need to have the name "P.S. Ghosh" approved as a DBA before it could be used on business cards and letterhead. That said, the Firm also consistently told him that he would still need to obtain approval from the OBA Unit for P.S. Ghosh. In any event, there is no evidence that Ghosh ever filed a DBA submission for P.S. Ghosh. And the DBA Unit never approved "P.S. Ghosh" as a DBA. Tr. 224.

[230] *See* p. 31 n.237, *infra*.

[231] Ghosh's Post-Hrg. Br. at 17–19. Several communications Ghosh identifies as constituting notice before registration actually occurred afterward. Ghosh testified that he believed he became registered with NYLife Securities on May 23, 2016, the date on which he signed his registered representative agreement. Tr. 1757, JX-5, at 4. But according to FINRA's Central Registration Depository, Ghosh became registered on May 20, 2016. JX-1, at 3. Also, Ghosh admitted in his Answer to the Complaint that he became registered on May 20, 2016. Ans. ¶ 3. Regardless, it is immaterial whether Ghosh became registered on May 20 or May 23; once registered, he failed to provide written notice in the form required by his firm before engaging in an OBA.

- Ghosh's disclosures and written communications to his supervisors Goel and Kortkamp, beginning in January 2016.

- Gentile's office inspection where she saw the P.S. Ghosh business card on May 16, 2016, and promptly reported this to Goel and Kortkamp.[232]

- Ghosh's May 21, 2016 email to Goel asking how he should address getting P.S. Ghosh approved,[233] and Goel's return email to Ghosh informing him that by May 23, the situation would be resolved, and that Gentile will get Ghosh's "DBA/OBA approved."

- Goel's May 21 conversation with Kortkamp in which Kortkamp told him, "[Gentile] is working on it. We will have it taken care of."[234] Later, Goel conveyed to Ghosh the substance of that conversation, along with his assurance they were taking care of the issue.[235]

According to Ghosh, "[t]hese communications and understandings were reached before Ghosh became registered at" NYLife Securities. "[T]hus," he concluded, "these communications [were] made in advance of Ghosh's registration at [NYLife Securities] in compliance with Rule 3270."[236]

Ghosh's defense fails for several reasons. FINRA Rule 3270 requires "fulsome and prompt disclosure in writing" in the form required by the employer firm before engaging in the OBA; oral disclosure is insufficient.[237] The Firm's procedures required registered persons to submit a written OBA request on a specified online form and Ghosh did not do so before engaging in the OBA. Further, neither Ghosh's supervisors nor anyone else at the Firm ever told him that P.S. Ghosh was not an OBA[238] or that he should not file an OBA submission with the CCD.[239]

Ghosh was not relieved of his compliance obligations by virtue of Goel and Kortkamp's knowledge about P.S. Ghosh or any reassurance they gave him that they and Gentile would get

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[232] Tr. 1214–15, 1222–23; RX-6, at 3.

[233] RX-6, at 1–2.

[234] Tr. 625–26.

[235] Tr. 433–34, 626.

[236] Ghosh's Post-Hrg. Br. at 19.

[237] *Akindemowo*, 2015 FINRA Discip. LEXIS 58, at *44; *Dep't of Enforcement v. Weinstock*, No. 2010022601501, 2016 FINRA Discip. LEXIS 34, at *24 (NAC July 21, 2016). Even written notice of the activity to a supervisor is insufficient to comply with the rule when, as here, the supervisor was not responsible for approving an OBA. *See Giblen*, 2014 FINRA Discip. LEXIS 39, at *17 n.17.

[238] Tr. 1148–49.

[239] Tr. 773, 1146–48, 1354.

his OBA approved. "A registered representative cannot shift responsibility for compliance requirements to his firm or supervisor."[240] Therefore, "even assuming that his supervisors knew about his outside business activities, the obligation to disclose lies with the registered person, not his supervisors."[241] Simply put, Goel and Kortkamp's "awareness of [Ghosh's] activities does not satisfy [his] obligation to provide written notice to his firm[] under FINRA's outside business activities rule."[242]

c. Ghosh's Defense That, at Worst, He Only Violated Firm Policies

Finally, Ghosh suggests that the evidence showed that he violated only Firm policies, not FINRA Rule 3270.[243] We reject this argument, as the two are related but not exclusive of each other. The Firm's policies required registered representatives to file an online OBA request with the CCD on a specified form before engaging in the OBA. Ghosh's violation of this policy led to his violation of FINRA Rule 3270.[244]

* * *

In sum, we reject Ghosh's defenses. Next, we turn to sanctions.

IV. Sanctions

A. Overview

In considering the appropriate sanctions to impose on Ghosh, we begin our sanctions analysis with FINRA's Sanction Guidelines ("Guidelines") as a benchmark.[245] The Guidelines contain (1) General Principles Applicable to All Sanction Determinations ("General Principles") "that should be considered in connection with the imposition of sanctions in all cases"; (2) a list of Principal Considerations in Determining Sanctions ("Principal Considerations") "which enumerates generic factors for consideration in all cases"; and (3) guidelines applicable to

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[240] *Richard Cody*, Exchange Act Release No. 64565, 2011 SEC LEXIS 1862, at *59 (May 27, 2011), *aff'd*, 693 F.3d 251 (1st Cir. 2012). Ghosh argues that he offered evidence of his supervisor's awareness of his activities not to "shift responsibility . . . or to establish constructive or actual notice . . . but rather, to establish that [P.S. Ghosh] was not an OBA outside the scope of his relationship to the firm." Ghosh's Post-Hrg. Br. at 12 n.75. But the totality of Ghosh's testimony makes it clear that Ghosh was trying to shift responsibility and blame to his supervisors.

[241] *Akindemowo*, 2016 SEC LEXIS 3769, at *31. His notification does, however, serve to mitigate sanctions.

[242] *McGuire*, 2015 FINRA Discip. LEXIS 53, at *40.

[243] Ghosh's Post-Hrg. Br. at 11–12.

[244] *Cf. Connors*, 2017 FINRA Discip. LEXIS 2, at *35 (rejecting respondent's argument that "he only violated his firms' internal policies and that such conduct 'does not equate to a violation of FINRA Rule 3270'" because his "failure to abide by the terms of his employment agreements and his certifications is a primary reason why [his] activities gave rise to the notice obligations under FINRA Rule 3270."

[245] *See, e.g.*, *Fuad Ahmed*, Exchange Act Release No. 81759, 2017 SEC LEXIS 3078, at *80 (Sept. 28, 2017) (finding that a sanctions analysis should begin with the Sanction Guidelines as a benchmark).

specific violations ("Specific Considerations"), which also typically "identify potential principal considerations that are specific to the described violation."[246]

The General Principles explain that "sanctions should be designed to protect the investing public by deterring misconduct and upholding high standards of business conduct." Adjudicators are therefore instructed to "design sanctions that are meaningful and significant enough to prevent and discourage future misconduct by a respondent and deter others from engaging in similar misconduct." Further, sanctions should "reflect the seriousness of the misconduct at issue,"[247] and should be "tailored to address the misconduct involved in each particular case."[248]

The sanctions we impose, here, are appropriate, proportionally measured to address Ghosh's misconduct, and designed to protect and further the interests of the investing public, the industry, and the regulatory system.

B. Discussion

For engaging in undisclosed outside business activities, the Guidelines recommend a fine of $2,500 to $77,000. The Guidelines also recommend a suspension in any or all capacities for a period of 10 business days to three months, when the outside business activities do not include aggravating conduct. Where there are aggravating factors, however, the Guidelines suggest a suspension of up to one year. Where aggravating factors predominate the respondent's misconduct, the Guidelines recommend a longer suspension of up to two years or a bar.[249]

In assessing sanctions for cases involving undisclosed outside business activities, the Guidelines advise adjudicators to consider six Specific Considerations:

1. Whether the outside activity involved customers of the firm.

2. Whether the outside activity resulted directly or indirectly in injury to other parties, including the investing public, and, if so, the nature and extent of the injury.

3. The duration of the outside activity, the number of customers and the dollar volume of sales.

4. Whether the respondent's marketing and sale of the product or service could have created the impression that the employer (member firm) had approved the product or service.

[246] FINRA Sanction Guidelines at 1 (Mar. 2019) (Overview), http://www.finra.org/industry/sanction-guidelines.

[247] *Id.* at 2 (General Principle No. 1).

[248] *Id.* at 3 (General Principle No. 3).

[249] *Id*. at 13.

5. Whether the respondent misled his or her employer member firm about the existence of the outside activity or otherwise concealed the activity from the firm.

6. The importance of the role played by the respondent in the outside business activity.[250]

1. Aggravating Factors

We find that numerous aggravating factors are present. First, Ghosh played important roles in the OBA—he owned, operated, and was the CEO of P.S. Ghosh.[251]

Second, while it is mitigating that Ghosh conducted the OBA for only two and a half months before filing the OBA form,[252] we find it aggravating that (1) he was on notice for the entire period that the Firm wanted him to file an OBA request; (2) in violation of Firm policy, he conducted an unapproved OBA for three and a half months, namely, from the time he became registered (May 20) until he resigned (September 8); and (3) he continued operating his OBA for nearly a month after the CCD denied his OBA request.

Third, Ghosh's communications could have created the impression that NYLife Securities approved his products or services because Ghosh touted his purported relationship with capital partners, referencing NYLife directly, or by implication.[253] Not only did Ghosh highlight the purported connection between NYLife and P.S. Ghosh, but so did KM, who worked with him.[254] That said, the record does not reflect whether any prospects, in fact, were under the impression that the Firm had approved any products or services Ghosh sold through P.S. Ghosh.

Fourth, Ghosh benefited financially from his OBA.[255] Ghosh testified that P.S. Ghosh never generated any revenue, that he injected capital into it, and withdrew funds for expenses.[256] Even so, Ghosh earned commissions from the sale of NYLife Insurance products based on efforts he undertook through P.S. Ghosh.

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[250] *Id.*

[251] *Id.* (Specific Consideration No. 6).

[252] *Id. See* pp. 42–43.

[253] *Id.* at 13 (Specific Consideration No. 4). Ghosh admitted that he frequently referred to NYLife generically as his capital provider. Tr. 740. *See e.g.*, CX-47, at 2; *see also* CX-45, at 1 (Ghosh writing to a prospect that "New York Life" was his "AAA-rated balance sheet partner"). By contrast, in *Mathieson*, the NAC found it mitigating that while respondent's involvement could have created the impression that his firm had approved the outside business activity in some way, there was no evidence in the record that respondent attempted to create that impression. *Mathieson*, 2018 FINRA Discip. LEXIS 9, at *24.

[254] In an email he sent to a recipient of P.S. Ghosh services updating her about her application for a P.S. Ghosh "propriety solution," KM wrote: "I work with P.S. Ghosh Inc. in providing access to the AAA-rated balance sheet of a partner institution, New York Life. In fact, I'm a licensed NYL Agent." CX-46, at 2.

[255] Guidelines at 8 (Principal Consideration No. 16).

[256] Tr. 776–77.

Fifth, without disclosing it to the Firm, Ghosh enlisted the efforts of three NYLife Insurance agents to act on behalf of P.S. Ghosh and included them on his unapproved website to market its services.

Sixth, although Ghosh did not mislead the Firm about P.S. Ghosh's existence,[257] he concealed certain activities and misrepresented the nature of his OBA.[258] In violation of NYLife entities' policies, he communicated with prospects through an unapproved email address to which the Firm did not have access, maintained an unapproved website, and used unapproved marketing materials.[259] He made misleading statements on his OBA request form for P.S. Ghosh, stating—as he had done on his earlier OBA request form for Trans Global—that his OBA did not in any way pertain to insurance and securities and that he did not expect to receive any compensation from it.[260] He also answered questions falsely on his annual compliance questionnaire relating to the proper disclosure of OBAs and the usage and approval of email accounts and marketing materials.[261] These false statements concealed aspects of his OBA.[262] Finally, as the NAC has observed, not filing an OBA request form amounts to an act of concealment.[263] By shielding his activities from supervisory review, Ghosh exposed both the public and the NYLife entities to risk.

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[257] *See* p. 43, *infra.*

[258] Guidelines at 7 (Principal Consideration No. 10) and 13 (Specific Consideration No. 5).

[259] Ghosh conceded that he used P.S. Ghosh "emails, set up a website and [had P.S. Ghosh] business cards without firm approval." Ghosh's Post-Hrg. Br. at 23.

[260] While it was technically true that Ghosh did not receive compensation from P.S. Ghosh, his answer was misleading because he expected to receive, and did receive, compensation for P.S. Ghosh-related activities, namely, commission payments from NYLife Insurance for the sale of insurance products.

[261] Ghosh testified that he misunderstood and answered incorrectly several of the questions on the questionnaire. For example, regarding the question addressing the requirement that he obtain prior approval of sales materials, CX-9, at 5, Ghosh explained that he incorrectly thought he did not need prior approval of materials for his presentations and for his website because he did not mention life insurance, annuities, or securities. Tr. 1773–74. He also said he thought he was not bound by the prior approval requirement because he "didn't feel NYLife had the expertise to review presentations or websites concerning concepts in finance." Tr. 1777. *See also* Tr. 1774 (Ghosh admitting that he had incorrectly answered the question asking that he certify that he understood and complied with the rule requiring that "when using e-mail to communicate with clients . . . on business-related matters," he use "a company provided e-mail address to do so").

[262] This type of misconduct violates FINRA Rule 2010. *See, e.g.*, *Seol*, 2019 FINRA Discip. LEXIS 9, at *41 (finding that falsely certifying on a firm's compliance questionnaire that a registered person has disclosed all outside business activities constitutes conduct that is inconsistent with high standards of commercial honor and just and equitable principles of trade and violates FINRA Rule 2010); *see generally Mathieson*, 2018 FINRA Discip. LEXIS 9, at *19 ("FINRA Rule 2010 includes the obligation to disclose truthfully material information to an associated person's firm.").

[263] *Giblen*, 2014 FINRA Discip. LEXIS 39, at *28–29 & n.35 (holding that respondent's failure to disclose his outside business activities on firm's compliance forms was "tantamount to concealment of the activities from the firm").

Seventh, Ghosh's misconduct was intentional.[264] Ghosh disputed this. He made various arguments to the effect that he was not aware at the time—and even at the hearing still disagreed—that P.S. Ghosh was an OBA that required prior written notice to the Firm. Ghosh testified to the following:

- When Gentile found the P.S. Ghosh business card, Ghosh was not familiar with FINRA Rule 3270.[265]

- He thought that he had satisfied his compliance obligations once he dissolved Trans Global, changed its name to P.S. Ghosh, and was not going to be compensated.[266]

- He mistakenly believed that P.S. Ghosh was a DBA, not an OBA, and thus thought he did not have to follow the OBA rules.[267]

- He did not know he had to seek prior approval for an OBA.[268]

- He thought he had complied with his obligations regarding notifying the Firm about P.S. Ghosh because of two questions on the annual compliance questionnaire. One question required him to confirm that he understood and complied with the requirement that he disclose in writing to his managing partner all OBAs prior to engaging in those activities,[269] and he claimed he did provide written disclosure to Kortkamp. Also regarding the question about disclosing board or officer positions to the OBA Unit,[270] he said he was under the impression that holding a board or officer position in a DBA was within the scope of his relationship with the Firm and he did not need to disclose it.[271]

Notwithstanding this testimony, we find that Ghosh acted intentionally when he failed to provide written notice to the Firm prior to commencing his OBA. Ghosh testified he understood at the time that under FINRA Rule 3270, registered representatives were required to provide

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[264] Guidelines at 8 (Principal Consideration No. 13).

[265] Tr. 1759–60.

[266] Tr. 769, 779–80, 1688–89, 1820–22. Ghosh admitted, however, that when he made this determination, he was "remiss" in not considering whether FINRA rules required that he submit an OBA for P.S. Ghosh. Tr. 1822.

[267] I "still don't think I was doing an OBA," he said. "I am not so clear about that now." Tr. 769–71.

[268] Tr. 1770–71.

[269] CX-9, at 3.

[270] CX-9, at 4.

[271] Tr. 1772. Ghosh testified that he now appreciated that he misunderstood the question but took full responsibility for his answer. Tr. 1772–73.

prior written notice to NYLife Securities of any OBA.[272] Moreover, Ghosh knew he needed to file an OBA request for P.S. Ghosh with the CCD. In November 2015, before he became registered, Ghosh was notified that he needed to file an OBA request for Trans Global. It is not plausible that a few months later—after dissolving Trans Global and forming P.S. Ghosh—he failed to realize he was required to file an OBA request for the same type of entity.

In other words, regardless of whether he thought P.S. Ghosh was an OBA, he knew that the NYLife entities required him to seek prior written approval for it because it had required him to seek approval for Trans Global. Not only did Ghosh know he was required to file an OBA submission for P.S. Ghosh, but his own testimony revealed the true reason he decided against doing so: "I knew it would be denied," Ghosh said.[273] Therefore, we conclude that to avoid a denial and to ensure his ability to continue conducting business through P.S. Ghosh, he intentionally chose not to file the OBA request.[274]

Eighth, Ghosh failed to appreciate his regulatory responsibilities or accept responsibility for his misconduct.[275] To be sure, at times during his testimony, he made statements to the effect that he appreciated the importance of compliance and took responsibility for his actions. "I knew that compliance is one of the most important functions in a financial institution because at the end of the day a financial institution sells promises. And if there is no integrity in those promises, there is no business," he said, adding: "I have been around to see a number of financial institutions fail specifically because of compliance. So I am a stickler for compliance."[276] Ghosh also testified that he has "been in this industry long enough [that] when compliance tells you to do something, you do it."[277] He went on to say he was not "passing the buck," and that "nobody but I am responsible."[278]

These statements, however, were belied by other testimony in which he tried to shift responsibility for compliance to others at the Firm. Ghosh made it clear that he became registered begrudgingly. The NYLife entities "forced [him] because they make money on

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[272] Tr. 93.

[273] Tr. 1830–31 (testifying that when he finally filed the request, he was not "concerned it would be denied" because he "knew it would be denied").

[274] *Giblen*, 2014 FINRA Discip. LEXIS 39, at *28–29 (finding that respondent's failure to disclose outside business activities was intentional given his industry experience, his awareness of his firm's policies, and his prior submission of a request to engage in other outside business activities).

[275] *Cf.* Guidelines at 7 (Principal Consideration No. 2). *See also N. Woodward Fin. Corp*., Exchange Act Release No. 74913, 2015 SEC LEXIS 1867, at *44 (May 8, 2015) (explaining that while respondent is "entitled to present a vigorous defense," denying that conduct was wrongful demonstrated either a misunderstanding or a lack of recognition of his duties as a professional and of his regulatory obligations), *petition for review denied sub nom. Troszak v. SEC*, No. 15-3729, 2016 U.S. App. LEXIS 24259 (6th Cir. June 29, 2016).

[276] Tr. 495–96.

[277] Tr. 705–06.

[278] Tr. 502.

variable products . . . ," he said.[279] Ghosh explained that he wanted to avoid registration because FINRA "puts way too many constraints on innovation. . . . It would keep me from operating in an innovative way."[280]

Against this backdrop of resentment, Ghosh adopted the view that his supervisors should deal with compliance issues so he could focus on business development. "In my view, that is one of the reasons they got paid," he said. "I'm a producer. Their job is to clear the woodwork so I could produce. One of those tasks is taking care of the paperwork. I'm on a field, I don't have time to figure out who compliance is, okay."[281]

Worse, Ghosh blamed Firm management for his regulatory non-compliance. He accused Goel and Kortkamp of caring only about his production levels[282] and claimed they instructed him to focus on business production, not compliance. "Whenever I raised compliance with anyone, they said don't worry about it, go out and sell," he recalled.[283] Below are a few examples of Ghosh's blame-shifting testimony:

- Ghosh claimed that after receiving Gentile's May 24 email directing him to file an OBA request, Goel told him to do nothing and not worry because "they" would take care of it; instead, he should just go out and produce.[284]

- After receiving Gentile's July 7 email, Ghosh did not immediately cease conducting activities under P.S. Ghosh[285] because he "was asking questions" and his managers were telling him "to go out and make money."[286] Attempting to justify his delay, Ghosh said that he submitted the OBA form as soon as Kortkamp told him to do so.[287]

- Explaining why he continued to conduct business under P.S. Ghosh after July 11 and before he submitted the OBA request, he said: "I had it with my management. They said we will take care of it. They are telling me go out and sell." Further, he

[279] Tr. 1823.

[280] Tr. 1840.

[281] Tr. 497.

[282] Tr. 498–502.

[283] Tr. 500.

[284] Tr. 197, 211, 433, 497. Goel confirmed that in connection with the denial of Trans Global, he "probably" did tell Ghosh not to worry and that he would take care of it. Tr. 554.

[285] Tr. 221.

[286] Tr. 220.

[287] Tr. 220.

testified, "[t]he whole thing was very confusing and I had questions, they were not answered. As long as my questions were not answered, I did it that way."[288]

- Asked whether he considered stopping doing business under P.S. Ghosh until his questions were answered, Ghosh said he rejected that approach and, again, blamed Firm management:

> The problem is I was under 100 percent commission. Two problems were happening, one, I would not be able to pay my mortgage and two my boss would get pissed off, excuse my Spanish. I have quotas to meet and severe consequences if I don't meet those quotas. Certainly Dominick [Kortkamp] was in no rush. What they should have done if it was so severe was to cut off my license. Say you're no longer affiliated until you get this done. They never did, it was not a priority. It was sell, sell, sell and in retrospect, should I have done it sooner, maybe if I got my answers.[289]

- Later, after the CCD denied his OBA request in August, Ghosh claims Kortkamp told him not to worry because he would appeal the decision and, meanwhile, Ghosh should "go out there and produce."[290] Ghosh added that as far as he was concerned, once Kortkamp filed his appeal, "any decision [the CCD] made was in abeyance until the appeal was concluded."[291]

We found aggravating Ghosh's failure to appreciate the seriousness of his misconduct and—by his efforts to shift blame to others—his failure to fully accept responsibility for it.[292]

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[288] Tr. 263–64. Ghosh testified that while Goel and Kortcamp told him to "go out and produce" and they would "take care of it," they never directed him to disobey compliance's instructions, Tr. 433–34. Indeed, an hour after Gentile sent her May 24, 2016 email to Ghosh, Kortkamp emailed Ghosh and Gentile (and copied Goel) advising that Gentile would assist Ghosh in connection with processing the OBA, adding: "We just need to make sure the OBA you have and the DBA you would like to operate as, is approved and filed." JX-14, at 2.

[289] Tr. 264–65. Ghosh also blamed Gentile for not timely responding to his inquiries. He testified that the reason he did not promptly file his OBA submission was, in part, because it did not make sense to him that P.S. Ghosh was an OBA and he was waiting for answers and clarification from Gentile, including direction about who to contact in the CCD to discuss the issue further. Tr. 704–06.

[290] Tr. 433–34, 753–54.

[291] Tr. 754. The appeal, however, did not constitute temporary authorization for Ghosh to conduct an unapproved OBA. "[O]nce CCD goes ahead and puts forth a denial, you have to have a cease and desist," Kortkamp testified. "After that, the person is not able to operate their everyday business practice . . . [u]ntil it is approved by the company and it is an approved" OBA. Tr. 1144–45. Further, Kortkamp denied telling Ghosh that based on the appeal, Ghosh could continue his activities with P.S. Ghosh. Tr. 971, 1145–46.

[292] *Keith D. Geary*, Exchange Act Release No. 80322, 2017 SEC LEXIS 995, at *33 (Mar. 28, 2017), *petition for review denied*, 727 F. App'x 504 (10th Cir. 2018) (Respondent's "efforts to shift blame to others indicates a disturbing approach to regulatory compliance and its role in protecting customers."); *Dep't of Enforcement v. Eplboim*, No. 2011025674101, 2014 FINRA Discip. LEXIS 8, at *45 (NAC May 14, 2014) (Respondent's

Indeed, Ghosh's "refusal to acknowledge his misconduct and attempts to deflect blame increase the likelihood that he would engage in similar misconduct in the future."[293]

While Ghosh's attempts to blame Goel and Kortkamp were aggravating, this does not mean that we endorse their conduct. The evidence showed that they were not diligent in trying to ensure Ghosh's compliance with his OBA reporting obligations under the Firm's policies and FINRA rules. From the beginning, they did more than tolerate Ghosh's business activities through P.S. Ghosh; they encouraged them. They knew about P.S. Ghosh's existence before Ghosh became registered, but were indifferent to whether he had filed an OBA request, even though they knew he had been previously denied permission to operate Trans Global as an OBA. Then, after Gentile instructed Ghosh to submit the request, they sent him conflicting signals. On the one hand, they told him that he had to comply with the OBA approval process. But, on the other hand, at a minimum, they overlooked his continued P.S. Ghosh-related activities and failed to insist that he stop them until his OBA request was submitted and approved.

Finally, Ghosh's violative conduct was accompanied by numerous other acts of misconduct that reflected a pattern of wrongdoing.[294] This pattern began when he was affiliated with the NYLife entities before he became registered with the Firm, and continued after registration. After dissolving Trans Global at the CCD's direction, he soon formed an identically-purposed company, P.S. Ghosh, and conducted business through it. But in violation of NYLife entities' policies, Ghosh did not file an OBA request with the CCD for that new entity. In further violation of NYLife entities' policies, [295] he created and used an unapproved website, business cards, email addresses, and marketing materials to conduct unapproved business activities on behalf of P.S. Ghosh and provided false certified answers on the annual compliance questionnaire.

Especially troublesome were Ghosh's misrepresentations in emails to several prospects that he was a registered investment adviser who owed them a fiduciary duty. Ghosh made these

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continued denial of responsibility and attempts to blame others was "troubling and serves to aggravate his misconduct.").

[293] *Mitchell H. Fillet*, Exchange Act Release No. 79018, 2016 SEC LEXIS 3773, at *18 (Sept. 30, 2016).

[294] Guidelines at 7 (Principal Consideration No. 8); *Dennis S. Kaminski*, Exchange Act Release No. 65347, 2011 SEC LEXIS 3225, at *38 (Sept. 16, 2011) ("[A]n adjudicator may consider matters that fall outside the underlying rule violation when determining whether the sanction serves a remedial purpose that will deter future misconduct and improve overall standards in the securities industry."); *Connors*, 2017 FINRA Discip. LEXIS 2, at *39 n.19 ("Evidence of misconduct that is not alleged in a complaint, but similar to the misconduct that is charged, is admissible to determine sanctions.").

[295] We treat Ghosh's violation of Firm policies as an aggravating factor. *Cf. Dep't of Enforcement v. Richard O. White*, No. 2015045254501, 2019 FINRA Discip. LEXIS 30, at *51 n.25 (NAC July 26, 2019) (finding that a violation of firm policy was an aggravating factor); *Dep't of Mkt. Regulation v. Sheerin*, No. 2011027926301, 2017 FINRA Discip. LEXIS 8, at *35 (NAC Mar. 13, 2017) (recognizing that a violation of firm policy can constitute a violation of just and equitable principles of trade).

misrepresentations in four emails to four prospects in June, July, and August 2016.[296] In one of those emails, he also identified himself as an "investment banker."[297] Ghosh was never registered as an investment adviser[298] and was not an investment banker. At the hearing, he compounded this wrongdoing by, at turns, splitting hairs, equivocating, and trying to justify his misrepresentations while, at the same time, purporting to express remorse for them.

Ghosh testified that he has "never been known for brevity"[299] and liked to hear himself talk.[300] Indeed, at times, his testimony was rambling, evasive, and inconsistent.[301] This was particularly the case when he tried to explain these emails. Asked to confirm that he did not owe a fiduciary duty to the recipient of one such communication,[302] he hedged: "Depends on what you mean by that," he began. Continuing, he explained:

> I put a fiduciary duty on myself because I felt that one of the differentiators is that most brokers and agents operate by the rules of suitability and I wanted to put on-the-record that I consider myself to have a fiduciary duty and they should sue me if I didn't fulfill that duty, . . . So did I have a legal duty, no. That is why I wanted to write the Series 65, so [it] would be imposed. But I was a fiduciary, they should sue me if I don't live up to those duties.[303]

Upon further questioning, he clarified his response: "I live up to the standards of [a] fiduciary and advertise myself as such. I didn't say I am legally a fiduciary. I just said I am a fiduciary."[304] He went on to say, "The distinction I am making, I had no legal obligation to be a fiduciary. I am saying I imposed the fiduciary standard on myself."[305]

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[296] CX-47, at 2 (writing on June 28, 2016, that he was a "Fiduciary" who owed the recipient a "duty of care"); CX-50, at 2 (writing on June 29, 2016, that he had "an RIA [registered investment adviser] license with the SEC and US treasury which gives me a Fiduciary Duty"; "[t]his means that if I make a professional recommendation which is not in your best interest then I am PERSONALLY LIABLE . . . you can sue me for any losses plus interest"; and he was "not a salesman. A broker, Agent, so called Wealth Managers, are salesmen . . . [T]heir licensing . . . does NOT create a Fiduciary standard . . . ."); CX-45, at 5 (writing on July 12, 2016, "This is not a sales call (I'm an Investment Banker with a Fiduciary Duty not a salesman)."); CX-59, at 2 (writing on August 17, 2016, to his friend RG, "As you might have guessed, I have a Fiduciary Duty because I have a Series 65 License.").

[297] CX-45, at 5.

[298] Tr. 99, 421.

[299] Tr. 214–15.

[300] Tr. 1568.

[301] *See, e.g.*, Tr. 1555–65, 1657–61, 1666–70. This undermined Ghosh's general credibility.

[302] CX-45, at 5.

[303] Tr. 363.

[304] Tr. 363–64.

[305] Tr. 363.

Regarding a similar email he sent to another prospect,[306] Ghosh took a different approach. He testified that at the time he sent the email, he failed to understand the "distinction between imposing a fiduciary duty on [himself and] having a legal duty imposed upon [him]." He continued, "I considered myself to have a fiduciary duty but not necessarily a legally imposed fiduciary duty. I realize now I was wrong. It was my mistake, I take full responsibility for it. I won't do it again."[307] When asked why he made the misrepresentation, Ghosh explained: "I intended to take the exam but I should have phrased it, [']I intend to take the 65['] but it was my error."[308] Finally, during his testimony, Ghosh apologized for an email he sent to a prospect telling him that he had a series 65 license and a fiduciary duty,[309] calling it "unconscionable and unacceptable."[310]

We find Ghosh's justifications and explanations troubling. Ghosh has had a lengthy career in the financial services industry.[311] He certainly knew he was not a registered investment adviser and, thus, did not owe the email recipients a fiduciary duty. Plainly, Ghosh made these false statements to differentiate himself from registered representatives to gain the trust of his prospects and obtain their business. Ghosh was right: this conduct was unconscionable and unacceptable.

2. Mitigating Factors

Two factors are mitigating. First, the duration of the OBA was not lengthy.[312] But for the reasons discussed, above, we accorded this factor only limited weight.[313]

Second, Ghosh did not mislead the Firm about the existence of P.S. Ghosh.[314] He testified that he was not "trying to sneak around." Indeed, Ghosh said, if that had been his purpose, he would not have held the Cornell Club event and passed out his business cards.[315] We

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[306] CX-50, at 1–2.

[307] Tr. 422.

[308] Tr. 422. *See also* CX-110, at 6 (stating, in response to a FINRA request for information during the investigation, that he regretted making the statement and that it was his intention "to convey as a licensed Life Insurance Agent, [he] voluntarily held [himself] to the same fiduciary standards as an RIA/Series 65").

[309] CX-59, at 2.

[310] Tr. 431.

[311] *Cf. Peter Siris*, Exchange Act Release No. 71068, 2013 SEC LEXIS 3924, at *24 (Dec. 12, 2013) (finding that respondent's "long experience in the industry" made it "particularly true" that he acted intentionally or with severe recklessness).

[312] Guidelines at 7 (Principal Consideration No. 9) and 13 (Specific Consideration No. 3).

[313] *See* p. 34, *supra.*

[314] Guidelines at 7 (Principal Consideration No. 10) and 13 (Specific Consideration No. 5).

[315] Tr. 780.

agree. The evidence firmly established that Ghosh made Firm management (Goel and Kortkamp) aware of P.S. Ghosh's existence and purpose.[316]

By way of background, Ghosh testified that when he first joined the NYLife entities, he disclosed the existence of Trans Global to Goel and Kortkamp and relied on their representation that his marketing strategy was compatible with NYLife policies.[317] Ghosh testified that he told them he needed to operate under a different name than NYLife and wanted to use Trans Global as his DBA. He claims they told him they were fine with that approach[318] but that he just needed to "get it in to the system."[319]

Later, according to Ghosh, he also made both Goel and Kortkamp aware of P.S. Ghosh's existence and purpose. Ghosh claims that they did not express concerns to him about his P.S. Ghosh-related activities or the need to have them approved by the Firm and that he disclosed the alleged OBA in writing a number of times to Kortkamp.[320] "My immediate supervisor [Goel] knew about it," Ghosh testified, referring to P.S. Ghosh. "Everybody in the firm knew about it."[321] While this was an overstatement, the evidence did show that, at a minimum, Goel and Kortkamp knew about P.S. Ghosh by the time Ghosh became registered with the Firm.

As for Goel, he admitted knowing about P.S. Ghosh before Gentile discovered the business card on May 16, 2016.[322] According to Goel, he knew around January or February 2016 that after dissolving Trans Global, Ghosh was setting up P.S. Ghosh.[323] He went on to say that Ghosh talked openly about P.S. Ghosh and its business model, and that he freely distributed P.S. Ghosh business cards, including to him, Kortkamp,[324] and the agents.[325] In fact, Ghosh had a

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[316] *Mathieson*, 2018 FINRA Discip. LEXIS 9, at *24–25 (finding mitigating that respondent did not attempt to conceal his involvement with the outside business activity from his firm, even though he falsely responded to firm questionnaires and failed to make the required written disclosures, because, among other things, he spoke with his supervisor about his activities).

[317] Tr. 1798.

[318] Tr. 1816–17.

[319] Tr. 1817.

[320] Tr. 1769.

[321] Tr. 180. In fact, Ghosh said, he was so open about P.S. Ghosh, he was surprised that Gentile did not know about it. Tr. 1743–44.

[322] Goel testified that at the time Gentile discovered the business card, he had assumed Ghosh's OBA had already been approved. Tr. 584. In any event, he disclaimed responsibility for approving or denying Ghosh's OBA or informing the CCD's OBA Unit that Ghosh had an OBA; he viewed that as Kortkamp's and Gentile's responsibility. Tr. 593–94. But, Goel testified, until he received Gentile's May 17, 2016 email, he was not aware that P.S. Ghosh was an unapproved OBA or DBA. Tr. 621.

[323] Tr. 570. Goel said that in January 2016, he assumed that Ghosh had submitted an OBA request for P.S. Ghosh and that it had been approved, although he took no steps to confirm this understanding. Tr. 573–74.

[324] Tr. 616–17.

[325] Tr. 582–83.

stack of P.S. Ghosh, Inc. business cards on his desk, Goel said.[326] Goel testified that based on his conversations with Ghosh, he understood that Ghosh's business model consisted of only selling NYLife whole life policies or lifetime income annuities.[327] According to Goel's purported understanding, Ghosh would compare "the life insurance cash value to 30 year bonds and look at the rate of return, the cash value. And he would say hey you got the cash with death benefit and he would tell the clients, . . . I am teaming up with NYLife. . . . He would never say he was an agent of NYLife . . . ." Instead, Goel recalled, Ghosh would tell prospects that he was "partnering up with NYLife and here is the junior agent wrapping up all of the paperwork."[328] Regarding the Cornell Club event, Goel said he knew it was hosted by P.S. Ghosh, and he and Kortkamp even helped obtain sponsorship of the event through a NYLife division.[329]

For his part, Kortkamp denied knowing about P.S. Ghosh before Gentile showed him the P.S. Ghosh business card.[330] The Panel, however, did not credit this testimony. On January 25, 2016, Ghosh sent an electronic invitation for the upcoming Cornell Club event to Kortkamp. The invitation described the event as "P.S. Ghosh Inc. – FinTech," and Kortkamp accepted the invitation.[331] Also, on February 2, 2016, two days before the event, Ghosh sent both Goel and Kortkamp an email using the ceo@psghosh.com email address. He attached to the email the open letter referred to above,[332] which described P.S. Ghosh and contained the name in large, bold, typeface at the top of the page.[333] Kortkamp said that he understood the purpose of the event was for Ghosh "to connect with people in his inner circle, his natural market and have the ability to potentially do business with him in the future."[334] Most importantly, Goel and Kortkamp attended the event.[335]

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[326] Tr. 617.

[327] Tr. 572.

[328] Tr. 571.

[329] Tr. 576–77, 906, 1074–75. Also, in or about February 2016, Ghosh applied for whole life insurance through NYLife Insurance, and on the application, he identified his employer as "P.S. Ghosh Inc." located at 14 Wall Street, 20th Floor. RX-135, at 5; Tr. 1712–13. According to Ghosh, Goel signed off on the application. Tr. 1713.

[330] Tr. 930. Gentile testified that when she approached Kortkamp and showed him the P.S. Ghosh business card, he told her that he was unaware of P.S. Ghosh's existence or its business cards, or that the entity had not been approved by the Firm. Tr. 1223, 1279.

[331] Tr. 1078–81; RX-42, at 1.

[332] *See* p. 11.

[333] RX-53.

[334] Tr. 904.

[335] Tr. 576, 902, 1078–79, 1711; RX-42.

Therefore, we find that Ghosh disclosed the existence of P.S. Ghosh to Goel and Kortkamp, and this is mitigating. That said, the weight we accord this factor is offset to a large degree by Ghosh's concealment of P.S. Ghosh's activities, as discussed above.[336]

3. Additional Considerations

We considered certain other factors, but did not view them as either aggravating or mitigating. A relevant factor under the guidelines for OBA violations is whether the OBA involved Firm customers.[337] Ghosh testified that in conducting his outside business activity, he did not provide services to Firm customers.[338] The evidence did not indicate otherwise, but this is not mitigating. "[T]he presence of certain factors may be aggravating, but their absence does not draw an inference of mitigation," according to the Guidelines.[339]

Whether the OBA directly or indirectly injured other parties is also relevant in assessing sanctions.[340] Ghosh denied that his P.S. Ghosh-related activities injured anyone.[341] Enforcement countered that Ghosh injured the Firm by depriving it of potential revenue, pointing out that he admitted telling clients "not to purchase securities through NYLife Securities, because he thought they were overpriced."[342] While Ghosh admitted that he did not recommend the securities offered by NYLife Securities because he considered them excessively overpriced,[343] any injury to the Firm was too speculative and tenuous for us to accord it any weight. Moreover, Ghosh's decision not to offer securities was based on his pricing assessment, and not a result of his OBA activities. We did not, however, find the lack of harm mitigating. As the NAC has held regarding customers, "[i]t is well established that the absence of customer harm is not mitigating."[344]

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[336] In his pre-hearing brief, Ghosh represents that he suffers from a medical disability and condition that "causes him difficulty in assimilating information . . . and can cause him to engage at times in what may appear to be inappropriate behavior . . . ." Ghosh's Pre-Hearing Br. at 2. But Ghosh presented no evidence to support this claim and did not mention it again in this proceeding. Therefore, we did not consider this purported disability and condition in determining liability or assessing sanctions.

[337] Guidelines at 13 (Specific Consideration No. 1).

[338] Tr. 1633–34.

[339] Guidelines at 7; *cf. Seol*, 2019 FINRA Discip. LEXIS 9, at *55 (acknowledging that respondent did not engage in private securities transactions with firm customers but finding that this was not mitigating).

[340] Guidelines at 13 (Specific Consideration No. 2).

[341] Ghosh's Post-Hrg. Br. at 22.

[342] Enforcement's Post-Hrg. Br. at 24.

[343] Tr. 230, 234, 714.

[344] *Seol*, 2019 FINRA Discip. LEXIS 9, at *54 & n.56 ("It is well established that the absence of customer harm is not mitigating.") (quoting *KCD Fin., Inc.*, 2017 SEC LEXIS 986, at *48); *but see Mathieson*, 2018 FINRA Discip. LEXIS 9, at *24 & n.13 (observing, in connection with determining sanctions, that there was no evidence that respondent's misconduct injured any investor) (citing Guidelines at 13 (Specific Consideration No. 2)).

C. Conclusion

Ghosh's violations are serious, as they deprived the public of the Firm's oversight and due diligence;[345] frustrated the Firm's "ability to assess the risks that his outside business activities may cause harm to potential investors and to manage those risks by taking appropriate action";[346] and deprived the Firm of the opportunity to protect itself.[347] Therefore, weighing both the serious nature of a Ghosh's misconduct and the mix of aggravating and mitigating factors, we impose a fine of $25,000 and a six-month suspension. We intend these sanctions to discourage Ghosh from further violations and to deter others from engaging in similar misconduct. [348]

Additionally, the evidence shows that Ghosh lacked an appropriate appreciation of his responsibilities under the securities laws. The Guidelines provide that requiring requalification is appropriate where "a respondent's actions have demonstrated a lack of knowledge or familiarity with the rules and laws governing the securities industry."[349] We find that requalification would be remedial here; Ghosh would benefit from focusing on the securities rules and regulations.[350]

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[345] *Philippe N. Keyes*, Exchange Act Release No. 54723, 2006 SEC LEXIS 2631, at *15 (Nov. 8, 2006) (explaining that violations of NASD Rule 3040 are serious, "depriv[ing] investors of a member firm's oversight and due diligence, protections they have a right to expect"); *Connors*, 2017 FINRA Discip. LEXIS 2, at *32 (same).

[346] *Akindemowo*, 2016 SEC LEXIS 3769, at *31–32 (holding that applicant's failure to provide firm with prior written notice of outside business activity "frustrated [the firm's] ability to assess the risks that his outside business activities may cause harm to potential investors and to manage those risks by taking appropriate action").

[347] *Cf. Seol*, 2019 FINRA Discip. LEXIS 9, at *48–49 (finding that respondent's undisclosed private securities transactions and undisclosed outside business activities, coupled with his false responses on the firm's annual compliance questionnaires, sidestepped the firm's supervision of his activities and deprived the firm of the opportunity to protect itself and investors from his outside business activities).

[348] *See Dep't of Enforcement v. Golonka*, No. 2009017439601, 2013 FINRA Discip. LEXIS 5, at *42 & n.32 (NAC Mar. 4, 2013) ("These sanctions are intended both to discourage Golonka from further violations and to deter others from engaging in similar misconduct.") (citing Guidelines at 2 (explaining the specific deterrence and general deterrence purposes of sanctions)). In determining the appropriately remedial sanctions to impose, we are mindful that the Guidelines recommend that when aggravating factors predominate, as here, we should consider a suspension longer than one year. But we conclude that on the facts of this case, higher sanctions would not serve any remedial purpose.

[349] Guidelines at 6 (General Principles Applicable to All Sanction Determinations, No. 8); *see also Dep't of Enforcement v. N. Woodward Fin. Corp.*, No. E8A2005014902, 2008 FINRA Discip. LEXIS 47, at *29 n.24 (NAC Dec. 10, 2008) (citing *Leonard John Ialeggio*, 53 S.E.C. 601, 604 (1998) (explaining that a requalification requirement is a "reasoned means of reeducating [the respondent] about his regulatory responsibilities to both his customers and his employer.")).

[350] *See Dep't of Enforcement v. Cuozzo*, No. C9B050011, 2007 NASD Discip. LEXIS 12, at *30 (NAC Feb. 27, 2007) (ordering respondent to requalify after finding that he would benefit from focusing on the securities rules and regulations).

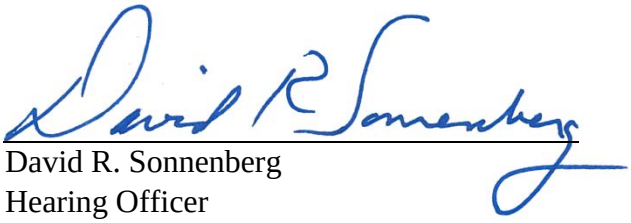
Therefore, we order that he requalify by examination before serving again in any registered capacity in the securities industry.[351]

V. Order

Respondent Partho S. Ghosh is fined $25,000 and suspended for six months from associating with any FINRA member firm in all capacities for engaging in undisclosed outside business activities, in violation of FINRA Rules 3270 and 2010. Ghosh is ordered to requalify by examination before reentering the securities industry in any registered capacity requiring qualification. Ghosh is also ordered to pay the costs of the hearing in the amount of $15,347.99, which includes a $750 administrative fee and a $14,597.99 fee for the cost of the hearing transcripts.

If this decision becomes FINRA's final disciplinary action, the suspension shall become effective with the opening of business on October 7, 2019. The fine and assessed costs shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final disciplinary action in this proceeding.[352]

SO ORDERED.



David R. Sonnenberg
Hearing Officer
For the Extended Hearing Panel

Copies to:

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[351] The applicable guideline states that "Adjudicators may also order disgorgement." Guidelines, at 13, n.1. But we did not consider ordering it here because Enforcement did not seek disgorgement and introduced no evidence supporting that sanction.

[352] The Extended Hearing Panel considered and rejected without discussion all other arguments of the parties.