FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. SUZANNE MARIE CAPELLINI (CRD No. 1357703), Respondent.	Disciplinary Proceeding No. 2020066627202 Hearing Officer–DDM **EXTENDED HEARING PANEL DECISION** July 14, 2023

Respondent Suzanne Marie Capellini provided false and misleading responses and an altered document to FINRA's investigative requests. For this misconduct, Capellini is barred from associating with a FINRA member firm in any capacity. She also failed to establish and implement an anti-money laundering ("AML") program reasonably designed to cause the detection and reporting of suspicious low-priced securities activity under the Bank Secrecy Act ("BSA"). No other sanctions are imposed for this violation because of the bar.

Appearances

For the Complainant: Savvas Foukas, Esq., Amanda E. Fein, Esq., and Jeff Fauci, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: Ian McLoughlin, Esq., and Thomas McCabe, Esq.

DECISION

I. Introduction

Enforcement alleges that Respondent Suzanne Marie Capellini violated a provision of FINRA's AML compliance rule, FINRA Rule 3310(a), while she was an AML Compliance Officer ("AMLCO") at First Manhattan Co. ("First Manhattan") from January 2018 through May 2020 ("the Relevant Period"). Enforcement asserts that Capellini failed to adopt and implement a reasonable AML program for First Manhattan's deposit and trading of low-priced securities ("LPS").[1] Enforcement also alleges that Capellini provided false or misleading information,

[1] For purposes of this decision, a "low-priced security" is one issued by a very small or microcap company that trades at less than $5 per share. This is consistent with how the U.S. Securities and Exchange Commission ("SEC")

including an altered document, in response to FINRA Rule 8210 requests about LPS trading activity in accounts held by Capellini's husband, RB, at First Manhattan.

After a five-day hearing, the Hearing Panel finds that Capellini violated Rules 3310(a) and 2010 while she was First Manhattan's primary AMLCO. As a sanction for this violation, the Panel would impose a $25,000 fine and a two-year suspension in all principal and supervisory capacities. We would also require that Capellini re-qualify by examination as a registered principal before acting in that capacity.

We do not impose that sanction, however, because a majority of the Hearing Panel also found that Capellini violated Rules 8210 and 2010 by providing misleading responses and an altered document to FINRA's investigative requests. As a sanction for her Rule 8210 violation, the majority imposes a bar from associating with a FINRA member firm in any capacity. One panelist dissents from the majority's finding that Capellini violated Rule 8210.

II. Findings of Fact

A. Background

Capellini worked in the registration department of a FINRA member firm[2] before joining First Manhattan in 1985 as a General Securities Representative and General Securities Principal.[3] The next year, Capellini registered with FINRA through First Manhattan as a General Securities Sales Supervisor.[4] Capellini was associated with First Manhattan until May 8, 2020, when the firm terminated her employment.[5]

Capellini served as Compliance Director for First Manhattan.[6] As Compliance Director, Capellini had a broad range of duties that included reviewing and opening accounts, preparing for the annual compliance meeting, responding to inquiries from regulators, reviewing trading, filing required forms, and helping First Manhattan's registered representatives.[7] For the last 28 years of her tenure,[8] Capellini reported directly to Neil Stearns, First Manhattan's Chief Compliance Officer ("CCO") and General Counsel.[9] Stearns had supervisory responsibilities

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has generally defined a "penny stock." *See* Section 3(a)(51) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 3a51-1 thereunder; FINRA Regulatory Notice 21-03 (Feb. 2021), http://www.finra.org/rules-guidance/notices/21-03.

[2] Hearing Transcript ("Tr.") 880-81.

[3] Joint Stipulations ("Stip.") ¶ 1.

[4] Stip. ¶ 1.

[5] Stip. ¶ 10.

[6] Tr. 881.

[7] Tr. 1217-18.

[8] Tr. 1392.

[9] Stip. ¶ 2.

over Capellini,[10] and overall responsibility for legal and compliance issues affecting First Manhattan.[11]

B. LPS Trading at First Manhattan and RB's Accounts

First Manhattan's primary business consists of rendering investment advisory services.[12] The firm's customers are mostly high net-worth individuals and related entities with long-term investments in value-oriented stocks.[13] By April 2020, shortly before Capellini departed, First Manhattan had around $16 to $18 billion in assets under management.[14] First Manhattan's customers rarely traded LPS,[15] which was a very small part of the firm's business.[16]

RB maintained accounts at First Manhattan for four entities that he owned or controlled.[17] With rare exceptions, First Manhattan required employees' spouses to keep their brokerage accounts at First Manhattan.[18] Although there was no requirement by First Manhattan that she do so, Capellini served as the registered representative on her husband's accounts.[19]

RB engaged nearly exclusively in depositing and selling LPS in his four First Manhattan accounts.[20] His four accounts at First Manhattan were AEH, FF, GG, and ASR.[21]

RB opened two of his four accounts at First Manhattan, AEH and FF, before the Relevant Period. AEH is an LLC of which RB is the sole member.[22] During the Relevant Period, AEH was the most active of RB's four accounts, as measured by LPS sales and transfers.[23] During the Relevant Period, AEH also transferred 50,000 LPS shares to FF.[24] FF is a corporation for which

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[10] Stip. ¶ 3.

[11] Tr. 1391.

[12] Tr. 1396.

[13] Tr. 1396-99.

[14] Tr. 1396.

[15] Tr. 1398-99.

[16] Tr. 316, 1399.

[17] Complainant's Exhibit ("CX-__") 1.

[18] Tr. 1355-56. Despite this requirement, RB held three brokerage accounts at another FINRA member. CX-120, at 1.

[19] Tr. 1357.

[20] Tr. 378-79.

[21] CX-1.

[22] Tr. 960-61.

[23] CX-1.

[24] CX-1.

RB serves as an officer.[25] Aside from receiving the 50,000 shares from AEH, FF had no other LPS activity during the Relevant Period.[26]

Unlike the AEH and FF accounts, RB's other two accounts were opened during the Relevant Period, when Capellini was the firm's primary AMLCO. In January 2018, RB opened the GG account at First Manhattan.[27] RB is a member of the Operating Agreement for GG, along with GG Ltd.[28] Capellini testified that she does not know what GG Ltd is, or who owns it.[29] In fact, the SEC had revoked GG Ltd.'s securities registration.[30] During the Relevant Period, GG's only activity was the deposit of 15 million LPS shares.[31] Capellini testified that she did not know where GG obtained those 15 million shares.[32]

RB opened the ASR account in May 2019.[33] ASR is an LLC with two members – RB and RB Consultancy,[34] another business of RB.[35] RB funded the ASR account with a wire transfer from the AEH account.[36]

Capellini testified that she did not know why her husband needed four brokerage accounts in the names of four entities.[37] She also testified that she did not know what business the entities engaged in, other than selling LPS through their First Manhattan accounts.[38] And she testified that she did not know why each account transacted in LPS.[39]

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[25] Tr. 965.

[26] CX-1.

[27] CX-1.

[28] CX-137, at 3.

[29] Tr. 969.

[30] CX-134.

[31] CX-1.

[32] Tr. 967.

[33] CX-1; Tr. 971.

[34] CX-138, at 16.

[35] Tr. 974.

[36] CX-138, at 20; Tr. 976.

[37] Tr. 977.

[38] Tr. 961 (AEH), 965 (FF), 966 (GG), 972 (ASR).

[39] Tr. 977-78.

Capellini's brother, TC, also had an account at First Manhattan.[40] TC worked with RB.[41] As with RB's accounts, Capellini served as the registered representative for TC's account.[42] Capellini communicated with both RB and TC about LPS activity in TC's account.[43] RB also placed trades for TC's account.[44]

During the Relevant Period, after Capellini became the primary AMLCO, RB increased his LPS activity, in deposits and sales.[45] He made 45 deposits of LPS in his accounts, with 204 sales,[46] for total proceeds of around $397,000.[47] By comparison, before the Relevant Period, starting in 2013, when First Manhattan's clearing firm questioned RB's LPS activity, RB made only 14 deposits of LPS, and 35 sales transactions.[48] And TC deposited 144,101 LPS shares in his account during the Relevant Period, with four sales for total proceeds of $22,765.[49]

RB was the most active LPS trader among First Manhattan's customers.[50] But he and TC were not the only First Manhattan customers who traded LPS. During the Relevant Period, 1,575 First Manhattan customers engaged in securities transactions priced $5.00 per share or less, for total proceeds of over $110 million.[51] Of those 1,575 customers, 614 engaged in transactions of securities priced $1.00 per share or lower, for total proceeds of more than $19 million.[52] During that same time, 24 customers made 91 deposits of slightly more than 84 million shares of LPS, about a third of which were sold for total proceeds of $1,915,365.23.[53]

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[40] Tr. 981.

[41] Tr. 983.

[42] Tr. 981-82.

[43] *See, e.g.*, CX-40; CX-41; CX-42; CX-43; CX-44.

[44] Tr. 617.

[45] CX-2.

[46] CX-2.

[47] CX-1.

[48] CX-2.

[49] CX-1.

[50] Tr. 1399.

[51] CX-3.

[52] CX-3.

[53] CX-3.

C. First Manhattan's AML Program

1. The AML Procedures and the AMLCOs

First Manhattan had two sets of AML Procedures in effect during the Relevant Period. The first set was effective since October 2010.[54] Capellini revised these AML Procedures in October 2019, with input from Stearns, the CCO, and Joseph Sammarco, First Manhattan's Co-Director of Operations.[55] Stearns approved both the 2010 and 2019 versions of the AML Procedures,[56] which he described as the products of "a collaborative effort" between the firm's legal and compliance teams.[57]

Both sets of AML Procedures defined the responsibilities of the firm's AMLCOs in the same way. The AMLCOs were "primarily responsible for the anti-money laundering program at [First Manhattan] . . . ."[58] The AMLCOs were required to "monitor the firm's compliance with AML obligations and oversee communications with and training for employees."[59]

Capellini was one of two AMLCOs designated in the 2010 AML Procedures, along with CK, who served as the primary AMLCO.[60] When CK left First Manhattan in January 2018, Capellini continued to serve as AMLCO,[61] replacing CK as the primary AMLCO. And in the revised 2019 AML Procedures, First Manhattan identified Sammarco as another AMLCO along with Capellini.[62]

First Manhattan's AML auditors described Capellini as "the primary individual responsible for the AML program at [First Manhattan]" with "multiple persons . . . responsible as back up to" Capellini.[63] And Capellini acknowledged that she had "the bulk of, if not all, of the 'compliance' responsibilities" for First Manhattan's AML program.[64] By contrast, Sammarco

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[54] Joint Exhibit ("JX-__") 13.

[55] Tr. 1222-28.

[56] JX-13, at 20; JX-14, at 21.

[57] Tr. 1425.

[58] JX-13, at 1, 24; JX-14, at 1, 25.

[59] JX-13, at 1, 24; JX-14, at 1, 25.

[60] Stip. ¶ 4; Tr. 888-89.

[61] Stip. ¶ 5.

[62] JX-14, at 1, 25.

[63] JX-17, at 4.

[64] JX-18, at 5; Tr. 924.

was involved only "from an operations standpoint, but not in any compliance, testing or oversight capacity."[65]

Capellini described how she and Sammarco apportioned CK's responsibilities after CK's departure. Capellini reviewed exception reports and money-flow reports generated by First Manhattan's clearing firm, and made AML approvals for new accounts.[66] She also provided AML training for First Manhattan's employees, usually by arranging for the firm's AML auditors to provide a training session.[67] Sammarco approved third-party wires and communicated with the clearing firm if the clearing firm had questions about First Manhattan accounts.[68] The AML Procedures also designated Sammarco as the person at the firm who would determine whether to file a Suspicious Activity Report ("SAR"), though only after he first informed Capellini.[69] And Sammarco signed an attestation, along with Stearns, in December 2018 that the firm would amend its AML Procedures in response to deficiencies identified during the previous audit.[70]

2. The Preclearance Form

Though it was not mentioned in the AML Procedures,[71] First Manhattan's due diligence tool for LPS was its preclearance form.[72] First Manhattan developed the preclearance form in January 2013,[73] in response to questions by its clearing firm about LPS activity in RB's AEH account.[74] Capellini helped prepare the preclearance form,[75] which First Manhattan used to memorialize the due diligence that the firm conducted before accepting LPS shares for deposit.[76]

The form asked for the account name and number, along with the name of the money manager for the account.[77] It also asked for the name of the security and details about how and

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[65] JX-18, at 6; Tr. 924.

[66] Tr. 1222.

[67] Tr. 928. Capellini testified that she provided the AML training if the auditors did not. Tr. 929-30.

[68] Tr. 1224.

[69] JX-14, at 16.

[70] JX-17, at 4.

[71] Tr. 452-53.

[72] CX-101, at 1-2.

[73] JX-15.

[74] CX-30; Tr. 937.

[75] Tr. 936.

[76] Tr. 942-43. The preclearance form was required for securities that were either priced at less than $1 per share or assigned to a bottom-three OTC Markets Group tier. The firm also reserved the right to require preclearance for securities that were priced at less than $5 per share. JX-15, at 1.

[77] JX-15, at 2.

when the accountholder acquired the securities.[78] The form also asked the preparer to attach any relevant documentation, such as a registration statement or subscription agreement, or explain why no documents were attached.[79]

The preclearance form did not apply solely to deposits. Instead, the form stated that it was also required for the "sale/transfer of certificates representing a large block of certain thinly traded or [LPS]."[80] The form asked the representative to specify whether the transaction was a "deposit," a "sale/transfer," or "both if applicable[.]"[81] And while the form asked for details about the accountholder's acquisition of shares, it also asked, "[f]or sale transactions, [the] relationship of seller to issuer . . . ."[82]

At the hearing, Capellini testified that she did not use the preclearance form for LPS sales.[83] First Manhattan representatives did not have to update the form[84] or complete another form for LPS sales.[85] So if a customer started to liquidate LPS a week after depositing them into a First Manhattan account, the representative did not have to complete another preclearance form for the sales.[86] In fact, Capellini did not know that First Manhattan had any AML responsibility at all when a customer sold LPS.[87]

Capellini's due diligence for RB's LPS deposits did not extend beyond completing the preclearance form.[88] For each LPS deposit in the AEH account, she did not "know anything about the seller" of the securities to AEH,[89] including how the seller obtained the shares,[90] whether the seller was related to the issuer,[91] or how the seller knew her husband.[92] For several securities, there was no purchase agreement attached to the preclearance form.[93] She did not

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[78] JX-15, at 2.

[79] JX-15, at 2.

[80] JX-15, at 2.

[81] JX-15, at 2.

[82] JX-15, at 2.

[83] Tr. 959-60.

[84] Tr. 959.

[85] Tr. 949.

[86] Tr. 946-47.

[87] Tr. 960.

[88] Tr. 942-43.

[89] Tr. 1035.

[90] Tr. 1030, 1033.

[91] Tr. 1009, 1029, 1032-33.

[92] Tr. 1014.

[93] *See* CX-65; CX-67; CX-70.

investigate the issuer,[94] including what kind of business the issuer purported to conduct,[95] whether the issuer had any assets or revenues,[96] or even if the issuer was a shell company.[97] She did not ask why AEH was purchasing the shares[98] or for evidence of actual payment.[99]

When AEH deposited PACM shares into its First Manhattan account, for example, Capellini completed a preclearance form.[100] In the section of the form that asked for "specific details as to how and when securities were acquired," Capellini wrote, "see attached."[101] She attached a purchase agreement, which purported to show that AEH bought 3,000 shares of PACM for $300 from an individual in Bosnia and Herzegovina.[102]

Capellini did not know or ask what business the seller was in, whether he was related to any of PACM's principals, where he obtained the shares he was selling, why her husband was buying PACM shares, or how her husband became acquainted with a seller in Bosnia and Herzegovina.[103] And there was no evidence that AEH paid for the shares.[104] A day after depositing PACM shares, and less than a month after acquiring them, AEH sold 100 PACM shares for $1 per share. This was not only the first public trade of PACM shares, but all the PACM market volume that day.[105] Yet because Capellini did not realize that the firm had any AML responsibility to monitor LPS sales, she did not investigate the PACM shares.[106]

The PACM preclearance form is a good example of Capellini's minimal efforts to conduct due diligence for AEH's LPS deposits. But she often did even less and failed to prepare preclearance forms for AEH's deposits. Between January 2018 and November 2019, AEH deposited certificates for 38 securities into its First Manhattan account.[107] For nearly 40 percent of those deposits — 15 out of 38 — there was no preclearance form in First Manhattan's files.[108]

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[94] Tr. 1035.

[95] Tr. 1006, 1010, 1014, 1020.

[96] Tr. 1006, 1020.

[97] Tr. 1007.

[98] Tr. 1020.

[99] Tr. 1035-36.

[100] CX-73.

[101] CX-73, at 1.

[102] CX-73, at 4-5.

[103] Tr. 953-55.

[104] Tr. 955.

[105] CX-5.

[106] Tr. 959-60.

[107] CX-6; *see also* CX-104.

[108] CX-6.

Twice Capellini prepared preclearance forms only *after* RB had deposited and sold the security in AEH's account.[109]

3. AML Exception Reports

Along with the preclearance form, First Manhattan used AML exception reports to monitor its LPS business. First Manhattan received daily AML exception reports from its clearing firm.[110] Under the AML Procedures, Capellini needed to review the exception reports each month.[111] First Manhattan's AML Procedures contained no guidance for how Capellini should review the exception reports, however.[112]

Capellini testified that she viewed the AML exception reports on her computer.[113] She testified that if none of the reports required further attention, she completed her review and printed the cover sheets of the reports later, sometimes several months later,[114] when she "had some downtime[.]"[115] After she printed the reports, she initialed the pages to show that she reviewed them.[116] After she printed and initialed the cover sheets, along with the results of any investigation she conducted,[117] she put the exception reports in a file in her office, organized by month.[118]

One report that Capellini received from First Manhattan's clearing firm was the "Low-Priced Security Turnover Report."[119] This report captured accounts that received 50,000 or more shares of a security trading at less than $3 per share and sold some of those shares within 30 calendar days.[120] The report showed some basic information about the registered representative, the account, and the shares sold.[121] The purpose of this report was to "detect shifts in account

[109] CX-5; CX-6; Tr. 696.

[110] JX-14, at 13; Tr. 927.

[111] CX-52, at 70.

[112] *See* JX-14, at 13.

[113] Tr. 1036-37.

[114] *See* CX-7.

[115] Tr. 1037-38.

[116] Tr. 1050; *see, e.g.*, CX-55.

[117] Tr. 1041.

[118] Tr. 1040-41.

[119] CX-54.

[120] CX-54.

[121] CX-54; *see* CX-55.

trading patterns or to identify accounts that may require special monitoring or enhanced review."[122]

Capellini pulled this report for 15 of the months during the Relevant Period.[123] The report captured exceptions from customer trading for nine of those months.[124] Of the nine reports, four had exceptions from trading in RB's account, and one had an exception from trading in TC's account.[125] The June 2018 report contained seven exceptions in six days from AEH's trading.[126]

But Capellini did not conduct any review of the trading that led to these exceptions.[127] "I was the RR on the account," she explained at the hearing.[128] She claimed that she "knew these transactions" because she deposited the shares, completed the preclearance form, and placed the sale orders.[129] But because she conducted no review of the trading, she could not explain why, in one instance, the AEH account was both buying and selling shares of the same issuer at the same time.[130]

At the hearing, Capellini disparaged the exception reports. When questioned about her delay in printing the exception reports, she testified that she essentially viewed the exception reports as meaningless:

> You know, I tried to fit it into my day and you know, tried to get everything in a timely manner. And every once in a while I would have some downtime, maybe I stayed late at the office after hours and sit there and print out all this nonsense and initial it and staple it and put it into a file. Not nonsense but I mean you know the hard copies of those reports.[131]

While Capellini retracted her description of the exception reports as "nonsense," she never identified any potentially suspicious activity from the exception reports that she reviewed.[132]

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[122] CX-54.

[123] CX-7; Tr. 686-87.

[124] CX-7; Tr. 687.

[125] CX-7; Tr. 687-88.

[126] CX-55, at 11-16; Tr. 1053.

[127] Tr. 594, 1053.

[128] Tr. 1053.

[129] Tr. 1053.

[130] Tr. 1056-57; CX-85, at 280-82.

[131] Tr. 1061.

[132] Tr. 900.

4. First Manhattan's AML Auditor Recommendations

During the Relevant Period, First Manhattan's AML auditors conducted two audits of First Manhattan's AML program. In their report covering 2018, the auditors' findings were "limited to clerical or minimal oversight deficiencies, with no real violations of either the Patriot Act or FINRA Rule 3310."[133] And in their 2019 report, the auditors characterized First Manhattan's AML Compliance Program as low risk.[134]

The auditors made several written recommendations for how First Manhattan could improve its AML program. For example, in their 2018 report, the auditors recommended that First Manhattan customize the software used by the clearing firm that created alerts and exception reports.[135] The auditors wrote that First Manhattan did not understand how its reliance on its clearing firm impacted First Manhattan's "independent AML obligations."[136] The auditors also advised First Manhattan to "define and establish its specific procedures in its [Written Supervisory Procedures] for monitoring for suspicious activities, reviewing red flags and escalating any findings and taking additional actions in those circumstances," such as filing a SAR.[137] Finally, the auditors recommended that First Manhattan perform periodic testing and oversight to determine whether the firm's controls were effective.[138] When the auditors returned the next year, however, they found that First Manhattan had failed to address these recommendations.[139]

In the 2019 report, the auditors also noted that First Manhattan had procedures for responding to red flags indicative of possible money laundering or terrorist financing.[140] The auditors failed to note, however, that the October 2019 AML Procedures did not mention multiple red flags that FINRA highlighted to the industry in May 2019.[141] FINRA's Regulatory Notice 19-18 identified 28 potential red flags associated with securities deposits and securities trading.[142] Stearns sent Regulatory Notice 19-18 to Capellini and Sammarco, along with others at First Manhattan, shortly after FINRA issued it in May 2019.[143] Yet when Capellini revised the

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[133] JX-17, at 24.

[134] JX-18, at 4.

[135] JX-17, at 12.

[136] JX-17, at 17.

[137] JX-17, at 12.

[138] JX-17, at 12.

[139] JX-18, at 8-9.

[140] JX-18, at 19.

[141] CX-50, at 4-15.

[142] CX-133, at 5-7. *See* FINRA Regulatory Notice 19-18 (May 2019), http://www.finra.org/rules/guidance/notices/19-18.

[143] CX-50.

AML Procedures in October 2019, she did not address Regulatory Notice 19-18. As a result, First Manhattan's AML Procedures listed only one of the 28 potential red flags listed in Regulatory Notice 19-18.[144]

D. Red Flags from Trading in LPS at First Manhattan

1. Expert Testimony about First Manhattan's LPS Business

Enforcement called Arthur R. Middlemiss as an expert to testify about AML-related topics, including the risks associated with LPS trading, First Manhattan's AML program for LPS, and Capellini's monitoring of accounts that traded LPS, including her husband's accounts.[145] Middlemiss is a managing partner at a law firm and has significant experience in AML and financial-crimes compliance.[146]

Based on his review of documents and investigative testimony, Middlemiss concluded that, as AMLCO, Capellini failed to assess and respond appropriately to the significant AML risks posed by First Manhattan's LPS business.[147] In his opinion, Capellini failed to tailor First Manhattan's AML program to the risks in LPS activity.[148] Capellini also failed to investigate and consider whether to file a SAR about potentially suspicious activity conducted by her husband, her brother, and other LPS customers, Middlemiss testified.[149]

Although LPS was only a fraction of First Manhattan's overall business, Middlemiss concluded "[t]hat there was a meaningful volume of [LPS] trading at the firm that should have been addressed within the AML program that was not."[150] Despite "an ongoing systematic course of conduct that evidences consistent red flags," he testified, "essentially there were no questions asked and therefore there was no assessment about whether or not a SAR should be filed."[151] He acknowledged that First Manhattan should not have assigned Capellini the duty of monitoring her husband's account for suspicious activity because of the "obvious conflict."[152] And he also acknowledged that the "root of the problem with First Manhattan's AML program"

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[144] Tr. 400.

[145] In an Order dated December 2, 2022, I granted Enforcement's unopposed motion to allow Middlemiss to testify as an expert on various AML topics.

[146] Tr. 1473-74. *See also* CX-13, at 4-7.

[147] Tr. 1477.

[148] Tr. 1478. As Middlemiss testified, "essentially it boils down to the fact that low-priced securities are . . . easier to cheat." Tr. 1491. LPS are "easier to manipulate" given their low price and small trading volume, he elaborates. Tr. 1491.

[149] Tr. 1478.

[150] Tr. 1493.

[151] Tr. 1517.

[152] Tr. 1536-37.

was Capellini's trust in her husband.[153] But once Capellini took on the role of AMLCO, he opined, she was responsible for material deficiencies in the firm's AML program.[154] And because she did not adequately assess the firm's AML risk from LPS trading and adapt the firm's AML program to that risk, Middlemiss testified, she provided "an open window for potentially illegal activity to occur through the firm."[155]

2. Token Communities Ltd. ("TKCM")

RB's LPS activity through the AEH account during the Relevant Period was replete with red flags.[156] A good example of that activity involved TKCM. RB deposited 300,000 shares of TKCM by physical certificate into the AEH account at First Manhattan on September 21, 2018.[157] That same day, Capellini prepared a preclearance form for the deposit.[158] She attached the stock certificate, issued in April 2018, and two letters from AOG, an attorney her husband used for his LPS business whose law license had been suspended from 1998 to 2006.[159] This form and attachments represented Capellini's due diligence for RB's deposit of TKCM shares.[160] There was no purchase agreement attached to the preclearance form,[161] and Capellini testified that she had no idea how, when, or why AEH obtained the TKCM shares.[162]

In one of the letters, AOG noted that TKCM had three prior incarnations since being formed in 2014.[163] In fact, the company was first formed as a "mobile app" development company, then began to develop cannabis chewing gum, before changing its name to TKCM to "enter the blockchain technology sector."[164] In a May 2018 SEC filing for the quarter ended March 31, 2018, TKCM disclosed that it had no revenue for the prior nine months and no assets.[165] In addition, TKCM's auditor had issued an opinion expressing "substantial doubt"

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[153] Tr. 1537.

[154] CX-13, at 41.

[155] Tr. 1499. *See also* CX-13, at 41 (concluding that "Capellini's blind eye" to the firm's LPS trading and her husband's trading "resulted in the firm providing an open window to high-risk activity that should have been, but was not, closely scrutinized").

[156] *See* CX-4; CX-5.

[157] CX-5.

[158] CX-64.

[159] CX-64, at 2-6; CX-128.

[160] Tr. 1076.

[161] Tr. 1076.

[162] Tr. 1077-78.

[163] CX-64, at 5.

[164] CX-11, at 1.

[165] CX-11, at 1.

about the company's "ability to continue as a going concern."[166] Capellini testified that she did not know whether the company had any assets or revenues.[167]

Five days after depositing the TKCM shares, RB sold 100 TKCM shares from the AEH account.[168] This was the first public sale of TKCM shares and represented the entire market volume that day.[169] RB sold the shares for $1.40 per share, which represented a 1,400,000 percent increase over the best prior bid of $0.00001 per share.[170]

RB continued to sell TKCM shares from the AEH account, often comprising most or all the daily market volume for TKCM.[171] In June 2019, RB appeared on both sides of the same TKCM trade, selling TKCM shares from the AEH account that he then purchased in TC's account.[172] He also journaled 50,000 TKCM shares and 25,000 TKCM shares from the AEH account to his FF and ASR accounts, respectively.[173] Between September 2018 and March 2020, RB generated $96,820.64 from his sales of TKCM in the AEH account.[174] In October 2020, the SEC revoked the registration of TKCM.[175]

E. FINRA's 8210 Requests Regarding RB's Account

FINRA sent three Rule 8210 requests to First Manhattan about the trading activity in RB's AEH account. All three requests were addressed to Capellini. And all three requests were sent by investigators in the fraud surveillance section ("Fraud Surveillance") of FINRA's Office of Fraud Detection and Market Intelligence ("OFDMI").

John Sazegar managed the Fraud Surveillance investigators who sent the Rule 8210 requests. Sazegar testified at the hearing. According to Sazegar, Fraud Surveillance investigates "a wide variety of securities fraud schemes[,]" with a focus on "pump and dump schemes and market manipulation schemes."[176] Sazegar testified that Fraud Surveillance typically sends Rule

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[166] CX-11, at 1.

[167] Tr. 1078.

[168] CX-85, at 256.

[169] CX-5.

[170] CX-11, at 1.

[171] CX-11, at 1-3.

[172] Tr. 1088-89.

[173] CX-11, at 1-2; CX-47; CX-49.

[174] CX-11, at 3.

[175] Tr. 586; CX-11, at 3.

[176] Tr. 83.

8210 requests to a member firm, if FINRA identifies potentially suspicious trading activity by one or more accounts at that firm.[177]

In the Rule 8210 requests, Sazegar testified, Fraud Surveillance generally asks a FINRA member firm for information such as trade blotters, order details, money movement, account statements, and log-in details.[178] Fraud Surveillance also may seek "due diligence information pertaining to the free trading basis of the shares being sold by the account."[179] Fraud Surveillance is interested in due diligence information for two reasons, Sazegar explained. First, "[s]ometimes the actual deposit of the shares and subsequent sale of the shares is . . . part and parcel to the actual fraud scheme."[180] Second, Fraud Surveillance looks at the firm's responses to evaluate whether the group should make a referral to FINRA Enforcement or elsewhere within FINRA "regarding due diligence that the firm conducted or a lack of due diligence that the firm conducted."[181]

In late 2019, Fraud Surveillance investigated suspicious trading by AEH through its account at First Manhattan.[182] According to Sazegar, it is highly likely that Fraud Surveillance's investigation involved more than just trading by the AEH account.[183] But the three Rule 8210 requests sent by OFDMI to First Manhattan are the subject of this disciplinary case.

1. Rivex Technology Corp. ("RIVX")

a. AEH's activity in RIVX

On August 9, 2018, AEH deposited 3,000 common shares of RIVX in certificate form into its account at First Manhattan.[184] Capellini prepared a preclearance form for the deposit.[185] She attached to the preclearance form a one-page purchase agreement between her husband, as manager of AEH, and a person described as a "Citizen of Slovakia with a Residence in Clearwater, FL[.]"[186] According to the agreement, dated July 10, 2018, RB paid $600 for the shares, or 20 cents per share.[187] Capellini also attached the stock certificate, dated July 19, 2018,

[177] Tr. 86.

[178] Tr. 86.

[179] Tr. 86.

[180] Tr. 87.

[181] Tr. 87-88.

[182] Tr. 90.

[183] Tr. 160.

[184] CX-4.

[185] CX-19.

[186] CX-19, at 2.

[187] CX-19, at 2.

to the preclearance form.[188] The entire First Manhattan's due diligence file for RIVX consisted of the preclearance form and three pages of attachments. First Manhattan had no other documents when AEH deposited the shares.[189]

Capellini conducted no further inquiry into AEH's deposit of RIVX shares. She did not know what business RIVX purported to be in.[190] She did not know if the company had any assets or revenue.[191] (In fact, the company was the subject of an auditor's "going concern" opinion.)[192] She did not know why RB bought RIVX shares.[193] She knew nothing about the seller.[194] She did not know what business the seller was in, or where he obtained the RIVX shares.[195] She did not see any proof that AEH paid for the shares.[196]

Five days after the deposit, AEH sold 100 RIVX shares.[197] This was the first public sale of RIVX shares.[198] AEH sold the shares, which it had purportedly bought for 20 cents per share, at five *dollars* per share.[199] This was far outside the national best bid before AEH's order, which was five *cents* per share.[200] The sale made up half of the entire market volume for RIVX that day.[201]

While she placed the sale orders for the AEH account, Capellini testified that she did not look at the price or daily volume for the securities traded by the account.[202] But in November 2019, as RB continued to sell RIVX shares from the AEH account, a First Manhattan trader told Capellini about unusual trading volume for RIVX, in an email entitled "VERY high volume on RIVX today (30 day avg vol is 7 shares!)".[203] The trader attached a screenshot to her email that

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[188] CX-19, at 3-4.

[189] Tr. 1122-23.

[190] Tr. 1123.

[191] Tr. 1123.

[192] CX-4.

[193] Tr. 1123.

[194] Tr. 1125-26.

[195] Tr. 1126.

[196] Tr. 1126-27.

[197] CX-85, at 271; CX-5.

[198] CX-5.

[199] CX-85, at 271; CX-5.

[200] CX-5.

[201] CX-5.

[202] Tr. 1127-28.

[203] CX-51.

showed the RIVX trading volume so far that day was 91,020.[204] The trader also noted that "our order is to sell 1,300 at 5".[205] One minute later, Capellini forwarded the trader's email to RB.[206] On that day, and the next day, AEH sold 2,000 RIVX shares from its First Manhattan account, for about $6,540.[207] Capellini testified that she did not view the spike in trading volume as suspicious or worthy of further AML review.[208]

b. OFDMI's Rule 8210 Request about RIVX

About two weeks after Capellini received the trader's email about a spike in RIVX trading volume, OFDMI sent her a Rule 8210 request.[209] In the first paragraph of the request, dated November 19, 2019, OFDMI explained that it was reviewing RIVX trading.[210] OFDMI requested that First Manhattan produce certain information for the AEH account.[211] In the fourth item ("Item 4"), OFDMI requested that First Manhattan produce documents related to RIVX:

> A copy of all documentation related to all receipt, delivery, and/or transfer of RIVX stock as well as all due diligence inquiries made to determine the free trading basis of any RIVX shares sold by the account between August 2018 and November 7, 2019.[212]

As Sazegar put it, Item 4 was aimed at the due diligence process by which First Manhattan became comfortable that "the shares were freely tradeable and able to be sold in the public market."[213] In the request, Sazegar testified, OFDMI sought "documents that related essentially to what the firm did when it was accepting the stock deposit."[214] OFDMI was *not* asking First Manhattan to contact the accountholder to get documents, Sazegar testified. In fact, OFDMI did *not* want its member firms to contact accountholders about their fraud investigations because making an accountholder "aware of the existence of a FINRA inquiry into the activity could have a potentially compromising [e]ffect on the investigation."[215]

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[204] CX-51. The trader sent Capellini the email at 2:12 p.m.

[205] CX-51.

[206] CX-51.

[207] CX-85, at 91.

[208] Tr. 1130.

[209] JX-1.

[210] JX-1, at 1.

[211] JX-1, at 1.

[212] JX-1, at 1.

[213] Tr. 98.

[214] Tr. 98.

[215] Tr. 99.

Capellini testified that she interpreted Item 4 quite differently. She knew OFDMI was seeking information about potentially fraudulent activity in her husband's AEH account.[216] And Capellini acknowledged that she already had the firm's due diligence file — the RIVX preclearance form and two attachments.[217] But she testified that she did not read Item 4 as "just send what you already have."[218] Instead, Capellini testified, "I thought they were asking for any documentation that I could get to support the trading activity and so I asked him [RB] if he had anything else."[219] She said that she trusted her husband, who had assured her that the shares were either registered or exempt from registration.[220] So to "make it clear that nothing had been done wrong,"[221] she testified, she asked her husband to "get every piece of paper we could get to show that this was a legitimate deposit and there was no issue with the sales."[222]

In response to her request, RB sent Capellini two emails on November 25, 2019.[223] RB sent both emails to Capellini's personal email account, which Capellini then forwarded to her work email account.[224] In the first email, RB attached a two-page opinion letter from AOG about RIVX shares.[225] The opinion letter identified four exhibits — Exhibits A through D — but RB's email did not attach the exhibits.[226] In the second email, RB sent what was Exhibit D, a letter from another lawyer to the transfer agent, along with a shareholder list.[227] Capellini did not have either the opinion letter or Exhibit D before RB sent them to her in these emails.[228]

The next day, Capellini responded to OFDMI's Rule 8210 request.[229] In response to Item 4 of the request, Capellini provided three documents. The first document was the purchase agreement, which First Manhattan had collected when AEH deposited the RIVX shares.[230] The other two documents were the legal opinion letter and Exhibit D, which she had received the day

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[216] Tr. 1134, 1138.

[217] Tr. 1136-37.

[218] Tr. 1137.

[219] Tr. 1137.

[220] Tr. 1139.

[221] Tr. 1138.

[222] Tr. 1138.

[223] CX-21; CX-22.

[224] CX-21; CX-22.

[225] CX-21.

[226] CX-21, at 3.

[227] CX-22, at 2-7; Tr. 1145.

[228] Tr. 1144, 1146.

[229] JX-3.

[230] Tr. 1147.

before from RB.[231] She did not provide the preclearance form for RIVX in her response.[232] Capellini testified that she could not recall why she did not provide the preclearance form,[233] but said that she was "focused on getting . . . what other documents were available."[234] She showed the cover letter of the Rule 8210 response to Stearns,[235] the CCO, but did not tell him that she intended to provide documents that she had obtained from RB after receiving the Rule 8210 request.[236]

2. Lazex, Inc. ("LAZX")

a. AEH's activity in LAZX

AEH deposited 2,000 shares of LAZX into its First Manhattan account on May 13, 2019.[237] There was no preclearance form for LAZX in First Manhattan's files.[238] Eleven days later, AEH sold 100 shares of LAZX at $2 per share,[239] far outside the national best bid of five cents per share before AEH's order.[240] This trade comprised the entire market volume for LAZX that day.[241]

Capellini was unaware that AEH's sale of LAZX's shares constituted all the trading volume that day.[242] She was unconcerned that AEH sold shares only 11 days after RB deposited them,[243] and she did not ask her husband about it.[244] In fact, she did not know why RB bought

[231] Tr. 1147.

[232] JX-2; Tr. 1149.

[233] Tr. 1150.

[234] Tr. 1149.

[235] Tr. 1372-73.

[236] Tr. 1150.

[237] CX-4; CX-49.

[238] CX-6.

[239] CX-85, at 169.

[240] CX-5.

[241] CX-5.

[242] Tr. 1155.

[243] Tr. 1154.

[244] Tr. 1154-55.

LAZX shares.[245] Nor did she ask what kind of business LAZX purported to be in,[246] or whether the company had any revenues or assets.[247]

b. OFDMI's Rule 8210 Request about LAZX

OFDMI sent Capellini a Rule 8210 request about LAZX on December 4, 2019.[248] As it did with its request about RIVX, OFDMI stated in the first paragraph that it was reviewing LAZX trading.[249] Capellini knew that this request, like the last one, was about her husband's trading in the AEH account.[250] Capellini told Stearns about the request and prepared a response.[251]

Like Item 4 from the RIVX request, the fifth item ("Item 5") of the request asked First Manhattan to produce documents related to the LAZX shares deposited and sold by the AEH account at First Manhattan. But Item 5 used different language:

> Copies of all due diligence inquiries that the firm had to determine the free trading basis of the LAZX shares deposited by, or transferred into, the [AEH] account . . . This should include, if applicable, copies of stock certificates, attorney opinion letters, and any other documents detailing the origin of the shares.[252]

Again, Capellini testified, she did not interpret OFDMI's request to be limited to the firm's due diligence files when RB deposited the LAZX shares.[253] Instead, she testified, she thought that OFDMI "wanted anything that . . . we had or could get our hands on to support the fact that the shares were free trading."[254]

As she did with the RIVX request, Capellini told her husband about the LAZX request and asked him if he had any information responsive to Item 5.[255] The day after Capellini received the LAZX request, RB sent Capellini three emails, each to her personal email

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[245] Tr. 1152.

[246] Tr. 1152-53.

[247] Tr. 1153.

[248] JX-5.

[249] JX-5.

[250] Tr. 1156.

[251] Tr. 1156.

[252] JX-5.

[253] Tr. 1166-67.

[254] Tr. 1166.

[255] Tr. 1157.

account.[256] In the first email, RB attached a one-page opinion letter from AOG about LAZX shares.[257] The letter identified two exhibits — Exhibits A and B — but the first email did not include the exhibits.[258] In the second email, RB sent Exhibit A to the opinion letter, which consisted of a two-page subscription agreement along with an invoice, written in Czech.[259] The subscription agreement and invoice purported to show the purchase of 40,000 LAZX shares by an individual in the Czech Republic, for $800, or two cents per share.[260] In the third email, RB sent Exhibit B to the opinion letter, which consisted of a three-page legal opinion letter and a shareholder list.[261] Capellini did not have any of these documents before her husband emailed them to her.[262] None were part of First Manhattan's due diligence files for LAZX.[263]

Four days after receiving these documents from RB, Capellini sent them to FINRA in response to Item 5.[264] Before sending the response to OFDMI, Capellini showed it to Stearns.[265] She did not tell him, however, that she included documents that were not in First Manhattan's files and were obtained from RB after she received OFDMI's request.[266]

3. Remaro Group Corp. ("REMO")

a. AEH activity in REMO

AEH deposited 2,000 shares of REMO into its account at First Manhattan on August 5, 2019.[267] Two days after the deposit, AEH placed a limit order to sell REMO shares.[268] The next day, August 8, 2019, AEH sold 100 REMO shares at $2 per share.[269] This was the first public sale of REMO shares, and the national best bid before AEH's order was only one cent per

[256] CX-23; CX-24; CX-25.

[257] CX-23, at 3.

[258] CX-23, at 3.

[259] CX-24; Tr. 1145.

[260] CX-24, at 2-4.

[261] CX-25.

[262] Tr. 1161.

[263] Tr. 1161, 1165.

[264] JX-7, at 2.

[265] Tr. 1164.

[266] Tr. 1164.

[267] CX-5; CX-85, at 132.

[268] CX-5.

[269] CX-5; CX-85, at 132.

share.[270] AEH's sale of 100 REMO shares constituted half of the market volume in REMO that day.[271]

Capellini prepared a preclearance form for AEH's deposit of REMO shares — but not until August 9, 2019, a day *after* AEH had sold REMO shares.[272] She attached four pages to the preclearance form: a one-page purchase agreement,[273] a two-page stock certificate,[274] and a cover letter from the transfer agent for the stock certificate.[275] The purchase agreement was dated 12 days before AEH's deposit of REMO shares.[276] The seller was a person in the Dominican Republic,[277] which is a country of primary concern for money laundering.[278] According to the purchase agreement, AEH bought 2,000 REMO shares from the individual, for $2,000.[279] The stock certificate for the 2,000 REMO shares was dated July 30, 2019.[280]

Beyond obtaining the purchase agreement and stock certificate, Capellini did not conduct any due diligence of REMO when AEH deposited REMO shares.[281] She did not know what business REMO purported to be in, or whether it had any assets or revenues.[282] (Like RIVX, REMO's auditors had issued a "going concern" opinion.)[283] In fact, she had never heard of REMO before AEH's deposit.[284] She did not know and did not ask why her husband bought REMO shares.[285] She knew nothing about the seller in the Dominican Republic, including whether he had any connection to REMO principals or how he obtained the REMO shares he sold.[286] She did not know that AEH's sale of REMO shares on August 8, 2019 was the first

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[270] CX-5.

[271] CX-5.

[272] CX-20.

[273] CX-20, at 2.

[274] CX-20, at 4-5.

[275] CX-20, at 3.

[276] CX-20, at 2.

[277] CX-20, at 2.

[278] Tr. 564.

[279] CX-20, at 2.

[280] CX-20, at 4.

[281] Tr. 1170.

[282] Tr. 1171.

[283] CX-4.

[284] Tr. 1171.

[285] Tr. 1171.

[286] Tr. 1176.

public sale of REMO shares.[287] Nor did she check to see what percentage of the daily trading volume AEH's sale of REMO shares represented.[288] And she also testified that she was not concerned that AEH held the REMO shares for only about one week before selling some of them.[289]

b. OFDMI's Rule 8210 Request about REMO

OFDMI sent a third Rule 8210 request to Capellini about her husband's trading. This request, dated January 24, 2020, related to AEH's trading of REMO.[290] Because this was the third request from OFDMI about her husband's trading activity, Capellini was concerned.[291] As with the prior two OFDMI requests, Capellini told Stearns that she would collect information and prepare a response.[292]

Item 5 of the REMO request was identical to Item 5 of the LAZX request, aside from the ticker symbol:

> Copies of all due diligence inquiries that the firm had to determine the free trading basis of the REMO shares deposited by, or transferred into, the [AEH] account . . . This should include, if applicable, copies of stock certificates, attorney opinion letters, and any other documents detailing the origin of the shares.[293]

As with the prior OFDMI requests, Capellini testified that she thought that OFDMI sought in Item 5 "anything that pertained to the free trading of the [REMO] shares."[294] As before, Capellini did not contact the OFDMI investigator who sent the request, or anybody else within OFDMI, to see if her interpretation of Item 5 was correct.[295] And as she had done with the two prior OFDMI requests, Capellini told her husband about the REMO request, and "asked him if he had any other information."[296]

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[287] Tr. 1175.

[288] Tr. 1177.

[289] Tr. 1175.

[290] JX-9.

[291] Tr. 1179.

[292] Tr. 1178.

[293] JX-9.

[294] Tr. 1180.

[295] Tr. 1181.

[296] Tr. 1178.

Two days after receiving the REMO request, Capellini received an email at her personal account from AOG, [297] who by that time had pled guilty to three felonies related to wire fraud.[298] In the email, AOG wrote that he enclosed "a copy of the file we had prepared for [AEH] and provided to you last summer."[299] According to AOG, the file consisted of his legal opinion, and Exhibits A to E of the opinion.[300] In the attachment to his email, however, AOG provided only Exhibits A, B, D, and E to his opinion letter.[301] He failed to provide Exhibit C,[302] identified in his opinion letter as "April 17, 2017 Amended S-1A filing. SEC/EDGAR[.]"[303] At 10:09 the next morning, January 27, 2020, Capellini forwarded AOG's email, with attachments, to her First Manhattan email account.[304]

Less than one hour later, at 11:06 a.m., Capellini scanned documents in First Manhattan's offices. First Manhattan's scanner sent a pdf file to Capellini's First Manhattan email account at 11:14 a.m.[305] In the pdf file was a cover letter from the transfer agent for the REMO stock certificate, along with the two-page REMO stock certificate.[306] These documents were attached to the preclearance form that Capellini prepared in August 2019.[307] She also included AOG's opinion letter,[308] along with Exhibits A,[309] B,[310] D,[311] and E,[312] and cover pages that she created for the exhibits.[313]

There was one document in the pdf file that was not in AOG's email, however.[314] In the pdf file, Capellini included Exhibit C to the opinion letter — an Amendment to the Form S-1

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[297] CX-26.

[298] CX-142; Tr. 674-75.

[299] CX-26, at 1. Capellini denied that AOG had previously provided the file to her. Tr. 1190.

[300] CX-26, at 1.

[301] Tr. 1190.

[302] Tr. 1190-91.

[303] CX-26, at 3.

[304] CX-26.

[305] CX-27.

[306] CX-26, at 2-4.

[307] CX-20, at 3-5.

[308] CX-27, at 5-6.

[309] CX-27, at 7-12.

[310] CX-27, at 13-16.

[311] CX-27, at 68-70.

[312] CX-27, at 71-72.

[313] Tr. 1194.

[314] Tr. 1194-95.

Registration Statement for REMO ("Form S-1/A") — along with an "Exhibit C" cover page.[315] Each of the 50 pages of the Form S-1/A had a footer that showed that the Form S-1/A was printed from the SEC's EDGAR website on January 27, 2020.[316] Yet at the hearing, Capellini testified that she could not recall if she printed the Form S-1/A from EDGAR that day.[317]

About four-and-a-half hours later, Capellini scanned another set of documents, and the scanner sent another pdf file of documents to her First Manhattan email account at 3:35 pm.[318] This set of documents was nearly identical to the set of documents she had scanned earlier that day. Like the prior scanned documents, these documents included the transfer-agent cover letter,[319] the REMO stock certificate,[320] the opinion letter,[321] Exhibits A through E to the opinion letter,[322] and the cover pages she created for the exhibits.[323]

There was only one difference in the two sets of scanned documents. In the second set, the footer was missing from each page of Exhibit C, the Form S-1/A.[324] Capellini was asked at the hearing to explain the difference.

> Q: How did that come to be?
> A: I don't know.
> Q: You don't know?
> A: I don't recall.
> Q: So at 11:06 a.m. you had this package ready to go with the footer and then at 3:30 p.m. you got one without the footer?
> A: Correct.
> Q: And you are telling us you don't recall how that happened?
> A: That is what I am saying.[325]

Fifteen minutes after her second scan of documents, Capellini responded to OFDMI's Rule 8210 request by uploading a cover letter and exhibits onto FINRA's system.[326] In the cover

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[315] CX-27, at 17-67.

[316] Tr. 1196.

[317] Tr. 1195-96.

[318] CX-28.

[319] CX-28, at 2.

[320] CX-28, at 3-4.

[321] CX-28, at 5-6.

[322] CX-28, at 7-72.

[323] CX-28, at 7, 13, 17, 68, 71.

[324] CX-28, at 18-67; Tr. 1199.

[325] Tr. 1199.

[326] JX-10.

letter, she responded to Item 5 of the request with one sentence: "Attached as Exhibit 4."[327] In FINRA's system, Capellini named each file she uploaded, including Exhibit 4.[328] She named Exhibit 4 "Due Diligence."[329]

Capellini did not produce the REMO preclearance form, which was in First Manhattan's due diligence files.[330] Instead, Capellini uploaded the second set of documents that she had scanned that day, including the Form S-1/A without a footer.[331] Capellini testified that she could not recall why she uploaded the version of Form S-1/A without a footer, or even why she had two versions of the document.[332] "It was a time crunch and hectic," she testified, before offering that "[o]ne maybe cosmetically looks better, I don't recall."[333]

F. First Manhattan's Investigation and Capellini's Termination

There things stood until April 2020, when the SEC sent Stearns an email asking for information related to the three OFDMI Rule 8210 requests about AEH's trading.[334] The SEC specifically instructed Stearns not to tell Capellini about the request.[335] Stearns told senior management at the firm about the SEC request, and the firm started an investigation with outside counsel.[336]

First Manhattan interviewed Capellini on April 29, 2020.[337] At that time, the firm removed Capellini's access to the firm's electronic systems and the firm's physical offices.[338] The firm also placed her on administrative leave.[339]

That evening, Andrew Aspen, First Manhattan's Chief Legal Officer, searched Capellini's office files.[340] Aspen testified that he was looking for "any information or materials that might shed some light on" First Manhattan's responses to OFDMI's three Rule 8210

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[327] JX-10, at 3; JX-11, at 2.

[328] Tr. 130, 1185.

[329] JX-10, at 1; Tr. 1185-86.

[330] *See* JX-12.

[331] JX-10, at 178-228.

[332] Tr. 1201.

[333] Tr. 1201.

[334] Tr. 235, 1383.

[335] Tr. 238, 1384-85.

[336] Tr. 238-39, 320-21, 1384.

[337] Tr. 287.

[338] Tr. 287.

[339] Tr. 287.

[340] Tr. 288.

requests.[341] In one of the filing cabinets in Capellini's office, Aspen found a drawer with folders for each of First Manhattan's three responses.[342]

When Aspen reviewed the REMO folder, he had what he called "an 'oh my gosh' moment."[343] He described his reaction as "[s]ort of amazement[.] . . ."[344] In the folder, Aspen saw that the Form S-1/A "appeared to have been physically altered."[345] As Aspen testified, "the bottom one half to . . . two-thirds of an inch on each page of that registration statement had been cut off."[346] Aspen described "a slightly [j]agged cut across the bottom of the page[,]" that appeared to have been made with scissors.[347] Aspen placed Capellini's files in a sealed box, and couriered the box to First Manhattan's outside law firm, WilmerHale.[348] WilmerHale then sent the physical files to FINRA.[349]

At the hearing, Sazegar showed the physical copy of the REMO file that Aspen found in Capellini's office.[350] The file consisted of the Rule 8210 request, the cover letter of First Manhattan's response, and the documents attached to First Manhattan's response.[351] The Form S-1/A was collated with a paper clip among those documents.[352] Around half an inch to three-quarters of an inch appeared to have been cut off, slightly unevenly, from the bottom of each page of the Form S-1/A.[353]

About a week after discovering the altered Form S-1/A, the firm spoke with Capellini again and terminated her employment.[354] The firm also placed Stearns on administrative leave, and First Manhattan allowed him to resign effective June 2021.[355] In his Form U5, First Manhattan wrote that Stearns "did not properly oversee or supervise certain aspects of the compliance program, including with respect to review of low-priced securities transactions,

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[341] Tr. 291.

[342] Tr. 290.

[343] Tr. 298.

[344] Tr. 298.

[345] Tr. 293.

[346] Tr. 293.

[347] Tr. 293.

[348] CX-115; Tr. 300.

[349] CX-115; Tr. 144.

[350] Tr. 149. An electronic version of the REMO file from Capellini's office is at CX-17.

[351] Tr. 150.

[352] Tr. 150.

[353] Tr. 153-54.

[354] Tr. 300, 325-26.

[355] Tr. 327, 1331.

responses to certain regulatory inquiries, and to prevent conflict of interests."[356] First Manhattan made a presentation to regulators about the firm's "preliminary factual findings" relating to the firm's Rule 8210 responses.[357]

G. Capellini's Hearing Testimony about the Altered REMO Form S-1/A

At the hearing, Capellini was asked whether she cut the bottom off each page of the Form S-1/A. "I have absolutely no recollection of doing that, absolutely none," she testified.[358] "I know how it looks," she added, "but I have no recollection of even thinking about doing it because I wasn't trying to hide anything."[359] When asked if somebody else cut the pages, she responded that she did not know.[360] And she could not explain how and why the Form S-1/A was found in her office with the bottom of each page sliced off:

> I can't explain it because I don't have any recollection as I said of doing that or even thinking about doing it. It, you know, why would I do it, I was not trying to hide the time, date of when I had documents. I just was trying to get as much as I could send to FINRA. I have no recollection of this. I just don't. And I wracked my brains for three years over it.[361]

When pressed even further, Capellini testified that she was "juggling a lot of things" and wanted to submit a response to FINRA. But she insisted that she could not "recall the sequence of all of those events"[362] and did not "have a recollection of a specific day three years ago of what was going on."[363]

III. Conclusions of Law

A. First Cause of Action – FINRA Rule 3310(a) and FINRA Rule 2010

Under FINRA Rule 3310, each FINRA member must "develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the member's compliance with" the BSA and its implementing regulations. Rule 3310(a) requires that each member "[e]stablish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) [of the BSA] and

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[356] JX-26, at 8.

[357] Tr. 301-02.

[358] Tr. 1205.

[359] Tr. 1205.

[360] Tr. 1206.

[361] Tr. 1207-08.

[362] Tr. 1211.

[363] Tr. 1210-11.

the implementing regulations thereunder."[364] Broker-dealers must report any transaction of $5,000 or more if the broker-dealer knows, suspects, or has reason to suspect that the transaction: (1) involves funds derived from illegal activity or is intended or conducted to hide or disguise funds or assets derived from illegal activity; (2) is designed to evade the requirements of the BSA; (3) has no business or apparent lawful purpose or is not the type in which a particular customer would normally engage; or (4) involves the use of the broker-dealer to facilitate criminal activity.[365]

FINRA has provided extensive guidance to members about how to comply with their AML obligations. A firm's AML program "must reflect the firm's business model and customer base," and must be tailored to reflect factors such as a firm's "size, location, business activities, the types of accounts it maintains, and the types of transactions in which its customers engage."[366] FINRA members must monitor for suspicious transactions, including by detecting and investigating red flags that may suggest illicit activity.[367] FINRA has also reminded its member firms that they are required to file a SAR within 30 days of learning about a suspicious transaction.[368]

FINRA first published a list of red flags that could reflect suspicious activity in 2002.[369] That list included scenarios in which (1) the customer, for no apparent reason or as part of other red flags, engages in transactions involving certain securities, such as penny stocks; (2) the customer engages in transactions that lack business sense or apparent investment strategy, or conflict with the customer's stated business strategy; and (3) the customer (or a person publicly associated with the customer) has a questionable background or is the subject of news reports indicating possible criminal, civil, or regulatory violations.[370] Since then, several governmental agencies and international organizations have published guidance about other red flags applicable to the securities industry.[371] In May 2019, for example, FINRA issued Regulatory Notice 19-18, which provided "examples of these additional money laundering red flags for firms to incorporate into their AML programs, as may be appropriate in implementing a risk-based approach to BSA/AML compliance."[372]

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[364] Under FINRA Rule 0140(a), persons associated with a member, like Capellini, have the same duties and obligations as a member under FINRA rules.

[365] NASD Notice to Members 02-47, at 1-2 (Aug. 2002), http://finra.org/rules-guidance/notices/02-47.

[366] NASD Notice to Members 02-21, at 4 (Apr. 2002), http://finra.org/rules-guidance/notices/02-21.

[367] *Id.* at 10.

[368] 31 C.F.R. § 1023.320(a)(2) (2010); *see also* NASD Notice to Members 02-47, at 2.

[369] NASD Notice to Members 02-21.

[370] *Id.* at 10-11.

[371] *See* FINRA Regulatory Notice 19-18, at 12 n.8, http://finra.org/rules-guidance/notices/19-18 (citing publications).

[372] *Id.* at 2.

Under Rule 3310(d), member firms must "designate and identify to FINRA . . . an individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the [AML] program . . . ." FINRA has said that firms "should vest this person [AMLCO] with full responsibility and authority to make and enforce the firm's policies and procedures related to money laundering."[373] And the person designated as AMLCO "should have the authority, knowledge, and training to carry out the duties and responsibilities of his or her position."[374]

Enforcement argues that Capellini violated FINRA Rules 3310(a) and 2010 in two ways. First, Enforcement asserts, Capellini failed to establish and enforce an adequate AML program for LPS. Second, Enforcement argues, Capellini failed to detect and reasonably investigate many red flags of potentially suspicious LPS activity in her husband's accounts at First Manhattan. As we explain below, we find that Enforcement proved by a preponderance of evidence that Capellini violated FINRA Rules 3310(a) and 2010 in both ways.

1. Capellini's Responsibility for First Manhattan's AML Deficiencies

First Manhattan's AML program was deficient when it came to LPS. More than 1,500 customers transacted over $100 million in LPS through First Manhattan during the Relevant Period.[375] At the same time, more than 600 customers transacted in LPS of $1.00 or less, generating almost $20 million in proceeds.[376] While this was an extremely small portion of First Manhattan's overall business, it was still meaningful.[377] And it posed high AML risk.[378]

As Enforcement's expert, Arthur Middlemiss, testified, First Manhattan did not tailor its AML program to address this risky AML area.[379] First Manhattan's AML Procedures did not address the risks that the firm's LPS business posed, and ignored almost all the red flags in Regulatory Notice 19-18.[380] The firm's AML program relied on exception reports provided by the clearing firm that were not tailored to First Manhattan's LPS business.[381] The firm's primary due diligence tool was a preclearance form that was not addressed in the AML Procedures, was

[373] Notice to Members 02-21, at 13.

[374] *Id.*

[375] CX-3.

[376] CX-3.

[377] Tr. 1494.

[378] Tr. 1491.

[379] Tr. 1493. *See also* CX-13, at 3.

[380] Tr. 400.

[381] JX-17, at 12.

used inconsistently,[382] and was not used for sales or transfers.[383] Indeed, Capellini was unaware that First Manhattan even had an AML obligation to monitor LPS sales.[384] As Middlemiss put it, "Capellini and First Manhattan provided an open and unwatched window for highly questionable activity to occur absent meaningful scrutiny."[385]

Capellini does not seriously dispute that First Manhattan's AML program was deficient. Instead, she argues that holding her responsible for any of First Manhattan's AML deficiencies is unfair. She maintains that she acted reasonably under difficult circumstances.

Capellini makes several contentions in support of her position that blaming her for First Manhattan's AML failures is unfair. First, she argues that the firm's AML systems and procedures were all established by her predecessor, CK, along with Stearns. Even if the firm's AML systems and procedures were deficient, Capellini argues, they pre-dated her tenure as AMLCO. And once she became AMLCO, Capellini claims, she believed that the firm's AML program complied with FINRA Rules. First Manhattan never gave her any tools to change the firm's AML program, she contends, or any training about AML. Indeed, Stearns approved the AML Procedures, which Capellini could not change alone. The firm's outside AML auditors characterized the firm's AML program as low risk. Neither regulators nor the firm's clearing firm, which had much more experience with LPS than First Manhattan, raised significant AML concerns with her. As a result, Capellini argues, she reasonably believed that First Manhattan's AML policies complied with Rule 3310(a).

Capellini's arguments to deflect responsibility are unpersuasive. The AML Procedures expressly vested Capellini, as AMLCO, with the broad responsibility of communicating with regulatory agencies about First Manhattan's AML program, monitoring the firm's compliance with its AML obligations, and overseeing the communication with and training of employees about their AML obligations.[386] While Sammarco joined Capellini as an AMLCO in 2019, Capellini was responsible for the "bulk of, if not all, of the 'compliance' responsibilities for the AML program."[387] She never told Stearns that she did not feel adequately trained or qualified to be AMLCO, and she never asked for more training to be an AMLCO.[388] Instead, Stearns described her as the person who "probably had more experience on the AML side than anybody

[382] CX-6.

[383] Tr. 959-60.

[384] Tr. 960.

[385] CX-13, at 3.

[386] JX-13, at 1; JX-14, at 1.

[387] JX-18, at 4.

[388] Tr. 1342-43.

else at the firm during that period."[389] In fact, she provided AML training to First Manhattan's employees.[390]

While First Manhattan's AML Procedures resulted from a "collaborative effort" of the firm's legal and compliance teams,[391] it was Capellini's responsibility as AMLCO to identify potential modifications to the AML program to address regulatory changes.[392] Indeed, Stearns expressly told Capellini about red flags for LPS in Regulatory Notice 19-18,[393] yet she did not seek to amend the firm's AML program to address those red flags. And while the auditors characterized First Manhattan's AML program as low risk[394] and "reasonably designed to achieve compliance with applicable rules,"[395] Capellini failed to implement several significant recommendations made by the auditors specific to First Manhattan's LPS business.[396]

As for Capellini's argument that FINRA is singling her out for discipline when others were also responsible for aspects of First Manhattan's AML program, "[i]t is well-established that Enforcement has broad prosecutorial discretion when deciding who and what violation to charge."[397] And "more than one individual or firm can be responsible and thus held liable for the same violation."[398] Enforcement's decision to charge Capellini for AML violations during her tenure as AMLCO is well within the bounds of its discretion.[399] We therefore conclude that Enforcement proved that Capellini violated Rules 3310(a) and 2010 by failing to adopt and

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[389] Tr. 1342.

[390] Tr. 928-29.

[391] Tr. 1425-26.

[392] JX-13, at 27; Tr. 1346.

[393] CX-50.

[394] JX-18, at 4.

[395] JX-17, at 3.

[396] JX-18, at 8-9.

[397] *Dep't of Enforcement v. C.L. King & Assocs., Inc.*, No. 2014040476901, 2019 FINRA Discip. LEXIS 43, at *137 (NAC Oct. 2, 2019) (quoting *Dep't of Enforcement v. Wedbush Sec., Inc.*, No. 20070094044, 2014 FINRA Discip. LEXIS 40, at *80-81 (NAC Dec. 11, 2014)).

[398] *Merrimac Corp. Sec., Inc.*, Exchange Act Release No. 86404, 2019 SEC LEXIS 1771, at *13 (July 17, 2019), *modified*, No. 2011027666902r, 2020 FINRA Discip. LEXIS 28 (NAC Mar. 27, 2020).

[399] *See, e.g.*, *C.L. King & Assocs., Inc.*, 2019 FINRA Discip. LEXIS 43, at *137 (finding Enforcement properly exercised discretion to charge with AML violations "the person expressly named in the WSPs as responsible for the firm's adherence to AML requirements"); *Dep't of Enforcement v. Glendale Sec., Inc*., No. 2016049565901, 2019 FINRA Discip. LEXIS 25, at *190 (OHO Apr. 5, 2019) (dismissing AML allegations against four respondents because "[n]one was Glendale's designated AMLCO and, accordingly, they were not responsible for Glendale's AML program during the relevant period"), *aff'd in relevant part*, 2021 FINRA Discip. LEXIS 25 (NAC Oct. 6, 2021), *appeal docketed sub nom. Paul Eric Flesche*, No. 3-20647 (SEC Nov. 2, 2021).

implement a reasonably designed AML program for the deposit and trading of LPS securities by First Manhattan's customers.

2. Capellini's Failure to Detect and Reasonably Investigate LPS Deposits and Trading by RB

Capellini failed to detect or reasonably investigate red flags of suspicious LPS activity in accounts controlled by RB. In his four accounts during the Relevant Period, RB deposited shares for 38 microcap securities, engaged in over 200 sales of those securities, and wired out nearly $400,000 in sales proceeds.[400] This activity generated multiple red flags. In the AEH account, RB deposited recently-issued stock certificates for companies that were shells or had little or no assets or revenues, had undergone name changes, were the subject of a going-concern opinion, and whose owners had a regulatory history or were linked to multiple issuers.[401] RB often sold those shares at prices well outside the best bid or ask before his sale.[402] Often RB's sales were the first public trade in those securities.[403] His sales made up a significant portion or all of the daily trading volume.[404] He wired the proceeds out of the AEH account shortly after each sale.[405] His securities attorney was convicted of multiple felonies, including wire fraud, and had his law license suspended for approximately eight years.[406] RB's activity in TKCM generated numerous red flags,[407] as did his activity in the three securities that prompted OFDMI to send Rule 8210 requests to First Manhattan.[408]

Yet Capellini failed to make even a rudimentary inquiry into this suspicious activity. She failed to ask basic questions about the issuers whose shares RB deposited. She asked no questions about what businesses the issuers purportedly engaged in, or whether they had assets or revenue. Sometimes she had no information about how RB obtained the shares. She asked no questions about the seller, such as whether the seller of the shares was connected to the issuer, even when the seller was in a country notorious for money laundering. She asked for no evidence that RB had paid for the shares. Sometimes she did not complete the preclearance form or collect any due diligence information.

After RB deposited LPS shares into his accounts, Capellini did not monitor the sales of those shares or the transfer of the sales proceeds. By her admission, she did not think that First

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[400] CX-1.

[401] *See* CX-4.

[402] CX-3.

[403] CX-3.

[404] CX-3.

[405] CX-4.

[406] CX-142; CX-128; Tr. 674-75.

[407] CX-11.

[408] CX-8 (RIVX); CX-9 (LAZX); CX-10 (REMO).

Manhattan had an AML obligation for LPS sales once RB deposited the securities into his accounts. So she did not inquire into RB's activity even when it repeatedly appeared on First Manhattan's exception reports.

Capellini does not dispute that RB's LPS activity presented multiple red flags. Instead, she argues that she was not responsible for any failure to detect or investigate those red flags. Stearns was the designated approver for the preclearance forms for the RB accounts, and the principal supervisor for RB's accounts. Capellini asserts that Stearns refused to allow RB to hold his accounts outside the firm, and he could have asked somebody else to monitor RB's accounts. Capellini contends that by asking her to monitor RB's accounts, the firm created a conflict of interest that violated FINRA Rule 3110(b)(6)(D). That provision states that a firm must reasonably design its written supervisory procedures to prevent the firm's supervisory system "from being compromised due to the conflicts of interest that may be present with respect to the associated person being supervised . . . ." As Enforcement's expert agrees, and Capellini points out, it was no surprise that she trusted her husband, and First Manhattan should have never asked her to oversee AML compliance in her husband's account. Capellini argues that she "should not be faulted for violations that only occurred because the firm and Stearns insisted that she occupy a role that presented a conflict of interest."[409]

Again, Capellini's arguments that she is not responsible for AML deficiencies are unconvincing. As AMLCO, Capellini was required to monitor the firm's compliance with its AML obligations.[410] That included the firm's obligations associated with RB's accounts. And as Middlemiss testified, it was Capellini's responsibility as AMLCO to identify the conflict of interest associated with monitoring her husband's account, raise that issue within the firm, and "build commensurate controls to deal with it."[411]

Further, as Stearns pointed out, the firm did not require Capellini to be the registered representative for RB's accounts.[412] She could have assigned her husband's accounts to another First Manhattan representative. She did not. She could have asked Stearns or Sammarco to monitor the accounts for AML compliance.[413] She did not. She could have asked Sammarco to review the exception reports that captured the activity in RB's accounts. She did not.

Capellini's argument that the firm created a conflict of interest that violated Rule 3110(b)(6)(D) is also misguided. By its plain terms, Rule 3110(b)(6)(D) pertains to a potential conflict of interest posed by the *supervision of an associated person*, not a potential conflict caused by an AMLCO monitoring a customer account. Indeed, the examples of potential conflicts in the provision make that clear: "the position of such person, the revenue such person

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[409] Respondent's Post-Hearing Brief ("Resp't Post-Hr'g Br.") 30.

[410] JX-13; JX-14.

[411] Tr. 1552-53.

[412] Tr. 1357.

[413] Tr. 1552-53.

generates for the firm, or any compensation that the associated person conducting the supervision may derive from the associated person being supervised."[414] It was Capellini's duty as AMLCO to identify and manage any potential conflicts of interest that may have inhibited the firm's ability to comply with its AML obligations.

Because she served as the registered representative on RB's accounts, Capellini saw the deposits, sales, and wire transfers in those accounts. This activity presented many red flags. Capellini did not reasonably investigate these red flags because she trusted her husband. As AMLCO, she needed to do more. We find that Enforcement proved that Capellini violated FINRA Rules 3310(a) and 2010 by failing to detect and reasonably investigate the potentially suspicious LPS activity in RB's accounts.[415]

B. Second Cause of Action – FINRA Rule 8210 and FINRA Rule 2010

FINRA Rule 8210(a)(1) authorizes FINRA staff to require associated persons to provide information in an investigation. Rule 8210 is "at the heart of the self-regulatory system for the securities industry."[416] It "is the principal means by which FINRA obtains information from its member firms and associated persons in order to detect and address industry misconduct."[417]

Rule 8210 is unequivocal in its requirement that persons subject to FINRA's jurisdiction provide full, complete, and truthful cooperation to FINRA in response to a request made under Rule 8210.[418] Compliance with Rule 8210 is "essential to enable [FINRA] to execute its self-

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[414] *See* Regulatory Notice 14-10, at 7 (Mar. 2014), http://finra.org/rules-guidance/notices/14-10 ("a firm must have procedures to prohibit its supervisory personnel from (1) supervising their own activities; and (2) reporting to, or having their compensation or continued employment determined by, a person the supervisor is supervising.").

[415] "An associated person also violates FINRA Rule 2010 when he or she violates any FINRA rule, including Rule 8210." *Dep't of Enforcement v. Kanarek*, No. FPI220008, 2023 FINRA Discip. LEXIS 9, at *8 n.2 (NAC Apr. 19, 2023) (citing *Dep't of Enforcement v. Gallagher*, No. 2008011701203, 2012 FINRA Discip. LEXIS 61, at *11 n.9 (NAC Dec. 12, 2012)).

[416] *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008), *petition for review denied*, 347 F. App'x 692 (2d Cir. 2009).

[417] *Dep't of Enforcement v. Lundgren*, No. FPI150009, 2016 FINRA Discip. LEXIS 2, at *13–14 (NAC Feb. 18, 2016) (quoting *Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at *55 n.46 (Sept. 24, 2015)).

[418] *See Dep't of Enforcement v. Taboada*, No. 2012034719701, 2017 FINRA Discip. LEXIS 29, at *41–44 (NAC July 24, 2017), *appeal dismissed,* Exchange Act Release No. 82970, 2018 SEC LEXIS 823 (Mar. 30, 2018); *see also Dep't of Enforcement v. Reifler*, Exchange Act Release No. 94026, 2022 SEC LEXIS 167, at *13–14 (Jan. 21, 2022), *sanctions reaffirmed*, No. 2016050924601r, 2023 FINRA Discip. LEXIS 1 (NAC Jan. 17, 2023); *see also Keilan Dimone Wiley*, Exchange Act Release No. 76558, 2015 SEC LEXIS 4952, at *22–25 (Dec. 4, 2015), *petition for review denied*, 663 F. App'x 353 (5th Cir. 2016).

regulatory functions."[419] A person violates Rule 8210 by providing false or misleading information to FINRA in an investigation.[420]

Enforcement contends that Capellini violated Rule 8210 in two ways. First, Enforcement argues that Capellini provided misleading information in response to three Rule 8210 requests about First Manhattan's due diligence. Second, Enforcement asserts that Capellini violated Rule 8210 by cutting off the footer of the Form S-1/A and providing the altered document to FINRA.

A majority of the Panel concludes that Enforcement proved by a preponderance of evidence that Capellini violated Rule 8210. The November 2019 RIVX request sought "receipt, delivery, and/or transfer of RIVX stock as well as all due diligence inquiries . . . between August 2018 and November 7, 2019." This request sought documents and information from First Manhattan, within the firm's possession, custody, and control. It was also limited by time. The December 2019 LAZX request and January 2020 REMO request were even more explicit, asking for "due diligence inquiries that the firm made . . . ." While OFDMI sent the requests to Capellini, the introductory paragraph in each request requested that "First Manhattan . . . provide the following information . . . ." In short, each request sought due diligence documents and information from First Manhattan that the firm had in its files at the time of the request.

Capellini provided misleading information in response to those requests about the firm's due diligence. In response to the November 2019 RIVX request, she provided a legal opinion letter[421] and a transfer agent's shareholder list.[422] In response to the December 2019 LAZX request, Capellini provided a legal opinion,[423] subscription agreement,[424] and shareholder list.[425] In response to the January 2020 REMO request, Capellini provided a legal opinion with five attachments, one of which was the Form S-1/A that she had printed off EDGAR.[426]

These responses were misleading because Capellini obtained each document after receiving FINRA's Rule 8210 request. She received the RIVX and LAZX documents from her husband, RB, whose accounts she knew were the focus of the requests in a fraud investigation.

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[419] *See PAZ Sec., Inc.*, Exchange Act Release No. 57656, 2008 SEC LEXIS 820, at *12 (Apr. 11, 2008), *aff'd*, 566 F.3d 1172 (D.C. Cir. 2009).

[420] *Wiley*, 2015 SEC LEXIS 4952, at *22–25; *see also Dep't of Enforcement v. Mellon*, No. 2017052760001, 2022 FINRA Discip. LEXIS 11, at *23 (NAC Oct. 18, 2022) (citing *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *23–24 (Aug. 22, 2008)), *application for review dismissed*, Exchange Act Release No. 97623, 2023 SEC LEXIS 1440 (May 31, 2023).

[421] CX-21.

[422] CX-22.

[423] CX-23.

[424] CX-24.

[425] CX-25.

[426] CX-26; CX-27; CX-28.

She received the REMO documents from AOG.[427] She produced these documents in response to the Rule 8210 requests when nobody at First Manhattan had obtained these documents as part of any due diligence effort, and she did not explain that she obtained these documents after receiving the Rule 8210 requests. Her silence when she produced these documents to FINRA suggested that she obtained these documents from the firm's existing due diligence files.

And the circumstantial evidence makes very clear that Capellini altered one of those documents – the REMO Form S-1/A – before providing it to FINRA.[428] In her personal email account, Capellini received a legal opinion letter for REMO from AOG, along with Exhibits A, B, D, and E to the letter, but not Exhibit C. Capellini forwarded that letter and attachments to her First Manhattan email account. About an hour later, a pdf file was sent to her First Manhattan email account. That pdf file contained Exhibits A, B, D, and E. The pdf file also contained Exhibit C, the Form S-1/A, which had a footer that showed it was printed from EDGAR that day. About four hours later, another pdf file appeared in Capellini's First Manhattan email account. The only difference between this pdf file and the previous one was the Form S-1/A. The footer was gone.

Capellini provided this latter pdf file – with the footer-less Form S-1/A – to FINRA in response to the Rule 8210 request. She labeled the file "Due Diligence." Around three months later, Aspen found the hard copy of the response to the Rule 8210 request about REMO in a folder in Capellini's office. A hard copy of the Form S-1/A was in the folder. Almost three-quarters of an inch was jaggedly cut off the bottom of each page of the Form S-1/A.

Capellini's testimony about the Form S-1/A was not credible. She had no explanation for how it was scanned and emailed to her without a footer. She had no explanation for how a hard copy, with the footer cut off, was found in her office. She claimed she had no memory of cutting off the footer from the Form S-1/A and then re-scanning the entire document. She even refused to rule out the possibility that another person did it.

Removing the footer concealed the fact that the Form S-1/A could not have been part of the firm's due diligence files and was printed after Capellini received the Rule 8210 request. Capellini had no other explanation for why the footer was removed. Capellini argues that the footer was irrelevant because the Form S-1/A is a public document available on the SEC's website. But the footer was important because it showed *when* Capellini printed out the document, and that date showed that the Form S-1/A could not have been part of the firm's due diligence files when RB deposited his REMO shares.

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[427] CX-142; Tr. 674-75.

[428] *See Dep't of Enforcement v. Saliba*, No. 2013037522501r, 2022 FINRA Discip. LEXIS 12, at *18 (NAC Oct. 6, 2022) ("we find that the circumstantial evidence in this case is overwhelming that Saliba knew he was producing falsified documents, and that 'circumstantial evidence can be more than sufficient to prove a violation of the securities laws'") (internal quotation omitted), *appeal docketed*, No. 3-18989r (SEC Nov. 4, 2022).

Capellini's main argument is that the RIVX, LAZX, and REMO requests were imprecise. As she points out, and as Sazegar agreed, FINRA has an obligation to make its Rule 8210 requests clear and unambiguous.[429] Quoting a decision issued by a hearing panel in another case, she maintains that "[a] recipient of a Rule 8210 request should not have to guess what documents or information is being requested or have to connect the dots with language contained somewhere else in the Rule 8210 request to understand what information FINRA is seeking under a particular request."[430] Capellini argues that, if FINRA wanted First Manhattan to produce only due diligence inquiries already in the firm's files at any particular time, FINRA had an obligation to make that limitation clear in its requests. Without that limitation, Capellini claims, she produced documents that she believed were responsive to ambiguous Rule 8210 requests.

But a majority of the Panel disagrees with Capellini's depiction of the requests as confusing or vague. Capellini claims that she read the Rule 8210 requests to seek "anything that . . .we could get our hands on to support the fact that the shares were free trading,"[431] including documents obtained from her husband after her receipt of the requests. A majority of the Panel concludes that this claim is implausible, particularly given Capellini's nearly 40 years of experience as a compliance officer for First Manhattan who regularly responded to regulatory requests. Her explanation ignores the plain language of the requests, which explicitly sought documents from First Manhattan, not from her husband or any other accountholders. And her claim that she did not carefully read the wording of the LAZX and REMO requests is belied by her admission that she was concerned by the gravity of FINRA's repeated inquiries about potential fraud. She also failed to provide the preclearance forms, which represented First Manhattan's due diligence, in response to the RIVX and REMO requests. Finally, Capellini explained that she named the REMO pdf file "Due Diligence" to track the language of the Rule 8210 request, not to mislead OFDMI into thinking that she was producing First Manhattan's due diligence. But this explanation highlights that Capellini understood that OFMDI sought the firm's due diligence files, not documents that she obtained from RB after receiving the Rule 8210 request.

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[429] Tr. 171.

[430] Resp't Post-Hr'g Br. 21 (quoting *Dep't of Enforcement v. Blake*, No. FPI180004**,** 2018 FINRA Discip. LEXIS 30, at *13–14 (OHO Oct. 29, 2018)). In *Blake*, the hearing panel dismissed an expedited proceeding against Blake, a non-registered person, for failing to comply with Rule 8210, and ordered Enforcement to lift Blake's Notice of Suspension. OFDMI had sent Blake a Rule 8210 request asking her for a "[a] signed statement addressed to FINRA in response to the allegations." *Blake*, 2018 FINRA Discip. LEXIS 30, at *3. But OFDMI never explained in its Rule 8210 request what "the allegations" were and Blake was not told what "the allegations" were until the hearing. *Id.* at *13. The panel therefore found that the Rule 8210 request was "vague and ambiguous," particularly for a non-registered person like Blake. *Id.* at *14. By contrast, here the majority of the Hearing Panel concludes that the Rule 8210 requests here were not vague and ambiguous, particularly to a very experienced compliance professional like Capellini.

[431] Tr. 1166.

Capellini's other arguments are similarly unpersuasive. She contends that she had no motive to provide misleading information in response to the Rule 8210 requests. The firm's AML Procedures did not require that she use the preclearance form or obtain any specific documents, like an attorney opinion letter or a registration statement, when a customer made an LPS deposit.[432] Because she did not violate the firm's AML Procedures when RB deposited his shares, she argues, she had no incentive to pass off the documents she produced as the firm's due diligence.[433]

But this argument misses the mark. By producing materials she obtained from RB after she received the requests, Capellini suggested that she and First Manhattan conducted more due diligence (and, for LAZX, *any* due diligence)[434] than occurred when RB deposited the shares. As Sazegar testified, OFDMI may refer a matter to Enforcement or elsewhere within FINRA if OFDMI believes based on a firm's Rule 8210 response that the firm failed to conduct adequate due diligence.[435] As AMLCO and Director of Compliance, Capellini had an interest in persuading OFDMI that the firm's due diligence was reasonable.

Capellini also argues that she would have violated Rule 8210 if she had not produced the documents she obtained from RB after receiving the Rule 8210 requests. This argument has no merit. First, the documents were not responsive to the requests because they were not part of the firm's due diligence files. Second, Rule 8210 requires a member to "make available its books, records or accounts when these books, records or accounts are in the possession of another person or entity, such as a professional service provider," but only if the member "controls or has a right to demand them."[436] The Rule 8210 requests required First Manhattan to produce documents and information, and First Manhattan did not control or have a right to demand documents and information from RB. Indeed, Sazegar testified that Fraud Surveillance customarily did not want member firms to seek documents or information from accountholders because it might compromise FINRA's investigation.[437]

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[432] Tr. 1266.

[433] Tr. 1267.

[434] Indeed, if she had not provided the documents obtained from her husband after she received the Rule 8210 requests, Capellini's answer to Item 5 would have revealed that First Manhattan did *no* due diligence when RB deposited and sold the LAZX shares.

[435] Tr. 87-88.

[436] FINRA Rule 8210, Supplementary Material .01, *Books and Records Relating to Investigations*; *see Dep't of Enforcement v. Felix*, No. 2018058286901, 2021 FINRA Discip. LEXIS 7, at *16–19 (NAC May 26, 2021) (finding that respondent's personal tax transcript was within his control because he had a right to obtain it from the IRS), *appeal docketed*, No. 3-20380 (SEC July 1, 2021).

[437] Tr. 99.

IV. Capellini's Affirmative Defenses

At the hearing, Capellini asserted two related affirmative defenses.[438] First, she claims that Enforcement "rushed to judgment," in a way that deprived her of a fair disciplinary procedure under the Exchange Act.[439] Second, she contends that, if there were any violations of FINRA rules, others at First Manhattan caused or were responsible for those violations.[440] Neither affirmative defense has merit.

First, Capellini argues that FINRA denied her a fair disciplinary procedure because Enforcement did not follow its own procedures before filing the Complaint. Capellini contends that Enforcement did not conduct "an objective fact-finding process when conducting an investigation, without bias or against the parties involved," as set forth in a description of the disciplinary process by *Regulatory Notice 09-17*.[441] Nor did Enforcement "analyze the evidence and applicable law" at the end of its investigation before making a "preliminary determination of whether or not a violation appears to have occurred," also as depicted in *Regulatory Notice 09-17*.[442] Instead, Capellini argues, Enforcement determined that Capellini had violated FINRA rules based on WilmerHale's presentation, before concluding its own investigation, and proposed that she accept a bar from the industry before interviewing her.[443]

This affirmative defense rests on alleged deficiencies in Enforcement's investigation. As Enforcement notes, the Exchange Act requires FINRA to provide a "fair procedure" in an adjudicatory proceeding. But the "fair procedure" requirement does not apply to a respondent's contention that FINRA's investigation yielded the wrong result.[444] The SEC and the NAC have therefore concluded that respondents were not denied a "fair procedure" when those respondents alleged that FINRA investigators cherry-picked evidence, ignored exculpatory evidence, or otherwise conducted a flawed or biased investigation.[445] In short, Capellini received the "fair

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[438] In her Answer, Capellini also asserted as an affirmative defense that the Complaint was untimely and that FINRA lacks jurisdiction over this proceeding. She later moved for summary disposition on this basis. In an Order denying her motion for summary disposition, I ruled that Enforcement's Complaint was timely and that FINRA has jurisdiction over this proceeding.

[439] Resp't Post-Hr'g Br. 31. The Exchange Act requires FINRA to "provide a fair procedure for the disciplining of members and persons associated with members . . . ."15 U.S.C. § 78o-3(b)(8).

[440] Resp't Post-Hr'g Br. 32.

[441] FINRA issued Regulatory Notice 09-17 as "guidance to provide transparency into its enforcement process, and to assist firms and their associated persons with their understanding of how the investigative process works and to highlight procedural safeguards in this process . . ." Regulatory Notice 09-17, at 1 (March 18, 2009), http://finra.org/rules-guidance/notices/09-17.

[442] *Id.* at 3.

[443] Resp't Post-Hr'g Br. 31-32; Tr. 1272.

[444] *Richard A. Neaton*, Exchange Act Release No. 65598, 2011 SEC LEXIS 3719, at *35 (Oct. 20, 2011).

[445] *See, e.g.*, *Richard G. Cody*, Exchange Act Release No. 64565, 2011 SEC LEXIS 1862, at *41–42 (May 27, 2011) (rejecting respondent's contention that he was deprived of a "fair procedure" because FINRA conducted a "grossly incomplete investigation"), *aff'd*, 693 F.3d 251 (1st Cir. 2012); *Dep't of Enforcement v. Se. Invs. N.C., Inc.*,

procedure" that the Exchange Act requires, including notice of the specific charges against her and a chance to defend herself.[446]

Capellini's remaining affirmative defense suffers from similar defects. Capellini argues that First Manhattan and its senior personnel scapegoated her for their own misconduct. First Manhattan allowed Stearns to resign amid allegations that he failed to properly oversee or supervise certain aspects of the firm's compliance program, including for LPS, responses to regulatory inquiries, and the prevention of conflicts of interest.[447] She entered into a settlement with First Manhattan over her claims of discriminatory treatment.[448] She also points to a settlement between First Manhattan and FINRA in which First Manhattan agreed to pay a $250,000 fine based on FINRA's findings that the firm's AML program was inadequate, specifically about RB's LPS transactions.[449] It is unclear whether this argument constitutes an affirmative defense, rather than a general denial and explanation of why Enforcement has not met its burden of proving that Capellini violated FINRA rules.[450] In any event, the possibility that others may have violated FINRA rules or engaged in misconduct does not preclude a finding that Capellini also violated FINRA rules.[451] Similarly, an action against a firm for alleged rule violations does not preclude holding an individual responsible for the actions that led to those rule violations.[452] For these reasons, the Panel rejects Capellini's affirmative defenses.

No. 2014039285401, 2019 FINRA Discip. LEXIS 23, at *41–42 (NAC May 23, 2019) (rejecting respondents' argument that a flawed investigation deprived them of a fair and unbiased hearing), *appeal docketed*, No. 3-19185 (SEC May 28, 2019).

[446] *See, e.g., Dep't of Enforcement v. Kielczewski*, No. 2017054405401, 2021 FINRA Discip. LEXIS 22, at *46–47 (NAC Sept. 30, 2021) (finding requirements of Exchange Act met when respondent had notice of charges and opportunity to be heard), *appeal docketed*, No. 3-20636 (SEC Oct. 27, 2021).

[447] JX-26, at 8.

[448] Tr. 1273.

[449] JX-27.

[450] *See, e.g.*, OHO Order 18-05 (201404186081) (Jan. 10, 2018), at 7-8, http://www.finra.org/sites/ default/files/ OHO_Order_18-05_2014041860801.pdf. (explaining distinction between affirmative defense and a "negative" defense, where Respondent bears no burden of proof and seeks to show instead that Complainant has not met its burden of proof).

[451] *See, Pac. On-Line Trading & Sec., Inc.*, Exchange Act Release No. 48473, 2003 SEC LEXIS 2164, at *19 (Sept. 10, 2003) ("In any event, more than one individual or firm can be responsible and thus held liable for the same violation.").

[452] *See, e.g.*, *SIG Specialists, Inc.*, Exchange Act Release No. 51867, 2005 SEC LEXIS 1428, at *31 (June 17, 2005) (holding firm and individual liable for same violations because "[i]t is well-established that a firm may be held accountable for the misconduct of its associated persons because it is through such persons that a firm acts").

V. Sanctions

A. Overview

In considering the appropriate sanctions, we start with FINRA's Sanction Guidelines ("Guidelines") as a benchmark.[453] 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 specific violations ("Specific Considerations"), which "identify potential principal considerations that are specific to the described violation."[454]

The General Principles explain that "sanctions should be designed to protect the investing public by deterring misconduct and upholding high standards of business conduct."[455] Adjudicators are told 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."[456] Further, sanctions should "reflect the seriousness of the misconduct at issue,"[457] and should be "tailored to address the misconduct involved in each particular case."[458] The sanctions we impose here are appropriate, proportionally measured to address Capellini's misconduct, and designed to protect and advance the interests of the investing public, the industry, and the regulatory system.

B. FINRA Rule 3310(a) and FINRA Rule 2010 (First Cause of Action)

For violations of FINRA Rule 3310(a), "when a responsible individual fails to implement and monitor the day-to-day operations and internal controls of the firm's written AML program," the Guidelines suggest a fine of $5,000 to $50,000, with a higher fine where aggravating factors predominate.[459] The Guidelines also suggest a suspension for 10 business days to two months.[460] Where aggravating factors predominate, the Guidelines state that adjudicators should consider suspending the respondent for two months to two years, or imposing a bar. [461]

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[453] *See, e.g.*, *Fuad Ahmed*, Exchange Act Release No. 81759, 2017 SEC LEXIS 3078, at *56 (Sept. 28, 2017) (finding that a sanctions analysis should begin with the Guidelines as a benchmark).

[454] Guidelines (2022), http://www.finra.org/sanctionguidelines, at 1.

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

[456] *Id.*

[457] *Id.*

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

[459] *Id.* at 83.

[460] *Id.*

[461] *Id.*

The Sanctions Guidelines also set forth four Specific Considerations for violations of FINRA Rule 3310(a). All four are relevant here:

- Whether the respondent failed to detect or investigate red flags of suspicious activity;
- Whether the respondent's deficient monitoring allowed reportable suspicious activity to go undetected;
- Whether the respondent's failures were systemic or widespread, or occurred over an extended time period; and
- Whether the respondent was responsible for establishing the firm's AML compliance program.

Each of these four Specific Considerations is aggravating. Capellini contends that no "actual AML violations or reportable activity occurred or escaped detection" because of her AML violations.[462] But she failed to detect or investigate many red flags of suspicious activity in RB's account, some of which may have been reportable. While trading in LPS was indeed a tiny fraction of First Manhattan's overall business, as Capellini points out,[463] her failures were systemic and widespread, encompassing all LPS activity at First Manhattan during the Relevant Period. This amounted to more than 1,500 customers and $10 million in proceeds. As for Capellini's objection that First Manhattan gave her inadequate AML tools and training,[464] she was the firm's AMLCO, had the most AML experience at the firm, and never asked Stearns for more training.[465]

Several Principal Considerations are also aggravating. Her AML violations were reckless.[466] She ignored recommendations from First Manhattan's auditors about how to improve the firm's AML Procedures for LPS.[467] She failed to incorporate the red flags from Regulatory Notice 19-18 into the firm's AML program.[468] A First Manhattan trader alerted her in an email to highly unusual trading volume in RIVX. Rather than investigate the circumstances around the

[462] Resp't Post-Hr'g Br. 33.

[463] *Id*.

[464] *Id*.

[465] Tr. 1342.

[466] Guidelines at 8 (Principal Consideration 13).

[467] JX-18, at 8-9.

[468] Tr. 400.

volume spike, Capellini simply forwarded the email to her husband, who was selling RIVX into the surge in volume.[469]

Capellini's misconduct also led to the potential for her own monetary gain.[470] Her husband used nearly $400,000 in LPS proceeds for their household living expenses, such as rent and tuition.[471] And while Capellini argues that First Manhattan, Stearns, CK, and Sammarco were responsible for deficiencies in the firm's AML program and monitoring of RB's account, this is not mitigating.[472] Instead, it reflects her consistent attempts to deflect responsibility for her shortcomings as AMLCO and in monitoring and detecting potentially suspicious activity in RB's account. [473] While Capellini is "entitled to present a vigorous defense," her repeated attempts to shift blame to others reveals that she either misunderstands her duties as a compliance professional or does not recognize her regulatory obligations.[474]

Capellini makes three other arguments for a minimal sanction for her Rule 3310(a) violations. First, she argues that her lack of disciplinary history over a 40-year career is mitigating.[475] It is not. The SEC and NAC have repeatedly cautioned that a lack of disciplinary history is not a mitigating factor in determining sanctions.[476]

Second, she points to FINRA's settlement with First Manhattan for AML violations, along with sanctions imposed against AMLCOs in other cases. She argues that she deserves a

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[469] CX-51.

[470] Guidelines at 8 (Principal Consideration 16).

[471] Tr. 1090-91.

[472] A respondent cannot shift responsibility for compliance to others, including her firm or supervisors. *See Jason A. Craig*, Exchange Act Release No. 59137, 2008 SEC LEXIS 2844, at *15 (Dec. 22, 2008) (holding that a registered representative "cannot shift his responsibility to comply with NASD rules to his firm"); *Rafael Pinchas*, Exchange Act Release No. 41816, 1999 SEC LEXIS 1754, at *14 (Sept. 1, 1999) ("a registered representative is responsible for his actions and cannot shift that responsibility to the firm or his supervisors").

[473] Guidelines at 7 (Principal Consideration 2).

[474] *N. Woodward Fin. Corp*., Exchange Act Release No. 74913, 2015 SEC LEXIS 1867, at *44 (May 8, 2015), *petition for review denied sub nom., Troszak v. SEC*, No. 15-3729 2016 U.S. App. LEXIS 24259 (6th Cir. June 29, 2016).

Capellini also argues that she was candid about her conduct when questioned by FINRA during her OTR, and this deserves some weight as mitigation. Resp. Post-Hr'g Br. 34. A majority of the Panel disagrees primarily because she first attempted to conceal her misconduct as AMLCO by providing misleading responses to Rule 8210 requests. *See* Guidelines at 7 (Principal Consideration 10).

[475] Resp't Post-Hr'g Br. 33.

[476] *Denise M. Olson*, Exchange Act Release No. 75838, 2015 SEC LEXIS 3629, at *32 (Sept. 3, 2015) (rejecting argument that lack of disciplinary history is mitigating "because an associated person should not be rewarded for acting in accordance with her duties as a securities professional"); *Dep't of Enforcement v. Lykos*, No. 2018059510201, 2021 FINRA Discip. LEXIS 33, at *26 n.18 (NAC Dec. 16, 2021) ("We have repeatedly held, however, that a lack of prior disciplinary history is not mitigating."), *appeal docketed*, No. 3-20703 (SEC Jan. 10, 2022).

more lenient sanction than FINRA imposed in those matters.[477] But comparison to sanctions in other cases is inappropriate.[478] Instead, we impose a sanction based on the facts presented at the hearing.

Third, she contends that her termination from First Manhattan, along with FINRA's investigation and this disciplinary proceeding, have effectively ended her career, and is sanction enough.[479] In some cases, a respondent's termination of employment for the same conduct at issue in a disciplinary proceeding can be mitigative.[480] But a respondent must prove that the firm's termination of her employment "has materially reduced the likelihood of misconduct in the future."[481] In cases of serious misconduct, adjudicators may find, despite the employment termination, "that there is no guarantee of changed behavior and therefore may impose a bar."[482] And unemployment, salary loss, "and other impacts of an employment termination are collateral consequences of being terminated and should not be considered as mitigating."[483] Given the seriousness of Capellini's misconduct, and her lack of accountability for her failings, we give little mitigative weight to her termination from First Manhattan, and the collateral consequences of that termination.

After carefully considering the relevant factors, the Hearing Panel concludes that an appropriate sanction is a $25,000 fine and a two-year suspension in all principal and supervisory capacities. We also order Capellini to re-qualify as a principal by examination.[484] Her misconduct demonstrated a lack of understanding of the AML rules and her duties as an AMLCO and compliance professional. We find that she would benefit from relearning the foundations for acting as a principal. We believe these sanctions are appropriately remedial and sufficient to achieve the deterrence goals of the Guidelines.

We do not impose these sanctions, however, because a majority of the Hearing Panel imposes a bar as a sanction for Capellini's Rule 8210 and Rule 2010 violations.

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[477] Resp't Post-Hr'g Br. 34.

[478] *William J. Murphy*, Exchange Act Release No. 69923, 2013 SEC LEXIS 1933, at *72 (July 2, 2013) ("as we consistently have held, the appropriateness of a sanction 'depends on the facts and circumstances of each particular case and cannot be precisely determined by comparison with action take in [sic] other proceedings'") (internal citation omitted), *petition for review denied sub nom*. *Birkelbach v. SEC*, 751 F.3d 472 (7th Cir 2014).

[479] Resp't Post-Hr'g Br. 35.

[480] Guidelines at 5-6 (General Principle 7).

[481] *Id.* at 6 (General Principle 7).

[482] *Id*.

[483] *Id*.

[484] *See* Guidelines at 6 (General Principle 8) ("Where appropriate, Adjudicators should require a respondent to requalify in any and all capacities.").

C. FINRA Rule 8210 and FINRA Rule 2010 (Second Cause of Action)

For a failure to respond or a failure to respond truthfully in violation of Rule 8210, the Guidelines suggest a fine of $10,000 to $50,000.[485] Without mitigating circumstances, a bar is the standard sanction.[486] As the SEC has put it, "the failure to provide truthful responses to requests for information renders the violator presumptively unfit for employment in the securities industry."[487]

A Specific Consideration for a failure to respond truthfully is "[t]he importance of the information requested as viewed from FINRA's perspective."[488] Sazegar testified about the importance of the due diligence information requested by OFDMI here. OFDMI evaluates the firm's responses about their due diligence (or lack of due diligence) to assess whether to make a referral to FINRA's Enforcement unit or elsewhere within FINRA.[489] And Sazegar also testified that "it would be a very important fact to note in the cover letter of a firm's response that the firm did not actually have certain of the documents on hand as of the time of the firm's receipt of our 8210 request."[490]

There are other aggravating factors. Capellini acted intentionally to mislead FINRA,[491] as was evident in her alteration of the Form S-1/A before submitting it to FINRA. She provided three misleading responses to FINRA over three months.[492] She continued to disavow responsibility for her actions even up through the hearing,[493] when she refused to rule out the possibility that somebody else sliced off the footer from the Form S-1/A and placed it in a folder in her office file cabinet.[494]

A majority of the Panel also sees no evidence of mitigation. We have already discussed and rejected Capellini's claims of mitigation based on her lack of disciplinary history and her termination from First Manhattan. And while she is correct that First Manhattan should not have permitted her to respond to OFDMI investigative requests about her husband's account at the firm, that does not mitigate her misconduct. She chose to respond to the requests, and she chose to provide misleading responses and an altered document.

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[485] Guidelines at 93.

[486] *Mellon*, 2022 FINRA Discip. LEXIS 11, at *31.

[487] *Ortiz*, 2008 SEC LEXIS 2401, at *32-33.

[488] Guidelines at 93.

[489] Tr. 87-88, 175.

[490] Tr. 175.

[491] Guidelines at 8 (Principal Consideration 13).

[492] *Id.* at 7 (Principal Consideration 8).

[493] *Id.* at 7 (Principal Consideration 2).

[494] Tr. 1206.

Providing misleading responses and an altered document "demonstrates a lack of integrity and ability to comply with regulatory rules . . . ."[495] The majority therefore concludes that a bar is the appropriate remedial sanction. It both reflects the serious nature of Capellini's misconduct and serves to deter others from engaging in future misconduct.

VI. Order

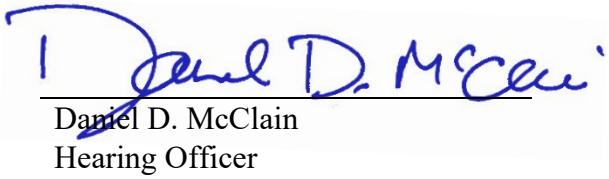
Capellini violated FINRA Rules 3310(a) and 2010 by failing to adopt and implement a reasonable AML program for First Manhattan's deposit and trading of LPS. A majority of the Panel also found that Capellini violated FINRA Rules 8210 and 2010 by providing misleading information, including an altered document, in response to FINRA Rule 8210 requests about LPS trading activity in accounts held by Capellini's husband, RB, at First Manhattan.

For her violations of FINRA Rules 3310(a) and 2010, the Panel would impose a $25,000 fine, a two-year suspension in all principal and supervisory capacities, and a requirement that Capellini re-qualify as a principal by examination. We do not impose these sanctions, however, because of the sanctions imposed for Capellini's FINRA Rules 8210 and 2010 violations. For those violations, a majority of the Panel imposes a bar on Capellini from associating with any FINRA member in any capacity. [496]

If this decision becomes FINRA's final disciplinary action, the bar will become effective immediately.

Respondent is ordered to pay costs in the amount of $12,853.13, which includes a $750 administrative fee and $12,103.13 for the cost of the transcript.

The costs shall be due on a date set by FINRA, but not sooner than 30 days after this decision becomes FINRA's final action.



Daniel D. McClain
Hearing Officer
For the Hearing Panel Majority

DISSENT

Panelist dissenting from the majority of the Panel regarding Second Cause of Action of the Complaint:

[495] *Saliba*, 2022 FINRA Discip. LEXIS 12, at * 31.

[496] The Hearing Panel has considered and rejects without discussion all other arguments of the parties.

I respectfully dissent with the majority of the Hearing Panel's finding that Respondent Suzanne M. Capellini violated FINRA Rules 8210 and 2010.

Ms. Capellini, a Barnard graduate, worked at First Manhattan for 35 years. In that time, and until this action, she never had a regulatory blemish. Further, in the testimony of her supervisor Neil Stearns, she was an exemplary employee. And it appears that her willingness to undertake any and all tasks requested of her may be the underlying cause of the issues put forth in this proceeding.

During the course of her tenure, the AMLCO left the firm. At no financial benefit to her, she essentially volunteered to take over the position. The company and her respective rationales seemingly being that it was a very small portion of First Manhattan's business, and that procedures and protocols were already in place for her to mimic. What the firm and her supervisor should have identified before allowing this responsibility to be given to her was the fact that a family member, her husband, was engaged in activities that would fall under the purview of her supervisory authority. This can only be described as systemic failure. That being said, Ms. Capellini willingly undertook this responsibility and the regulatory obligations that go with it. Her failure to uphold the professional standards associated with her position cannot be overlooked. And it is because of this that I agree with the other panelists that she has violated FINRA rules, and a proper finding is required to uphold the integrity of the industry. What is entirely less clear is Enforcement's contention regarding the Rule 8210 violation.

There are two primary concerns that form the basis of the action brought by Enforcement. The first item is Ms. Capellini's response to the three letters requesting information on RIVX, LAZX and REMO. The first letter requesting information on RIVX sent to Ms. Capellini by Enforcement is ambiguous as to whether or not the information was to be drawn exclusively from the firm's files or could include information from other sources. Ms. Capellini testified that she thought it the latter, that by gathering as much information as possible including from outside sources, she was being cooperative. At the time, she was unaware that First Manhattan was the subject of the investigation. She believed that RIVX was. She then received two nearly identical requests for information regarding LAZX and REMO. The wording on these two requests was slightly different than the first but, essentially, they mirrored the earlier request. Ms. Capellini subsequently provided FINRA with a similarly broad swath of material for LAZX and REMO. During testimony, Ms. Capellini never denied that some of the documents sent to FINRA were not originally in her possession nor did Enforcement ever suggest that she did deny it. Instead, Enforcement theorizes that by her silence she was obfuscating or obstructing the investigation. This presumption is not supported by a preponderance of the evidence. As noted in the Panel decision "(a) recipient of a Rule 8210 request should not have to guess what documents or information is being requested…" The wording in Enforcement's letters was inconsistent. Combining that with Ms. Capellini's sworn testimony that she believed that she was fully cooperating, the blame for this confusion has to be at a minimum shared with FINRA.

The second piece is the Form S-1/A document. This is a public document that was added by Ms. Capellini to the file. Whether or not this document is relevant is debatable, but it was included based on Ms. Capellini's intention to provide any and all material related to these stocks. So while the relevance of the document is murky as a matter of compliance that is not the concern. Rather, the issue is the trimming of the footer at the bottom of the document during its initial printing. For guidance on whether this was a malicious attempt to deceive FINRA or was essentially inconsequential to the 8210 request cannot be resolved based on what was presented at the hearing. There were no witnesses that testified to malicious behavior. The testimony by Ms. Capellini was that she doesn't even remember how this came to pass. So the question becomes is this a single innocuous incident or part of a pattern of deceptive behavior? Based on information and belief, there is nothing apart from the alleged impropriety of removing the footer on a Form S-1/A document that suggests an attempt to deceive Enforcement. There were no other documents in Ms. Capellini's possession that were alleged to have been tampered with or altered including, most importantly, First Manhattan documents. Ms. Capellini's conjecture that the original documents didn't contain a footer and therefore that they may have been returned to their original condition for submission is not unreasonable.

So with no pattern of obstruction or obfuscation, and a respected industry veteran who for 35 years didn't have a blemish on her record, the evidence suggests that this does not rise to the level of an 8210 violation. It is for these reasons that I dissent from the other panelists.

Copies to:

Suzanne M. Capellini (via overnight courier and first-class mail)
Ian McLoughlin, Esq. (via email)
Thomas McCabe, Esq. (via email)
Amanda E. Fein, Esq. (via email)
Jeff Fauci, Esq. (via email)
Savvas A. Foukas, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)