BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of Department of Enforcement, Complainant, vs. Suzanne Marie Capellini New York, New York, Respondent.	DECISION Complaint No. 2020066627202 Dated: October 3, 2024

Registered representative provided false and misleading responses and an altered document in response to FINRA investigative requests and failed to establish and implement an anti-money laundering program reasonably designed to cause the detection and reporting of suspicious low-priced securities activity. Held, findings and sanctions modified.

Appearances

For the Complainant: Jennifer Crawford, Esq., Loyd Gattis, Esq., Savvas Foukas, Esq., Amanda E. Fein, Esq., Jeff Fauci, Esq., Financial Industry Regulatory Authority

For Respondent: Ian J. McLoughlin, Esq.

Decision

Suzanne Marie Capellini appeals a July 14, 2023 Extended Hearing Panel decision. The Hearing Panel found that Capellini provided false and misleading responses and an altered document in response to FINRA investigative requests. The Hearing Panel also found that Capellini, while serving as her firm's anti-money laundering compliance officer ("AMLCO"), 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"), and failed to detect or reasonably investigate red flags of suspicious activity in accounts controlled by her spouse. For providing false and misleading responses and an altered document in response to investigative requests, the Hearing Panel barred Capellini from associating with a FINRA member in any capacity. Considering the bar,

the Hearing Panel did not impose additional sanctions for the AML violations. The Hearing Panel determined, however, that it would have fined Capellini $25,000, suspended her in all principal and supervisory capacities for two years, and ordered her to requalify by examination as a principal before again serving in that capacity.

After an independent review of the record, we modify the Hearing Panel's findings of violation and the sanctions it imposed.

I. Background

A. Suzanne Marie Capellini

Capellini joined the securities industry in 1979 shortly after graduating from college. After approximately a year in the registration department of a FINRA member, Capellini moved to the compliance department. In 1985, Capellini joined FINRA member First Manhattan Co. ("First Manhattan") as compliance director. During the relevant period—from January 2018 through May 2020—Capellini was registered with First Manhattan in numerous capacities, including as a general securities principal, general securities representative, and general securities sales supervisor. She reported to NS, First Manhattan's General Counsel and Chief Compliance Officer ("CCO"). First Manhattan's Written Supervisory Procedures ("WSPs") designated Capellini as responsible for responding to requests for information from outside sources (including regulators), providing annual compliance training, reviewing low-priced securities and sales of control or restricted stocks, and supervising transactions in penny stocks.

Prior to January 2018, Capellini was one of two designated AMLCOs along with CK, who served as the primary AMLCO. Capellini became First Manhattan's primary AMLCO in January 2018, after CK left the firm, and served in this role until she was terminated in May 2020.

B. First Manhattan

During the relevant period, First Manhattan was a dually registered investment advisor and broker-dealer. The firm's primary business was providing investment advisory services to high-net-worth individuals who made long-term investments in value-oriented stocks. As of April 2020, First Manhattan had approximately $16-18 billion in client assets under management.

Transactions in low-priced securities constituted a very small portion of First Manhattan's business.[1] From January 2018 through May 2020, 1,575 First Manhattan customers

[1] Low-priced securities include "microcap stocks"—generally stocks issued by companies with market capitalization of less than $250 to $300 million—or "penny stocks"—typically stocks issued by very small companies that trade at less than $5 per share. Low-priced securities often trade in the over-the-counter markets. *See FINRA Regulatory Notice 21-03*, 2021 FINRA LEXIS 2, at *1 n.1 (Feb. 2021).

engaged in 5,658 transactions in which just under 102 million shares of low-priced securities were purchased or sold. The dollar amount of this trading was approximately $112.2 million.[2] During the same period, twenty-four First Manhattan customers made 91 deposits of more than 84 million low-priced securities shares that were followed by sales yielding proceeds of more than $1.9 million.

II. Factual Background

A. First Manhattan's AML Policies and Procedures During the Relevant Period

When Capellini became the primary AMLCO in January 2018, First Manhattan's AML procedures had most recently been revised in October 2010 (the "2010 AML Procedures"). The 2010 AML Procedures provided that "[w]hen an employee of the firm detects any red flag, he or she will investigate further under the direction of the [AMLCOs]." Such an investigation "may include gathering additional information internally or from third-party sources, contacting the government, freezing the account, or filing a Form SAR." The 2010 AML Procedures did not include any guidance, however, on the monitoring or investigation of suspicious activity involving low-priced securities.

In September 2012, First Manhattan's clearing firm, Pershing LLC ("Pershing"), questioned low-priced securities deposits in an account controlled by Capellini's spouse, RB, which Pershing stated raised "the red flags of receiving blocks of a low priced security, liquidating and sending the funds out of the account." In response to Pershing's concerns, First Manhattan developed a form to assist it in complying with its regulatory obligations in connection with low-priced securities (the "Preclearance Form"). Capellini helped develop the Preclearance Form and circulated it to First Manhattan staff. The Preclearance Form was required to be completed by registered representatives "prior to the deposit or sale/transfer of certificates representing a large block of thinly traded or low-priced securities." The Preclearance Form asked the registered representative to "provide specific details as to how and when [the] securities were acquired" and to attach supporting documentation. When the customer acquired the low-priced securities in a sale, the Preclearance Form asked the registered representative to describe the relationship of the seller to the issuer. In her cover memorandum circulating the new Preclearance Form to First Manhattan staff, Capellini explained that the firm "has regulatory obligations to comply with federal securities laws and FINRA regulations regarding unregistered sales of restricted securities," and said that the firm had developed the Preclearance Form "to help satisfy these obligations."

In May 2019, FINRA issued Regulatory Notice 19-18, which provides firms with guidance regarding suspicious activity monitoring and reporting obligations. *FINRA Regulatory Notice 19*-18, 2019 FINRA LEXIS 21 (May 2019). Regulatory Notice 19-18 reminds firms of their obligations under FINRA rules to establish and implement policies that can reasonably be expected to detect and trigger the reporting of suspicious activities under the BSA and provides

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[2] Of these, 614 customers traded 66,607,926 shares of low-priced securities under $1.

dozens of "examples of . . . money laundering red flags for firms to consider incorporating into their AML programs," including red flags associated with the deposit and trading of low-priced securities. *Id.* at *4, 7-17. Shortly after it was issued, NS (First Manhattan's General Counsel and CCO) emailed a copy of Regulatory Notice 19-18 to Capellini and others at First Manhattan.

In October 2019, Capellini revised the firm's AML procedures (the "2019 AML Procedures"), with input from NS and JS, First Manhattan's Co-Director of Operations and alternate AMLCO. Capellini did not add any procedures related to the deposit and trading of low-priced securities and did not incorporate any of the red flags listed in Regulatory Notice 19-18 into the revised procedures. The 2019 AML Procedures did not include any guidance about reviewing or monitoring low-priced securities for suspicious activity and did not mention the Preclearance Form or provide any guidance for its use.

When necessary, Pershing provided First Manhattan with exception reports, including a low-priced securities turnover report.[3] Capellini was responsible for reviewing these exception reports. Capellini testified that she would log into the reports provided on a Pershing computer system to review them. Sometimes she would immediately print the report's cover page and initial it to memorialize her review. Other times, she would print it later. Neither the 2010 AML Procedures nor the 2019 AML procedures contained any information or guidance on how this exception report should be used to monitor low-priced securities activity.

During Capellini's tenure as AMLCO, First Manhattan's outside auditors issued two reports of their audits of the firm's AML procedures. In March 2019, the auditors sent First Manhattan a report covering the year 2018 (the "2019 AML Audit Report"). The 2019 AML Audit Report noted that Capellini was the primary individual responsible for First Manhattan's AML program. The 2019 AML Audit Report concluded that the firm's AML problems were "limited to clerical or minimal oversight deficiencies, with no real violations." The auditors nonetheless recommended several improvements to First Manhattan's procedures. These recommendations included: customizing the software provided by Pershing to create useful alerts and exception reports; implementing "specific procedures in its [procedures] for monitoring for suspicious activities, reviewing red flags and escalating any finding and taking additional actions in those circumstances"; and performing periodic testing of the AML procedures to determine their effectiveness. The 2019 AML Audit Report also noted that First Manhattan "must understand" how its reliance on Pershing impacted its independent AML obligations, including "describing the exception reports, if any, [the firm] obtain[s] from [its] clearing firm, how frequently the reports will be reviewed and by whom, what review or inquiry will be conducted regarding exceptions, and how that review will be evidenced."

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[3] The low-priced securities turnover report included an exception when an account received 50,000 or more low-priced securities shares and then sold all or part of the shares within 30 calendar days. The report defines low-priced securities as those trading at less than $3 per share.

In January 2020, the auditors issued their report for the year 2019 (the "2020 AML Audit Report"). The 2020 AML Audit Report noted First Manhattan had not addressed the recommendations in the 2019 AML Audit Report.

B. RB's First Manhattan Accounts

RB, Capellini's spouse, controlled four accounts at First Manhattan that traded low-priced securities.[4] He opened two accounts in the names of two entities he controlled—the Aleutian Equity Holdings, LLC ("Aleutian") account and the Final Frontier Inc. ("Final Frontier") account— in 2009 and 2017, respectively, prior to Capellini becoming the firm's primary AMLCO. RB opened two additional accounts after Capellini became the primary AMLCO in January 2018. The Geo Global Group LLC ("Geo Global") account was opened in January 2018 and the Antoine de Sejournet de Rameignies LLC ("Sejournet") account was opened in May 2019. RB also controlled the trading in an account opened by Capellini's brother, TC, in March 1999. Capellini was the registered representative for RB's and TC's accounts.

RB almost exclusively deposited and liquidated low-priced securities in his First Manhattan accounts. After his wife became First Manhattan's primary AMLCO, RB's low-priced securities activity increased dramatically. From 2012 though 2017, RB made five, one, zero, one, five, and seven low-priced securities deposits, respectively. In 2018, after Capellini became the primary AMLCO, RB made 22 low-priced securities deposits, more than the total for the six previous years. From January 2019 through April 2020, prior to Capellini's termination, RB made 23 additional low-priced securities deposits. For the six-year period from 2012 through 2017, RB engaged in 107 low-priced securities sales transactions. During the two-and-a-half-year period Capellini was the firm's primary AMLCO, RB engaged in 204 low-priced securities sales transactions, almost double the number for the previous six years.

The Aleutian account contained the majority of RB's low-priced securities activity during the relevant period. From 2018 through 2020, RB deposited 908,840 shares of low-priced securities in the Aleutian account and generated $365,706 in proceeds through 196 sales of low-priced securities. RB's certificate deposits in the Aleutian account shared several features. Most of these certificates had been issued in the 30 days prior to the deposit. For all but one certificate deposit, the issuer was the subject of a "going-concern" opinion—an auditor's opinion included in public filings raising doubts about the issuer's ability to continue as a going concern. Finally, certain of the issuers for which RB deposited certificates were shell companies, had changed their names prior to the deposit, or had owners with regulatory history or who were associated with multiple low-priced securities issuers.

Aleutian's initial sales of deposited low-priced securities also shared certain features. In many cases, Aleutian's sales constituted a substantial portion or all the daily market volume for

[4] First Manhattan required employees' spouses to maintain their brokerage accounts with First Manhattan.

the stock.[5] Moreover, in most cases, RB placed limit orders[6] for the first sale of deposited low-priced securities that exceeded by substantial amounts the best bid or ask prior to the order, and ultimately executed the sale at the requested limit price.[7]

1. RB Deposits and Sells Rivex

On August 9, 2018, RB deposited 3,000 shares of Rivex Technology Corp. ("Rivex") into the Aleutian account by means of a physical stock certificate issued on July 19, 2018. Capellini completed and signed the Preclearance Form for the deposit. When the form called for her to provide specific details about how and when Aleutian acquired the Rivex shares, Capellini wrote "see attached." Capellini attached to the Preclearance Form a purchase agreement and a copy of the stock certificate. Despite the purchase agreement indicating that Aleutian acquired the shares in a sale, Capellini did not include any information about the relationship of the seller to the issuer in the portion of the Preclearance Form asking for this information.

The Rivex purchase agreement states that on July 10, 2018, Aleutian purchased 3,000 common shares of Rivex from DK, a citizen of Slovakia residing in Clearwater, Florida, and that Aleutian paid 20 cents per share for the Rivex stock. The purchase agreement and stock certificate attached to the Preclearance Form represent the only due diligence Capellini performed in connection with Aleutian's deposit of Rivex.

In SEC filings, Rivex described its business as "development of and sale of mobile games." Rivex disclosed that for the period ending March 31, 2018, it had "not yet established an ongoing source of revenues sufficient to cover its operating costs" and that there was "substantial doubt about [its] ability to continue as a going concern." For the quarter ending June 30, 2018, Rivex disclosed that it had no revenue in that quarter and only $767 in cash. For the year ending March 31, 2019, Rivex disclosed that it had no revenue in the prior two years, no

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5 Daily trading volume refers to the number of shares transacted every day. *See* NASDAQ Glossary, *Trading Volume*, https://www.nasdaq.com/glossary/t/trading-volume (last visited Sept. 23, 2024). Of 32 initial sales of low-priced securities by Aleutian, in 23 Aleutian's sales constituted more than 50 percent of the stock's daily market volume for the date of the sale. In 14 of these sales, Aleutian's trading constituted 100 percent of the stock's daily trading volume.

6 "A limit order is an order to buy or sell a stock at a specific price or better. A buy limit order can only be executed at the limit price or lower, and a sell limit order can only be executed at the limit price or higher." *See* SEC, *Limit Orders*, https://www.sec.gov/answers/limit.htm (last visited Sept. 23, 2024).

7 A bid is the "price a potential buyer is willing to pay for a security." *See* NASDAQ Glossary, *Bid*, https://www.nasdaq.com/glossary/b/bid (last visited Sept. 23, 2024). An ask is the "lowest price an investor will accept to sell a stock." *See* NASDAQ Glossary, *Ask*, https://www.nasdaq.com/glossary/a/ask (last visited Sept. 23, 2024).

cash or assets, and that there was "substantial doubt about [its] ability to continue as a going concern."

On August 13, 2018, four days after the deposit, RB placed a limit order to sell Rivex at a limit price of $5.00. The next day, RB sold 100 shares of Rivex for $5.00 per share. Aleutian's sale was the first public sale of Rivex ever, and its trade constituted 50 percent of the daily trading volume in Rivex that day. From August 2018 through November 2019, Aleutian engaged in six sales of Rivex followed by wires of the proceeds out of the account. In total, RB sold 2,800 shares of Rivex, generating total proceeds of $10,481.33.[8] Capellini did not do any due diligence with respect to these sales even though the Preclearance Form was supposed to be used for sales and transfers of low-priced securities.

2. RB Deposits and Sells Token

On September 21, 2018, RB deposited 300,000 shares of Token Communities, LTD ("Token") into the Aleutian account by means of a physical stock certificate that was issued on April 2, 2018. Capellini completed a Preclearance Form for the deposit. In the space calling for specific details about how and when Aleutian acquired the securities, Capellini wrote "see attached," and attached a copy of the stock certificate and an attorney opinion letter written by attorney AG. AG's letter represented that Aleutian purchased the Token shares in a private transaction for 25 cents per share. No details were provided about the identity of the seller or the date of the transfer. The stock certificate and AG's letter were the only due diligence Capellini performed in connection with the deposit. Even though Aleutian obtained its Token shares through a sale, Capellini did not obtain or include any information about the relationship of the seller to the issuer as required by the Preclearance Form.

Token was organized in 2014 under a different name to engage in the business of developing mobile applications. In 2017, the company changed its name and business to developing chewing gum products to deliver medical cannabis. In 2018, the company changed its name a second time to Token and its business to working in the "blockchain technology sector." Token disclosed in an SEC filing that as of March 31, 2018, it had no revenue in the prior nine months and had no assets. A previous financial statement contained an auditor's opinion expressing substantial doubt about Token's ability to continue as a going concern.

On September 26, 2018, Aleutian placed a limit order to sell 100 shares of Token for a limit price of $1.30. Aleutian executed its sale of 100 Token shares that same day for a price of $1.40 per share. Aleutian's sale was the first public sale of Token stock and constituted 100 percent of Token's daily trading volume that day.

From September 2018 through March 2020, Aleutian engaged in approximately 30 sales of Token and numerous wires of the proceeds from these sales out of the account. Aleutian also

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[8] On January 2, 2020, the SEC suspended trading in Rivex citing, among other problems, "recent, unusual, and unexplained market activity."

transferred 50,000 Token shares to the Final Frontier account and 25,000 Token shares to the Sejournet account. Aleutian's sales of Token resulted in total proceeds of $96,820.64.[9] Capellini did not complete a Preclearance Form or do any due diligence for Aleutian's sales or transfers of Token shares.

3. RB Deposits and Sells Lazex

On May 13, 2019, RB deposited 2,000 shares of Lazex Inc. ("Lazex") in the Aleutian account by means of a physical stock certificate issued on April 23, 2019. There was no Preclearance Form for this deposit in First Manhattan's files and no evidence that Capellini performed any due diligence with respect to this deposit at all.[10]

Lazex's SEC filings described its business as "travel consulting and tour guide services," including "specializing in arranging brewery tours for tourists visiting the Czech Republic." Lazex disclosed that for the quarter ending January 31, 2019, the company had no revenue in the prior nine months, $4,592 in cash, and that there was substantial doubt about its ability to continue as a going concern.

On May 16, 2019, RB placed a limit order to sell Lazex shares for a limit price of $2.00 in the Aleutian account. The prior best bid for Lazex before Aleutian's limit order was five cents per share. On May 24, 2019—11 days after the deposit—Aleutian sold 100 Lazex shares for $2.00 per share. Aleutian's sale at $2.00 per share represented an approximately 3,900 percent increase over the prior best bid of five cents. Aleutian's sale constituted 100 percent of the daily trade volume for that day. On June 26, 2019, Aleutian sold another 100 shares for $2.00 per share, and on June 25, 2019, it sold 300 shares for $2.1833. On both those days, Aleutian's trades constituted 100 percent of Lazex's daily trade volume. RB wired out proceeds from Aleutian's sales of Lazex. Aleutian sold a total of 500 Lazex shares for total proceeds of $1,034.70. There is no evidence that Capellini conducted any due diligence with respect to these sales.

4. RB Deposits and Sells Remaro

On August 5, 2019, RB deposited 2,000 Remaro Group Corporation ("Remaro") shares into the Aleutian account by means of a physical stock certificate issued on July 30, 2019. According to its SEC filings, Remaro was a "tourism agency" located in Ecuador that offered the "services of a freelance local guide." Remaro disclosed that, as of the quarter ending April 20,

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[9] On October 14, 2020, approximately seven months after Aleutian's last Token sale at First Manhattan, the SEC revoked Token's registration.

[10] While Capellini did not conduct any due diligence on how Aleutian acquired the Lazex shares at the time of the deposit, after FINRA issued information requests about Lazex, RB provided information purporting to show that Aleutian obtained the shares from an individual residing in the Czech Republic for $1.00 per share.

2019, it had no revenue in the prior nine months and $242 in cash, and that there was substantial doubt about its ability to continue as a going concern.

Two days after the deposit, Aleutian placed a limit order to sell Remaro shares at a limit price of $2.00 per share. Prior to Aleutian's limit order, the best bid for Remaro was one cent per share. The next day, Aleutian sold 100 Remaro shares for $2.00 per share, a price representing an approximately 19,000 percent increase over the prior best bid. Aleutian's August 8, 2019 sale was the first public sale of Remaro stock, and its trade represented 50 percent of Remaro's daily market volume for that day.

Capellini did not complete a Preclearance Form for Aleutian's Remaro deposit until August 9, 2019, the day after Aleutian's first Remaro sale. Capellini wrote "see attached" in the space calling for specific details about how and when the securities were acquired. Capellini attached a private share purchase agreement and a copy of the stock certificate to the Preclearance Form. The share purchase agreement purported to show that Aleutian purchased the shares 12 days before the deposit from an individual residing in the Dominican Republic for $1.00 per share. Capellini did not include on the Preclearance Form any information about the relationship of the seller to the issuer.

Aleutian made two additional sales of Remaro and wired out the proceeds from those sales. During the relevant period, Aleutian sold a total of 500 shares of Remaro, generating total proceeds of $1,277.46. Capellini did not complete Preclearance Forms for any of Aleutian's sales of Remaro.

C. FINRA Requests Documents and Information About RB's Trading in Rivex, Lazex, and Remaro

Beginning in November 2019, FINRA's Office of Fraud Detection and Market Intelligence ("OFDMI") began investigating some of Aleutian's trading. Over the course of three months, OFDMI issued FINRA Rule 8210 requests for documents and information concerning Aleutian's trading in Rivex, Lazex, and Remaro. The requests were sent to Capellini, First Manhattan's designated point of contact for such requests, and she prepared responses on behalf of the firm.

1. OFDMI Requests Documents Related to Aleutian's Trading in Rivex

On November 19, 2019, five days after Aleutian's second sale of 550 Rivex shares at $5.00 per share, OFDMI sent a FINRA Rule 8210 request to First Manhattan requesting documents and information concerning Rivex activity in the Aleutian account (the "Rivex Request"). The Rivex Request was sent to Capellini through FINRA's Gateway portal. The Rivex Request requested in Item 4, "[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."

On November 26, 2019, Capellini forwarded from her personal email to her First Manhattan email two emails RB had sent her the day before. RB's first email included as an attachment an opinion letter written by attorney AG. The letter referred to four exhibits that were not included in the attachment. In his second email, RB provided one of the exhibits to the AG opinion letter, an opinion of another attorney JM, and a Rivex shareholder list including the individual who purportedly sold the shares to Aleutian.

On November 26, 2019, Capellini submitted First Manhattan's written response to the Rivex Request and uploaded responsive documents through Gateway. For Item 4 of the request, Capellini wrote that:

> A copy of the purchase agreement between [Aleutian] and [DK] (the "Seller") dated July 10, 2018 is attached as Exhibit D. A copy of a legal opinion (with further attachments) dated August 8, 2018 regarding the registration status of the shares purchased by [Aleutian] from the Seller is attached as Exhibit E. Attached as Exhibit F are copies of Certified Shareholder Lists from V Stock Transfer dated 3/31/18 and 6/13/18 evidencing the Seller's share ownership as described in Exhibit E.

In response to Item 4, Capellini submitted to FINRA the documents she had received from RB the day before—i.e., a copy of AG's attorney opinion letter, JM's attorney opinion letter, and the shareholder list. Capellini also provided the stock purchase agreement that was attached to the Preclearance Form and thus part of the firm's due diligence. Capellini did not provide to FINRA the Preclearance Form she had completed for Aleutian's Rivex deposit and testified that she could not remember why she did not. The AG opinion letter, JM's attorney opinion letter, and the shareholder list were not in First Manhattan's files before Capellini received these documents from RB on November 25, 2019.

2. <u>OFDMI Requests Documents Related to Aleutian's Trading in Lazex</u>

On December 4, 2019, OFDMI sent a second request to Capellini asking First Manhattan to provide documents and information concerning Aleutian's activity in Lazex (the "Lazex Request"). The Lazex Request requested, in relevant part under Item 5:

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

Capellini told RB about the Lazex Request and the next day RB sent three emails with attachments to Capellini's personal email account. Capellini forwarded these emails to her First Manhattan email. The attachments to RB's emails included: (1) an opinion letter from attorney AG opining on the free-trading status of the Lazex shares; (2) a copy of the subscription agreement for the seller from which Aleutian purchased the Lazex shares; and (3) a copy of an

attorney opinion letter from attorney BB with an attached shareholder list. Capellini did not have these documents prior to receiving them from RB on December 5, 2019, and they were not part of First Manhattan's due diligence files. In fact, Capellini did not complete a Preclearance Form or conduct any due diligence at all in connection with Aleutian's deposit of Lazex.

On December 9, 2019, Capellini responded to OFDMI's Lazex Request. In response to Item 5, Capellini indicated that responsive documents were "[a]attached as Exhibit D." Exhibit D included the documents RB provided to Capellini after OFDMI's Lazex Request—documents she did not have at the time of the deposit of Lazex shares.

3. OFDMI Requests Documents Related to Aleutian's Remaro Trading

On January 24, 2020, OFDMI sent Capellini a third request asking First Manhattan to provide documents and information concerning Aleutian's activity in Remaro (the "Remaro Request").[11] The Remaro Request also sought, in relevant part under Item 5, "[c]opies of all due diligence inquiries that the firm made to determine the free trading basis of [Remaro] shares deposited by, or transferred into, the [Aleutian account]." The request further explained that such documents "should include, if applicable, copies of stock certificates, attorney opinion letters, and any other documents detailing the origin of the shares."

As before, Capellini told RB about the Remaro Request. On January 26, 2020, attorney AG sent an email to Capellini's personal email address attaching his July 25, 2019 letter opining on the free-trading status of the Remaro shares purchased by Aleutian.[12] AG's Remaro opinion letter referred to five exhibits, but his email was missing one of the exhibits—a Remaro Amended S-1 filing dated April 17, 2017. Capellini forwarded AG's email from her personal email to her First Manhattan email on January 27, 2020, at 10:09 a.m.

Approximately an hour later, at 11:06 a.m., documents responsive to the Remaro Request were scanned on First Manhattan's copier and emailed as a .pdf file to Capellini's First Manhattan email address. The scanned documents included Remaro's April 17, 2017 Amended S-1—the attachment that had been missing from AG's email. Each page of the Amended S-1 included a footer that indicated that it had been downloaded from the SEC's Edgar[13] system that day, January 27, 2020.

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[11] The letter was mistakenly dated 2019 but was sent in 2020.

[12] In December 2019, the month prior to sending this email to Capellini, AG pled guilty to three counts of wire fraud in connection with a scheme to "steal advance fees provided by victims in exchange for fraudulent standby letters of credit" and misappropriation of client funds in his attorney escrow account "in an attempt to delay the victims' discovery of the stolen funds." Capellini did not conduct any due diligence concerning AG's background.

[13] The SEC's Electronic Data Gathering, Analysis, and Retrieval—EDGAR—system provides free public access to the informational documents filed by publicly traded companies

[Footnote continued on next page]

At 3:28 p.m., documents responsive to the Remaro Request were again scanned on First Manhattan's copy machine and emailed as a .pdf file to Capellini's First Manhattan email address. The only difference between this copy of the documents and the copy scanned earlier was that the Remaro Amended S-1 did not contain the footer indicating that it had been downloaded from Edgar that day.

Approximately 15 minutes later, at 3:50 p.m., Capellini uploaded documents through FINRA's Gateway system in response to the Remaro Request.[14] Capellini's written response letter indicated that documents responsive to Item 5 were "[a]ttached as Exhibit 4." Capellini named that file "Exhibit 4 – Due Diligence." The copy of the Remaro Amended Form S-1 that Capellini submitted to FINRA was the one without the footer. Capellini's response included documents she had received from AG the day before—documents that were not previously in First Manhattan's files.

D. First Manhattan Investigates Capellini's Responses to FINRA's Rule 8210 Requests and Terminates Her

In April 2020, the SEC sent NS an email requesting information about the firm's responses to FINRA's Rule 8210 requests concerning Aleutian's trading in Rivex, Lazex, and Remaro. The SEC instructed NS not to tell Capellini about its inquiry. NS informed First Manhattan's senior management about the SEC's inquiry, and the firm started an investigation.

As part of its investigation, the firm reviewed relevant electronic files and emails and interviewed staff. On April 29, 2020, First Manhattan representatives interviewed Capellini about her responses to the Rivex, Lazex, and Remaro Requests. That same day, First Manhattan placed Capellini on administrative leave. That evening, First Manhattan's Chief Legal Officer, AA, searched Capellini's office for documents related to the Rule 8210 requests. AA located a file for each of the Rivex, Lazex, and Remaro Request responses. The files were sent to First Manhattan's outside counsel.

In May 2020, First Manhattan's outside counsel contacted FINRA and alerted staff to concerns about the FINRA Rule 8210 responses Capellini had submitted. Representatives of First Manhattan, its outside counsel, FINRA staff, and other regulators met virtually on May 11, 2020. First Manhattan's counsel told FINRA staff that it was concerned that Capellini had submitted to FINRA an altered document and inaccurate responses to FINRA's requests for due

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and others. *See* SEC, Search Filings, https://www.sec.gov/search-filings (last visited Sept. 23, 2024).

[14] Capellini did not produce the Remaro Preclearance Form in response to the Remaro Request.

diligence. Specifically, First Manhattan discovered through email searches that Capellini had submitted to FINRA documents in response to requests for due diligence that were not in firm files prior to FINRA's requests, and thus not actually part of the firm's contemporaneous due diligence.

The files located in Capellini's office contained the hard copies of the responses she submitted to FINRA in response to the Rivex, Lazex, and Remaro Requests. In the file for Remaro, the firm found a hard copy of the Remaro Amended S-1 that was provided to FINRA. The bottom inch of each page—the portion which would have contained the footer—had been cut off. First Manhattan subsequently provided to FINRA relevant documents and information, including the original copy of the Remaro file found in Capellini's office which included the Amended S-1 with the bottom of each page cut off.

On May 8, 2020, a week after the search of her office, First Manhattan representatives met with Capellini and terminated her employment. On June 5, 2020, First Manhattan filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") disclosing that it had discharged Capellini.[15]

III. Procedural History

The Department of Enforcement ("Enforcement") filed a two-cause complaint against Capellini on June 1, 2022.[16] Under cause one, Enforcement alleged that, during the period from January 2018 through May 2020, when Capellini was First Manhattan's AMLCO and thus responsible for the firm's AML program, she violated FINRA Rules 3310(a) and 2010 by failing to develop and implement a reasonable AML program for the deposit and trading of microcap securities by firm customers. Specifically, Capellini "failed to establish and implement AML policies and procedures that could be reasonably expected to detect and cause the reporting of suspicious activity in microcap securities and to achieve compliance with the BSA and the implementing regulations thereunder." Enforcement further alleged that during the relevant period, Capellini "was aware of numerous red flags of potentially suspicious activity" in accounts controlled by her spouse, and thus should have, but failed to, detect this potentially suspicious activity, reasonably investigate it, and consider whether to report the activity by filing a SAR.

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[15] On June 29, 2022, First Manhattan filed a Form U5 amendment disclosing its internal review and conclusion that First Manhattan "believes that Suzanne Capellini was in violation of FINRA Rules 8210 and 2010."

[16] Enforcement subsequently filed an Unopposed Motion for Leave to Amend the Complaint to correct certain allegations in three paragraphs of the complaint. The Hearing Officer granted the unopposed motion and Enforcement filed an amended complaint on November 2, 2022. We refer to the allegations in the amended complaint.

Under cause two, Enforcement alleged that Capellini violated FINRA Rules 8210 and 2010 by providing responses to FINRA requests for information about RB's trading in Rivex, Lazex, and Remaro that were false and misleading because Capellini attached documents that were not part of the firm's due diligence, but rather were obtained after she received FINRA's Rule 8210 requests. Additionally, Enforcement alleged that Capellini produced a document—the Remaro Form S-1 registration statement—that she knew had been altered to remove the footer showing the date it was downloaded. Enforcement alleged that "Capellini did so to give FINRA the false and misleading impression that First Manhattan had received the Form S-1 from Attorney A as an attachment to his legal opinion letter and that the firm had included the Form S-1 in its due diligence files for [Remaro]."

On June 28, 2022, Capellini filed a motion to dismiss and answer. Capellini moved to dismiss on the grounds that FINRA lacked jurisdiction over her and argued that the complaint was time-barred. Specifically, Capellini argued that FINRA lacked jurisdiction because the complaint was filed more than two years after the date Capellini was terminated by First Manhattan.

The Hearing Officer denied Capellini's motion to dismiss on the grounds that FINRA's procedures do not allow for a motion to dismiss but granted her leave to re-file her motion as one for summary disposition. Capellini filed a motion for summary disposition on November 21, 2022, asserting again that FINRA lacked jurisdiction over her and on the grounds that Capellini was entitled to summary disposition as a matter of law. The Hearing Officer denied Capellini's motion for summary disposition, finding that FINRA had jurisdiction over her and that a hearing was necessary to decide disputed issues of fact.

After a five-day hearing, the Hearing Panel issued a decision on July 14, 2023. A Hearing Panel majority found that Capellini provided false and misleading responses in response to the Rivex, Lazex, and Remaro Requests and an altered document in response to the Remaro Request, thereby violating FINRA Rules 8210 and 2010.[17] For this misconduct, the Hearing Panel majority barred Capellini from associating with a FINRA member in any capacity. The Hearing Panel also found that Capellini violated FINRA Rules 3310 and 2010 by failing to establish and implement an AML program reasonably designed to cause the detection and reporting of suspicious low-priced securities activity and by failing to detect and reasonably investigate red flags of suspicious activity in accounts controlled by RB. Because of the bar imposed for her Rule 8210 violations, the Hearing Panel did not impose a sanction for Capellini's AML violations. The Hearing Panel found, however, that it would have imposed a $25,000 fine, a two-year suspension in all principal and supervisory capacities, and a requirement that Capellini requalify by examination as a principal as sanctions for her AML violations.

This appeal followed.

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[17] One panelist dissented from the majority's findings that Capellini violated FINRA Rules 8210 and 2010.

IV. Discussion

A. FINRA Had Jurisdiction to Bring this Disciplinary Action

As a threshold matter, we address Capellini's argument that this matter should be dismissed because Enforcement did not file timely the complaint in the period during which FINRA retained jurisdiction over Capellini. We find that Enforcement did file timely the complaint and there are no jurisdictional grounds for dismissing this matter.

Article V, Section 4(a)(i) of FINRA's By-laws provides that FINRA retains jurisdiction over a formerly registered person for "two years after the effective date of termination of registration pursuant to Section 3" of the By-laws. When a FINRA member terminates its association with a person registered with it, Section 3 of Article V requires the member to "give notice of the termination of such association" to FINRA "not later than 30 days after such termination."

The Hearing Panel found that FINRA had jurisdiction because the June 1, 2022 complaint was filed within two-years of when First Manhattan filed the Form U5 terminating Capellini's registration on June 5, 2020. We agree. As we have previously held, FINRA's retention of jurisdiction runs from the date that a registered person's registration—not employment—is terminated by the filing of a Form U5. *See, e.g.*, *Dep't of Enf't v. Makkai*, Complaint No. 2018058924502, 2023 FINRA Discip. LEXIS 2, at *10 (FINRA NAC Jan. 6, 2023) (stating that "[a] person who becomes registered through a FINRA member remains registered until FINRA ends the registration after it receives a Form U5"); *Dep't of Enf't v. Weinstock*, Complaint No. 2010022601501, 2016 FINRA Discip. LEXIS 34, at *11 n.5 (FINRA NAC July 21, 2016) (explaining that termination of registration is effective upon the date that FINRA receives a Form U5 from the individual's member firm).

Capellini argues that the termination of her registration was effective earlier than the date First Manhattan filed the Form U5. Specifically, Capellini argues that as of May 8, 2020, the day her employment was terminated and First Manhattan's counsel emailed FINRA staff inviting them to a meeting to discuss the findings of their internal investigation or, alternatively, May 11, 2020, the day of the meeting itself, FINRA had sufficient notice of Capellini's termination and the surrounding circumstances to begin the running of the two-year jurisdiction retention. Capellini cites FINRA Bylaws Article V, Section 3(a), which she reads disjunctively as requiring notice of termination of association by any "electronic process" *or* by another process designated by FINRA. Capellini misunderstands the applicable rules and our prior holdings.

Capellini misreads Article V, Section 3(a), which provides that notice of termination shall be provided by the electronic process *prescribed by FINRA* or other process prescribed by FINRA. The full text of this portion of Article V, Section 3(a) requires a member to give notice of termination of association "via electronic process or such other process as [FINRA] may prescribe on a form designated by [FINRA]." The phrase "may prescribe" applies to both the electronic process or other process and, in both cases, notice must be made with the designated form. Indeed, FINRA has prescribed the electronic form to be used—i.e., the filing of a Form

U5 through the Central Registration Depository ("CRD"®).[18] *See* FINRA Rule 1010(e) (requiring initial filings and amendments of the Form U5 to be submitted electronically); *see also David Kristian Evansen*, Exch. Act Release No. 75531, 2015 SEC LEXIS 3080, at *12-13 (July 27, 2015) (acknowledging that the Form U5 is the designated form for termination of registration).

FINRA uses a firm's filing of the Form U5 to determine when a person's registration is terminated. This meaning of Article V, Section 3(a) is confirmed by the Commission's previous holding that "FINRA is in charge of its own registration system and requires filings from its members, including on Forms U5, to administer registration changes and the consequences that flow from changes in registration status." *Evansen*, 2015 SEC LEXIS 3080, at *12-13. A "registered person cannot unilaterally terminate his or her FINRA registration before FINRA receives the prescribed form" and "remains registered until FINRA (not the registered person) ends the registration, based, among other things, on the Forms U5 it receives." *Id*. at *13.

FINRA's control of its registration system ensures clarity about the date registration is terminated and the matters that flow from that date, including the period that FINRA retains jurisdiction. The illogical reading of the rules Capellini urges us to adopt is contrary to the text of applicable rules and our prior holdings and would undermine this certainty. Thus, we reaffirm our prior holdings and find that the complaint in this matter was timely filed in the period during which FINRA retained jurisdiction over Capellini.

B. Capellini Failed to Establish and Implement an Adequate AML Program and Failed to Detect and Reasonably Investigate Red Flags of Suspicious Activity in RB's Accounts

The Hearing Panel found that Capellini violated FINRA Rules 3310 and 2010 by failing to establish and implement a reasonably designed AML program for the deposit and trading of low-priced securities and by failing to detect and investigate red flags of suspicious activity in RB's account. We affirm these findings.

In October 2001, Congress passed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "PATRIOT Act"), Pub. L. No. 107-56, 115 Stat. 272. Title III of the PATRIOT Act imposes added obligations on broker-dealers under AML provisions and amendments to the BSA requirements. *See* 31 U.S.C. §§ 5311 et seq. Among other requirements, the PATRIOT Act requires that all broker-dealers establish and implement AML programs designed to achieve compliance with the

[18] To support her position, Capellini points to a date in her CRD record as the date after which FINRA no longer possessed jurisdiction over to discipline her. The date Capellini cites, however, refers to the date her *employment* was terminated, and she ignores the material just below this in her CRD record that states her *registrations* were terminated on June 5, 2020. Indeed, the parties stipulated that First Manhattan filed a Form U5 terminating Capellini's registration on June 5, 2020.

BSA and the regulations thereunder, including the requirement that broker-dealers file SARs when they detect certain suspicious activity. *See* 31 U.S.C. § 5318(h); 31 C.F.R. § 1023.210(a), (b).

FINRA Rule 3310 sets forth the minimum requirements for FINRA members' AML compliance programs. Rule 3310(a) requires members to "develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the member's compliance with the requirements of the [BSA]." This includes "establish[ing] and implement[ing] policies and procedures that can be reasonably expected to detect and cause the reporting" of suspicious transactions.[19] FINRA Rule 3310(a).

FINRA Rule 3310(d) requires members to "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." This AMLCO should have "full responsibility and authority to make and enforce the firm's policies and procedures related to money laundering" and "should have the authority, knowledge, and training to carry out the duties and responsibilities of his or her position." *NASD Regulatory Notice 02-21*, 2002 NASD LEXIS 24, at *48-49 (Apr. 2002).

FINRA has issued guidance concerning member firms' AML compliance obligations. In 2002, FINRA issued Regulatory Notice 02-21, explaining that a firm's AML procedures must be tailored to "reflect the firm's business model and customer base" and consider factors such as the firm's "business activities, the types of accounts it maintains, and the types of transactions in which its customers engage." *NASD Regulatory Notice 02-21*, at *17-20. Moreover, AML procedures should address, among other matters, the "monitoring of account activities, including but not limited to, trading and the flow of money into and out of the account, the types, amount, and frequency of different financial instruments deposited into and withdrawn from the account, and the origin of such deposits and the destination of withdrawals." *Id.* at *21. Regulatory Notice 02-21 also reminds member firms of their duty to detect and investigate red flags indicating potential money laundering and sets forth a lengthy non-exhaustive list of such red flags. *Id.* at *37-42.

In 2019, FINRA issued additional guidance to firms regarding their obligations under FINRA Rule 3310 for monitoring and reporting suspicious activity. *See FINRA Regulatory Notice 19-18*, 2019 FINRA LEXIS 21 (May 2019). In Regulatory Notice 19-18, FINRA updated and expanded the non-exhaustive list of red flags that firms should "consider incorporating into their AML programs." *Id.* at *4. These red flags include, in relevant part:

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[19] FINRA Rule 3310 applied to persons associated with member through FINRA Rule 0140(a) which provides that "[p]ersons associated with a member shall have the same duties and obligations as a member" under FINRA rules. Additionally, a violation of FINRA Rule 3310 is also a violation of FINRA Rule 2010. *See Dep't of Enf't v. Merrimac Corp. Sec., Inc.*, Complaint No. 2011027666902, 2017 FINRA Discip. LEXIS 16, at *36-37 (FINRA NAC May 26, 2017)

- A customer has a pattern of depositing physical share certificates, or a pattern of delivering in shares electronically, immediately selling the shares and then wiring, or otherwise transferring out the proceeds of the sale(s). *Id.* at *11-12.

- A customer deposits into an account physical share certificates or electronically deposits or transfers shares that: were recently issued; were issued by a shell company; were issued by a company that has been through recent name changes; or were issued by a company whose officers or insiders have a history or regulatory or criminal violations. *Id.* at *12.

- The customer, for no apparent reason or in conjunction with other "red flags," engages in transactions involving certain types of securities, such as penny stocks which although legitimate, have been used in connection with fraudulent schemes and money laundering activity. *Id.* at *13-14.

- The customer's activity represents a significant proportion of the daily trading volume in a thinly traded or low-priced security. *Id.* at *14.

1. Capellini Failed to Establish and Enforce an Adequate AML Program for First Manhattan's Low-Priced Securities Business

We agree with the Hearing Panel that while a very small portion of First Manhattan's overall business, low-priced securities activity at the firm was still meaningful and, because of the nature of low-priced securities and their susceptibility to fraudulent schemes, posed a high AML risk to the firm. *See Dep't of Enf't v. C.L. King & Assoc., Inc.*, Complaint No. 2014040476901, 2019 FINRA Discip. LEXIS 43, at *79 (FINRA NAC Oct. 2, 2019) (noting that FINRA has emphasized the susceptibility of penny stocks to fraud and manipulation, and that brokerage firms risk facilitating unlawful distributions of unregistered securities when they liquidate penny stocks for customers). During the relevant period, more than 1,500 First Manhattan customers engaged in more than 5,600 low-priced securities transactions representing more than $112 million in trading activity. More than 600 of these customers generated almost $20 million in proceeds by trading stocks valued at $1 or less.[20] Thus, First Manhattan was required to have an AML program tailored to its risky low-priced securities business.

First Manhattan's AML procedures were not properly tailored for its low-priced securities business. The firm's written AML procedures did not address the trading of low-

[20] Capellini argues that this data is unreliable because Enforcement introduced it though a summary exhibit. Capellini, however, did not object to the admission of this summary at the hearing. Moreover, the person who prepared the summary authenticated it at the hearing and testified about the source of the data. Under these circumstances, Capellini has waived any objection to the document, and there is no basis to find it unreliable.

priced securities and did not incorporate the relevant red flags included in FINRA guidance. *See C.L. King*, 2019 FINRA Discip. LEXIS 43, at *81 (findings procedures deficient because the AMLCO did not incorporate red flags enumerated by FINRA in its revised template); *see also Regulatory Notice 02-21*, 2002 NASD LEXIS 24, at *42 (advising that "[a]ppropriate red flags should be described in the written policies and AML compliance procedures of the broker/dealer"). While the firm received a low-priced securities turnover exception report from its clearing firm, as its auditors pointed out, First Manhattan's procedures did not specifically describe exception reports, specify how frequently they were to be reviewed, by whom, what review would be conducted, or how it would be documented. The evidence demonstrates that Capellini's review of the low-priced securities report was cursory, and she did not investigate transactions that appeared on the report.

While the Preclearance Form was the firm's primary due diligence tool, the form was not addressed in the AML procedures at all and was used inconsistently. For example, in the case of Aleutian's deposits of low-priced securities during the relevant period, the firm's files did not include a Preclearance Form for 15 of 38 deposits and in two cases the Preclearance Form was not completed until after the low-priced securities had been accepted for deposit. Moreover, the Preclearance Form was not used for sales or transfers of low-priced securities even though the form stated on its face that it was to be used for sales and transfers as well as deposits. Thus, no due diligence was done at all for sales and transfers of low-priced securities.[21]

Capellini's primary argument on appeal is that she was not responsible for any failures in First Manhattan's AML program because the procedures were in place before she took over as primary AMLCO, she could not change the procedures on her own but rather needed NS's approval, and she did not have adequate training in AML. We are not persuaded by any of Capellini's arguments.

There is no question that Capellini was First Manhattan's primary individual responsible for AML compliance at the firm during the relevant period. The firm's AML procedures named her as the person responsible for AML and she was identified to FINRA as the designated AMLCO. NS testified that Capellini had more AML experience than anyone else at First Manhattan. Capellini had 40 years of experience in compliance and served as the alternate AMLCO before taking over as primary AMLCO. When she became the primary AMLCO, it was Capellini's responsibility to make necessary changes to the firm's AML program to reflect its business. *See* FINRA Rule 3310(d) (providing that the designated AMLCO is "responsible for implementing and monitoring the day-to-day operations and internal controls of the

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[21] The Hearing Panel's AML findings relied in part on expert witness testimony presented by Enforcement. Implicit in the Hearing Panel's reliance is a finding that the expert was credible. We agree that the expert's testimony was consistent with the law and supported by the record and thus reliable. *See C.L. King*, 2019 FINRA Discip. LEXIS 43, at *110-16 (deferring to the Hearing Panel's finding that an expert was credible in finding that respondent's AML program was deficient).

program"); *see also*, *C.L. King*, 2019 FINRA Discip. LEXIS 43, at *80-83 (finding the firm's AMLCO liable for insufficient AML procedures).

While changes to the AML program may, as Capellini claims, have been a joint effort and required NS's approval, it was Capellini's responsibility to prompt the firm to implement necessary modifications to the procedures. There is no evidence that Capellini did so. To the contrary, despite NS sending her AML guidance from FINRA about red flags that should have been incorporated into the firm's procedures and the firm's auditors recommending specific modifications related to the firm's low-priced securities business, Capellini did not implement the necessary changes.[22] As the registered representative on her husband's accounts, Capellini had a front row seat to the firm's low-priced securities business and, as the firm's AMLCO, she should have taken steps to address the risks inherent in that activity.

Capellini's attempts to point the finger at others for her failures are also baseless. While others may also bear responsibility for AML failures at the firm, this does not excuse Capellini's violations.[23] *See Edward Beyn*, Exch. Act Release No. 97325, 2023 SEC LEXIS 980, at *19-20 (Apr. 19, 2023) (rejecting respondent's attempt to shift blame for his misconduct to his firm and supervisors and explaining that "[t]he fact that others also might have been remiss in their duties does not mitigate [the respondent's] responsibility"), *appeal docketed*, No. 23-6526 (2nd Cir. May 19, 2023). Nor can she shift the responsibility for AML compliance at First Manhattan to the firm's auditors or clearing firm. *See C.L. King*, 2019 FINRA Discip. LEXIS 43, at *81-82 (rejecting reliance on a third-party vendor to provide updates to the firm's procedures and finding that "it was [an AMLCO's] and the firm's responsibility, rather than a third party's, to ensure that the procedures were reasonably designed and tailored to the firm's business"); *Dep't of Enf't v. Lek Sec. Corp.*, Complaint No. 2009020941801, 2016 FINRA Discip. LEXIS 63, at *26 (FINRA NAC Oct. 11, 2016) (explaining that the firm had independent responsibilities for AML compliance and could not rely on delegation to its clearing firm), *aff'd*, Exch. Act Release No. 82981, 2018 SEC LEXIS 830 (Apr. 2, 2018). Capellini's attempts to blame FINRA or the SEC for failing to identify deficiencies in First Manhattan's AML program similarly are

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[22] We are not persuaded by Capellini's claim that she was not provided adequate training for her to perform her duties as AMLCO. If Capellini felt she was not qualified for the role of AMLCO or needed additional training to perform her duties, it was incumbent on her to raise this with her supervisor and First Manhattan's management. There is no evidence that she ever did so. *See Thomas C. Kocherhans*, 52 S.E.C. 528, 531 (1995) (explaining that "ignorance of [FINRA] requirements is no excuse for violative behavior" and industry participants "must take responsibility for compliance with regulatory requirements and cannot be excused for lack of knowledge, understanding, or appreciation of these requirements").

[23] In February 2022, First Manhattan submitted a Letter of Acceptance, Waiver and Consent ("AWC") in which the firm consented to findings that it had failed to establish and implement an AML program reasonably expected to detect and cause the reporting of suspicious transactions in microcap securities. First Manhattan also consented to sanctions of a censure, a $250,000 fine, and an undertaking to revise its procedures.

unfounded. *See Dep't of Enf't v. Pellegrino*, Complaint No. C3B050012, 2008 FINRA Discip. LEXIS 10, at *50 n.34 (FINRA NAC Jan. 4, 2008) (stating that the Commission has repeatedly held that responsibility for compliance cannot be shifted to regulators), *aff'd*, Exch. Act Release No. 59125, 2008 SEC LEXIS 2843, (Dec. 19, 2008).

Accordingly, we find that Capellini violated FINRA Rules 3310 and 2010 by failing to establish and implement a reasonable AML program.

2. Capellini Failed to Detect and Reasonably Investigate Red Flags of Suspicious Low-Priced Securities Activity in Accounts Controlled by Her Spouse

The Hearing Panel found that Capellini also violated FINRA Rules 3310 and 2010 by failing to detect and reasonably investigate red flags of suspicious activity in the accounts controlled by her spouse, RB. We agree and affirm.

During the relevant period, RB made 38 low-priced securities deposits in his First Manhattan accounts, engaged in over 200 sales of these low-priced securities, and wired out more than $360,000 in proceeds from these sales. This pattern of depositing low-priced securities, selling them, and then wiring out the proceeds was itself a red flag that should have prompted an investigation of RB's low-priced securities activity. *See FINRA Regulatory Notice 19-18*, 2019 FINRA LEXIS 21, at *11-12. But RB's activity also raised numerous other red flags. RB often deposited shares using physical certificates that had been issued within the 30 days prior to the deposit. Many of the low-priced securities issuers were the subject of "going concern" opinions, had changed their names or business lines, and had limited or no revenue or assets. RB's sales often constituted the first public sale of the low-priced securities, were priced significantly higher than the prior best bid, and represented all or a substantial portion of the low-priced securities' daily market volume for the day of RB's trading.

RB's deposits and sales of Rivex, Token, Lazex, and Remaro illustrate the presence of these red flags. RB deposited Rivex into the Aleutian account through a physical stock certificate issued just 21 days before the deposit. Aleutian purchased the Rivex shares from a citizen of Slovakia, residing in Florida. Rivex was the subject of a going concern opinion and had virtually no revenue or assets. Five days after he deposited Rivex, RB sold a portion of his shares for $5 per share, a substantial increase from the 20 cents he paid for the shares just a month before. This sale was Rivex's first public sale ever and represented 50 percent of Rivex's daily trade volume for that day.

RB's deposit and sales of Token raised similar red flags. RB deposited Token into the Aleutian account through a physical stock certificate issued approximately five months before the deposit. Aleutian paid 25 cents per share for Token in a private transaction. From 2014, Token changed its name and business line twice. Token had a going concern opinion and no revenue or assets in the months prior to Aleutian's purchase of the shares. A few days after the deposit, RB sold blocks of Token for $1.30 and $1.40 per share. Aleutian's sales were the first public sales of Token ever and constituted 100 percent of the daily trading volume for Token that

day. Aleutian ultimately engaged in approximately 30 sales of Token, generating total proceeds of almost $100,000.

There is no evidence that Capellini did any due diligence at all for RB's Lazex deposit or trading. If she had, that due diligence would have revealed numerous red flags. RB deposited Lazex in the Aleutian account through a physical stock certificate issued 20 days before the deposit. Lazex had a going concern opinion, no revenues, and minimal cash assets. Eleven days after the deposit, RB sold a block of Lazex shares for $2.00 per share, a substantial increase from the stock's prior best bid of five cents. The sale constituted 100 percent of the daily trading volume for Lazex, as did subsequent sales by RB.

Finally, RB's deposits and sales of Remaro raised similar red flags. Once again, RB deposited Remaro into the Aleutian account through a physical stock certificate issued six days before the deposit. Remaro had a going concern opinion, no revenue, and virtually no assets. Aleutian purchased the shares from an individual residing in the Dominican Republic for $1 per share. A few days after the deposit, Aleutian sold a block of Remaro for $2 per share, double the $1 per share Aleutian purportedly paid for the shares 12 days earlier, and substantially more than Remaro's prior best bid of one cent per share. Aleutian's sale was the first public sale of Remaro and represented 50 percent of the stock's daily market volume that day.

We agree with the Hearing Panel's assessment that despite these multiple and repeated red flags, "Capellini failed to make even a rudimentary inquiry into this suspicious activity." In some cases, she did not even complete a Preclearance Form or completed it after the shares were accepted for deposit and, in at least one case, after a sale of shares. Capellini did nothing to learn about the issuers, including their business, assets, and revenue. She sometimes had little or no information about how RB obtained the shares and, when she did have information about the seller, asked no questions about the seller's relationship to the issuer. Capellini did not obtain evidence that RB had actually paid for the shares. Significantly, she did not even obtain the minimal information required by the Preclearance Form, a document she helped develop and described as helping the firm meet its compliance obligations.

Capellini also did nothing to monitor RB's subsequent trading or transfers of low-priced securities or the transfers of proceeds out of the account. Indeed, Capellini admitted that she did not believe that First Manhattan had any AML obligations after the deposit of the shares. Thus, even when Aleutian's trading appeared on low-priced securities turnover exception reports, Capellini did nothing to investigate the potentially suspicious activity.

As with her failure to implement an adequate AML program, Capellini attempts to blame others for failures to detect and investigate suspicious activity in her husband's accounts. Specifically, Capellini blames First Manhattan for creating an "untenable conflict of interest" by putting her in a position to monitor and investigate suspicious activity in her husband's account, whom she trusted. But other than Capellini's unsupported claim that she asked the firm to allow her husband to maintain accounts outside the firm at some unspecified point, there is no evidence that Capellini did anything to raise or address these conflicts with anyone at First Manhattan. Capellini never asked JS, the alternate AMLCO, to review her husband's deposits of low-priced securities, her husband's trading, or instances when his accounts appeared in exception reports.

Moreover, Capellini chose to act as the registered representative for RB's accounts though she was not required to do so. While we agree that others at First Manhattan may also bear responsibility for allowing Capellini's conflict of interest to continue unchecked, this fact does not excuse Capellini from fulfilling her duties as the firm's AMLCO.

Accordingly, we agree that Capellini did not reasonably detect and investigate red flags of suspicious activity in her husband's accounts and thus violated FINRA Rules 3310(a) and 2010.

C. Capellini Provided False and Misleading Responses and an Altered Document in Response to FINRA Investigative Requests

The Hearing Panel majority found that Capellini violated FINRA Rules 8210 and 2010 by providing false and misleading responses and an altered document in response to Rule 8210 requests with respect to the RB's deposits of Rivex, Lazex, and Remaro in the Aleutian account. Capellini's primary argument on appeal is that the Rivex, Lazex, and Remaro Requests were vague and ambiguous, and she reasonably read the requests as calling for not only the firm's due diligence, but any responsive documents she could obtain, including from her husband. We agree with the Hearing Panel majority's findings with respect to the Lazex and Remaro Requests but reverse the findings with respect to the Rivex Request.

FINRA Rule 8210(a) authorizes FINRA staff to "require a member, person associated with a member, or any other person subject to FINRA's jurisdiction to provide information orally, in writing, or electronically . . . with respect to any matter involved in the investigation, complaint, examination, or proceeding" and to "inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in the investigation, complaint, examination, or proceeding." FINRA Rule 8210 is indispensable to FINRA's ability to fulfill its regulatory functions. Because FINRA does not have subpoena power, it "must rely on Rule 8210 to obtain information . . . necessary to carry out its investigations and fulfill its regulatory mandate." *See CMG Inst. Trading, LLC*, Exch. Act Release No. 59325, 2009 SEC LEXIS 215, at *15 (Jan. 30, 2009); *see also Howard Brett Berger*, Exch. Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008), *aff'd*, 347 F. App'x 692 (2d Cir. 2009) (stating that Rule 8210 "is at the heart of the self-regulatory system for the securities industry"); *PAZ Sec., Inc.*, Exch. Act Release No. 57656, 2008 SEC LEXIS 820, at *12 (Apr. 11, 2008) (stating that FINRA's "lack of subpoena power thus renders compliance with Rule 8210 essential to enable [FINRA] to execute its self-regulatory functions"), *aff'd*, 566 F.3d 1172 (D.C. Cir. 2009).

It is well settled that providing false or misleading information to FINRA in response to a FINRA Rule 8210 request constitutes a violation of the rule.[24] *See Geoffrey Ortiz*, Exch. Act Release No. 58416, 2008 SEC LEXIS 2401, at *23; *Dep't of Enf't v. Masceri*, Complaint No. C8A040079, 2006 NASD Discip. LEXIS 29, at *36 (NASD NAC Dec. 18, 2006) (explaining

[24] A violation of Rule 8210 is also a violation Rule 2010. *See CMG Inst. Trading, LLC*, 2009 SEC LEXIS 215, at *30 n.36.

that "[i]t is axiomatic that . . . Rule 8210 prohibits an associated person from providing false or misleading information to [FINRA] in connection with an examination or investigation"). Providing false information to FINRA "can conceal wrongdoing and thereby subvert [FINRA's] ability to perform its regulatory function and protect the public interest." *Ortiz*, 2008 SEC LEXIS 2401, at *32. Thus, associated persons have an unequivocal and unqualified duty to comply with FINRA Rule 8210 requests, and to do so completely and accurately. *See, e.g.*, *Dep't of Enf't v. Escobio*, Complaint No. 2018059545201, 2021 FINRA Discip. LEXIS 3, at *18 (FINRA NAC Mar. 10, 2021), *aff'd*, Exch. Act Release No. 977701, 2023 SEC LEXIS 1532 (June 12, 2023).

1. Capellini Provided False and Misleading Responses to the Lazex and Remaro Requests

The Lazex and Remaro Requests asked for production of documents by First Manhattan. In relevant part, the Lazex and Remaro Requests asked for "[c]opies of all due diligence inquiries that the firm made to determine the free trading basis" of the Lazex and Remaro shares "deposited by or transferred into" the Aleutian account. The second sentence of the Lazex and Remaro Requests elaborated by explaining that such due diligence documents "should include, *if applicable*, copies of stock certificates, attorney opinion letters, and any other documents detailing the origin of the shares." (Emphasis added.) We find that these requests are clear and call for production of First Manhattan's contemporaneous due diligence. *See Dep't of Enf't v. Palmeri*, Complaint 2007010580702, 2013 FINRA Discip. LEXIS 2, at *15 (FINRA NAC Feb. 15, 2013) (rejecting a respondent's interpretation of a request for information when the request was clear and unambiguous).

First Manhattan's files contained no due diligence with respect to Aleutian's deposit and trading of Lazex. Capellini nonetheless produced attorney AG's opinion letter, a subscription agreement, and attorney BB's opinion letter with a shareholder list attached. These were all documents that Capellini obtained from RB after she received the Lazex Request from FINRA. Capellini, however, did not tell FINRA that these documents were not actually part of the firm's due diligence, but rather documents she received from her husband after FINRA's request for information.

First Manhattan's due diligence file with respect to Aleutian's deposit and trading of Remaro contained the Preclearance Form Capellini completed after the shares had already been deposited and the first trade executed, a copy of Aleutian's purchase agreement for the shares, and a copy of the stock certificate. Capellini's response to the Remaro Request included the stock certificate and purchase agreement contained in First Manhattan's due diligence file.[25] Capellini also produced, however, documents she had received after FINRA sent the Remaro Request. These included attorney AG's opinion letter and the documents listed as exhibits to his letter: a copy of the seller's subscription agreement; a list of Remaro shareholders; Remaro's

[25] Capellini did not produce the Preclearance Form that she completed for Aleutian's Remaro deposit.

April 17, 2017 amended S-1; and a document reflecting the effective date for Remaro's S-1. Again, Capellini produced these documents in response to FINRA's request for due diligence without disclosing that they were not in fact a part of the firm's due diligence, but rather obtained after Capellini received the Remaro Request.

Capellini's responses to the Lazex and Remaro Requests were misleading because she produced documents in response to requests for the firm's due diligence that she received from her spouse and attorney AG after FINRA sent the Lazex and Remaro Requests, without disclosing this fact to FINRA. We agree with the Hearing Panel majority that Capellini's "silence when she produced these documents to FINRA suggested that she obtained these documents from the firm's existing due diligence files." In fact, the firm, through Capellini, had done no due diligence on the Lazex deposit, and virtually none on the Remaro deposit. We find that Capellini's misleading responses violated FINRA Rules 8210 and 2010.

2. Capellini Produced an Altered Document in Response to the Remaro Request

We also agree with the Hearing Panel majority that the evidence establishes that Capellini altered the Remaro amended S-1 before producing it in response to the Remaro Request by removing the footer showing that the document had been downloaded from the SEC site the same day as the response. The circumstantial evidence of Capellini's conduct is overwhelming. *See Dep't of Enf't v. Saliba*, Complaint No. 2013037522501r, 2022 FINRA Discip. LEXIS 12, at *18 (FINRA NAC Oct. 6, 2022) (explaining that circumstantial evidence can be more than sufficient to prove a violation and finding that the circumstantial evidence proved that the respondent knowingly produced falsified documents to FINRA), *aff'd* Exch. Act Release No. 99940, 2024 SEC LEXIS 852 (Apr. 11, 2024). Capellini's own emails establish that: (1) attorney AG emailed Capellini his opinion letter for Remaro, which referred to five exhibits, but was missing a copy of one exhibit—the amended S-1; (2) a scanned copy of the Remaro response that included the missing amended S-1 containing a footer indicating that it had been downloaded that day was emailed to Capellini as a .pdf; and (3) a few hours later, a second scanned copy of the Remaro response in which the amended S-1 no longer contained the footer was emailed to Capellini as a .pdf. During their search of Capellini's office, First Manhattan's chief legal officer discovered a physical file with the Remaro response, which contained a copy of the S-1 from which the bottom portion had been cut off.

The Hearing Panel majority found Capellini's testimony about the altered S-1 not credible, and we defer to that finding. *See Eliezer Gurfel*, 54 S.E.C. 56, 62 n.11 (1999) (explaining that the NAC gives substantial weight and deference to the Hearing Panel's credibility findings), *aff'd*, 205 F.3d 400 (D.C. Cir. 2000). Capellini could offer no explanation for how the S-1 was scanned and emailed to her without the footer or how the hard copy with the footer cut off was found in her office. She claimed to have no memory of removing the footer herself and testified that she could not rule out the possibility that some other unspecified person removed it. Capellini's incredible testimony bolsters our certainty that she altered the S-1 prior to producing it to FINRA. Moreover, the only reason for doing so would be to conceal the fact

that the documents had been downloaded after Capellini received the Remaro Request and thus could not have been part of First Manhattan's due diligence file.[26]

Accordingly, we find that by producing the altered S-1 to FINRA, Capellini produced an altered document in violation of FINRA Rules 8210 and 2010.

3. We Dismiss the Hearing Panel's Findings with Respect to the Rivex Request

The Rivex Request was worded differently than the Lazex and Remaro Requests. It was also addressed to Capellini and asked First Manhattan to provide "documentation related to the receipt, delivery, and/or transfer of [Rivex] stock *as well as* all due diligence inquiries made to determine the free trading basis of Rivex" sold in the Aleutian account. (Emphasis added.) After careful consideration, we find that the Rivex request could be understood to be seeking documents other than First Manhattan's due diligence, as Capellini argues, and we thus dismiss the findings of violation with respect to this request.

We acknowledge that the Hearing Panel majority correctly noted that, like the other requests, the Rivex Request was directed to First Manhattan and did not require First Manhattan to seek documents from a customer that it did not already have in its files. We also agree that as an experienced compliance officer of 40 years, Capellini understood this. However, under the specific circumstances here—including, the wording of the request and the fact that the customer here was Capellini's spouse—we decline to impose liability based on Capellini's response to the Rivex Request and dismiss this portion of the Hearing Panel majority's findings.[27]

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[26] Capellini argues that the Remaro S-1 alteration is irrelevant to determining whether Capellini acted intentionally to mislead FINRA because this document is publicly available. Capellini's argument misses the point. The issue is not whether the Remaro S-1 is publicly available, but rather whether it was part of Capellini's due diligence in connection with the Remaro deposit. By removing the footer reflecting the date it was downloaded, Capellini concealed that AG's opinion letter and the referenced exhibits were not part of First Manhattan's due diligence.

[27] Capellini also argues that we should dismiss the Hearing Panel majority's findings that she violated FINRA Rule 8210 because the findings rest in part on a theory Enforcement did not charge in the complaint, i.e., that Capellini violated the rule by failing to produce Preclearance Forms in response to the Rivex and Remaro Requests. Capellini misunderstands the Hearing Panel majority's findings. The Hearing Panel majority did not cite the failure to produce the Preclearance Form as a basis for the violations but only as refuting Capellini's claim that she understood the requests as asking to produce any responsive documents she "could get [her] hands on to support the fact that the shares were free trading." In any event, to the extent there is any lack of clarity in the Hearing Panel majority's decision, our de novo review here cures it. *See Dep't of Enf't v. Erenstein*, Complaint No. C9B040080, 2006 NASD Discip. LEXIS 31, at *10 (NASD NAC Dec. 18, 2006) (holding that the NAC's de novo review "cures any drafting

[Footnote continued on next page]

V. Sanctions

In determining appropriate sanctions, we consider FINRA's Sanction Guidelines ("Guidelines"), including the General Principles Applicable to All Sanction Determinations (the "General Principles") and the Principal Considerations in Determining Sanctions (the "Principal Considerations").[28] The Guidelines provide that sanctions "should be designed to protect the investing public by deterring misconduct and upholding high standards of business conduct."[29] To achieve this goal, the NAC "should 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."[30]

A. Capellini's AML Violations

For Capellini's AML violations, the Hearing Panel assessed, but did not impose considering the bar imposed for her Rule 8210 violations, a $25,000 fine, a two-year suspension in all principal and supervisory capacities, and a requirement that Capellini requalify by examination as a principal. We find that the Hearing Panel's sanctions do not adequately reflect the egregiousness of Capellini's misconduct, particularly considering the serious conflicts of interest and the potential for personal financial gain inherent in her supervision of her husband's trading for AML purposes. We instead impose a bar in all capacities for these violations.

In cases when an individual fails to reasonably monitor or report suspicious transactions in violation of FINRA Rule 3310(a), the Guidelines recommend a fine of $5,000 to $50,000 and a suspension in any or all capacities for a period of 10 business days to two months.[31] When aggravating factors predominate, the Guidelines direct us to consider a higher fine and a suspension in any or all capacities for a period of two months to two years or a bar.[32] The

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[Cont'd]

deficiencies or errors that may exist in the Hearing Panel decision"), *aff'd*, Exch. Act Release No. 56768, 2007 SEC LEXIS 2596 (Nov. 8, 2007), *aff'd*, 316 Fed. Appx. 865 (11th Cir. 2008).

28 *See FINRA Sanction Guidelines* (March 2024), https://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf [hereinafter *Guidelines*]. We apply the Guidelines in effect at the time of the NAC's decision.

29 *Guidelines*, at 2 (General Principles No. 1).

30 *Id.*

31 *Id.* at 83.

32 *Id.*

considerations specific to sanctions for this misconduct include: (1) whether the respondent failed to detect or investigate "red flags" of suspicious activity; (2) whether the deficiencies in the suspicious transaction monitoring allowed reportable activity to escape detection; (3) whether the respondent's failures were systemic, widespread, or occurred over an extended period; and (4) whether the respondent was responsible for establishing the firm's AML compliance program.[33]

Several of these considerations are applicable and aggravating here. As the primary AMLCO, Capellini was responsible for establishing and implementing First Manhattan's AML compliance program. Yet she failed to detect and investigate a plethora of red flags of suspicious activity. While low-priced securities constituted a small part of First Manhattan's overall business, Capellini's violations encompassed all low-priced securities activity at the firm, which we have found to be meaningful, very risky, and requiring monitoring under the AML rules. Capellini's failures to detect and investigate red flags were systemic and occurred over two and a half years.[34]

We agree that Capellini's failures to implement an adequate AML program and detect and investigate obvious red flags were reckless.[35] She failed to implement relevant recommendations from the firm's auditors and took no steps to incorporate applicable red flags set forth in FINRA guidance, despite it being sent to her attention by her supervisor. When she did due diligence in connection with a deposit, it was minimal and did not even meet the requirements of the Preclearance Form she herself helped develop. And once low-priced securities were deposited, Capellini admittedly conducted no AML review at all related to the trading of the stocks. Despite these failures, Capellini has taken no responsibility for her AML violations and has consistently blamed others for her violations.[36]

Capellini's arguments in favor of mitigation are baseless. We have repeatedly held that a lack of disciplinary history or demonstrated customer harm is not mitigating for purposes of sanctions. *See Dep't of Enf't v. Patatian*, No. 2018057235801, 2023 FINRA Discip. LEXIS 13, at *76 (FINRA NAC Sept. 27, 2023) (explaining that a lack of disciplinary history is not

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33 *Id.*

34 The Hearing Panel also found that some of the activity in RB's account for which Capellini failed to detect and investigate red flags "may have been reportable." While we agree this is possible, the Guidelines direct us to consider "whether the deficiencies in the suspicious transaction monitoring allowed *reportable* activity to escape detection." *Id.* at 83 (emphasis added.) While we find that Capellini failed to detect and investigate numerous red flags of suspicious activity, we make no findings that any particular transaction was reportable. Thus, unlike the Hearing Panel, we do not apply this consideration in assessing sanctions.

35 *Id.* at 8 (Principal Consideration No. 13).

36 *Id.* at 7 (Principal Consideration No. 2).

mitigating); *Dep't of Enf't v. DiPaola*, Exch. Act Release No. 2018057274302, 2023 FINRA Discip. LEXIS 4, at *48 (FINRA NAC Mar. 23, 2023) (explaining that a lack of customer harm is not mitigating), *appeal docketed*, SEC Admin. Proceeding No. 3-21402 (May 1, 2023). Nor do we find it mitigating that First Manhattan terminated Capellini. To receive mitigation for a member's prior termination of the respondent based on the same misconduct, the respondent has the burden to show that the member's termination of the respondent has materially reduced the likelihood of future misconduct by the respondent.[37] Thus, we have held that "termination by a member [is] mitigating when a respondent has expressed true remorse and made credible assurances against future misconduct." *Makkai*, 2023 FINRA Discip. LEXIS 2 at *22. The record here does not demonstrate such remorse or credible assurance by Capellini. To the contrary, she continues to blame others for her own violations.

The most troubling applicable aggravating factor here is the substantial financial gain to Capellini resulting from her husband's trading in accounts for which she conducted deficient AML review.[38] When Capellini became First Manhattan's primary AMLCO, RB's instances of deposits and sales of low-priced securities—transactions that should have been subject to AML review—increased significantly. On Capellini's watch, however, RB's increasing activities did not receive any meaningful review despite varied and numerous red flags of suspicious activity. Capellini concedes that the more than $360,000 in proceeds RB generated from his deposits and sales of low-priced securities were used to pay the couple's household expenses, thereby benefiting herself. The Guidelines provide that when the violations at issue "result in significant ill-gotten gains," sanctions even above the upper guidelines may be appropriate. We find that the financial gain to Capellini, along with the conflicts of interest present, more than justify a sanction at the upper limit of the Guidelines. Capellini's AML violations were egregious and a bar is necessary to protect the investing public.

B. Capellini's FINRA Rule 8210 Violations

For providing false and misleading responses and an altered document in response to FINRA's investigative requests, the Hearing Panel barred Capellini from associating with any FINRA member. We agree that a bar reflects the serious nature of Capellini's misconduct and affirm.

For a failure to respond or respond truthfully to a FINRA Rule 8210 request, the Guidelines recommend a fine of $10,000 to $50,000 and provide that, absent mitigation, "a bar is

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37 *See id*. at 5 (General Principles No. 7 ("Where appropriate, Adjudicators should consider . . . previous corrective action imposed by a firm on an individual respondent based on the same conduct.")).

38 *Id.* at 8 (Principal Consideration No. 16).

standard."[39] The Guidelines further direct us to consider the importance of the information requested as viewed from FINRA's perspective.[40]

The Guidelines' recommendation that a bar is standard reflects the importance of Rule 8210 to FINRA's ability to achieve its regulatory mandate and the danger that results when members and associated persons supply false or misleading responses. As discussed above (supra part IV.C), in the absence of subpoena power, Rule 8210 is critical to FINRA's ability to conduct investigations. *See CMG Inst. Trading, LLC*, 2009 SEC LEXIS 215, at *15. The effectiveness of Rule 8210 depends on the honesty and integrity of persons associated with FINRA members who provide responses and "supplying false information to [FINRA] during an investigation . . . mislead[s] [FINRA], . . . can conceal wrongdoing," and "subvert[s] [FINRA's] ability to perform its regulatory function and protect the public interest." *Ortiz*, 2008 SEC LEXIS 2401, at *29, 32-33 (stating that the "public interest demands honesty from associated persons of [FINRA] members; anything less is unacceptable"); *see also Michael A. Rooms*, 58 S.E.C. 220, 229 (2005), *aff'd*, 444 F.3d 1208 (10th Cir. 2006) (explaining that untruthful responses "are more damaging than a refusal to respond to a request for information since they mislead [FINRA] and can conceal wrongdoing"). Accordingly, in the absence of mitigation, we have routinely barred respondents who provide false or misleading responses. *See, e.g.*, *Dep't of Enf't v. Nancy Kimball Mellon*, Complaint No. 2017052760001, 2022 FINRA Discip. LEXIS 11, at *31 (FINRA NAC Oct. 18, 2022) (imposing a bar for respondent's misrepresentations to FINRA that she did not have access to certain bank records that FINRA requested pursuant to Rule 8210), *aff'd*, Exch. Act Release No. 97623, 2023 SEC LEXIS 1440 (May 31, 2023); *Saliba*, 2022 FINRA Discip. LEXIS 12, at *31-33 (imposing a bar for providing falsified documents to FINRA).

We find numerous aggravating factors, and no mitigating factors, apply to Capellini's misconduct. The due diligence documents FINRA requested were important to FINRA's investigation of potentially violative trading in the Aleutian account because a truthful production of First Manhattan's due diligence may have raised questions about the firm's compliance with its AML obligations.[41] Capellini intentionally altered the Remaro S-1 to remove the date it was downloaded and produced documents that were not part of First Manhattan's due diligence in response to requests for such documents, thereby concealing potential AML violations and potentially lulling FINRA into inactivity by representing that First Manhattan's due diligence was more extensive than it actually was.[42] Capellini provided two misleading responses to FINRA.[43] Additionally, Capellini has not taken any responsibility for

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39 *Id.* at 93.

40 *Id.*

41 *Id.*

42 *Id.* at 7-8 (Principal Considerations Nos. 10, 13).

43 *Id.* at 7 (Principal Considerations No. 8).

her misconduct, continuing to argue that despite 40 years of experience in securities industry compliance, she did not understand the requests. Her testimony concerning the altered Remaro S-1 defies credulity given the incontrovertible documentary evidence, yet she refused to take responsibility for even this misconduct.[44]

We are most troubled by the potential for monetary gain furthered by Capellini's misleading responses.[45] By misleading FINRA about the extent of her and First Manhattan's due diligence regarding Aleutian's deposits and sales of low-priced securities, she preserved Aleutian's ability to continue to engage in this activity and generate proceeds that Capellini admits RB used to pay their joint household expenses.

Capellini argues that a bar is excessive and oppressive because she lacked any "nefarious motive" when she responded to the Rule 8210 requests and provided the altered document. For the reasons discussed more fully above (*supra* part IV.C.), we reject this argument.[46] The Hearing Panel found Capellini's testimony about the altered Remaro S-1 not credible—a determination to which we defer—and her argument that she misunderstood the requests "implausible." We agree. To the contrary, we find that Capellini acted intentionally, and that the production of the altered Remaro S-1, along with a file of responsive documents that she falsely labeled "due diligence," persuasively demonstrates that she knew her responses were misleading.

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44 *Id.* (Principal Considerations No. 2).

45 *Id.* at 8 (Principal Considerations No. 16).

46 Capellini argues that this case is analogous to *David B. Tysk*, Exch. Act Release No. 91268, 2021 SEC LEXIS 534 (Mar. 5, 2021). In *Tysk*, the Commission reversed FINRA's findings that the respondent deliberately produced a misleading document when he produced notes that he had edited without telling FINRA he had done so. *Id.* at *20-24. Capellini's reliance on *Tysk* is misplaced. In that case, the hard copy of the notes produced by the respondent stated on their face that they had been edited around the time they were produced, and the Commission found that this fact "weighs against a determination that the document was misleading about when the notes were made." *Id.* at *21. Moreover, FINRA's own expert testified that the system the respondent used to create the notes did not contain the function to show when edits were made and thus the respondent could not produce a document reflecting when edits were made. *Id.* at *21-24. Here, there was nothing on the face of the documents that revealed that they were obtained by Capellini after she received the Rule 8210 requests and had not been part of the firm's due diligence files. Indeed, Capellini removed the only information that might have raised a question about when the documents were obtained—the footer on the Remaro S-1 showing that it was printed the same day it was produced to FINRA. Thus, as discussed above, Capellini's responses were misleading because she produced documents she had obtained after-the-fact in response to requests for the firm's due diligence without disclosing to FINRA she had done so and took affirmative steps to conceal this fact.

These circumstances and the numerous other aggravating factors support the imposition of a bar. *See, e.g.*, *Trevor Michael Saliba*, Exch. Act Release No. 99940, 2024 SEC LEXIS 852, at *22 (Apr. 11, 2024) (finding that providing falsified documents to FINRA "demonstrated dishonesty and a lack of integrity that make [the respondent] unfit to participate in the securities industry and fully justif[ies] the bar"); *Mellon*, 2022 FINRA Discip. LEXIS 11, at *32 (explaining that respondent's misrepresentations to FINRA in response to investigative requests demonstrated a "repeated and troubling lack of candor with her regulator" and "establishes that a bar is the appropriate sanction"); *Rita Delaney*, 48 S.E.C. 886, 890 (1987) (affirming bar when applicant falsified firm records to conceal activities from FINRA during its investigation and stating that "[i]n a business that depends so heavily on the integrity of its participants, such behavior cannot be countenanced").

Accordingly, for Capellini's violations of FINRA Rules 8210 and 2010 for providing false and misleading responses and an altered document in response to investigative requests, we bar Capellini from association with a FINRA member in any capacity.

VI. Conclusion

Capellini violated FINRA Rules 3310 and 2010 by failing to establish and implement an AML program reasonably designed to detect and report suspicious activity in low-priced securities activity, and by failing to detect, investigate, and consider whether to report numerous red flags of suspicious activity. For these violations, Capellini is barred from associating with a FINRA member in any capacity. Capellini also violated FINRA Rules 8210 and 2010 by providing false and misleading responses and an altered document in response to FINRA investigative requests. For these violations, we impose on Capellini a second bar in all capacities.[47] We also affirm the Hearing Panel's order that Capellini pay $12,853.13 in hearing costs, and we order that she pay appeal costs in the amount of $1,997.86.

On Behalf of the National Adjudicatory Council,

Jennifer Piorko Mitchell,
Vice President and Deputy Corporate Secretary

[47] The bars will be effective immediately upon issuance of this decision.