

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOSE L. CENTENO
(CRD No. 6368188),

Respondent.

Disciplinary Proceeding
No. 2020066079903

Hearing Officer—LOM

**ORDER GRANTING IN PART
THE DEPARTMENT OF ENFORCEMENT'S MOTION
PURSUANT TO FINRA RULE 9285**

I. Introduction

In a decision issued on August 28, 2024 (“Decision”), a Hearing Panel concluded that Respondent, Jose L. Centeno, while employed in the compliance department of a FINRA member firm, violated FINRA Rule 2010 by falsifying firm records.¹ The Panel declared in its Decision that Respondent acted both unethically and dishonestly.² It imposed as sanctions a 12-month suspension from associating with any FINRA member firm in any capacity and a \$10,000 fine.³ The Decision provided that the suspension would begin with the opening of business on Monday, October 21, 2024.⁴ Respondent timely filed a notice of appeal on September 23, 2024.

Respondent is currently associated with a different FINRA member firm as a vice president and compliance officer.⁵ Under FINRA Rule 9285(e), if a respondent appeals a decision, the respondent’s current firm is notified of the appeal and is required within ten days to adopt and file a written plan of heightened supervision with FINRA’s Office of General Counsel and to serve that plan on the Department of Enforcement. Under Rule 9285(e), the plan of heightened supervision is not filed with or reviewed by the Office of Hearing Officers. The

¹ *Dep’t of Enforcement v Centeno*, No. 2020066079903, 2024 FINRA DISCIP. LEXIS 17, at *3 (OHO Aug. 28, 2024).

² *Id.* at *3, 33, 35.

³ *Id.* at *3, 47.

⁴ *Id.* at *47.

⁵ *Id.* at *5.

record does not indicate whether Respondent's current firm filed a plan of heightened supervision or what might be contained in any such plan.

On October 7, 2024, pursuant to FINRA Rule 9285, the Department of Enforcement filed a Motion for Interim Conditions and Restrictions ("Motion"). Respondent has not filed an opposition to the Motion or any other responsive pleading.

For the reasons discussed below, I grant Enforcement's Motion in part.

II. FINRA Rule 9285

FINRA Rule 9285(a)(1) provides that if a respondent appeals a disciplinary decision issued pursuant to FINRA Rule 9268 and the decision finds (as the Decision in this case did) that the respondent "violated a statute or rule provision," then Enforcement may move for an order imposing "conditions or restrictions on the activities" of the respondent "that are reasonably necessary for the purpose of preventing customer harm." Under FINRA Rule 9285(a)(1) and (a)(2), such a motion is filed with the Office of Hearing Officers within ten days after service of the notice of appeal. Enforcement's motion in this case was timely.

FINRA Rule 9285(a)(3) permits a respondent to file an opposition or other response to a motion to impose conditions or restrictions within ten days after service of the motion. An opposition "shall explain why no conditions or restrictions should be imposed or specify alternate conditions or restrictions that are sought to be imposed and explain why the conditions or restrictions are reasonably necessary for the purpose of preventing customer harm." Respondent here filed no opposition or proposal for alternate conditions or restrictions.

Notwithstanding the filing of an appeal, the Hearing Officer who participated in the underlying disciplinary proceeding has jurisdiction under Rule 9285(a)(1) to decide a motion for conditions or restrictions and is authorized by Rule 9285(a)(5) "to impose any conditions or restrictions that the Hearing Officer considers reasonably necessary for the purpose of preventing customer harm." As the Hearing Officer who participated in the underlying disciplinary proceeding, I have jurisdiction.

Under Rule 9285(b)(1), a respondent subject to a Hearing Officer's order imposing conditions and restrictions may file with the Review Subcommittee of FINRA's National Adjudicatory Council a motion to modify or remove the restrictions, and under Rule 9285(b)(6) such a review motion stays the effectiveness of the conditions and restrictions ordered by the Hearing Officer until the Review Subcommittee rules on the motion for review. If no motion for review is filed, then under Rule 9285(d) the conditions or restrictions imposed by a Hearing Officer remain in place until FINRA's final decision in the underlying disciplinary proceeding takes effect and all appeals are exhausted.⁶

⁶ FINRA also amended Rule 9556 when it adopted Rule 9285. The amendments to Rule 9556 give FINRA staff the authority to bring an expedited proceeding against a respondent who fails to comply with conditions and restrictions

FINRA Rule 9285 became effective on April 15, 2021.⁷ In Regulatory Notice 21-09, FINRA explained that Rule 9285 is intended to enhance investor protection by potentially preventing “associated persons and firms found to have violated a statute or rule from engaging in additional misconduct during the appeal process.”⁸ FINRA described the Rule as adding “an interim layer of investor protection” during that period.⁹

The Securities and Exchange Commission explained in its order approving the adoption of Rule 9285 that interim conditions and restrictions “will lead to greater oversight of disciplined Respondents’ activities during the appeal period, thereby reducing the potential risk of customer harm that may occur during this period.”¹⁰ But the SEC also cautioned in its order that under Rule 9285 a Hearing Officer’s authority is not unlimited. A Hearing Officer should “target the misconduct demonstrated in the disciplinary proceeding” and tailor the conditions or restrictions “to the specific risks posed by the Respondents during the appeal period.”¹¹ Interim conditions or restrictions “are not intended to be as restrictive as the underlying sanctions and would likely not be economically equivalent to imposing the sanctions during the appeal.”¹²

III. Discussion

A. The Decision

As explained in the Decision, Respondent was a member of his firm’s compliance department. He was responsible for, among other things, daily review of five different types of exception reports to monitor for potential misconduct such as money laundering, market manipulation, and other improper trading.¹³ Each of the exception reports identified potential violations requiring further scrutiny.¹⁴ Sometimes hundreds and even thousands of transactions were listed on a single exception report.¹⁵ Respondent understood he was responsible for checking every transaction listed.¹⁶ If Respondent saw something suspicious in an exception

imposed pursuant to Rule 9285 and create the process for the new expedited proceeding. *See* FINRA Rule 9556(a)(2).

⁷ FINRA Regulatory Notice 21-09 (Mar. 2021), <https://www.finra.org/rules-guidance/notices/21-09>.

⁸ *Id.* at 3.

⁹ *Id.*

¹⁰SR-FINRA-2020-011, Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to Address Brokers With a Significant History of Misconduct, Exchange Act Release No. 34-90635, 85 Fed. Reg. 81540, 81543–44 (Dec. 16, 2020).

¹¹ *Id.* at 81542.

¹² *Id.*

¹³ *Centeno*, 2024 FINRA DISCIP. LEXIS 17, at *8, 9–11.

¹⁴ *Id.* at *9, 11 n.41.

¹⁵ *Id.* at *19, 20, 23, 25, 40–41 & n.217.

¹⁶ *Id.* at *9, 11 & n.41, 17, 21, 22.

report, he was supposed to investigate and raise any issues to the head of trading compliance, who would further consider the matter and determine whether to recommend the filing of a suspicious activity report to the chief compliance officer.¹⁷ Respondent's firm operated in the over-the-counter securities market, which, as Respondent acknowledged, is more vulnerable to potential market abuses and improper trading than other securities markets where blue chip securities might trade.¹⁸

The Panel found that during the period from January 2019 through September 2021 (the "relevant period") Respondent falsified his review of 383 exception reports in his firm's records.¹⁹ He marked the records falsely to show that he had reviewed the exception reports for suspicious trading when he had not.²⁰ His falsification of the records left thousands of transactions that had been flagged as potential violations needing investigation unreviewed.²¹ Respondent had reason to falsify the records; he wanted to cover up his failure to timely review most of the 3,063 individual exception reports assigned to him during the relevant period.²²

The circumstantial evidence that Respondent did not review the exception reports he marked as reviewed pointed in one direction—Respondent falsely marked exception reports as reviewed when he did not review them.²³ The record showed that Respondent hastily batched and marked as reviewed numerous exception reports assigned to him long after the reports were generated. Even though many of the reports contained hundreds and even thousands of transactions, he typically spent only a few seconds on each report.²⁴

And Respondent admitted to falsifying most, if not all, of the 383 reports to show he had conducted reviews of suspicious trading when he had not.²⁵ He said he falsified some of the records to keep his job.²⁶

In mitigation, Respondent urged that his misconduct should be judged in context. He was overwhelmed by the volume of the reports and called it an impossible task to review all the

¹⁷ *Centeno*, 2024 FINRA DISCIP. LEXIS 17, at *9.

¹⁸ *Id.* at *8.

¹⁹ *Id.* at *47.

²⁰ *Id.* at *11–12.

²¹ *Id.* at *41 & n.217. He falsely marked the following exception reports: 60 wash sales reports containing 55,340 transactions; 72 marking-the-open reports containing 28,528 transactions; 53 FID4025 reports containing 1,717 transactions; 61 FID5023 reports containing 1,017 transactions; and 137 Low Volume reports containing 137 transactions. *Id.* at *13, 15, 17, 19, 20–22.

²² *Id.* at *11–12.

²³ *Id.* at *33.

²⁴ *Id.* at *2, 16–19, 23, 25–31.

²⁵ *Id.* at *19, 21, 23, 25, 27.

²⁶ *Id.* at *28.

transactions.²⁷ He also complained of a lack of adequate training, guidance, and supervision.²⁸ He confessed that he did not know what he was looking for when he marked some of the exception reports as reviewed.²⁹ Respondent did not, however, actively seek guidance or call to management's attention the difficulty he was having with reviewing the exception reports for which he was responsible.³⁰ Instead, he attempted to deal with his problem by falsifying firm records—inherently unethical and dishonest conduct—as he should have known.³¹ Overall, the Panel concluded that Centeno's efforts to shift blame for his misconduct diminished its "confidence that he fully understands the inherently unethical and dishonest nature of his misconduct and the importance of avoiding it in the future."³²

B. Enforcement's Proposed Conditions and Restrictions

Enforcement urges that the Hearing Officer enter an order as follows:

- The Order should require Respondent to complete a total of ten hours of continuing education.
 - Five hours should focus on monitoring, detecting, and reporting suspicious trading activity, and/or ensuring compliance with FINRA Rules 3110 (supervision), 3310 (Anti-Money Laundering), and 4511 (books and records).
 - The other five hours should be related to the ethical obligations of registered representatives.
 - The continuing education should be provided by a provider acceptable to Enforcement.
 - Respondent should certify in writing to Enforcement his completion of these continuing education requirements.³³
- While the appeal is pending, the Order should prohibit Respondent from performing (or supervising others in performing) any compliance reviews or

²⁷ *Centeno*, 2024 FINRA DISCIP. LEXIS 17, at *29, 36.

²⁸ *Id.* at *3, 21, 36, 42.

²⁹ *Id.* *17, 19, 21, 29.

³⁰ *Id.* at *37.

³¹ *Id.* at *35–36.

³² *Id.* at *42–43.

³³ Motion 5.

related compliance testing of exception reports until he completes and certifies to Enforcement the completion of the continuing education set forth above.³⁴

- Even after Respondent certifies to Enforcement his completion of the required continuing education and is no longer prohibited from performing (or supervising others in performing) the compliance activities described above, *unless* the written heightened supervision plan that Respondent's current FINRA member firm submits under Rule 9285(e) (or any other FINRA member firm with which he associates while the appeal of this matter is pending) requires a designated principal to conduct the review and create the record specifically set forth here, the Order should require a designated principal to take the following steps:
 - Review a sample of Respondent's exception report review and supervision on a weekly basis.
 - Create, sign, and maintain a written record of their review of Respondent's performance.³⁵
- The Order should preclude Respondent from performing any reviews and testing surveillance or similar activities in any area in which he has not been adequately trained or does not understand the standards he is expected to apply.³⁶

C. Determination to Grant Enforcement's Motion in Part

1. Required Continuing Education

At the hearing, Respondent complained about his lack of understanding and a lack of training and guidance by his firm about how to identify suspicious transactions that might warrant further scrutiny and reporting. He blamed his misconduct—the falsification of the firm's records of surveillance review—on his confusion about how to perform the requisite surveillance.

The proposed requirement for Respondent to complete five hours of continuing education focused on monitoring, detecting, and reporting suspicious trading activities is designed to reduce Respondent's confusion, which he claimed caused him to engage in the misconduct of falsifying firm records. By reducing Respondent's confusion, this continuing education can diminish any incentive to conceal difficulties in performing surveillance duties by falsifying records. The proposed requirement for Respondent to take five hours continuing education focused on the ethical responsibilities of registered representatives is also related to the

³⁴ *Id.* at 6.

³⁵ *Id.* at 7.

³⁶ *Id.*

misconduct the Panel found. It will enable him to better understand his ethical obligations and the inherently unethical nature of his misconduct.

Consistent with FINRA Rule 9285, I find it appropriate to require Respondent to take the continuing education outlined in Enforcement's Motion. That continuing education is focused on activities central to Respondent's misconduct. Requiring continuing education is reasonably necessary to prevent customer harm and narrowly targeted to the misconduct found in the underlying disciplinary proceeding.³⁷

2. Restricted Surveillance Activities Until Continuing Education Is Certified Complete

Prohibiting Respondent from performing (or supervising others who perform) surveillance activities unless and until he certifies completion of the required ten hours of continuing education is also reasonably necessary to prevent customer harm and narrowly targeted at the underlying misconduct.

3. Review of Respondent's Surveillance Activities

Even after Respondent certifies his completion of the continuing education requirement and is no longer prohibited from performing surveillance activities, Enforcement proposes that the Order should require a designated principal at his firm to (i) review a sample of Centeno's Exception Report Review and Supervision on a weekly basis and (ii) create, sign, and maintain a written record of that review, *unless* Respondent's firm has submitted pursuant to FINRA Rule 9285(e) a written heightened supervision plan that requires a designated principal to take those actions. Requiring such review would enhance customer protection by making it less likely that Respondent would again falsify surveillance records and more likely that any such misconduct would be detected if it did happen. It also would encourage Respondent to clarify any confusion or difficulty he has in performing his surveillance duties rather than resort to falsifying records.

The requirement that a designated principal review samples of Respondent's surveillance work and create a record of that review is reasonably necessary to prevent customer harm and narrowly targeted to the misconduct found in the underlying disciplinary proceeding.³⁸

4. Preclusion from Activities if Respondent is Not Adequately Trained or Does Not Understand His Duties

Enforcement requests that Respondent be limited in performing (or supervising others in the performance of) surveillance or "similar" activities "in an area in which he has not been adequately trained or does not understand the standards he is expected to apply." The suggested

³⁷ Cf. OHO Order 24-12 (2021070337501) (May 20, 2024) at 4, https://www.finra.org/sites/default/files/2024-06/OHO_Order_24-12_Venturino_2021070337501.pdf; OHO Order 23-20 (2019061528001) (June 12, 2023) at 11, 13, https://www.finra.org/sites/default/files/2023-09/ofo_order_23-20_2019061528001_spartan.pdf.

³⁸ Cf. OHO Order 24-12 (2021070337501) at 3-4; OHO Order 23-20 (2019061528001) at 10.

restriction is too vague. I find that the other conditions and restrictions imposed by this Order are more tailored to the misconduct and I will rely on them to protect the investing public. I deny this request.

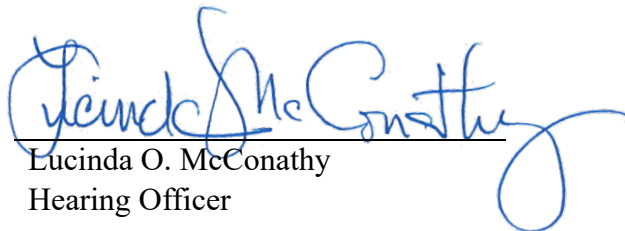
IV. Order

For the reasons discussed above, I **GRANT** Enforcement's Motion in part and impose the following conditions and restrictions, which shall be in effect until FINRA's final decision takes effect and all appeals are exhausted:

- Respondent, Jose L. Centeno, shall complete a total of ten hours of continuing education.
 - Five hours should focus on monitoring, detecting, and reporting suspicious trading activity, and/or ensuring compliance with FINRA Rules 3110 (supervision), 3310 (Anti-Money Laundering), and 4511 (books and records).
 - Five hours should focus on the ethical obligations of registered representatives.
 - The continuing education should be provided by a provider acceptable to Enforcement.
 - Respondent should certify in writing to Enforcement his completion of these continuing education requirements.
- Respondent is prohibited from performing (or supervising others in performing) any compliance reviews or related compliance testing of exception reports until Respondent completes and certifies to Enforcement the completion of the continuing education set forth above.
- ***Unless*** Respondent's current FINRA member firm submits a written heightened supervision plan under Rule 9285(e) (or any other FINRA member firm with which he associates while the appeal of this matter is pending does so) that requires a designated principal to do the following, this Order requires a designated firm principal to these things:
 - Review a sample of Respondent's exception report review and supervision on a weekly basis.
 - Create, sign, and maintain a written record of their review of Respondent's performance.

This Order is in effect from the date that it is issued until FINRA's final decision in the underlying disciplinary proceeding takes effect. If the parties have any questions about this Order, they should contact Case Administrator Kate Shaffer, at 202-728-8113 or kate.shaffer@finra.org.

SO ORDERED.


Lucinda O. McConathy
Hearing Officer

Dated: October 24, 2024

Copies to:

Jose L. Centeno (via email, overnight courier, and first-class mail)
Erin K. Preston, CCO, Wedbush Securities, Inc. (via overnight courier)
Melissa DePetris, Esq. (via email)
Robert Miller, Esq. (via email)
John Luburic, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)
Alan Lawhead, Esq. (via email)
Michael Garawski, Esq. (via email)
Paxton Dunn, FINRA Member Supervision (via email)
rmstandards@finra.org
regtasksgroup@finra.org