FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. SOUTHEAST INVESTMENTS, N.C., INC. (CRD No. 43035), and FRANK HARMON BLACK (CRD No. 22451), Respondents.	Disciplinary Proceeding No. 2014039285401 Hearing Officer—MJD **EXTENDED HEARING PANEL DECISION** March 3, 2017

Respondents Southeast Investments, N.C., Inc., and Frank Harmon Black testified falsely during an on-the-record interview and gave FINRA fabricated documents relating to Southeast's branch office inspections.

Respondents failed to ensure that Southeast retained business-related emails.

Respondents failed to establish and maintain a supervisory system and failed to establish, maintain, and enforce written supervisory procedures reasonably designed to achieve compliance with applicable securities laws, regulations, and rules to ensure that Southeast conducted branch office inspections and retained business-related emails.

For these violations, Southeast is fined a total of $243,000 and Black is barred from associating with any FINRA member firm in any capacity.

Respondents are also ordered to pay hearing costs.

Appearances

For the Complainant: Sean W. Firley, Esq., and Michael P. Manly, Esq., Department of Enforcement, Financial Industry Regulatory Authority.

For the Respondents: Edward T. Hinson, Jr., Esq., James, McElroy & Diehl, P.A.

I. Introduction

FINRA's Department of Enforcement alleges that Respondent Southeast Investments, N.C., Inc. ("Southeast" or the "Firm"), acting through Respondent Frank Harmon Black ("Black"), and Black violated FINRA Rules 8210, 4511, and 2010 by providing false documents to FINRA and giving false testimony in an on-the-record interview during an investigation into whether the Firm had conducted required inspections of five branch offices. One of the false documents was a list of 43 branch inspections Black claimed he performed, including the dates he purportedly conducted the inspections. Respondents also provided five false branch office inspection checklists that Black claimed he completed during the inspections.

Enforcement also alleges that for more than five years Respondents failed to ensure that Southeast preserved all business-related emails by permitting registered representatives to use private email providers. Under an "honor system" set up by Respondents, registered representatives were obligated to send copies of their emails to the Firm to review and retain. For this conduct, Southeast is charged with willfully violating Section 17(a) of the Securities Exchange Act of 1934 and Exchange Act Rule 17a-4. Southeast and Black are also charged with violating NASD Rule 3110 and FINRA Rules 4511 and 2010.

Finally, Enforcement charges Respondents with deficient supervision by failing to establish and maintain a supervisory system to ensure that five branch offices were inspected, in violation of NASD Rules 3010(a) and (c). Under NASD Rule 3010(c)(1)(B), the five non-registered branch offices had to be inspected at least every three years. Enforcement also alleges that Respondents failed to establish and maintain an adequate supervisory system and to establish, maintain, and enforce reasonable written supervisory procedures to ensure the Firm retained business-related emails. For this misconduct, Respondents are charged with violating NASD Rules 3010(a) and (b), and FINRA Rules 3110(a) and (b) and 2010.

Respondents deny these allegations.[1] Respondents contend that they performed all required branch office inspections and the Firm's system and policy governing retention of business emails was suitable for the Firm's business model.

An Extended Hearing Panel held a four-day hearing September 12–15, 2016, in Charlotte, North Carolina.[2] After carefully considering the evidence presented at the hearing and

[1] Respondents filed an Answer and an Amended Answer, together with a request for a hearing. The Amended Answer provided answers to two paragraphs of the Complaint that Respondents had inadvertently omitted and corrected paragraph numbering. The Amended Answer also corrected a date alleged in the Complaint that Respondents had adopted in their Answer.

[2] Ten witnesses testified at the hearing. Enforcement called Black; three FINRA examiners (Kelly Edwards, Pamela Arnold, and Matt Dale); and four registered representatives whose branch offices were among the five branches that Respondents allegedly failed to inspect (William Thomas Minor, Scott Rivard, Rocci Ravella, and Anthony Marable). In their case, Respondents called Black; a Firm principal, David Plexico, Jr.; and Southeast's compliance director, Jeannette Roberts.

the parties' arguments, we find that Respondents committed each of the violations alleged in the Complaint.

We impose the following sanctions:

- For committing the violations in each of the five causes of action, Southeast is fined in aggregate $243,000, $170,000 of which is assessed jointly and severally with Black.

- For fabricating documents and giving false investigative testimony that Black conducted inspections of five non-registered branches, as alleged in causes one and two, Black is barred in all capacities from associating with any FINRA member firm.

The Hearing Panel finds that Black's misconduct warrants the following additional sanctions, but in light of the bar for providing FINRA with false documents and testimony, we do not impose them.

- A $50,000 fine, assessed jointly and severally with Southeast, and a one-year suspension from associating with any FINRA member firm in any capacity for failing to ensure that Southeast retained email communications.

- A $120,000 fine, assessed jointly and severally with Southeast, and a bar in a principal capacity from associating with any FINRA member firm for supervision violations.

II. Findings of Fact

A. The Respondents and Jurisdiction

1. Southeast Investments, N.C., Inc.

Southeast has been a FINRA member since 1997. The Firm engages in a general securities business from its main office in Charlotte, North Carolina. In 2015, it had 33 registered branch offices and approximately 133 registered representatives. Southeast operates under an independent contractor business model, with registered representatives located throughout the United States and supervision centered in the main office. Many representatives maintain branch offices at their residences.[3] The Firm is licensed to conduct business in corporate debt and equities, U.S. Government securities, mutual funds, municipal bonds, options, and variable life insurance and annuities, among other securities instruments.[4] Forty percent of the Firm's revenues are from sales of variable annuities and another 40 percent comes from the sale of

[3] Hearing Transcript ("Tr. _") 243-44 (Arnold); Tr. 887 (Black); Amended Answer ("Amended Ans.") ¶ 55.

[4] Complaint ("Compl.") ¶ 4; Amended Ans. ¶ 4; Complainant's Exhibit ("CX-_") 7, at 4.

mutual funds. Most of the remaining 20 percent of Southeast's revenues is from the sale of real estate investment trusts.[5]

2. Frank Harmon Black

Black entered the securities industry in 1971. He formed Southeast in 1997 and has been associated with the Firm since then. Black is Southeast's President, Chief Compliance Officer, Chief Financial Officer, Anti-Money Laundering Compliance Officer, and Financial Operations Principal.[6] He is also registered with Southeast as a Municipal Securities Representative, Municipal Securities Principal, Registered Options Principal, General Securities Sales Supervisor, and Registered Investment Advisor.[7] Black was the Firm's sole owner until about five years ago when he transferred five percent ownership of Southeast to David Plexico, Jr. ("Plexico"), another Firm principal.[8]

Black is responsible for maintaining and updating Southeast's written supervisory procedures. He supervises all of Southeast's registered representatives and branch offices, including ensuring the Firm's obligation to inspect branch offices and retain emails.[9] At the hearing, Black stated he was "responsible for everything that happens at [Southeast]."[10]

3. Jurisdiction

FINRA has jurisdiction over Southeast under Article IV of FINRA's By-Laws because it currently is a FINRA member and because the Complaint charges the Firm with misconduct while it was a FINRA member. FINRA has jurisdiction over Black under Article V of FINRA's By-Laws because Black is currently registered with FINRA through a member firm and the alleged misconduct occurred while he was registered with FINRA.

B. Origin of This Disciplinary Proceeding

This matter originated from two FINRA examinations: a 2012 cycle examination of the Firm, and a statutory disqualification examination FINRA staff opened in January 2012.

1. The 2012 Cycle Examination

In 2011, the U.S. Securities and Exchange Commission's ("SEC") conducted an examination of Southeast and identified deficiencies in the Firm's conduct of branch office

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[5] Tr. 973 (Black).

[6] Tr. 407-09 (Black).

[7] Compl. ¶ 5; Amended Ans. ¶ 5; CX-1, at 4, 6.

[8] Tr. 943 (Black).

[9] Tr. 409-10 (Black).

[10] Tr. 410 (Black).

inspections and its retention of emails.[11] FINRA's 2012 cycle examination, covering the period from March 2010 to September 2012, addressed findings from the SEC exam and other potential violations.[12] FINRA staff conducted the on-site portion of the examination at Southeast's main office in Charlotte on September 17–28, 2012.

2. The Statutory Disqualification Examination

The second review that led to the filing of the Complaint was a statutory disqualification examination FINRA staff formally opened in January 2012.[13] On October 8–9, 2012, FINRA conducted the on-site portion of the exam at the non-registered branch office in Dayton, Ohio, of Charles Graham, a former Southeast registered representative. Graham's statutory disqualification exam resulted from a Membership Continuance Application Southeast had submitted to FINRA on his behalf.[14]

Two FINRA examiners conducted the unannounced on-site exam of Graham's branch to determine whether Southeast was complying with a plan of heightened supervision FINRA had imposed. The plan required that Plexico, a Firm principal, spend two days each month at Graham's branch office to ensure he followed Firm procedures. FINRA required that Plexico "discuss business conducted since the previous meeting" and that Plexico provide to Black a memo "detailing items covered" at the meeting. FINRA also obligated Plexico to "keep a log, detailing when the meetings occurred, and ... keep the log segregated for ease of review during any statutory disqualification examination."[15]

During the on-site examination, examiner Kelly Edwards asked Graham if Plexico had visited his office. According to Edwards, Graham "was very certain [that Plexico] had not visited his location."[16] Twice while the examiners were there Edwards asked Graham to confirm that Plexico had not visited; each time Graham said Plexico had not. Edwards testified that she "wanted to make sure that what [Graham] was saying was accurate" because failing to comply with the plan of heightened supervision "stood out as a possible finding" of the exam.[17] Edwards

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[11] The SEC discussed preliminary findings from its 2011 exam with the Firm in November 2011. It memorialized its findings in a March 19, 2012 letter to Respondents. Tr. 268 (Arnold); CX-27, at 5-6; Respondents' Exhibit ("RX-_") 114, at 5-6.

[12] For example, the staff also reviewed the Firm's sales of mutual funds and variable annuities. *See* Tr. 244, 267-68, 299, 317 (Arnold).

[13] Tr. 180 (Edwards).

[14] CX-9. On September 1, 2011, FINRA approved Graham's association with the Firm. CX-10. On December 12, 2011, the SEC approved Graham's continuing membership application. RX-106, at 7. Graham's statutory disqualification arose from a September 2000 Indiana Insurance Commission Final Order finding that Graham failed to effect a transfer of coverage from a client's prior insurance carrier, which resulted in the denial of insurance coverage and out-of-pocket losses to the client. CX-10, at 1; RX-106, at 1.

[15] CX-10, at 3.

[16] Tr. 184 (Edwards).

[17] Tr. 185 (Edwards).

further testified that during the second day of the exam Graham received a telephone call from Black, and following their 15-minute conversation, Graham told the examiners he wanted to correct what he had said the day before. Graham then told the examiners that Plexico had in fact visited his office for two days each month for the past year.[18] Graham told the examiners he forgot Plexico had visited because he was old and forgetful.[19] The change in Graham's story—together with the SEC's findings of deficient inspections—aroused the staff's suspicions that Respondents had not conducted other required branch office inspections.[20]

C. Respondents Did Not Conduct Five Branch Inspections

1. Black's Records Regarding Branch Office Inspections Are Unreliable

In September 2012, during the on-site portion of the 2012 cycle examination, FINRA staff asked Black for records documenting Southeast's branch office inspections. Black produced a three-page document (the "Inspections Calendar") listing 43 branch offices Black claimed he inspected between March 2010 and August 2012.[21] The Inspections Calendar provided the date by which a branch inspection was to be completed and the date Black claimed he performed the branch inspection. Black told the staff during the on-site examination, and testified at the hearing,[22] that he maintained the document in Microsoft Word format on his computer and updated it as he completed the inspections. Black testified that he personally performed the inspections by driving to each office except registered representative Damon Vickers' branch in Seattle, Washington.[23]

The staff found anomalies that undercut Black's credibility and the reliability of the documents he provided to evidence his purported branch office inspections. The Inspections Calendar showed that Black was in Augusta, Georgia, on March 22, 2010, to inspect the office of Carlton Norwood. At the hearing and during his investigative testimony, Black testified that he

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[18] Tr. 186 (Edwards). Edwards testified that the staff believed it was Black who called because when Graham answered the phone he said, "Hi, Frank." Graham had called Black at approximately 8:00 a.m. on the first day of the on-site to tell him that FINRA staff was visiting his office. Tr. 855, 895 (Black).

[19] Tr. 194 (Edwards).

[20] Graham did not testify at the hearing. In December 2012, the staff sent Graham a written request pursuant to FINRA Rule 8210 that he provide testimony at an on-the-record interview in January 2013. Graham resigned from Southeast on December 27, 2012, shortly after receiving the notice asking him to appear to testify. RX-92; RX-99, at 1-6; Tr. 872-73 (Black). Graham told the staff he would not appear. FINRA barred him for failing to appear for the interview. Tr. 188 (Edwards).

[21] CX-11; Tr. 246-47, 312 (Arnold); Compl. ¶ 10; Amended Ans. ¶ 10. Respondents called this document the "Office Inspections Checklist by Due Date." The Inspections Calendar was an exhibit during Black's April 2014 on-the-record interview. CX-25, at 11-13.

[22] Tr. 720 (Black). Black also testified at his on-the-record interview that he created the Inspections Calendar and he entered the dates purporting to represent when he inspected each branch. CX-25, at 7.

[23] Tr. 314 (Arnold); Tr. 457-58, 461, 718 (Black). Black took a flight to Seattle to inspect Vickers' branch office. Tr. 254 (Arnold); Tr. 437 (Black).

inspected Norwood's office on March 22, 2010. However, FINRA staff testified that Black was present during FINRA's 2010 cycle examination in Charlotte that day.[24]

According to the Inspections Calendar, Black inspected two offices on June 23, 2010. One branch office, belonging to Bill Jansen, was in Middletown, Ohio, about 500 miles from Charlotte. The other branch, belonging to Brian Yacks, was in New Baltimore, Michigan, about 260 miles from Middletown, Ohio.[25]

Additional evidence reflects that Black could not have inspected the other offices as he claimed to have done. According to the Inspections Calendar, Black drove about 500 miles to Leetonia, Ohio, to conduct an inspection of Rocci Ravella's branch on Friday, October 1, 2010. Black claimed two days later, on Sunday, October 3, he inspected Ronnie Franks' branch office in Shelby, North Carolina, which is about 50 miles west of Black's home near Charlotte.[26] According to the Inspections Calendar, Black then drove about 460 miles from Charlotte back to Ohio to inspect Roger Duplechian's branch in Kettering on Monday, October 4.[27] To accomplish this, Black would have had to drive about 2,000 miles over four or five days. Black insisted he performed these three inspections on the dates indicated in the Inspections Calendar. At the hearing, Black was asked if driving to Ohio, returning to North Carolina to inspect a branch in Shelby, then going back north to Ohio a day or two later for another branch inspection made sense. Black answered, "It makes sense to me."[28]

Black claimed he drove long distances to conduct branch inspections. Registered representative Robert Bruckner's branch was in Grants Pass, Oregon, about 2,800 miles from Charlotte. According to the Inspections Calendar, Black performed an inspection of that office on September 3, 2010. Jeff Kenyon's branch office is located in Cameron Park, California, about 2,600 miles from Charlotte. Black supposedly inspected it on August 20, 2012.[29]

Black testified that he drove to Oregon and California. He explained that "typically, I will drive anywhere from 17 to 22, 24 hours and stop ... if I stop at all, in terms of lodging, it's basically the cheapest hotel I can find. I will either sleep in the car or pull into a cheap hotel, sleep a couple of hours and get back on the road."[30] Black said, "I love to drive cars," and "I've

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[24] Tr. 254-55 (Arnold); Tr. 422-25 (Black); CX-25, at 9, 11, 32-39.

[25] Tr. 255-56 (Arnold); CX-25, at 9, 11, 40-48, 49-56. Plexico testified that he accompanied Black to inspect Yacks' branch in Michigan but did not say they also went to Jansen's branch in Ohio the same day. Tr. 674 (Plexico).

[26] CX-11, at 3; Tr. 259-60 (Arnold). Arnold testified that during a telephone interview Franks told her that neither Black nor anyone else from Southeast had been to his branch to conduct an exam. Tr. 262 (Arnold). FINRA staff followed up with Franks in writing to confirm his oral statements. Franks did not respond. According to Arnold, the staff did not pursue the matter with Franks because he was no longer under FINRA's jurisdiction. Tr. 263 (Arnold).

[27] CX-11, at 3; Tr. 260 (Arnold).

[28] Tr. 444 (Black).

[29] CX-11 at 1-2; Tr. 258-59 (Arnold).

[30] Tr. 435 (Black).

been in a car for 22 hours straight without stopping. My day will start at 2:00 in the morning and I will drive until I can't drive anymore, pull over, and get up and drive a little more."[31]

FINRA staff asked Respondents, pursuant to Rule 8210, to provide documents evidencing that the 43 branch inspections referenced in the Inspections Calendar were completed.[32] Respondents produced copies of branch inspection checklists ("Inspection Checklist") for branches Black claimed he inspected.[33] Respondents also produced 29 vouchers for reimbursement of mileage for the period March 2010 to June 2012.[34] Black was reimbursed a total of $38,044.74 for mileage during this period and another $1,139.21 for meals. He did not seek reimbursement for lodging or other incidental expenses for his purported travel.[35] Black testified that the vouchers represented mileage reimbursement for branch inspections, but none of the 29 vouchers identifies whose branches he supposedly inspected or where Black drove. Nor did Black explain at the hearing which branch inspections the vouchers supposedly represented.[36]

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[31] Tr. 436 (Black). *See also* Tr. 457-60 (Black). Black disputed Enforcement's claim that he could not have inspected branches belonging to Mike Webber in Ohio and Sid Harper in Texas on consecutive days—December 9 and 10, 2010—as indicated on the Inspections Calendar. CX-11, at 3; Tr. 261-62 (Edwards). According to Black, the Inspections Calendar contains a typo; he inspected Webber's branch in Ohio on December 19, not December 9, 2010, as reflected in the Inspection Checklist (see note 33 below) for Webber. Tr. 446 (Black); CX-25, at 83. Regardless of the date Black claims he conducted Webber's inspection in Texas, the Panel does not find it credible that he drove to all the branches he claimed.

[32] Tr. 248 (Arnold); CX-12, at 2.

[33] Tr. 250 (Arnold); CX-13. The Inspections Checklists are entitled "Southeast Investments, N.C., Inc. Internal Review Files and Forms Checklists." According to the eight-page Inspection Checklist, Black was required to review branch supervisory structure, books and records, communications with public, and customer accounts and question the registered representatives about their familiarity and compliance with various FINRA rules. FINRA questioned Black about the Inspection Checklists during his on-the-record interview in April 2014. *See* CX-25, at 14-97; RX-1; RX-2; RX-3; RX-4; RX-5.

[34] RX-38.

[35] Black was reimbursed $.50, $.51, or $.55 per mile for 2010, 2011, and 2012, respectively. Using a reimbursement rate of $.55 per mile, Black would have had to drive 69,172 miles from March 2010 to June 2012.

[36] Tr. 785 (Black); RX-38. The vouchers are in Black's handwriting and are barely legible. Black signed each one. The vouchers state that the mileage expenses are to be charged to "travel." Where the form asks "purpose of expenditure," Black wrote "travel" or, for example, "travel July," or "travel Jan-Feb." RX-38 at 2, 11, 22. Where the expense voucher asks "date and place of expenditure," Black answered "travel" or provided the month, or months, covered for which he sought reimbursement. The vouchers also provide the check number used to reimburse Black. Nowhere do the vouchers identify where Black supposedly traveled.

Given the other reliable record evidence in this case, the Panel finds that the mileage expense vouchers do not support Black's claim that he drove to each of the branches to conduct an inspection.[37]

Respondents did not produce credit card or bank statements, telephone and cellphone records, emails, or copies of expense receipts that could have supported Black's contention that he drove to and inspected 42 of the 43 branches.

2. The Evidence from Five Former Brokers that Respondents Did Not Conduct Inspections

At the time of the investigation, nine branch offices Black said he personally inspected between 2010 and 2012 belonged to brokers who were formerly registered with Southeast. The staff contacted six of those brokers who were no longer registered with the Firm, four of whom testified at the hearing that neither Black nor anyone else from Southeast ever conducted an inspection of their branch offices. A fifth former broker submitted a written response to a Rule 8210 request for information in which he stated that Black had not visited his office. After completing its investigation, Enforcement charged Respondents with providing false documents and testimony regarding the inspections of those five former brokers' branch offices.[38]

The five non-registered branches belonged to former registered representatives William Thomas Minor, Scott Rivard, Rocci Ravella, Anthony Marable, and Joe D. McCall, Jr. With the exception of McCall, all are currently associated with other FINRA member firms. Minor, Rivard, Ravella, and Marable testified at the hearing on Enforcement's behalf. Black claimed that each of them falsely testified at the hearing because they carried a grudge or some ill will against him as a result of being discharged by Southeast. Black disputed their testimony and insisted he had conducted the branch inspections.

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[37] The Panel notes that the United States tax authorities sanctioned Black for similar conduct involving unsubstantiated expense deductions. Black was the subject of an Internal Revenue Service ("IRS") investigation that resulted in a December 2007 finding by the United States Tax Court that, among other things, he had "grossly overstated" travel expense deductions, including mileage deductions and other disallowed expenses in his family's 1991 and 1992 tax returns. The court accepted an IRS agent's calculations that the distances Black claimed he drove were not credible. Black claimed he drove 156,669 miles in 1991 and 181,692 miles in 1992, which averages 429 and 498 miles per day, respectively. At these rates, driving 60 miles an hour, Black would have had to drive between seven and eight hours per day, seven days a week, not including time spent stopping for gas and meals, or meeting clients, the IRS reasoned. CX-36, at 32-33. The Tax Court found that Black's travel deductions were "indicative of Mr. Black's fraudulent intent to avoid taxes." CX-36, at 33.

[38] Tr. 263 (Arnold). According to the staff's hearing testimony, even though there was evidence Respondents failed to perform many other branch inspections, FINRA focused on Respondents' inspections of formerly registered Southeast brokers, rather than currently registered brokers, in part because they did not want to "disrupt Mr. Black's business." Tr. 264 (Arnold). *See also* Enforcement's Pre-Hearing Brief, at 8. FINRA no longer had jurisdiction over four of the nine brokers who were formerly registered with Southeast because they were last registered with a FINRA member firm more than two years earlier.

The Panel evaluated the sworn testimony and the demeanor of the four former Southeast representatives, including their prior written responses to requests for information they provided to FINRA pursuant to Rule 8210 and other record evidence. The Panel also considered Black's sworn hearing and investigative testimony and documentary evidence the parties presented at the hearing. The Panel finds that the four former Southeast representatives testified truthfully and were credible on the key subject matter of their testimony: that Respondents did not in fact perform the branch inspections they claim to have conducted. We also find that Black's hearing and investigative testimony was not credible. We discuss each of the registered representatives' testimony below.

a. William Thomas Minor III

William Thomas Minor III first joined the securities industry in 1971. He was associated with Southeast as a General Securities Representative from 2004 to 2005 and again from September 2008 to January 2012. Minor has been associated with another member firm since leaving Southeast in 2012.

While registered with Southeast, Minor had approximately 85 brokerage clients. He was also an insurance agent selling products of various insurance companies and held designations as a chartered life insurance underwriter and chartered financial consultant.[39] He earned half of his income from insurance business and half from the sales of securities, most of which involved mutual funds.[40] Minor's branch office was located in a cottage behind his residence, in Charlotte, less than two miles from Southeast's main office. No one else worked at Minor's office.[41]

The Inspections Calendar and the Inspection Checklist for Minor reflect that Black inspected Minor's branch on August 11, 2011.[42] As part of the investigation, FINRA sent Minor a request for information pursuant to Rule 8210, asking whether Respondents had ever conducted an inspection or audit of his branch office. Minor responded unequivocally that Black had not visited his office and that neither the Firm nor Black had ever performed an on-site review or audit of his branch.[43] At the hearing, Minor confirmed that no one from Southeast ever conducted a review of his branch office.[44]

Minor also explained his two departures from Southeast in 2005 and 2012. In October 2005, he left over a dispute with Black concerning Firm oversight of contracts for equity-indexed

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[39] Tr. 63 (Minor).

[40] Tr. 65, 79-80 (Minor); RX-20.

[41] CX-4; RX-35.

[42] CX-11, at 2; CX-25, at 12, 74-75; RX-4.

[43] CX-18; CX-19. Minor wrote, "No, [Black] did not visit" his office and, "No such audit was ever performed" by Black or anyone else from the Firm. CX-19. At the hearing, Minor testified that Black gave him a ride home once, but Black did not get out of his car. Tr. 49-50 (Minor).

[44] Tr. 49, 58 (Minor).

annuities. Minor contested the Firm's claim that it was obligated to supervise Minor's sales and accordingly entitled to a portion of commissions on the sales of the products.[45]

Minor testified that he left the Firm the second time in January 2012 after Black unilaterally reduced his commission pay out rate from 80 percent to 75 percent. When confronted by Minor, Black referred to a Firm commission grid and told Minor that he reduced his pay out because his production had fallen. Minor claimed he was unaware of a commission grid and told Black he was entitled to 80 percent payout regardless of his production levels. Minor and Black argued over the commissions, which soon thereafter led to Black ending Minor's registration with Southeast.[46] Minor filed a breach of contract action seeking $2,894 in unpaid commissions in a local small-claims court, which was dismissed on jurisdictional grounds.[47] Minor acknowledged at the hearing that he did "not much" like Black and felt he was "unfairly treated" by him.[48] Minor testified that his disputes with Black did not affect his testimony.[49]

Black disputed Minor's testimony. Black testified that he had in fact gone to Minor's branch office at his residence and performed an inspection.[50] He believes Minor gave false testimony because he had "ill feelings" toward him and he and Minor parted "on less than cordial terms."[51] Black said he had no ill feelings towards Minor, that he hired him back after he left the Firm the first time, and they never had a confrontation aside from the two occasions that led to Minor's departure from Southeast.[52]

b. Scott Rivard

Scott Rivard was first associated with a FINRA member firm in 1983. From 2007 to June 2012, he was associated with Southeast as a General Securities Representative, Investment Company and Variable Contracts Products Representative, and Direct Participation Programs Representative. Rivard's primary business was selling qualified retirement plans, including 401(k) plans.[53] Rivard is currently associated with another FINRA member firm.[54] When he was registered with Southeast, Rivard maintained a branch office in Pittsford, New York, a suburb of

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[45] Tr. 51-52, 79-80 (Minor).

[46] RX-21. *See also* RX-20; RX-23; RX-24.

[47] RX-22.

[48] Tr. 70, 78 (Minor).

[49] Tr. 58 (Minor).

[50] Tr. 747 (Black).

[51] Tr. 752-53, 960 (Black).

[52] Tr. 960 (Black).

[53] Tr. 85, 97, 115 (Rivard).

[54] CX-6, at 1, 4-5, 8; Tr. 86, 100 (Rivard).

Rochester. He was the only person who worked at the office. Rivard estimated that Pittsford is an 11-hour drive from Charlotte.[55]

The Inspections Calendar and Inspection Checklist for Rivard represent that Black inspected Rivard's branch on May 11, 2011.[56] In his written response to a FINRA Rule 8210 request for information, Rivard stated that Black never visited his branch office and no one from Southeast ever conducted an on-site review or audit of his branch office.[57] At the hearing, Rivard reaffirmed what he told FINRA in writing.[58]

Like Minor, Rivard left Southeast after a dispute with Black over commission payouts. Rivard had received an 85 percent payout of the commissions he earned until sometime in early 2012, when Black reduced the payout to 80 percent without prior notice. Black cited Rivard's lower production and the Firm's commission grid as the bases for reducing his compensation.[59] Rivard then gave Southeast notice that he would leave the Firm in June 2012. As a result of his anticipated departure, Black refused to pay Rivard for commissions earned in April and May because he was no longer with the Firm when the commissions were owed, according to Rivard. Rivard then filed an arbitration claim against Respondents for the unpaid commissions, which he won.[60]

Rivard testified that his hearing testimony was truthful notwithstanding the dispute he had with Respondents.[61]

During questioning by his counsel, Black testified that he had driven to New York to conduct an inspection of Rivard's office.[62] He testified that he filled out the Inspection Checklist while at Rivard's office. Black acknowledged the two had a disagreement about commission payments but said he could not "recall one angry word between us. Not one, but there were certainly some ill feelings on his part."[63]

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[55] Pittsford is over 700 miles from Charlotte by car. RX-34, at 1; Tr. 102 (Rivard). Rivard's daughter moved to Charlotte in 2006, before he registered with Southeast. Rivard bought a condominium in Charlotte in 2008 and spent half the year there, so he frequently worked out of Southeast's Charlotte office. Tr. 86, 94-95, 98, 102, 113-14 (Rivard).

[56] CX-11, at 2; CX-25, at 12, 14-21; RX-3.

[57] CX-22; CX-23.

[58] Tr. 88, 93 (Rivard).

[59] Tr. 90-91 (Rivard).

[60] Tr. 91-93, 111-12 (Rivard); RX-15; RX-16.

[61] Tr. 93 (Rivard).

[62] Tr. 742 (Black). About inspecting Rivard's office, Black testified: "I get in the car, I drive to New York, I do an office inspection and I get back in the car, come back to Charlotte." Tr. 742 (Black).

[63] Tr. 961 (Black).

c. Rocci Ravella

Rocci Ravella entered the securities industry in 1991. He was registered with Southeast from 2007 to October 2011 as a General Securities Representative and Investment Company and Variable Contracts Products Representative. While registered with Southeast, Ravella was also an insurance agent. His business involved the sales of retirement plans, fixed and variable annuities, mutual funds, and life insurance.[64] Ravella maintained a branch office at his residence in Leetonia, Ohio, which Ravella estimated was an 11-hour drive from Charlotte. No one else worked at his office. Ravella is currently associated with another FINRA member firm.[65]

According to the Inspections Calendar and the Inspection Checklist for Ravella, Black inspected Ravella's branch on October 1, 2010.[66] In a letter responding to a FINRA Rule 8210 request for information, Ravella stated that Black never visited him and no one from the Firm, including Black, had ever performed an on-site review of his branch.[67] At the hearing, Ravella testified that Black never visited his office.[68] Although they had talked over the phone before, Ravella testified that the hearing was the first time he had met Black in person.[69] On cross-examination, Ravella insisted that he was "positive" that Black had never been to his office in Ohio and that the first occasion he had met Black was at the hearing.[70]

According to Ravella, in approximately 2009, Southeast caused him to lose a potentially lucrative client for whom he had put together an employee retirement plan. Therefore, Ravella began to search for another broker-dealer with which to associate.[71] At some point thereafter, Black complained to Ravella about his low production.[72] Ravella left Southeast in October 2011 and registered with another member firm in October 2012. Ravella testified that the circumstances of his departure from Southeast did not affect his testimony.[73]

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[64] Tr. 117-19, 123-24 (Ravella).

[65] CX-3; Tr. 119, 121, 123, 126-27, 130 (Ravella). Leetonia is about a 500-mile drive from Charlotte. RX-33, at 1.

[66] CX-11, at 3; CX-25, at 13, 66-67; RX-2.

[67] CX-17.

[68] Tr. 121 (Ravella).

[69] Tr. 125 (Ravella).

[70] Tr. 126 (Ravella).

[71] Tr. 131-133 (Ravella).

[72] Tr. 122, 134 (Ravella); RX-12.

[73] Tr. 122 (Ravella).

Challenging Ravella's credibility, Black testified that Ravella was a low producer and denied that Southeast caused him to lose a client.[74] He said Ravella failed to generate sufficient business "to justify a relationship" with Southeast.[75]

d. Anthony Marable

Anthony Marable entered the securities industry in 2000. He was registered with Southeast from 2003 to January 2013 as an Investment Company and Variable Contracts Products Principal and Investment Company and Variable Contracts Products Representative. He is a certified public accountant and operates his own accounting firm through which he offers tax return preparation services. While registered with Southeast, Marable primarily sold mutual funds and variable annuities. He has been associated with another FINRA member firm since leaving Southeast.[76] While he was associated with Southeast, Marable operated a branch office in Mauldin, South Carolina, about 100 miles from Southeast's main office.[77]

The Inspections Calendar and the Inspection Checklist for Marable represent that Black inspected Marable's branch on July 16, 2012.[78] In a letter to FINRA staff responding to a Rule 8210 request for information, Marable said he did not recall Black visiting his office, "but if he did it surely was only one time."[79] He also stated in the letter that he did not recall anyone from Southeast or Black conducting an on-site review or audit of his branch.[80]

At the hearing, Marable testified that, since sending his Rule 8210 response letter to FINRA in September 2013, he recalled that Black did visit his office once, in approximately 2005, soon after he started working at Southeast. According to Marable, during his visit, Black did not look at or inspect any of his business files or documents, including any of his emails. Instead they talked about the nature of Marable's business.[81] Marable testified that no one else from Southeast ever visited his branch after Black's one visit in 2005.[82] Marable further testified

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[74] Tr. 732-33 (Black); RX-12.

[75] Tr. 736 (Black).

[76] CX-5; Tr. 143-45 (Marable).

[77] CX-21; RX-36; Tr. 150 (Marable). Marable moved from his first branch office location to the second location in Mauldin in 2009 or 2010. Tr. 145, 148 (Marable).

[78] CX-11, at 2; CX-25, at 12, 22-23.

[79] CX-21. Before FINRA sent Marable a Rule 8210 request for information, he told investigator Pamela Arnold in a telephone conversation that neither Black nor anyone from the Firm conducted an inspection of his office. Tr. 301 (Arnold).

[80] CX-21.

[81] Tr. 149-50, 157-58 (Marable).

[82] Tr. 167-68 (Marable).

that had Black visited his branch in July 2012, he would remember. Marable said that Black did not visit him then.[83]

Southeast terminated Marable because he was not generating enough business. Black told him in late 2012 he had to increase his business or he would be terminated.[84] Marable testified that he had no "hard feelings" about being terminated, adding, "I wasn't doing the numbers, so I understand that's part of it."[85]

At the hearing, Black insisted that he inspected Marable's branch office. Black said he filled out the Inspection Checklist as part of the inspection while at Marable's office.[86]

e. Joe D. McCall, Jr.

Joe D. McCall, Jr., entered the securities industry in 1981. From 2005 to December 2012, he was registered with Southeast as an Investment Company and Variable Contracts Products Representative. He has not been associated with a FINRA member firm since leaving Southeast. According to his CRD records, McCall was discharged by Southeast because of "low production."[87] McCall did not testify at the hearing.

McCall maintained a branch office in Charlotte, less than three miles from Southeast's main office. The Inspections Calendar and the Inspection Checklist for McCall that Respondents produced to FINRA claimed that Black inspected McCall's branch on July 6, 2010.[88] In a letter responding to FINRA's request for information pursuant to Rule 8210, McCall stated that Black did not visit his office and did not conduct an on-site review or audit. He recalled that an outside auditor visited his office on one occasion, which he believes occurred "several years ago."[89] Even though McCall did not testify, the Panel finds his written statement credible because it is consistent with the testimony of the four former registered representatives who appeared at the hearing.

Black testified that he personally inspected McCall's branch and filled out the Inspection Checklist while on site in July 2010.[90]

The Panel finds that Minor, Rivard, Ravella, and Marable gave truthful testimony and accordingly concludes that neither Black nor anyone else from Southeast inspected their offices.

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[83] Tr. 152-53 (Marable).

[84] *See* RX-28. Black had reduced Marable's commission payout in 2009. *See* RX-27.

[85] Tr. 152, 161-62 (Marable); RX-29.

[86] Tr. 754-56 (Black).

[87] CX-2, at 4.

[88] CX-11, at 1; CX-25, at 11, 57-58; RX-1.

[89] CX-15; RX-32.

[90] Tr. 723-25 (Black).

3. Respondents' False Investigative Testimony and Fabricated Documents Concerning Branch Inspections

Cause two of the Complaint alleges that Black provided false testimony during Black's on-the-record testimony on April 3, 2014. Specifically, Enforcement alleges Black falsely testified that he conducted the inspections of the five branch offices belonging to Minor, Rivard, Ravella, Marable, and McCall and that the branch Inspections Calendar and the five corresponding Inspection Checklists accurately record he conducted the inspections on the dates indicated.

Because we find that the registered representatives testified truthfully at the hearing and were credible on the issue in question—whether Black or anyone else from Southeast conducted inspections of their branches—we find that Black gave false testimony at his on-the-record interview. Below are the relevant excerpts from Black's on-the-record testimony on the issue of the branch inspections, which the Panel finds is false.

a. William Thomas Minor III

Black testified during his on-the-record interview that he personally conducted the inspection of Minor's branch on August 11, 2011.

Q:	Exhibit 22 [of the on-the-record interview] is Tom Minor's office compliance inspection checklist [the Inspection Checklist]; is that correct?
Black:	Correct.
Q:	The date of inspection appears to have been conducted [sic] on August 11, 2011; is that correct?
Black:	It is.
Q:	Mr. Black, is this your handwriting?
Black:	It is.
Q:	Mr. Black was this office inspection conducted by yourself?
Black:	It was.[91]

At the hearing, Black affirmed that the foregoing was his testimony at the on-the-record interview.[92] Having credited Minor's testimony, and found Black's hearing testimony false, the Hearing Panel concludes that Black's on-the-record testimony that he inspected Minor's branch office is also false.

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[91] CX-25, at 10.

[92] Tr. 429-30 (Black).

b. Scott Rivard

Black testified as follows at his on-the-record interview, claiming to have inspected Rivard's branch office on May 11, 2011.

Q:	Is [the inspection] conducted at the office, the remote office or the home office, the first page specifically?
Black:	This is the home office.
Q:	Mr. Black, a minute ago you mentioned that a checklist would indicate who conducted the examinations.
Black:	Yes.
Q:	Is this the checklist that you're referencing?
Black:	Yes.
Q:	Mr. Black, ... Going by this document, who does it represent was at the office inspection of Scott Rivard?
Black:	Me.
Q:	And the date you were on site?
Black:	5/11/11, and the top it says Charlotte and New York.[93]

At the hearing, Black affirmed his on-the-record testimony, and stated that he drove to Rivard's branch location in Pittsford, New York.[94] Because we credit Rivard's testimony, and find Black's hearing testimony false, we find that Black's testimony at his on-the-record interview that he conducted the inspection of Rivard's office is also false.

c. Rocci Ravella

At his on-the-record interview, Black gave the following testimony about performing the inspection of Ravella's branch office in Leetonia, Ohio, on October 1, 2010.

Q:	Mr. Black, ... Exhibit 21 is Rocky [sic] Ravella's office inspection checklist [the Inspection Checklist]; is that correct?
Black:	Yes.
Q:	Mr. Black, if you would please turn to page 2. Is this your handwriting?
Black:	It is.
Q:	It appears the date is October 1, 2010?

[93] CX-25, at 8.

[94] Tr. 416-19 (Black).

Black: Correct.

Q: Mr. Black, who conducted the office compliance inspection?

Black: I did.[95]

At the hearing, Black affirmed that he provided the foregoing testimony during his on-the-record interview. He added that he drove to Leetonia, Ohio, to inspect Ravella's office.[96] During questioning by his counsel, he repeated that he went to Ravella's office. He also stated that he filled out the Inspection Checklist while he was at Ravella's office.[97]

Because we credit Ravella's testimony, and find Black's hearing testimony false, we find that Black testified falsely at his on-the-record interview that he conducted an inspection of Ravella's branch.

d. Anthony Marable

At his on-the-record interview, Black gave the following testimony about allegedly performing the inspection of Marable's branch office in Mauldin, South Carolina, on July 16, 2012.

Q: Mr. Black, if you could please turn to page 2 of the exhibit. Mr. Black is this your handwriting?

Black: It is.

Q: Mr. Black, did you conduct the office inspection?

Black: I did.

Q: On 5/12/11?[98]

Black: Doesn't look like 5 to me.

Q: Then what would be the date?

Black: I think it's a 7 – 7/16.

Q: 7/16?

Black: I honestly don't know. Jeannette [Roberts] interprets my handwriting I promise you.

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[95] CX-25, at 8.

[96] Tr. 426-28 (Black).

[97] Tr. 729-31 (Black).

[98] According to the Inspections Calendar and the Inspection Checklist for Marable that Respondents produced to FINRA, Black inspected Marable's branch in 2012, not 2011. CX-11, at 2; CX-25, at 12, 22-23.

Q: The date of the inspection checklist was the date you were on site?

Black: Right.[99]

At the hearing, Black affirmed the testimony he provided to FINRA at his on-the-record interview. He added that he drove to Marable's branch office in Mauldin, South Carolina.[100] Regardless of the exact date (in May or July) in 2012 (or 2011) that Black purports to have performed the inspection, because we credit Marable's testimony, and find that Black gave false testimony at the hearing, we conclude that Black's on-the-record testimony that he inspected Marable's branch is also false.

e. Joe D. McCall, Jr.

At his on-the-record interview, Black gave the following testimony about purportedly performing the inspection of McCall's branch office in Charlotte, on July 6, 2010.

Q: ... Mr. Black, Exhibit 20 [of the on-the-record interview] is the office inspection check list of Mr. Joe McCall?

Black: Correct.

Q: Please turn to page 2. Mr. Black, is this your handwriting?

Black: It is.

Q: Mr. Black, who conducted the office and compliance inspection?

Black: I did.

Q: And the date reflected here appears to be July 6, 2010 is that when the office inspection was completed?

Black: Correct.[101]

At the hearing, Black affirmed his testimony at the on-the-record interview.[102] Black testified that he inspected McCall's branch and filled out the Inspection Checklist while he was on-site.[103] Because we find that Black's hearing testimony about McCall's inspection is false, we also find his on-the-record testimony is false.

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[99] CX-25, at 8.

[100] Tr. 419-22 (Black).

[101] CX-25, at 57-58.

[102] Tr. 425-26 (Black).

[103] Tr. 723-25 (Black).

4. Respondents' Evidence that They Conducted Branch Inspections Is Not Credible

Respondents presented testimony from Plexico and documents purportedly substantiating that Black conducted the five branch office inspections. The Panel did not find the evidence Respondents presented credible.

Even though not directly relevant to whether Respondents performed the five branch inspections and fabricated documents, we discuss the Respondents' evidence because it confirms that Black gave false testimony and fabricated documents about branch inspections, as alleged in causes one and two of the Complaint. It also provides additional support for the Panel's finding that Respondents demonstrated a disregard for their supervisory obligations to reasonably ensure that Southeast conduct required branch inspections, as alleged in cause three.

a. David Plexico's Testimony

Plexico's hearing testimony focused on the branch inspections he said he performed at Graham's branch office in Ohio. He also testified that it was Black's practice to drive to branches throughout the country to conduct inspections.

Plexico had a close personal and working relationship with Black. Plexico has known Black his entire life. Black was friends with Plexico's parents when Plexico was a child. Plexico described Black as his "best friend."[104] Before entering the securities industry, Plexico was a real estate agent and sold a house Black owned. Black persuaded Plexico to enter the securities business. He started working with Black at the same broker-dealer in 1991. Plexico has been registered with Southeast since Black formed the Firm in 1997. Plexico is a General Securities Principal, General Securities Representative, and General Securities Sales Supervisor.[105] Plexico's office at Southeast was about 15 feet from Black's office.[106] When Black was not in the office, Plexico acted as supervisor and was available to review customer trades for suitability, among other responsibilities.[107]

Plexico testified that he performed some branch inspections with Black. One was to a branch located in Bluffton, South Carolina. They drove there together using either Black's car or Plexico's car. Plexico testified that it was not uncommon for Black to drive long distances. For example, they drove to Michigan, according to Plexico, and "turn[ed] around and c[a]me all the way back in the same day. Get home at 3 or 4:00 the next morning, be back to work the next day."[108] Plexico testified that, aside from Michigan and Bluffton, South Carolina, he traveled

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[104] Tr. 614, 650 (Plexico).

[105] Tr. 613-15 (Plexico).

[106] Tr. 713 (Black).

[107] Tr. 617-18 (Plexico).

[108] Tr. 646 (Plexico).

with Black to Nashville where, he said, Black inspected a branch. Plexico has traveled to other offices, but not to conduct inspections that he could recall.[109]

As mentioned above, FINRA's heightened supervision plan required Plexico to spend two days a month at Graham's branch office in Dayton, Ohio. Plexico testified he did so.[110] He said he would "arrive one day and leave the next day" and stay with Graham and his wife at their home overnight.[111] Plexico said Graham's office was 550 miles from Charlotte, which took him seven or eight hours to reach by automobile. Plexico claimed he would drive to Ohio on Saturday and return on Sunday,[112] thereby driving 1,100 miles in two days. According to Plexico, Black sometimes accompanied him and also stayed at the Grahams' home overnight.[113]

According to Plexico, the volume of activity in Graham's office was so low that "there was little to do when I got there, it's really almost a waste."[114] Graham was 84 years old and not a big producer, according to Plexico.[115] As a result, it took him "at most" ten minutes to inspect Graham's office.[116] According to Respondents, Graham had five customer accounts belonging to members of two families.[117] Aside from the sale of an annuity to a customer soon after joining Southeast, Graham's revenue production totaled $2,616.39 from September 2012 to February 2013.[118]

At the end of the first day of FINRA staff's on-site of Graham's office as part of the October 2012 statutory disqualification exam, Black emailed the staff copies of compliance checklist forms purportedly evidencing Plexico's monthly inspections of Graham's office from January to September 2012. In his email, Black told the staff that Plexico used the checklist to supervise Graham and submitted the forms to Black each month.[119] Plexico testified he took the forms with him to Graham's office and filled them out himself.

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[109] Tr. 673-76 (Plexico).

[110] Tr. 621 (Plexico).

[111] Tr. 627 (Plexico).

[112] Tr. 652-53 (Plexico).

[113] Black testified that he accompanied Plexico on some visits to Graham's office. Tr. 849 (Black).

[114] Tr. 680 (Plexico).

[115] Tr. 632 (Plexico); CX-8, at 8.

[116] Tr. 689 (Plexico).

[117] RX-102; Tr. 851 (Black).

[118] Tr. 631 (Plexico); Tr. 869-70 (Black); RX-103 (Respondents did not produce payout calculations for Graham for the period before September 2012).

[119] RX-107, at 1-17. The checklist carried the heading "Compliance Form David Plexico Supervision of Charlie Graham."

But at the hearing, Plexico testified he did not know whose handwriting was on the forms.[120] Black afterward testified that he had to fill out another set of monthly inspection forms for Graham's office because Plexico is a "doggone terrible recordkeeper" and gave him forms that were in "terrible shape."[121]

At the hearing, Respondents also produced copies of monthly certifications signed by Plexico and initialed by Black to support their claim that Plexico conducted the inspections of Graham's office.[122] These documents, the Panel finds, could have been created whether or not Graham's office was in fact inspected and could have been fabricated at any time. They therefore are not reliable evidence supporting Plexico's claim that he conducted the Graham inspections. The Panel also rejects Plexico's testimony that he visited Graham's office as he claimed. Graham refuted Plexico's claim, and the Panel finds it is not credible, as Respondents would have us believe, that Graham simply forgot that Plexico stayed overnight at his house on multiple occasions, sometimes accompanied by Black.[123] In sum, the Panel finds that Plexico did not conduct the Graham inspections, lending further support to our finding that Respondents did not inspect the five branches that are the subject of the Complaint.

b. Mileage Reimbursement Requests

In October 2012, FINRA staff sent Respondents a Rule 8210 request for documentation that Plexico visited Graham's branch in Dayton each month. The only documents Respondents produced were seven mileage reimbursement requests Plexico submitted to Southeast during 2012, together with copies of cancelled checks made out to him.[124] Respondents explained that there were no receipts for meals, hotels, or airfare because each time Plexico inspected Graham's office he drove and stayed the night at the Grahams' home.

The Panel finds that Respondents fabricated the seven mileage reimbursement requests to support their claim that Plexico had conducted the required inspections. Respondents could not produce any underlying receipts or other business records to verify the authenticity of the mileage reimbursement requests. Six reimbursement requests included a claim for meal expenses, which totaled $180.68, but Respondents had no receipts for any of the meals. The Panel also noted discrepancies in the requests. For example, one reimbursement request was for fewer miles than the 1,100-mile round trip to Dayton. Plexico said he probably made an error in

[120] Tr. 626, 660 (Plexico).

[121] Tr. 898-99 (Black).

[122] RX-101, at 10-20; Tr. 201 (Edwards). Some of the documents were called "Activity Log of David Plexico Meeting with Charlie Graham." The activity logs were signed by Plexico and Black. Tr. 901-02 (Black).

[123] According to a certification Plexico purportedly submitted to Respondents to record his monthly visits to Graham's office, he conducted an inspection on September 29 and 30, 2012, just eight days before the examiners conducted their on-site. Yet Graham told the examiners Plexico had never visited. RX-101, at 9; RX-107, at 31.

[124] Tr. 203 (Edwards).

calculation.[125] And some mileage reimbursement requests purported to be for driving to various other branch offices for inspections, but do not identify those offices. Respondents also did not produce any emails between Plexico and anyone else—including brokers whose branches were being inspected—that discussed planning or scheduling branch inspections or completing an inspection.[126] The mileage reimbursements ranged from $434.52 to $2,302.58. Plexico was reimbursed a total of $8,766.41 for mileage expenses alone from March to December 2012.[127]

Plexico excused his lack of customary business records to back up his mileage reimbursement requests. Plexico testified that he used only cash when he traveled, including to pay for gasoline, and used credit cards "very sparsely" even though he owned two credit cards.[128] Plexico claimed he did not own an ATM card to withdraw cash from a personal bank account. He testified that he got cash by cashing checks from commission payments and mileage reimbursements.[129] As a result, Respondents had no records of expenses Plexico may have incurred to evidence he traveled to Graham's office in Ohio or to other branch offices.

c. Jeannette Roberts' Testimony

At the hearing, Respondents also presented the testimony of Jeannette Roberts, Southeast's compliance director. Most of her testimony was devoted to discussing FINRA's requests for information about Respondents' email retention practices and policies, but she was also asked what she knew about Respondents' branch inspections.

Roberts has worked for Black since 1978, when he was registered with Merrill Lynch. She started as his personal assistant there. She then became licensed as a General Securities Representative. With the exception of a six-month break in 2013, Roberts has worked at Southeast since its formation in 1997. Black has been Roberts' supervisor the entire time she has worked at Southeast. As compliance director, one of Roberts' responsibilities was to help Southeast respond to SEC and FINRA requests for information during examinations. She also handled back office operations at the firm.[130] Significantly, Roberts testified that she was not

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[125] Tr. 648, 664-65 (Plexico); RX-98, at 4, 6, 8, 10.

[126] With respect to communicating with clients, Plexico said he tries to avoid using emails because they can be hacked. Tr. 646-47 (Plexico).

[127] RX-98. Plexico was reimbursed at the rate of $0.55 per mile. The seven mileage reimbursements therefore covered 15,795 miles that Plexico purportedly drove.

[128] Tr. 641, 655 (Plexico). Plexico added that he did not like paying interest on the credit cards. Tr. 641 (Plexico). The Panel is also not persuaded by the fact that Plexico appeared at his on-the-record interview in Atlanta with $2,000 in cash. Tr. 642 (Plexico). We find that he anticipated that he would be asked about how he customarily paid for out-of-pocket expenses and accordingly carried a considerable amount of cash with him to the interview.

[129] Tr. 656 (Plexico).

[130] Tr. 475-79 (Roberts); RX-116.

involved in responding to FINRA's requests for information directed at Respondents that concerned branch office inspections.[131]

Roberts testified that she had no role in conducting branch examinations and has never visited a branch office.[132] She also had no responsibility "for keeping up with Mr. Plexico going to and from [Graham's] office" to conduct inspections. Yet she said she was "sure" Plexico went to Ohio.[133] But she corrected herself later and said that she was not sure that Plexico had made the trips. She "assume[d] he went because he's required to go and it's something he would do." Roberts also said that she "ha[s] no way to prove that [Plexico] went."[134] Plexico never told Roberts that he was planning on going to Graham's office or that he had just returned from his office. Roberts did not know if Plexico flew or drove to Ohio; "I don't know about those visits," she testified.[135] Roberts also testified that she had "no idea" whether Black, or anyone else from the Firm, drove or flew to branch offices to conduct inspections.[136]

The Panel finds it significant that Roberts, who worked closely with Black for years in her capacity as Southeast's compliance director, did not confirm or otherwise substantiate that Respondents conducted branch office inspections. Instead, she denied knowing any details about Respondents' branch inspections and travel arrangements.

5. Respondents Failed to Reasonably Supervise Branch Office Inspections

Cause three charges that neither Black nor anyone else from Southeast conducted inspections of the five non-registered branch offices belonging to Minor, Rivard, Ravella, Marable, and McCall. By failing to conduct the inspections, the Complaint alleges, Respondents failed to reasonably supervise.[137]

Black was responsible for ensuring that Southeast timely conducted the five branch office inspections.[138] Because we find that the five branch offices were not inspected, we also find that Black, and Southeast acting through Black, failed to exercise reasonable supervision in connection with their responsibility to ensure that the Firm conducted such inspections. Black completely ignored this responsibility. Instead of performing the inspections, or seeing that

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[131] Tr. 520 (Roberts).

[132] Tr. 570, 577, 580-81 (Roberts).

[133] Tr. 537 (Roberts).

[134] Tr. 595 (Roberts).

[135] Tr. 595-96 (Roberts).

[136] Tr. 596 (Roberts).

[137] Compl. ¶¶ 37-42.

[138] CX-26, at 14-15, 105.

someone else did them on behalf of the Firm, he provided false testimony and fabricated documents that falsely recorded he conducted the inspections.

D. Respondents Failed to Preserve Firm Email Correspondence

Causes four and five charge that from March 2010 to June 2015 Respondents failed to ensure that Southeast preserved business-related emails. Pursuant to the Firm's written supervisory procedures and supervisory system, Respondents relied on an honor system whereby Firm employees were permitted to use their own private email accounts to conduct business provided that they sent copies of such emails to a designated principal so that the copies could be retained electronically or printed and stored after a review.[139] The Complaint charges that by failing to ensure retention of email correspondence Respondents violated SEC and FINRA books and records rules and FINRA's supervision rules.

The Complaint charges that emails Respondents maintained did not include attachments referenced in the body of the email. Respondents also "knew, or reasonably should have known," according to the Complaint, that their email system was inadequate because registered representatives could easily evade the honor system by not copying the Firm on business-related emails. As an example, Enforcement alleges that at least one broker failed to copy the Firm on "several" emails involving his securities business. In another instance, Respondents were not able to access two personal email accounts a broker used for his securities business because they were deactivated by the email service provider.[140]

1. Southeast's Written Supervisory Procedures

The Firm's email retention policy was set forth in its written supervisory procedures. They stated that email correspondence "may be retained in the format in which it was received. All representatives are required to copy the Main Office with all e-mail communications with clients. The e-mails may be either retained as saved mail or printed out and stored after review."[141] The procedures also provided that a Firm principal had to review incoming and outgoing correspondence with the public and establish "written procedures for such review process which are appropriate in light of the [Firm's] structure and the nature and size of our business and operations."[142] A Firm principal was responsible for randomly reviewing incoming correspondence on a daily basis to identify customer complaints and inquiries and problems with

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[139] Compl. ¶¶ 44-46.

[140] Compl. ¶ 47. In their Amended Answer, Respondents admit that one broker had two personal email accounts he used for his securities business that, "through no fault of [Southeast] or the representative," could no longer be accessed. They noted though that the emails he copied to the Firm were retained in paper and electronic form. Amended Ans. ¶ 47.

[141] CX-26, at 34; RX-70, at 31; RX-71, at 31; RX-72, at 33; RX-73, at 34; RX-74, at 31; RX-75, at 31-32; RX-76; RX-77.

[142] CX-26, at 33; RX-70, at 29; RX-71, at 29; RX-72, at 32; RX-73, at 33; RX-74, at 30; RX-75, at 30; Tr. 271-72 (Arnold).

customer accounts and ensure client funds and securities are properly handled.[143] There was no system in place that ensured a Firm principal was copied on emails a broker received from customers.[144]

Enforcement alleges that the honor system was particularly inappropriate for Southeast's independent contractor model because many of the Firm's registered representatives worked out of their homes around the country. During the review period, Southeast had between 114 and 133 registered representatives and up to 38 registered branch offices and additional non-registered branches.[145]

Respondents do not dispute that Southeast failed to have a firm-wide email system that automatically preserved all incoming and outgoing emails. Rather, they argue the honor system they imposed on their brokers was suitable for Southeast's business model.[146] They further argue that they required brokers to certify annually in writing that they were complying with Firm procedures to copy Black on all emails.[147]

2. The SEC and FINRA Warned Respondents that Southeast's Email Retention System Was Deficient

Respondents were on notice for years that their regulators considered the Firm's email retention system deficient. Enforcement charges that despite the SEC's warnings, Respondents took no action to upgrade their system until June 2015, after Respondents received a Wells notice.[148] Respondents acknowledge that the SEC told them Southeast's email system needed to be upgraded, but because the SEC never followed up they argue the Firm was not obligated to change its policies.[149]

In 2011, the SEC formally informed Respondents that Southeast's email retention system was inadequate. As part of its 2011 examination of the Firm, SEC staff discussed email retention with Respondents during a November 2011 exit interview. The SEC followed up with a March 19, 2012 letter to Respondents describing the Firm's "deficiencies and weaknesses," including that Southeast "relies on [registered representatives] to submit their e-mail correspondence to the main office for review." It cited a November 2009 FINRA news release

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[143] CX-26, at 33; RX-70, at 29-30; RX-71, at 29-30; RX-72, at 32; RX-73, at 33; RX-74, at 30-31; RX-75, at 30-31.

[144] Tr. 319, 322 (Arnold).

[145] Compl. ¶¶ 56-57; Amended Ans. ¶¶ 56-57; Enforcement's Pre-Hearing Brief, at 10.

[146] "Given [Southeast's] business model, in which its representatives were permitted to work from their home offices around the country but required to clear every transaction through [Southeast's] main Charlotte office, this system was appropriate and reasonably designed to allow Mr. Black, as the principal, to review all communications and supervise [Southeast's] brokers." Respondents' Pre-Hearing Brief, at 11.

[147] Respondents' Pre-Hearing Brief, at 11.

[148] Compl. ¶¶ 60-61.

[149] Amended Ans. ¶¶ 60-61.

cautioning that "all firms must have the ability to flag emails that may evidence misconduct" and that "relying on brokers to provide copies of their own emails to supervisors for review is hardly an effective means to detect such misconduct."[150] The SEC told the Firm it had to take "immediate corrective action."[151]

On April 29, 2012, Black responded that the "vast majority" of Southeast's brokers do not use email. He wrote that according to a survey the Firm conducted, "only" 28 of 126 brokers email customers about their investments. Because few brokers use email, Black stated it "isn't that hard for me to read personally each e-mail."[152] Black claimed the quality of his supervision was "unusual" compared to other firms' supervision practices because he sits in an open office "within 7 ½ feet" of his operations manager, Roberts. Black argued that even if the Firm adopted an upgraded email retention system brokers could easily evade supervision of their email correspondence by opening personal email accounts. In any event, he wrote, the Firm requires that its brokers forward all correspondence, including emails, to the main office for review and storage.[153]

3. FINRA's Review of Emails Retained by Respondents

As part of the review of the Firm's email retention during the on-site for the 2012 examination of Southeast, the staff asked Respondents to produce a sample of emails that brokers had copied to the Firm. Respondents produced a stack of emails Black had initialed to show that he had reviewed them.[154] From the sample Respondents produced, the staff identified 90 emails that were missing a total of 120 attachments.[155] Some of the emails, including email strings, were missing parts of conversations.[156]

FINRA also conducted a 2014 cycle examination of Southeast, the on-site portion of which took place in January 2014.[157] Like the 2012 exam, the 2014 examination looked into potential deficiencies in Southeast's email retention. Black told the staff that Southeast continued to operate under the honor system because he thought it was sufficient to have brokers attest annually that they forwarded all their emails to the Firm.[158] During this on-site, the Firm produced a box containing printed copies of emails. The staff noticed that there were no emails

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[150] CX-27, at 6; RX-114, at 6; Tr. 268 (Arnold); Tr. 350-51 (Dale).

[151] CX-27, at 1; RX-114, at 1.

[152] RX-52, at 4; RX-115, at 11; Tr. 517 (Roberts).

[153] RX-115, at 11-12.

[154] Tr. 273, 317-18, 331 (Arnold).

[155] Tr. 273-74, 323 (Arnold); Tr. 816 (Black); CX-28.

[156] Tr. 274-75, 325-30 (Arnold); CX-29. The staff identified about 80 missing email strings. Tr. 274 (Arnold); CX-29.

[157] Tr. 349, 353 (Dale)

[158] Tr. 356 (Dale).

from registered representative Damon Vickers. The Firm explained that it maintained Vickers' emails in a separate box because there were so many.

As part of the 2014 examination, the staff also conducted inspections of Southeast branches in Bluffton, South Carolina, and San Juan, Puerto Rico. The staff reviewed a sample of 158 emails the registered representative in Bluffton sent or received from customers over a one-month period.[159] From the sample, the staff found 16 emails to customers that the broker did not copy to the Firm, as required by Respondents' honor system and the Firm's written supervisory procedures.[160] The broker told the staff that his failure to copy the Firm on emails was a "simple oversight."[161]

The staff next conducted an on-site inspection of Southeast's Puerto Rico branch office in February 2014. Registered representative Damon Vickers had recently moved his branch from Seattle to San Juan.[162] Vickers told the staff that he complied with Respondents' policy to forward copies of all emails to the Firm, but he did not allow the examiners unrestricted access to his computer to test if he had complied. Instead, Vickers retained control of the keyboard of the laptop while the staff asked him to retrieve a sample of emails drawn from between 10 and 15 customers.[163] Based on this limited review, the staff found six emails with customers between February 2013 and June 2013 that Vickers did not copy to the Firm.[164] Vickers told the staff that this was an "oversight."

In a letter dated August 27, 2014, FINRA staff detailed its findings from the 2014 cycle examination. The staff informed Respondents that Southeast "failed to implement an adequate supervisory system for capturing and preserving incoming and outgoing electronic correspondence ... at its branch office and non-branch office locations, in violation of NASD Rule 3010(a) and SEC Rule 17a-4." It noted that Respondents permit "registered representatives and branch personnel to utilize any email provider for securities related correspondence and does not impose any requirements ... to ensure proper archival, retention and maintenance" of emails.

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[159] Tr. 361-63 (Dale); CX-34, at 3; RX-54, at 3; RX-55, at 3. From September 2012 to January 2014, the broker used two email providers that he could no longer access. CX-34, at 3; RX-55, at 3. The broker provided FINRA with a written explanation why his former Internet access and email providers deactivated his email accounts. CX-32.

[160] Tr. 360-62 (Dale); CX- 31, at 11-44.

[161] Tr. 362 (Dale).

[162] Tr. 364-65 (Dale).

[163] Tr. 366-67 (Dale).

[164] Tr. 368 (Dale); CX-30. The emails concerned customers' investment decisions. In one email, Vickers told a customer that he believed the price of a stock "may be significantly higher in the years ahead." In another email, Vickers responded to a customer asking how to invest cash he and his wife "would like to work for us but are concerned about where to go." CX-30, at 2, 8. The staff did not complete its review of Vickers' branch because he resigned from Southeast and left the securities industry. Tr. 369 (Dale).

The staff further stated that the Firm relies "only on 'hard copy' maintenance of correspondence at the Main Office."[165]

The staff told Respondents their system does not comply with SEC Rule 17a-4 because they do not require Southeast brokers to keep hard copies of their correspondence at their branches and, unless the home office is copied on every communication, Respondents have no means to ensure that brokers' correspondence has not been altered. The staff told Respondents, based on a review of branch correspondence, the Firm is copied on "a very small percentage of actual incoming and outgoing" emails.[166] The staff specifically cited the email correspondence deficiencies it observed during the inspections of the South Carolina and Puerto Rico branches as the bases for its findings.[167]

III. Conclusions of Law

A. Respondents Provided False Documents and False Testimony, in Violation of FINRA Rules 8210, 4511, and 2010

Cause one alleges that Black, and Southeast acting through Black, fabricated documents to support Black's claim that he had conducted branch inspections. Respondents provided the false documents to FINRA in response to Rule 8210 requests. Enforcement charges that this violated FINRA Rules 8210, 4511, and 2010.

Cause two alleges that Black, and Southeast acting through Black, provided false testimony during an on-the record interview in April 2014 that Black conducted the inspections of the five former registered representatives' branch offices. For this conduct, Enforcement alleges that Respondents violated FINRA Rules 8210 and 2010.

FINRA Rule 8210 empowers FINRA, in the conduct of an investigation, to require a member or an associated person to provide information in writing or orally and requires members and registered persons to respond fully and truthfully. Because FINRA lacks subpoena power, it relies on Rule 8210 to obtain information from its members. "The rule is at the heart of the self-regulatory system for the securities industry."[168] An associated person's obligation to comply with Rule 8210 requests for information is unequivocal.[169] Rule 8210 prohibits providing false or misleading information in response to requests for information under the rule.

Providing false and misleading information to FINRA staff during an investigation "'mislead[s] [FINRA] and can conceal wrongdoing'" and therefore "'subvert[s]' [FINRA's]

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[165] CX-34, at 3; RX-55, at 3.

[166] CX-34, at 3.

[167] Tr. 371 (Dale); CX-34, at 3; RX-55, at 3.

[168] *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008).

[169] *Id.*

ability to perform its regulatory function and protect the public interest."[170] Falsifying documents "is a prime example of misconduct that adversely reflects on a person's ability to comply with regulatory requirements and has been held to be a practice inconsistent with just and equitable principles of trade."[171] Providing false or misleading information—including false and misleading testimony at an on-the-record interview[172]—in response to requests issued under the Rule violates FINRA Rules 8210 and 2010.[173]

FINRA Rule 4511(a) requires FINRA members to "make and preserve books and records as required under the FINRA rules, the Exchange Act, and the applicable Exchange Act rules." Causing a firm to maintain false books and records violates FINRA Rules 4511 and 2010.[174] Compliance with recordkeeping rules is essential to the proper functioning of the regulatory process. "Indeed, the Commission has stressed the importance of the records that broker-dealers are required to maintain pursuant to the Exchange Act, describing them as the 'keystone of the surveillance of brokers and dealers by our staff and by the securities industry's self-regulatory bodies.'"[175] Scienter is not required to prove a books and records violation of Rule 4511(a).[176]

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[170] *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 SEC LEXIS 2401, at *32 (Aug. 22, 2008) (quoting *Michael A. Rooms*, 58 S.E.C. 220, 229 (2005), *aff'd*, 444 F.3d 1208 (10th Cir. 2006)).

[171] *Dep't of Enforcement v. Taylor*, No. C8A050027, 2007 NASD Discip LEXIS 11, at *22-23 (NAC Feb. 27, 2007).

[172] *Dep't of Enforcement v. Hedge Fund Capital Partners, LLC*, No. 2006004122402, 2012 FINRA Discip. LEXIS 42, at *65-68 (NAC May 1, 2012) (finding that respondent member firm and its president and majority owner violated NASD Rules 8210 and 2110 by providing false and misleading information and testimony to FINRA); *John Montelbano*, 56 S.E.C. 76, 97-99 (2003) (sustaining NASD's finding that respondents violated Rule 8210 by giving false testimony during an on-the-record interview); *Dep't of Enforcement v. Masceri*, No. C8A040079, 2006 NASD Discip. LEXIS 29, at *36 (NAC Dec. 18, 2006) ("It is axiomatic that Procedural Rule 8210 prohibits an associated person from providing false or misleading information to [FINRA] in connection with an examination or investigation.").

[173] A violation of FINRA Rule 8210 also constitutes a violation of FINRA Rule 2010. See *CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *30 (Jan. 30, 2009). Providing false or misleading information to FINRA during an investigation constitutes an independent violation of FINRA Rule 2010, separate from a violation of Rule 8210. *Dep't of Enforcement v. The Keystone Equities Group, LP*, No. 2010024889501, 2015 FINRA Discip. LEXIS 54, at *41 (NAC Dec. 17, 2015) (citing *Dep't of Enforcement v. Ortiz*, No. E0220030425-01, 2007 FINRA Discip. LEXIS 3, at *33 n.26 (NAC Oct. 10, 2007)).

[174] FINRA Rule 140 provides that FINRA Rules apply to member firms and associated persons. Accordingly, as an associated person, Black has an obligation to comply with Rule 4511. An associated person who violates Rule 4511 also violates Rule 2010's requirement that members observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. *See, e.g., Fox & Co. Inv., Inc.*, 58 S.E.C. 873, 891-93 (2005).

[175] *Dep't of Enforcement v. Trevisan*, No. E9B2003026301, 2008 FINRA Discip. LEXIS 12, at *35 (NAC Apr. 30, 2008) (quoting *Edward J. Mawood & Co.*, 46 S.E.C. 865, 873 n.39 (1977), *aff'd*, 591 F.2d 588 (10th Cir. 1979)).

[176] *Joseph G. Chiulli*, 54 S.E.C. 515, 522 (2000) (holding that NASD Rule 3110, the predecessor to FINRA Rule 4511, has no scienter requirement).

1. Respondents Fabricated Documents Provided to FINRA (Cause One)

Pursuant to Rule 8210, Respondents provided FINRA with the Inspections Calendar and five Inspection Checklists Black created to document performance of the required inspections of the branches discussed above.[177]

Because the Hearing Panel finds that Respondents did not perform the branch office inspections, we also find that the Inspections Calendar and Inspection Checklists Respondents created and produced to FINRA are false; they were fabricated by Black, and by Southeast acting through Black. The Hearing Panel therefore concludes that Southeast and Black violated FINRA Rules 8210, 4511, and 2010 by creating and maintaining false documents and then knowingly providing the false documents to FINRA, as alleged in cause one of the Complaint.

2. Respondents Gave False Testimony (Cause Two)

On April 3, 2014, while under oath during his investigative testimony with Enforcement staff, Black falsely stated that he had conducted the inspections of the branches belonging to Minor, Rivard, Ravella, Marable, and McCall. Two years later at the hearing, Black confirmed that he in fact provided such sworn testimony and repeated his claim that he had performed the inspections.

The Panel rejects Black's testimony that he conducted the five branch inspections by driving to each of the office locations and his assertions that his investigative testimony was therefore truthful. Black gave false and misleading testimony concerning the branch office inspections at his April 3, 2014 on-the-record interview, which was taken under Rule 8210, and did so intentionally. Therefore, Southeast, acting through Black, and Black violated FINRA Rules 8210 and 2010, as alleged in cause two of the Complaint.

B. Respondents Failed to Ensure Retention of Firm Emails (Cause Four)

Cause four alleges that from March 2010 to May 2015[178] Respondents failed to retain email communications of persons associated with Southeast. Registered representatives were permitted to conduct securities business using any email provider they wished. The Firm's procedures adopted an "honor system" under which registered representatives were required to send a copy of their emails to a designated principal (Black) so that the emails could be stored

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[177] CX-11; CX-13, at 1-2; CX-25, at 14-21 (Rivard), 22-30 (Marable), 57-65 (McCall), 66-73 (Ravella), 74-81 (Minor); RX-1; RX-2; RX-3; RX-4; RX-5.

[178] The review period for FINRA's 2012 cycle examination of Southeast was March 2010 to September 2012. Accordingly, the Complaint alleges that misconduct relating to the Firm's failure to retain emails commenced in March 2010. In June 2015, the Firm retained the services of Smarsh, Inc., to preserve Firm emails. CX-33; RX-60; RX-61; RX-63; RX-64.

electronically or printed for review. Persons associated with Southeast could easily evade the honor system by simply not forwarding copies of emails to Black.[179]

For this conduct, Southeast is charged with willfully violating Section 17(a) of the Securities Exchange Act of 1934 and Exchange Act Rule 17a-4, and violating NASD Rule 3110 and FINRA Rules 4511 and 2010. Black is charged with violating NASD Rule 3110 and FINRA Rules 4511 and 2010.

NASD Rule 3110(a) and its successor FINRA Rule 4511(a)[180] require FINRA members to make and preserve books and records as required under the rules of FINRA, the Exchange Act, and the applicable Exchange Act rules. A member firm's responsibility to retain electronic records, including emails relating to its business is "well-established."[181] Section 17(a)(1) of the Exchange Act provides that a broker-dealer "shall make and keep for prescribed periods such records, [and] furnish copies thereof, ... as the Commission, by rule, prescribes as necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of this Act." Exchange Act Rule 17a-4(b)(4) requires that a broker-dealer retain originals of all communications received or sent by the broker-dealer relating to its business for at least three years, the first two years in an easily accessible place. The requirement applies to all electronic communications relating to the firm's business, including emails.[182]

Respondents did not have a system to ensure that emails were retained and backed up from March 2010 to May 2015. The Firm's written supervisory procedures permitted associated persons to use their own private email accounts for business-related emails, so long as they copied Southeast on all communications. The Firm then was supposed to print hard copies or retain electronic copies of emails it received. The Panel finds that this honor system created by Respondents is wholly inadequate because brokers can easily evade compliance. FINRA's investigation uncovered at least two instances in which brokers—in the Bluffton, South Carolina, and San Juan, Puerto Rico branches—failed to copy the Firm due to "oversight." The staff also presented evidence that Respondents failed to retain copies of entire email strings and copies of attachments brokers sent to outside parties. As a result, Respondents were unable to directly access brokers' email accounts. Only emails that brokers sent to the Firm were preserved. Emails that brokers deleted or did not send to the Firm were not preserved by Southeast.

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[179] Compl. ¶¶ 44-49.

[180] FINRA Rule 4511 became effective on December 5, 2011, superseding NASD Rule 3110, with certain modifications not at issue here. FINRA Regulatory Notice 11-19, 2011 FINRA LEXIS 31 (Apr. 2011). Thus, NASD Rule 3110 applies to Respondents' conduct before December 5, 2011, and FINRA Rule 4511 applies to Respondents' conduct beginning that date. See Rule Conversion Chart: NASD to FINRA, http://www.finra.org/industry/finra-rule-consolidation.

[181] *Dep't of Enforcement v. The Dratel Group, Inc.*, No. 2009016317701, 2015 FINRA Discip. LEXIS 10, at *26 (NAC May 6, 2015) (citing *Dep't of Enforcement v. Legacy Trading Co.*, No. 2005000879302, 2009 FINRA Discip. LEXIS 12, at *54-55 (OHO Mar. 12, 2009), *aff'd*, 2010 FINRA Discip. LEXIS 20 (NAC Oct. 8, 2010)).

[182] *See* Notice to Members 03-33, 2003 NASD LEXIS 40 (July 2003).

Enforcement alleges that Southeast's violations of Section 17(a) of the Exchange Act and Exchange Act Rule 17a-4 were willful. If it acted willfully, Southeast is subject to statutory disqualification.[183] Article III, Section 3 of FINRA's By-Laws provides that no member shall continue as a member if it becomes subject to disqualification. Article III, Section 4 of FINRA's By-Laws states that a member is subject to disqualification if the member is subject to one of the disqualifying events listed in Section 3(a)(39) of the Exchange Act. One such disqualifying event identified in Sections 3(a)(39)(F) and 15(b)(4)(D) is a finding that a violation of any provision of the Exchange Act was willful.

Respondents argue that Southeast did not violate Section 17(a) of the Securities Act (and therefore there can be no finding of a willful violation). They assert it is not necessary for a firm to maintain a "single electronic database of all communications" to "fully comply with FINRA regulations."[184] They acknowledge that Respondents "did not maintain electronic copies of all electronic communications" but claim that they preserved all hard copies. Because Respondents required registered representatives to copy Black on all electronic communications, the system was appropriate given the Firm's business model, they argue.[185]

The Panel disagrees. We find that Respondents failed to adopt an adequate email retention system. We also find that Southeast, acting through Black, acted willfully. Willfulness does not require intent to commit misconduct or knowledge of committing an error. "Willfulness" is defined broadly and means intentionally committing the act that constitutes the violation—not knowingly committing a rule violation.[186] "[A]s used in the federal securities laws, 'willful' means something other than involving 'deliberate or reckless disregard of a regulatory requirement.'"[187]

Enforcement proved that Southeast, through Black, voluntarily engaged in the acts that constituted the violations. Southeast's actions were particularly willful in light of FINRA's and the SEC's insistence, beginning no later than 2011, that the Firm adopt new technology that would allow for the retention of electronic communications. Enforcement proved that Southeast elected to ignore its regulators' admonitions that the Firm was in violation of its obligation to retain emails and needed to adopt a Firm-wide email system. For five years, Southeast chose to keep its honor system of email retention. It did so despite the substantial risks that the Firm would not be able to maintain records of all of its associated persons' emails. Black testified that

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[183] *Dep't of Enforcement v. Merrimac Corp. Sec., Inc.*, No. 2007007151101, 2010 FINRA Discip. LEXIS 41, at *55 n.48 (OHO Dec. 8, 2010), *aff'd*, 2012 FINRA Discip. LEXIS 43, at *38 (Bd. of Governors May 2, 2012) (recordkeeping violation was willful even if firm was attempting to comply with rules).

[184] Respondents' Pre-Hearing Brief, at 10.

[185] Respondents' Pre-Hearing Brief, at 11.

[186] *Mathis v. SEC*, 671 F.3d 210 (2d Cir. 2012); *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000); *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965); *Leaddog Capital Mkts., LLC*, Initial Decisions Release No. 468, 2012 SEC LEXIS 2918, *38-39 (Sept. 14, 2012) (collecting cases).

[187] *Next Financial Group, Inc.*, Initial Decision Release No. 349, 2008 SEC LEXIS 1393, at *59-60 (June 18, 2008).

it was not necessary for the Firm to update its electronic communications system given its business model. The Panel finds, to the contrary, that the honor system was particularly unsuitable for Southeast's independent broker model where brokers were scattered across the country. Notwithstanding its regulators instructions, Southeast persisted in delaying the adoption of an appropriate email communications retention system.

Respondents failed to ensure that Southeast properly retained business-related emails. Southeast's failure to adopt a system to retain emails is a willful violation of Section 17(a) of the Securities Exchange Act and SEC Rule 17a-4, and a violation of NASD Rule 3110 and FINRA Rules 4511 and 2010. Black's failure to ensure that the Firm retained business-related emails violated NASD Rule 3110 and FINRA Rules 4511 and 2010.

C. Respondents Failed to Exercise Reasonable Supervision (Causes Three and Five)

The Complaint also charges Southeast and Black with failing to exercise reasonable supervision to prevent the failures to perform branch inspections and retain emails for which we have found them directly responsible. As the SEC has stated, there is no "inherent inconsistency in finding a respondent both substantively responsible and a deficient supervisor with respect to the same misconduct. Participating in the misconduct is itself a supervisory failure."[188] Accordingly, we find that Respondents failed to meet their supervisory obligations with respect to ensuring branch inspections and retaining Firm emails.

1. Respondents Failed to Supervise to Ensure Branch Inspections Were Performed (Cause Three)

Cause three charges Respondents with violating NASD Rules 3010(a) and 3010(c)[189] by failing to ensure that the Firm conducted branch office inspections of the five former brokers. Rule 3010(a) requires a member firm to "establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable NASD Rules."

As set forth in Southeast's procedures, Black had direct responsibility for ensuring that the Firm conducted required branch inspections.[190] NASD Rule 3010(c) requires a member firm

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[188] *Montelbano*, 56 S.E.C. at 93-94 (finding that respondent engaged in separate supervisory failures as well as primary violations) (citing *C. James Padgett*, 52 S.E.C. 1257 (1997), *aff'd sub nom. Sullivan v. SEC*, 159 F.3d 637 (D.C. Cir. 1998) (finding respondents liable for supervisory failures as well as for substantive misconduct)). *See also Dep't of Enforcement v. The Dratel Group, Inc.*, No. 2008012925001, 2014 FINRA Discip. LEXIS 6, at *84 n.58 (NAC May 2, 2014), *aff'd*, 2016 SEC LEXIS 1035 (Mar. 17, 2016).

[189] Because Enforcement did not also charge Respondents with violating FINRA Rule 2010 in connection with the supervision charges contained in cause three (Compl. ¶ 42), the Panel does not find they violated FINRA Rule 2010.

[190] CX-26, at 104-05; RX-70, at 95-97; RX-71, at 95-96; RX-72, at 102-03; RX-73, at 101-03; RX-74, at 95-98; RX-75, at 95-98.

to conduct a review at least annually of the businesses in which it engages, reasonably designed to assist the member in detecting and preventing violations of, and in achieving compliance with, applicable securities laws and regulations and applicable rules.[191] The Rule requires a member to inspect branches such as the five at issue here at least every three years.[192] A member must also inspect non-branch locations on a regular periodic schedule.[193] The Rule further requires a firm to retain a written record of the date each review and inspection was conducted.[194]

Although Southeast's written supervisory procedures contained provisions requiring branch inspection and audits, Respondents simply ignored them.[195] Respondents failed to ensure that the Firm conducted inspections of the branches belonging to Minor, Ravella, Rivard, Marable, and McCall. The five former registered representatives were associated with Southeast for multiple years, during which time Respondents never conducted an inspection of their branches.[196] Respondents knew that inspections had to be conducted. Indeed, they fabricated documents to falsely represent to FINRA that inspections were performed.

Respondents ignored their obligations to comply with their supervisory obligations. Accordingly, the Panel finds that Southeast and Black violated NASD Rules 3010(a) and (c), as alleged in cause three of the Complaint.

2. Respondents Failed to Supervise to Ensure Adequate Retention of Firm Emails (Cause Five)

In connection with the Firm's failure to retain emails, cause five charges Respondents with failing to establish and maintain an adequate supervisory system, in violation of NASD Rule 3010(a) and FINRA Rules 3110(a) and 2010, and failing to establish, maintain, and enforce written supervisory procedures, in violation of NASD Rule 3010(b) and FINRA Rules 3110(b) and 2010.[197] NASD Rule 3010(b) and FINRA Rule 3110(b) require that a member firm "establish, maintain, and enforce written procedures to supervise the types of business in which it

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[191] NASD Rule 3010(c)(1).

[192] NASD Rule 3010(c)(1)(B).

[193] Rule 3010(c)(1)(C).

[194] Rule 3010(c)(1)(C).

[195] CX-26, at 14.

[196] Minor was associated with Southeast from December 1, 2004, to October 31, 2005, and from September 15, 2008, to January 19, 2012. Ravella was registered with Southeast for over four years, from October 10, 2007, to October 31, 2011. Rivard was associated with the Firm for more than five years, from March 27, 2007, to June 4, 2012. Marable was associated with the Firm more than nine years, from October 1, 2003, to January 18, 2013. McCall was registered with Southeast for seven years, from October 3, 2005, to December 14, 2012. Compl. ¶ 41; Amended Ans. ¶ 41.

[197] FINRA Rule 3110 became effective on December 1, 2014, superseding NASD Rule 3010 without substantive change, although with some modifications not at issue here. FINRA Regulatory Notice 14-10, 2014 FINRA LEXIS 17 (Mar. 2014). Thus, NASD Rule 3010 applies to Respondents' conduct before December 1, 2014, and FINRA Rule 3110 applies to Respondents' conduct beginning that date.

engages to supervise the activities of registered representatives and associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable rules of [NASD and FINRA]."

Southeast's honor system, whereby registered representatives were to copy the Firm on all business-related emails, was entirely inadequate. Respondents had no means to ensure that its employees complied with the honor system on all communications. Nor did Respondents ensure that emails from customers were copied to the Firm. Given Southeast's independent broker model, the honor system of copying the Firm on emails was particularly inappropriate. Respondents repeatedly ignored regulators' instructions to adopt an adequate email retention system until June 2015, when it retained a vendor to install a Firm-wide email system.[198]

The Panel therefore finds that, from March 2010 to May 2015, Southeast and Black violated NASD Rules 3010(a) and (b) and FINRA Rules 3110(a) and (b) and 2010.

IV. Sanctions

The Panel applied FINRA's Sanction Guidelines ("Guidelines") in considering the appropriate sanctions to impose on Respondents.[199] The Guidelines contain eight "General Principles" and 19 "Principal Considerations" that apply to all sanctions determinations, and additional guidelines tailored to specific violations. In determining appropriate sanctions to impose on Respondents, two General Principles were particularly relevant for the Panel. General Principle No. 1 states that "sanctions should be designed to protect the investing public by deterring misconduct and upholding high standards of business conduct." Adjudicators accordingly 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." "Sanctions should "be more than a cost of doing business. Sanctions should be a meaningful deterrent and reflect the seriousness of the misconduct at issue."[200] General Principle No. 3 instructs adjudicators to "tailor sanctions to respond to the misconduct at issue," so that the sanctions imposed "address the misconduct involved in each particular case."[201]

[198] CX-33; RX-60; RX-61; RX-63; RX-64.

[199] FINRA Sanction Guidelines (2016), http://finra.org/industry/sanction-guidelines.

[200] Guidelines at 2 (General Principles Applicable to All Sanction Determinations, No. 1).

[201] Guidelines at 3 (General Principles Applicable to All Sanction Determinations, No. 3).

A. Providing False Documents and Testimony (Causes One and Two)

Southeast and Black violated FINRA Rules 8210, 4511, and 2010 by providing fabricated documents and false testimony to FINRA, as alleged in causes one and two. Respondents' fabrication of records and false testimony are related. The Panel therefore imposes a unitary sanction for these two egregious violations.[202] The sanctions the Panel imposes are designed to deter the same underlying misconduct. For the following reasons, the Panel determines that Southeast should be fined $73,000 and Black should be barred in all capacities.

For an individual or a member firm's failure to respond to a Rule 8210 request, or failing to respond truthfully, the Guidelines recommend a fine between $25,000 and $73,000. When an individual provides false testimony, the Guidelines provide that a bar should be standard.[203] The Guidelines further provide that in an egregious case a firm should be expelled. Where mitigation exists, a Panel is directed to consider suspending a firm with respect to any or all activities or functions for up to two years.[204] The Guidelines direct adjudicators to consider the "[i]mportance of the information requested as viewed from FINRA's perspective."[205] The lack of harm to customers or absence of a benefit to a violator does not mitigate a Rule 8210 violation.[206]

Here, the Firm and Black provided false documents and testimony to FINRA about performing five branch inspections that Black claimed he conducted. This information was important because FINRA was investigating whether in fact Respondents had performed required inspections. Black and Southeast, through Black, were aware of the nature of FINRA's investigation when Black provided FINRA with the false documents and testimony.

For recordkeeping violations of FINRA Rule 4511, the Guidelines recommend a fine of $1,000 to $15,000 and a suspension of up to 30 business days in any or all capacities for responsible individuals. In the case of egregious violations, the Guidelines recommend a fine ranging from $10,000 to $146,000 and consideration of a suspension of up to two years or a bar for an individual. The Guidelines instruct adjudicators to consider suspending a firm with respect to any or all activities or functions for up to 30 business days. In egregious cases, adjudicators may suspend a firm for up to two years or expel it. In addition to the Principal Consideration, the

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[202] *Dep't of Enforcement v. Mielke*, No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at *55 (NAC July 18, 2014) (citing *Dep't of Enforcement v. Fox & Co. Inv., Inc.*, No. C3A030017, 2005 NASD Discip. LEXIS 5, at *37 (NAC Feb. 24, 2005) (finding that "where multiple, related violations arise as a result of a single underlying problem, a single set of sanctions may be more appropriate to achieve NASD's remedial goals"), *aff'd*, 58 S.E.C. 873 (2005)).

[203] Guidelines at 33.

[204] Guidelines at 33.

[205] Guidelines at 33.

[206] Guidelines at 33 n.2.

Guidelines direct adjudicators to consider the nature and materiality of the inaccurate or misleading information in the firm records.[207]

The Panel finds that there are no mitigating factors. Instead, there are aggravating factors. Black's misconduct was intentional. By insisting he performed the five inspections that are the subject of the Complaint, he denied that he fabricated and produced falsified documents to FINRA and gave false investigative testimony. His actions were intended to conceal Respondents' misconduct and deceive FINRA.[208]

The Panel determines that the information FINRA sought from Black and Southeast was important to its investigation and Respondents' violations of FINRA Rules 8210 and 4511 were egregious. Because the Firm's misconduct through Black was egregious, the Panel imposes a $73,000 fine against Southeast, an amount it considers is an appropriately remedial sanction. In arriving at the fine amount, the Panel considered that, by not conducting the required branch inspections, Southeast was able to avoid incurring certain usual and ordinary expenses of operating a member firm under an independent broker business model.

The Panel concludes that a bar is appropriately remedial sanction for Black for giving false testimony and creating and producing fabricated documents to FINRA, in violation of FINRA Rules 8210, 4511, and 2010.[209]

B. Failure to Retain Email Communications (Cause Four)

Cause four charges Southeast with willful violations of Section 17(a) of the Exchange Act and Exchange Act Rule 17a-4 and both Respondents with violations of NASD Rule 3110 and FINRA Rules 4511 and 2010 for failing to ensure that the Firm retained emails.

The Hearing Panel finds that Respondents' failure to ensure that the Firm's emails were properly retained was egregious. As discussed above, for egregious recordkeeping violations of NASD Rule 3110, FINRA Rule 4511, and SEC Rule 17a-4, the Guidelines recommend a fine ranging from $10,000 to $146,000 and consideration of a suspension of up to two years or a bar for an individual. The Guidelines direct adjudicators to consider the nature and materiality of the inaccurate or misleading information in the firm records.[210]

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[207] Guidelines at 29.

[208] Guidelines at 6-7 (Principal Considerations in Determining Sanctions, Nos. 2, 10, 13) (whether an individual or member firm respondent accepted responsibility for and acknowledged the misconduct to a regulator prior to detection and intervention by a regulator; whether the respondent attempted to conceal misconduct or lull into inactivity, mislead, deceive or intimidate regulatory authorities; and whether the respondent's misconduct was the result of an intentional act, recklessness, or negligence).

[209] The Guidelines state that adjudicators may exercise their discretion and refrain from imposing a fine when a bar is imposed. Guidelines at 10.

[210] Guidelines at 29.

The Panel also considered the Principal Considerations in Determining Sanctions applicable to all misconduct. Particularly relevant in this context is Respondents' refusal to upgrade the Firm's email retention capabilities for years despite warnings from their regulators.[211] Also relevant is that the misconduct extended over five years.[212] By putting off the upgrading of the email system, Respondents were able to avoid expenses that other properly compliant broker-dealers have incurred.[213]

Even though the SEC notified the Firm of the deficiency no later than 2011, Black did not ensure that Southeast had an effective email retention system until June 2015. Respondents spent years contesting FINRA's and the SEC's admonitions that the Firm needed to acquire the appropriate technology to retain emails. During this time, Respondents and persons associated with the Firm continued to use personal email accounts. As a result of Respondents' failure to effectively capture and retain emails, its employees could freely communicate without any concern that such communications would be monitored by Southeast or its regulators. Without proper email retention, reasonable supervision of the Firm's activities could not take place.

For the foregoing reasons, the Hearing Panel concludes that the appropriate remedial sanction is a $50,000 fine against Respondents, assessed jointly and severally against Southeast and Black.[214] Black's misconduct also warrants a suspension in all capacities from associating with any FINRA member firm for one year. We do not impose the fine and suspension against Black, however, in light of the bar for providing FINRA with fabricated documents and false testimony.

C. Supervisory Deficiencies (Causes Three and Five)

Southeast and Black violated NASD Rules 3010(a), (b), and (c) and FINRA Rules 3110(a) and (b) by failing to exercise reasonable supervision to ensure that the five branch inspections were performed and Southeast retained email communications, as alleged in causes three and five. Because Respondents' supervisory deficiencies involve similar misconduct, the Panel imposes a unitary sanction for these violations. For the reasons described below, the Panel imposes a $120,000 fine against Respondents, assessed jointly and severally. We also find it appropriate to bar Black from associating with any member firm in a principal capacity. We do

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[211] Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 15) (whether respondent engaged in the misconduct at issue notwithstanding prior warnings from FINRA or another regulator that the conduct violates FINRA rules or applicable securities laws or regulations).

[212] Guidelines at 6 (Principal Considerations in Determining Sanctions, Nos. 8 and 9) (whether respondent engaged in numerous acts and/or a pattern of misconduct and whether respondent engaged in the misconduct over an extended period of time).

[213] Guidelines at 7 (Principal Considerations in Determining Sanctions, No. 17) (whether respondent's misconduct resulted in the potential for the respondent's monetary or other gain).

[214] *See* Guidelines at 9 ("Fines may be imposed individually as to each respondent in a case, or jointly and severally as to two or more respondents.").

not impose these additional sanctions against Black because of the bar for providing FINRA with false documents and testimony, as alleged in causes one and two.

Cause three alleges that Respondents maintained an inadequate supervisory system to ensure that branch inspections were conducted. The Guidelines for deficient supervisory systems, including a failure to supervise, recommend a fine from $5,000 to $73,000 and consideration of suspending the responsible individual in all supervisory capacities for up to 30 business days and limiting the activities of the appropriate branch office or department for up to 30 business days. In egregious cases, the Panel is directed to consider suspending the responsible individual for up to two years or barring him.[215] The Guidelines also direct the Panel to consider limiting the activities of the branch office or department for a longer period or suspending the firm with respect to any or all activities or functions for up to 30 business days. In a case against a member firm involving systemic supervision failures, the Panel may consider a longer suspension of the firm with respect to any or all activities or functions (of up to two years) or expulsion of the firm.[216]

The guideline for failure to supervise has two relevant principal considerations: (i) the nature, extent, size, and character of the underlying misconduct; and (ii) the quality and degree of the supervisor's implementation of the firm's supervisory procedures and controls.[217]

In addition to maintaining a deficient supervisory system to ensure retention of Firm emails, in violation of NASD Rule 3010(a) and FINRA Rule 3110(a), Respondents had deficient written procedures, a violation of NASD Rule 3010(b) and FINRA Rule 3110(b). The guideline for inadequate written supervisory procedures instructs the Panel to consider a fine between $1,000 and $37,000. In egregious cases, the Panel should consider suspending the responsible individual in any or all capacities for up to one year and consider suspending the firm with respect to any or all relevant activities or functions for up to 30 business days and thereafter until the supervisory procedures are amended to conform to rule requirements.[218] The guideline for deficient procedures contains one relevant principal consideration: whether the deficiencies allowed violative conduct to occur or to escape detection.[219]

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[215] Guidelines at 102. The guideline for failing to supervise also instructs adjudicators to consider independent—rather than joint and several—monetary sanctions for a firm and responsible individuals. Because Black is the owner and President of Southeast, the Panel finds it appropriately remedial to fine Respondents jointly and severally for their supervision violations.

[216] Guidelines at 102. There is no specific guideline for violations of NASD Rule 3010(c) concerning branch inspections. The Panel applied the guideline for violations of NASD Rule 3010(a) for a failure to supervise.

[217] Guidelines at 102. The Panel did not find the third principal consideration relevant—whether respondent ignored "red flag" warnings that should have resulted in additional supervisory scrutiny—because Black himself and Southeast, acting through Black, committed the underlying violation of failing to perform the branch inspections.

[218] Guidelines at 103.

[219] Guidelines at 103. The Panel does not consider the other principal consideration—whether the deficiencies made it difficult to determine the individual responsible for specific areas of supervision or compliance—relevant.

The supervision failures in this case are egregious—particularly the failure to ensure that branch inspections were performed. Through his indifference to his supervisory obligations and his positions as Southeast's principal owner, President, and Chief Compliance Officer, Black created a culture of noncompliance with FINRA rules and SEC regulations at the Firm. Black was engaged in the underlying violation involving the failure to conduct required inspections. He gave false testimony to FINRA about conducting branch inspections during an on-the-record interview and fabricated documents, which he produced to FINRA. This is the most egregious sort of supervisory failure.

The Panel also considered that Respondents failed to ensure other branch inspections, in addition to the five branches alleged in the Complaint. Although misconduct relating to the required monthly inspections of Graham's office in Ohio was not charged, the Panel finds that Enforcement proved that Respondents did not perform the inspections. The Panel accordingly considered this failure when fashioning appropriate sanctions for Respondents' supervisory failures to ensure the inspection of the five branches.[220]

As for the failure to maintain a supervisory system and written procedures to reasonably ensure email retention, the Panel finds aggravating that Respondents were formally warned by the SEC by November 2011 that the Firm's system was insufficient. The SEC followed up in writing in March 2012, telling Respondents that "immediate corrective action" was needed to upgrade the Firm's system. FINRA warned Respondents in writing in August 2014, at the end of the 2014 cycle examination, that Southeast's email retention system was inadequate, particularly in light of its independent broker model. Notwithstanding regulators' insistence, Respondents did not adopt an acceptable email retention system for the Firm until June 2015.

The Panel also considered Respondents' disciplinary history involving deficient supervision.[221] In March 2016, Respondents consented to a $25,000 fine and a cease and desist order for supervision violations stemming from an investigation by the State of Washington's Department of Financial Institutions, Securities Division. The securities regulator found that Southeast failed to establish adequate systems to detect and prevent excessive trading involving customers of registered representative Damon Vickers between 2008 and 2012. According to the consent order, the Firm's failure to establish adequate supervisory procedures caused Black to fail to properly review Vickers' customers' accounts for excessive trading. Black approved the

[220] Evidence of misconduct that is not alleged in a complaint, but is similar to the misconduct charged in a complaint, is admissible to determine sanctions. *See Wanda P. Sears*, Exchange Act Release No. 58075, 2008 SEC LEXIS 1521, at *22 n.33 (July 1, 2008) (in an unauthorized trading case, finding that evidence of unauthorized trading, which was not alleged in the complaint, was admissible in gauging aggravating factors to assess appropriate sanctions); *Gateway Int'l Holdings, Inc.*, Exchange Act Release No. 53907, 2006 SEC LEXIS 1288, at *24 n.30 (May 31, 2006) ("Although we are not finding violations based on [failures to file timely reports], we may consider them, and other matters that fall outside the [SEC Order Instituting Proceedings], in assessing appropriate sanctions.").

[221] The Guidelines state that adjudicators "should always consider a respondent's relevant disciplinary history in determining sanctions." Guidelines at 2 (General Principles Applicable to All Sanction Determinations, No. 2). *See also* Guidelines at 6 (Principal Considerations in Determining Sanctions, No. 1).

customer accounts as discretionary accounts. The regulators also determined he approved an unreasonably high commission schedule for Vickers' customers. Washington State regulators also found that Black was responsible for reviewing customer trades but did not use exception reports and ignored red flags associated with Vickers' frequent trading in customer accounts. According to the consent order, Black never found instances of excessive trading despite the high turnover rates in some customer accounts.[222]

The Panel finds the Washington State disciplinary action particularly relevant in determining sanctions for Respondents' failure to supervise to ensure proper retention of Firm emails because it involved Vickers. FINRA staff had determined during its 2014 cycle examination of Southeast that Vickers had failed to copy the Firm on certain emails based on a review of a sample of emails. Vickers also generated so many emails that Respondents kept printed copies of the emails he did send the Firm in boxes separate from emails from other Firm brokers. If Southeast had adopted an adequate email retention system, a reasonable review his emails may have increased the chances of the Firm detecting Vickers' misconduct.

Respondents argue that imposing sanctions on Respondents for their supervisory deficiencies is inappropriate because there is no evidence in the record that Firm customers or the trading public were harmed. Respondents stated that neither Black nor Southeast was enriched as a result of the supervision violations.[223] Respondents also argue that they have taken remedial steps to ensure documentation of branch inspections, including requiring the representative whose branch is being inspected to sign a form acknowledging the inspection. Black has also delegated the responsibility of conducting inspections to others. They also believe that Southeast's hiring of a vendor in June 2015 to create email accounts for all Firm employees and install a server to archive all emails argues against imposition of sanctions.[224]

The Panel disagrees and believes that sanctions commensurate with the supervisory misconduct are warranted. The absence of customer harm is not mitigating.[225] The Panel finds that a $120,000 fine assessed jointly and severally against Respondents is appropriately remedial. The fine is slightly higher than the sum of the highest suggested fines for a failure to supervise ($73,000) and for deficient written procedures ($37,000). The Panel considered that the supervision violations involved two separate and distinct areas of the Firm's operations, and accordingly a fine exceeding the two recommended ranges is appropriate.

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[222] CX-37, at 12-16. Vickers was registered with Southeast from October 2008 to February 2014. CX-37, at 2. Southeast and Black neither admitted nor denied the findings of fact and conclusions of law set forth in the Washington State consent order. CX-37, at 1. Southeast also agreed to retain an independent consultant to review its supervisory procedures. CX-37, at 16. *See also* CX-1, at 14-22.

[223] Respondents' Pre-Hearing Brief, at 14.

[224] Respondents' Pre-Hearing Brief, at 12-13; Tr. 971 (Black).

[225] "The absence of ... customer harm is not mitigating, as our public interest analysis focus[es] ... on the welfare of investors generally." *Edward S. Brokaw*, Exchange Act Release No. 70883, 2013 SEC LEXIS 3583, at *68 (Nov. 15, 2013) (internal quotation omitted). *See also Coastline Fin., Inc.* Exchange Act Release No. 41989, 54 S.E.C. 388, 396 (Oct. 7, 1999) (rejecting absence of customer harm as a mitigating factor in sanctions).

The Panel finds that Black's egregious supervisory violations displayed a callous indifference to his obligations as a securities professional. In addition to a fine, it is also appropriate to bar Black from associating with any member firm in a principal capacity. However, in light of the bar in all capacities for providing FINRA with fabricated documents and false testimony, the Hearing Panel does not impose additional sanctions against Black for his supervisory deficiencies.

V. Order

Respondents Southeast Investments, N.C., Inc., acting through Frank Harmon Black, and Black:

- produced fabricated documents to FINRA, in violation of FINRA Rules 8210, 4511, and 2010 (cause one);
- gave false testimony during Black's on-the-record interview, in violation of FINRA Rules 8210 and 2010 (cause two);
- failed to establish and maintain a reasonable supervisory system to ensure inspections of five branches were performed, in violation of NASD Rule 3010(a) and (c) (cause three);
- failed to retain business email communications from March 2010 to May 2015; Southeast willfully violated Section 17(a) of the Exchange Act of 1934 and Exchange Act Rule 17a-4; Southeast and Black violated NASD Rule 3110 and FINRA Rules 4511 and 2010 (cause four); and
- failed to establish and maintain a reasonable supervisory system and failed to establish, maintain, and enforce written procedures to ensure retention of Firm business emails, in violation of NASD Rules 3010(a) and (b) and FINRA Rules 3110(a) and (b) and 2010 (cause five).

Southeast is subject to a statutory disqualification for its willful violations of federal securities laws and regulations, as alleged in cause four.

The Extended Hearing Panel imposes sanctions against Southeast consisting of a total fine of $243,000, of which $170,000 is assessed jointly and severally with Black, as follows:

- $73,000 for fabricating and producing false documents and providing false testimony to FINRA (causes one and two);
- $50,000, assessed jointly and severally with Black, for failing to retain Firm emails (cause four); and

- $120,000, assessed jointly and severally with Black, for supervision failures relating to branch inspections and email retention (causes three and five).

The Extended Hearing Panel also bars Black from associating with any FINRA member firm in any capacity for fabricating and producing false documents and providing false investigative testimony, as alleged in causes one and two.

Black's failure to retain Firm emails warrants a suspension from associating with any FINRA member firm in any capacity for one year and a $50,000 fine, assessed jointly and severally with Southeast. His supervisory failures relating to ensuring branch inspections and retention of Firm emails warrant a bar from associating with any FINRA member firm in a principal capacity and a $120,000 fine, assessed jointly and severally with Southeast. In light of the bar in all capacities for fabricating and producing false documents and giving false testimony, the Hearing Panel does not impose additional sanctions against Black.

Respondents are ordered, jointly and severally, to pay hearing costs of $8,335.29, consisting of an administrative fee of $750 and $7,585.29 for the hearing transcript.

If this Decision becomes FINRA's final disciplinary action, the bar shall take effect immediately. The fines and assessed costs shall be due on a date set by FINRA, but not sooner than 30 days after this Decision becomes FINRA's final disciplinary action in this proceeding.[226]

Michael J. Dixon
Hearing Officer
For the Extended Hearing Panel

Copies to: Frank Harmon Black (via overnight courier)
Southeast Investments, N.C., Inc. (via overnight courier)
Edward T. Hinson, Jr., Esq. (via electronic and first-class mail)
Sean W. Firley, Esq. (via electronic and first-class mail)
Michael Manly, Esq. (via electronic mail)
David Klafter, Esq. (via electronic mail)
Jeffrey D. Pariser, Esq. (via electronic mail)

[226] The Extended Hearing Panel considered all of the parties' arguments. They are rejected or sustained to the extent that they are inconsistent with the views expressed herein.