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

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| DEPARTMENT OF ENFORCEMENT,<br><br>Complainant,<br><br>v.<br><br>KEITH C. BARON<br>(CRD No. 3231494),<br><br>Respondent. | Disciplinary Proceeding<br>No. 2022073772701<br><br>Hearing Officer–RES<br><br>**EXTENDED HEARING PANEL DECISION**<br><br>January 15, 2025 |

**Respondent Keith C. Baron is barred from associating in any capacity with any FINRA member firm for omitting material information and making misrepresentations to two investors in violation of FINRA Rule 2010, making misrepresentations to his employer firm in violation of FINRA Rule 2010, and making misrepresentations to FINRA in violation of FINRA Rules 2010 and 8210. The Extended Hearing Panel would also impose fines and suspensions for Baron's pursuit of an outside business activity without notice to his employer firm, and for his participation in private securities transactions without prior notice to his employer firm, but the Panel declines to impose these sanctions in light of the bars imposed for Baron's other misconduct. For pursuing an outside business activity without notice, Baron is also ordered to pay disgorgement of $284,890 plus prejudgment interest.**

*Appearances*

For Complainant: Gregory R. Firehock, Esq., Marianne H. Combs, Esq., John R. Fallon, Esq., John R. Baraniak, Jr., Esq., Department of Enforcement, Financial Industry Regulatory Authority

For Respondent: Randy Scott Zelin, Esq., Randy Scott Zelin P.C.

## DECISION

### I. Introduction

FINRA's Department of Enforcement filed a Complaint against Respondent Keith C. Baron (Baron), formerly a registered representative of a FINRA member firm. The Complaint

consists of five causes of action. In the first cause of action, the Complaint alleges that in early 2016, Baron introduced "Investor A" and her husband, "Investor B", to the Chief Executive Officer ("CEO") of Native American Energy Group, Inc. ("Native American"), a financially troubled company purportedly doing business in the oil and gas industry.[1] Baron made this introduction to enable Investors A and B to make investments. The first cause of action alleges that Baron made misrepresentations to Investors A and B about Native American.[2] The evidence in the hearing shows these alleged misrepresentations included statements that Native American stock would enable Investors A and B to "make money very fast," that Native American was "guarantee[d] stock coming . . . on the stock market," that "before the end of year 2016, it will be worth three to $10," and other statements of similar purport and substance. Baron omitted to disclose to Investors A and B that he had a consulting agreement with Native American by which he could receive consulting fees of $10,000 per month ("Consulting Agreement").[3] Following these alleged misrepresentations and material omissions, Investors A and B made four purchases of Native American stock, paying the company $359,806.[4]

The first cause of action alleges that several years later, when Investor A expressed her worry about the safety of her and Investor B's investment in Native American, Baron made more misrepresentations to her. The evidence shows these alleged misrepresentations included statements that Investors A and B's "returns will be extremely high and will resolve everything in your life," that the CEO of Native American "says he will fix whatever you need and make you happy," that "nothing is lost!," that "you guys are getting it back," and other statements of similar purport and substance. According to the Complaint, by making misrepresentations and material omissions to Investors A and B, Baron violated FINRA Rule 2010.[5]

In the second cause of action, the Complaint alleges that Baron failed to give prior written notice to his employer firm, Equity Services, Inc. ("Equity Services" or "ESI"), that he worked as a consultant to Native American.[6] Instead of giving the requisite notice, Baron falsely stated in annual certifications to Equity Services that he had no undisclosed outside business activities ("OBAs") to report.[7] He failed to disclose his $10,000-per-month Consulting

[1] Complaint ("Compl.") ¶ 1. In this Extended Hearing Panel Decision ("Decision"), Native American will also be referred to by its trading symbols, "NAEG" and "NAGP".

[2] Compl. ¶¶ 1, 100.

[3] Compl. ¶ 1. All monetary amounts in this Decision are rounded to the nearest dollar.

[4] Compl. ¶¶ 1, 22.

[5] Compl. ¶ 3.

[6] Compl. ¶ 4.

[7] Compl. ¶ 4.

Agreement with Native American.[8] According to the Complaint, by failing to give written notice to Equity Services of his alleged OBA, Baron violated FINRA Rules 3270 and 2010.[9]

In the third cause of action, the Complaint alleges that Baron failed to give prior written notice to Equity Services that he participated in private securities transactions away from the firm.[10] These securities transactions consisted of Investors A and B's four purchases of Native American stock.[11] According to the Complaint, by failing to give prior written notice of his private securities transactions to Equity Services, Baron violated FINRA Rules 3280 and 2010.[12]

In the fourth cause of action, the Complaint alleges that Baron made misrepresentations to Equity Services.[13] First, Baron submitted false compliance records to Equity Services stating that he had disclosed all his OBAs and had not engaged in private securities transactions. Second, after Investors A and B submitted a complaint about Baron to FINRA, and FINRA forwarded the complaint to Equity Services, Baron submitted written statements for the firm's review that misrepresented the nature and extent of his participation in Investors A and B's purchases of Native American stock and his consulting arrangement with Native American.[14] According to the Complaint, by making misrepresentations to Equity Services, Baron violated FINRA Rule 2010.[15]

In the fifth cause of action, the Complaint alleges that Baron made misrepresentations to FINRA in two written responses to FINRA requests for information and documents.[16] The evidence shows these alleged misrepresentations included statements that "I had no involvement or compensation regarding [Investors A and B's] investment's [sic] with NAEG," that "I never sold any NAEG, my participation was strictly an introduction of [Investors A and B]," that "[m]y only business dealings with [the CEO] lasted for a short length of time;" and other statements of similar purport and substance. Baron omitted to disclose to FINRA the Consulting Agreement and his receipt of $284,890 in consulting fees. According to the Complaint, by making misrepresentations to FINRA, Baron violated FINRA Rules 2010 and 8210.[17]

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[8] Compl. ¶ 4.

[9] Compl. ¶ 4.

[10] Compl. ¶¶ 5, 118–21.

[11] Compl. ¶ 5.

[12] Compl. ¶¶ 5, 120–22.

[13] Compl. ¶ 6.

[14] Compl. ¶ 6.

[15] Compl. ¶ 6.

[16] Compl. ¶ 7.

[17] Compl. ¶¶ 7, 134, 136.

Baron denies in his Answer that: (1) he made a recommendation to Investors A and B that they purchase Native American stock; (2) he made misrepresentations or material omissions about Native American; (3) he expected to receive compensation from Native American after Investors A and B bought the company's stock; and (4) he participated in private securities transactions involving Native American and Investors A and B.[18]

The parties participated in a hearing before an Extended Hearing Panel ("Hearing Panel"). After carefully considering the hearing testimony, the hearing exhibits, and the pre-hearing and post-hearing briefs, the Hearing Panel concludes, as explained below, that Baron violated: (1) FINRA Rule 2010 by making misrepresentations and omitting material information from information provided to Investors A and B about Native American stock; (2) FINRA Rules 3270 and 2010 by engaging in an OBA without providing written notice to his employer firm; (3) FINRA Rules 3280 and 2010 by participating in private securities transactions without providing prior written notice to his employer firm; (4) FINRA Rule 2010 by making misrepresentations to his employer firm; and (5) FINRA Rules 2010 and 8210 by making misrepresentations to FINRA. Based on these conclusions, the Hearing Panel bars Baron from associating in any capacity with any FINRA member firm and orders him to pay disgorgement of $284,890 plus prejudgment interest.

## II. Findings of Fact

### A. Keith C. Baron

Keith C. Baron first registered with FINRA in 1999 as a General Securities Representative through an association with a FINRA member firm.[19] For the next sixteen years, Baron was registered through several FINRA member firms, including S.G. Martin Securities LLC and Park Avenue Securities LLC.

Baron was registered through Equity Services from 2015 until January 2022,[20] and he held Series 7 and Series 63 licenses.[21] He sold variable annuities, life insurance, stocks, bonds, and mutual funds.[22] He sold life insurance products as an agent for Equity Services' affiliate, National Life Insurance Company ("National Life").[23] He worked out of Equity Services' branch office in Jericho, New York.[24] In December 2021, he resigned his position as a registered

[18] Answer ("Ans.") ¶¶ 1, 38, 47, 62.

[19] Stipulations ("Stip.") ¶ 1.

[20] Stip. ¶ 2.

[21] Hearing Transcript ("Tr.") 80 (Baron).

[22] Stip. ¶ 3.

[23] Stip. ¶ 3.

[24] Stip. ¶ 4; Tr. 642 (Muro). Victor Muro was registered with FINRA through Equity Services and was Baron's branch office supervisor. Tr. 638–42 (Muro).

representative for the firm. This resulted in the termination of his registration with FINRA the next month.[25]

Baron has relevant disciplinary history. In 2013, without admitting or denying liability, Baron agreed in an Acceptance, Waiver and Consent ("AWC") to be sanctioned for his failure to disclose on his Uniform Application for Securities Industry Registration or Transfer (Form U4) a civil action for fraud that had been filed against him in New York state court.[26] In this AWC, FINRA fined him $10,000 and suspended him for two months from associating with any FINRA member firm.[27] A year later, Baron submitted a notarized document to his then-employer firm, Park Avenue Securities, stating that his AWC had taught him a very expensive lesson and he would never forget:

> Finra has told me that it was my job to update my U4 and that it was my fault for not doing this regardless of compliance. I was unaware that I was completely responsible for that, and was under the impression that is why we had a compliance officer. I have been taught a very expensive lesson and will never forget. After fighting back and forth for 2 plus years and a massive amount of monies spent on lawyers, finra and I decided to settle, so that I can move on with my life.[28]

The instant disciplinary proceeding originated from an amendment to Baron's Uniform Termination Notice for Securities Industry Registration (Form U5), reporting Baron's voluntary termination of his registration and an internal review of Baron by Equity Services following his receipt of a subpoena from the Securities and Exchange Commission.[29] According to the Form U5, the internal review concerned potential fraud or wrongful taking of property, or a potential violation of investment-related statutes, regulations, rules or industry standards of conduct.[30]

### B. Baron Enters His First Consulting Arrangement with Native American

In 1996, Baron and an individual named Joseph G. D'Arrigo worked together at a pharmaceutical company and became friends.[31] After this, Baron and D'Arrigo worked at two or three of the same FINRA member firms at the same time.[32]

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[25] Complainant's Exhibit ("CX-_") 181; Tr. 538 (Baron).

[26] CX-177; Tr. 130–31 (Baron).

[27] CX-177, at 2; Tr. 133 (Baron).

[28] CX-85, at 2–3.

[29] Tr. 938 (Akers); CX-181, at 2, 5–6. Ryan Akers is a Principal Investigator employed by FINRA's Department of Enforcement. Tr. 838-39 (Akers).

[30] CX-181, at 2.

[31] Tr. 69, 82 (Baron). According to FINRA BrokerCheck, D'Arrigo was once registered with FINRA.

[32] CX-184, at 3, 4, 6; CX-185, at 1–4.

Sometime after working in the securities industry, D'Arrigo became Chief Executive Officer of Native American.[33] Native American was purportedly in the business of acquiring oil and gas leases in oilfields on Native American lands and non-Native American lands in the State of Montana.[34] The company's business plan was to extract oil from wells that had been abandoned by major oil companies in the 1950s and 1960s, using the technology of the 1990s and 2000s.[35] The four main employees of the company were D'Arrigo, a chief financial officer, a geologist, and one other person.[36]

In 2005, Native American retained Baron as a consultant to the company under a written consulting agreement.[37] This agreement provided that Native American would pay Baron $2,000 per month.[38] Baron testified in the hearing that he became a consultant for Native American because of D'Arrigo.[39] Baron disclosed his consulting arrangement to S.G. Martin Securities, the FINRA member firm through which he was registered.[40] He disclosed the consulting arrangement to two subsequent employer firms on two later occasions.[41] The consulting arrangement was in effect for five years, until 2010.[42] Baron's services included negotiating outstanding debts that Native American owed to contractors and introducing Native American to an oil and gas company in Alaska.[43]

### C. Baron Becomes Investor A's Registered Representative

Baron first met Investor A in the early 2000s, when Investor A was an attending physician at a hospital in the Bronx.[44] Investor A was married to Investor B, who was also a physician.[45] Several times, Baron visited Investor A and discussed with her the advantages of investing in life insurance products.[46] Baron became Investor A's registered representative.[47] In May 2012, he

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[33] Stip. ¶¶ 15, 17.

[34] Stip. ¶ 16.

[35] Tr. 89–90 (Baron).

[36] Tr. 94–95 (Baron).

[37] Stip. ¶ 35.

[38] Stip. ¶ 36.

[39] Tr. 90 (Baron).

[40] CX-174; Tr. 115–17 (Baron).

[41] CX-175, at 7. Baron did not disclose Native American on this Form U4. CX-176, at 7; Tr. 118–19 (Baron).

[42] Tr. 92–93 (Baron).

[43] Tr. 123 (Baron).

[44] Stip. ¶ 8.

[45] Stip. ¶ 9; Tr. 1261, 1265 (Investor B).

[46] Tr. 1041–42 (Investor A).

[47] Stip. ¶ 10.

recommended that Investor A purchase several annuities.[48] Baron knew Investor A's investment objective was guaranteed income for life.[49]

### D. Native American Goes Out of Business

In 2013, Native American filed a Report on Form 10-Q with the SEC.[50] This Report on Form 10-Q stated that Native American had generated revenue of only $200,508 in the eight years since 2005 (an average of $25,064 per year).[51] The company had assets of $760,273, liabilities of $5,510,486, and a shareholders' deficit of $4,750,213.[52] In the nine months ended September 30, 2013, the company generated $0 in revenue but incurred a loss from operations of $1,714,188.[53] Native American's auditors reported there was substantial doubt as to the company's ability to continue as a going concern.[54] This was the last periodic report that Native American filed with the SEC.

The same year, the Board of Oil and Gas Conservation of the State of Montana revoked the bond that was necessary for Native American to conduct oil and gas operations.[55] Native American ceased whatever oil and gas operations it was conducting. After that, the company generated no revenue.[56]

### E. Baron Enters the Consulting Agreement with Native American

In June 2014—and even though Native American was not generating revenue—Baron entered the Consulting Agreement, memorializing his second consulting relationship with the company.[57] The Consulting Agreement had a term of three years.[58] Native American agreed to pay Baron a monthly consulting fee of $10,000, which adds up to $360,000 over the course of the Agreement.[59]

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[48] Stip. ¶ 10.

[49] Tr. 302 (Baron).

[50] Stip. ¶ 19; CX-15.

[51] Stip. ¶ 20; CX-15, at 6.

[52] CX-15, at 4.

[53] CX-15, at 6.

[54] Stip. ¶ 23.

[55] Stip. ¶ 24.

[56] Stip. ¶ 25.

[57] Stip. ¶ 37; CX-33; Tr. 122, 160 (Baron).

[58] CX-33, at 2; Tr. 161 (Baron).

[59] Stip. ¶ 38; CX-33 at 2.

In return for his $10,000 monthly fee, Baron agreed to perform many consulting services for Native American. These included: (1) responding to inquiries from shareholders and other stakeholders; (2) communicating with creditors; and (3) assisting with growth and strategy.[60] According to the Consulting Agreement, the monthly fee depended on Native American having "funds available . . . to meet operational expenses or . . . receiv[ing] a large funding."[61] If Native American had no funds available, Baron's fee accrued each month.[62]

### F. Baron Fails to Disclose His Consulting Agreement to Equity Services

Baron began working at Equity Services in August 2015.[63] His onboarding started five months earlier, in March 2015.[64] In the onboarding process, he submitted a document titled "Confidential Registration and Affiliation Request."[65] As reflected in this Request, he failed to disclose as an OBA his Consulting Agreement with Native American.[66]

Baron also submitted an Outside Business Activity Disclosure to Equity Services reporting OBAs of insurance sales agent for National Life and Integrated Financial Concepts LLC, an affiliate of Equity Services.[67] The OBA Disclosure form put Baron on notice that OBAs "include any and all business activity from which the registered representative derives income, and which is conducted outside the scope of their association with the broker-dealer."[68] Yet he failed to mention his Consulting Agreement with Native American.[69] The information and omission in Baron's OBA Disclosure were reflected in the Form U4 amendment Equity Services filed with FINRA.[70]

In the onboarding process, Baron signed a Letter of Understanding stating, "I understand that I will have to obtain the Firm's approval prior to engaging in any outside business activities."[71] The Letter of Understanding was something Equity Services required of Baron over

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[60] Stip. ¶ 39.

[61] CX-33, at 3; Stip. ¶ 40; Tr. 165–66 (Baron).

[62] Tr. 166 (Baron).

[63] Stip. ¶ 64.

[64] Stip. ¶ 56.

[65] CX-86; Tr. 177 (Baron).

[66] CX-86, at 6; Tr. 185–86 (Baron), 648–49 (Muro).

[67] Stip. ¶¶ 58-61; CX-92; Tr. 230–31 (Baron).

[68] Stip. ¶ 59; CX-92; Tr. 232–33 (Baron).

[69] CX-92.

[70] Stip. ¶ 63; CX-93; Tr. 241.

[71] Stip. ¶ 66; CX-95, at 2.

and above what the firm normally demanded of its registered representatives.[72] Equity Services did this because of Baron's disciplinary history. Equity Services decided to require the Letter of Understanding instead of putting Baron on heightened supervision.[73]

Throughout Baron's onboarding with Equity Services, he failed to give notice of his Consulting Agreement with Native American.[74] Baron said nothing to Equity Services about his relationship with Native American or that he had a contractual right to be compensated by Native American.[75] Baron did not inform Julie Muscara, the compliance director in the branch office where Baron worked, that he had a consulting arrangement with Native American.[76]

Equity Services' Written Supervisory Procedures ("WSPs") specified the form by which registered representatives notified the firm of their OBAs.[77] Tracking the exact language of FINRA Rule 3270, Equity Services' WSPs prohibited its registered persons from holding certain positions, being independent contractors, or being compensated by an OBA without providing prior written notice to the firm.[78] The WSPs provided, "Registered representatives and employees are required to disclose to the Firm, in writing, any outside business activities and obtain approval prior to engaging in such activity."[79] The WSPs required disclosure of specific information:

- Name of the outside employer or association.
- Nature of activity or association.
- The registered representative's position in the firm or association.
- Time spent at this activity per week or month and whether the activity occurs during the firm's normal business hours.
- Type of compensation.
- If the activity is investment related.

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[72] Tr. 658, 661–62 (Muro), 769–70 (Muscara). Julie Muscara is registered with FINRA through Equity Services and was the compliance director in the branch office where Baron worked. Tr. 742, 747–48 (Muscara).

[73] Tr. 767–68 (Muscara).

[74] Tr. 218–19, 270 (Baron), 667, 673–75 (Muro).

[75] Tr. 674–76 (Muro).

[76] Tr. 765 (Muscara).

[77] Stip. ¶ 45; CX-131.

[78] Stip. ¶ 47; CX-131, at 18; Tr. 245 (Baron), 677–79 (Muro).

[79] Stip. ¶ 47.

- Anticipated start date of the activity.
- How the activity will be differentiated from Equity Services.[80]

The WSPs provided for a detailed review by Equity Services:

> Additional information may be requested during the review process. The RR [i.e., the registered representative] or employee will be notified of the decision and a record of the notice will be retained in the RR or employee's file or a file established for outside business activities.[81]

### G. Baron Makes Representations to Investors A and B About Native American Stock

In late 2015 or early 2016, Baron introduced Investors A and B to D'Arrigo for them to make investments.[82] Before this, Investor A had told Baron she was concerned about her finances.[83] Baron knew Investors A and B were seniors.[84] Investor A testified that in introducing her to D'Arrigo, Baron told her, "I am going to fix your problem and I have something coming up, I will talk to you about it and you will make money very fast."[85] The "something" that was "coming up" was Native American stock. He represented to Investor A that Native American "was guarantee[d] stock coming . . . on the stock market . . . And that we will buy it at a certain price and it will double within three months."[86] Baron told Investor A, "before the end of year 2016, it will be worth three to $10."[87]

Investor B testified it was important to him and Investor A that they realize their capital gains from Native American stock in the short term, "because I needed the money to pay off some mortgages."[88] Investor B testified that "Mr. Baron presented this as something magnificent, which was going to help us pay for our mortgages."[89]

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[80] Stip. ¶ 48.

[81] Stip. ¶ 49.

[82] Stip. ¶ 90. The introduction did not entail a face-to-face meeting with D'Arrigo. Investor A testified she did not speak with D'Arrigo while she and Investor B considered whether to buy Native American stock. Tr. 1048 (Investor A).

[83] Tr. 307–08 (Baron).

[84] Tr. 306 (Baron).

[85] Tr. 1044 (Investor A).

[86] Tr. 1046 (Investor A); *accord* Tr. 1270–71 (Investor B).

[87] Tr. 1063 (Investor A).

[88] Tr. 1272 (Investor B). Investors A and B were heavily invested in residential real estate.

[89] Tr. 1276 (Investor B).

Baron failed to disclose to Investors A and B that he had a Consulting Agreement with Native American.[90] Baron did not mention that Native American was contracted to pay him $10,000 per month.[91] Investor B testified, "I never knew that Mr. Baron was going to get money from the company at such a high percentage."[92]

Baron does not contradict Investors A and B's testimony about what he failed to disclose to them. Instead, Baron testified that he does not remember telling Investors A and B about the Consulting Agreement he had with Native American.[93] Baron also does not remember telling Investors A and B that he was paid by the company under the Consulting Agreement.[94]

### H. Investors A and B Purchase Native American Stock in Four Transactions

Investors A and B bought shares of Native American stock in four transactions totaling $359,806.[95] In the first two transactions, Investors A and B paid $134,800 to purchase 1,348,000 shares of Native American stock in an unregistered offering.[96] In the third transaction, Investors A and B wrote a check to Native American for $150,006 to purchase 1,500,000 shares of Native American stock in an unregistered offering.[97] In the fourth transaction, Investors A and B wrote a check for $75,000 to Native American to buy 1,500,000 shares of Native American stock in an unregistered offering.[98]

Because Investors A and B bought their Native American stock in unregistered offerings, it was restricted from resale under Section 5 of the Securities Act of 1933.[99] None of Investors A or B's stock purchases were executed through Equity Services, Baron's employer firm.[100]

### I. Baron Participates in Investors A and B's Purchases of Native American Stock

Baron helped Investors A and B open a self-directed Individual Retirement Account ("IRA") at Entrust Financial Group, a FINRA member firm, to hold their Native American

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[90] Tr. 1065 (Investor A).

[91] Tr. 1068 (Investor A).

[92] Tr. 1285 (Investor B).

[93] Tr. 327 (Baron).

[94] Tr. 344 (Baron).

[95] Stip. ¶ 92.

[96] Stip. ¶ 92; CX-47.

[97] Stip. ¶ 92; CX-49; CX-52.

[98] Stip. ¶ 92; CX-53; CX-61.

[99] Stip. ¶ 94.

[100] Stip. ¶ 96.

stock.[101] Investors A and B rolled over money from their life insurance investments to fund their purchases of Native American stock.[102] Baron knew they moved retirement assets into their self-directed IRA.[103] Investor A testified, "Mr. Baron asked us for money and told us that we would open an account with Entrust and we roll some money and eventually we buy the stock of NAEG."[104]

The details of Investors A and B's purchase transactions show the extent of Baron's participation. Baron emailed a Native American stock subscription agreement from his work email address to his personal email address.[105] From his personal email address, he emailed the subscription agreement to Investor A.[106] When asked in the hearing why he was the person who emailed the subscription agreement—and not, for example, D'Arrigo—Baron testified that he helped out here and there and D'Arrigo asked him for certain things:

> I helped out here and there. Just like [Investor A] would ask me for certain things, [D'Arrigo] asked me for certain things. I guess she was texting or calling him for this that she wanted this agreement. And he was out in Long Island and he asked if he could stop by and I could do him a favor and e-mail her the document.[107]

In addition, Investor B testified that Baron gave him a Native American subscription agreement.[108] Baron also delivered to Investors A and B the stock certificates memorializing their ownership of Native American stock.[109]

Investor A testified that, several months after their first two purchases of Native American stock, Baron told her "[t]hat it was taking more time than he thought for the stock to be approved by the stock market, the stock exchange."[110] When Investor A asked Baron why Native American was not yet approved, Baron told her "[t]hat they were missing still some money. . . . They were missing money to be in order to fill up all of paperwork and to be approved by the stock

[101] Stip. ¶ 91; Tr. 467 (Baron), 1049 (Investor A).

[102] CX-35; CX-36; CX-39.

[103] Tr. 361 (Baron).

[104] Tr. 1054–55 (Investor A).

[105] CX-37; Tr. 310 (Baron).

[106] Tr. 310–11 (Baron).

[107] Tr. 316–17 (Baron). Other than Baron's testimony, there is no evidence that Investor A texted or called D'Arrigo at this time.

[108] Tr. 1274 (Investor B); CX-38.

[109] Tr. 1059 (Investor A); CX-61.

[110] Tr. 1056 (Investor A).

exchange."[111] This led to the third stock purchase, in which Investor B obtained a certified bank check from Citibank for $150,006, and "Mr. Baron came to our office and picked it up."[112]

Investors A and B made their fourth purchase of Native American stock because Investor B had "promised Mr. Baron that if he needed some more money, the last money we had was $75,000 at Santander [Bank] in a savings account for our medical practice."[113] Investor B obtained a $75,000 certified bank check from Santander in a personal visit to the bank, with Baron accompanying him:

> Mr. Baron came middle of an afternoon when my husband was seeing patients, came to our office. My husband stopped whatever he was doing with his patient, walked to Santander with Mr. Baron, obtained a bank check and gave it to Mr. Baron.[114]

After Investor B obtained the $75,000 certified check, "[h]e gave it to Mr. Baron who was in a hurry."[115] Investor B testified to the same effect, stating Baron "came with his beautiful car, very nice and I gave him, I ran to the bank, it was close to my office. I took a check and I give him a check from Santander Bank."[116]

### J. Baron Is Compensated by Native American

Following Investors A and B's purchases of Native American stock in 2016, Native American paid Baron $284,890:[117]

- March 22: Baron received two wires from Native American. Total amount: $7,650.
- March 25: Baron went to his bank and deposited a $59,750 check from Native American.[118]
- May 31: Baron went to his bank and deposited a $25,000 check from Native American.

[111] Tr. 1064 (Investor A).

[112] Tr. 1058 (Investor A).

[113] Tr. 1060 (Investor A).

[114] Tr. 1061–62 (Investor A); CX-53.

[115] Tr. 1063 (Investor A).

[116] Tr. 1282 (Investor B).

[117] Baron stipulated that he received these payments. Stip. ¶ 41.

[118] CX-46; Tr. 399–400 (Baron).

- June 6: Baron received a $75,000 wire from Native American.

- September 8: Baron received three wires from Native American totaling $14,997.

- September 12: Baron went to his bank and deposited a $52,500 check from Native American.[119]

- October 26–31: Baron received 10 wires from Native American totaling $49,993.[120]

Native American's payments to Baron under the Consulting Agreement were close in time to Investors A and B's payments to the company for their purchases of stock. The company did not make any payments to Baron until Investors A and B made their first purchase.[121] He admits that on each of the four occasions when Investors A and B bought Native American stock, he received 50 percent of the purchase amount within five days after the purchase.[122] Native American's last payment to Baron was on October 31, 2016—shortly after Investors A's and B's final purchase.[123] Baron asked no one at Native American why his payments stopped.[124]

### K. Baron Fails to Disclose His Consulting Agreement in Compliance Records He Submits to Equity Services

Baron failed to disclose his Consulting Agreement with Native American in two annual compliance certifications and renewal data forms that he submitted to Equity Services. In November 2016, Baron signed and returned his 2017 ESI Renewal Data Form.[125] This Form required him to disclose any OBAs other than the ones he had disclosed earlier.[126] He checked the box stating he did not have any OBAs to disclose.[127] Baron also signed and returned his completed 2016 Registered Representative Annual Certification.[128] He checked the box stating

[119] CX-56.

[120] Stip. ¶ 41.

[121] Stip. ¶ 42.

[122] Tr. 421 (Baron).

[123] Stip. ¶ 43.

[124] Tr. 352 (Baron).

[125] Stip. ¶ 68.

[126] Stip. ¶ 70.

[127] Stip. ¶ 71.

[128] Stip. ¶ 72.

he did not have any OBAs to disclose.[129] Thus, Baron failed to disclose his Consulting Agreement with Native American.

In October 2017, Baron signed and returned his 2018 ESI Renewal Data Form.[130] This Form required disclosure of any OBAs beyond the ones Baron had disclosed earlier.[131] He checked the box stating, "**No Changes**: I have no changes to the above previously disclosed outside business activity(ies)."[132] Equity Services also requested that Baron complete his 2017 Registered Representative Annual Certification.[133] Baron electronically submitted this Annual Certification.[134] In the Annual Certification, Baron checked the "NO" response to the question that asked, "Do you have any outside business activities that you have NOT disclosed to . . . Compliance in writing?"[135] Again, Baron failed to disclose his Consulting Agreement with Native American.

Throughout Baron's association with Equity Services, he did not tell the firm anything about the consulting fees he received from Native American.[136] Julie Muscara never saw a copy of the Consulting Agreement.[137] Muscara never heard of Native American.[138] Baron did not ask Muscara any questions about his obligation to disclose OBAs, and did not express any confusion about this obligation.[139] Still, Native American was an OBA Baron never disclosed.[140]

### L. Baron Fails to Disclose to Equity Services Investors A and B's Transactions in Native American Stock

Equity Services' WSPs prohibited registered representatives from participating in private securities transactions without prior authorization from the firm's main office in Montpelier, Vermont.[141] The WSPs provided, "Private securities transactions are defined by FINRA as any

[129] Stip. ¶ 74.

[130] Stip. ¶ 81.

[131] Stip. ¶ 83.

[132] Stip. ¶ 84 (emphasis original).

[133] Stip. ¶ 85.

[134] Stip. ¶ 86.

[135] Stip. ¶ 88; Tr. 294 (Baron).

[136] Tr. 675 (Muro).

[137] Tr. 754 (Muscara).

[138] Tr. 761 (Muscara).

[139] Tr. 772–73 (Muscara).

[140] Tr. 779 (Muscara).

[141] Stip. ¶ 51; Tr. 250 (Baron), 681–82 (Muro).

securities transaction outside the regular course or scope of a [registered representative]'s or employee's employment with ESI (sometimes referred to as 'selling away')."[142]

Baron knew introducing a customer to the seller of an unapproved investment was a private securities transaction that Equity Services prohibited without prior approval.[143] Yet in his 2016 Annual Certification, Baron checked the "NO" response to the question, "Have you engaged in any private securities transactions?"[144] He checked the same "NO" response in his 2017 Annual Certification.[145] Thus, in two Annual Certifications, Baron failed to disclose to Equity Services that he participated in Investors A and B's four purchases of Native American stock.[146]

### M. Native American Stock Is Delisted from Trading

In September 2017, the SEC issued an order suspending trading in Native American stock.[147] The next month, Native American entered into a settlement with the SEC consenting to an order revoking its registration and delisting it from trading.[148] Ever since then, Native American has been delisted and its registration revoked.[149]

### N. Baron Makes More Representations to Investor A

#### 1. Baron to Investor A: "Great article"

Investors A and B did not receive any return on their purchases of Native American stock and began to be concerned about the safety of their investment. Investor A emailed Baron on November 17, 2016 stating, "I am very sad you are keeping us without any news. It is getting difficult for us."[150] Investor A testified she sent this email because "I kept asking Mr. Baron for news of our investment if it was going on the stock-market."[151] Baron replied to this email two minutes later, stating, "I'm in a huge seminal [sic] / conference, I will call you later."[152]

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[142] Stip. ¶ 51.

[143] Tr. 276–77 (Baron).

[144] Stip. ¶¶ 72, 75; Tr. 283 (Baron).

[145] Stip. ¶¶ 85, 86, 89.

[146] Tr. 785–86 (Muscara).

[147] Stip. ¶ 28; CX-21.

[148] Stip. ¶ 29; CX-22.

[149] Tr. 164 (Baron).

[150] CX-59; Tr. 1072–73 (Investor A).

[151] Tr. 1073 (Investor A).

[152] CX-59.

The next month, Investor A emailed Baron an article and wrote, "I thought you might be interested in this article Millionaire returning $4M 'trophy' house to Indian tribe."[153] About this millionaire, Investor A suggested, "Ask him to help with NAGP."[154] Baron replied to Investor A's email stating, "I forwarded to [J]oe [D'Arrigo] . . . Great article."[155] At this time (late 2016), Investor A relied on Baron for information about Native American.[156]

**2. Baron to Investor A: "I will explain"**

In February 2018, Native American sought Investor A's help persuading her friends to purchase the company's stock to raise $200,000 to close a transaction. A consultant to Native American ("Consultant")[157] exchanged several text messages with Investor A about raising this $200,000:

- Consultant to Investor A: "I have a meeting on Wall Street upon arrival with Brokerage Firm/Hedge Fund for that final 200k. . . . Very busy and getting close to finishing. Again; if you have any thought on last 200k, it would be helpful and appreciated. Also will help speed up the closing."[158]

- Investor A to Consultant: "Asking around. No taker. So far. We are eager to help you and us Time is of the essence for us. Really and truly."[159]

- Consultant to Investor A: "[A]s you well know I've been traveling quite extensively over the last few weeks. I should however make it to New York towards the end of the week. . . . There were a couple of telephone calls that came in I'm not quite sure if you referred prospective investors toward myself but if you did please advise. I expect news to be coming shortly which would give you a better understanding as to how far we are."[160]

- Investor A to Consultant: "Yes we gave your # ..,! Eager to be up to speed . . . We are exhausted."[161]

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[153] CX-60; Tr. 1075–76 (Investor A).

[154] CX-60; Tr. 1076 (Investor A).

[155] CX-60.

[156] Tr. 1077 (Investor A).

[157] According to FINRA BrokerCheck, the Consultant was once registered with FINRA.

[158] CX-79, at 9.

[159] CX-79, at 9.

[160] CX-79, at 10.

[161] CX-79, at 11.

The next month, Investor A reached out to Baron for news about Native American. In an email exchange, Investor A complained to Baron about an annuity stating, "We are waiting since Sept 2017. As well as waiting for nagp [sic] formidable news. We are not happy. We need firm dates or we would like to get back our deposits."[162] Baron replied to this email stating, "We will talk later today or in the morning. I will explain."[163]

### 3. D'Arrigo to Investor A (Baron Copied): "You want plan B sell the stock back to the company for 10% of recorded price paid"

On May 3, 2018, Investor A sent a text message to D'Arrigo and the Consultant asking for "Plan B" for Native American.[164] When D'Arrigo replied to this text message, he added Baron to the recipients. This is the tenor of the text message exchange:

- Investor A to D'Arrigo and Consultant: "[Investor B] and myself wanted to wait until May 1 to see any realistic outcomes. Dreaming season is over! Kindly give us your plan B. I will inform K Baron who introduced us to you."[165]

- D'Arrigo to Investor A, Baron, and Consultant: "Its [sic] extremely difficult to articulate the amount of work everyone involved with us are doing to get the results we expect. Make your decisions according to your life plan not mine . . . You want plan B sell the stock back to the company for 10% of recorded price paid. I'm not a babysitter. I'm a businessman so there's your plan B. If you're not willing to accept that offer, then act like a professional and understand if I say 'die' this company dies. If I say 'live' then the company lives. The reason I say this is because the amount of work it has been to keep this process/company going has drained me to the doorsteps of death."[166]

- Investor A to D'Arrigo, Baron, and Consultant: "This is a lot of writing . . . with little information. Talking about your efforts is not helpful. We certainly appreciate your work. But we need concrete information and

[162] CX-64, at 1; Tr. 370 (Baron).

[163] CX-64, at 1.

[164] "Plan A," which was for Native American to be listed on a securities exchange, had not worked out.

[165] CX-65; Tr. 1079 (Investor A). Investor A testified she sent this text message because "I think Mr. D'Arrigo or Mr. Keith Baron, I don't know who told us that by May 1, 2018 we will have a solution . . . not about the stock but we will be returned some money." Tr. 1081 (Investor A).

[166] CX-65.

schedule. . . . Please give me a straight answer. No need to get a tantrum."[167]

- D'Arrigo to Investor A, Baron, and Consultant: "You asked for plan B and I just gave it to you, I can't get any straighter than that. Take the plan please."[168]

- Investor A to D'Arrigo, Baron, and Consultant: "Can you tell me how much it will be? You are not acting as a businessman with shareholders. Sorry to say."[169]

Investor A kept pressing the Consultant, Baron, and D'Arrigo for information about Native American. These text messages were exchanged on June 25 and July 10, 2018:

- Investor A to Consultant and Baron: "[Consultant], I was waiting for your call all weekend as you promised last Friday. This speaks volumes. How do you think I feel? We have been told too many stories . . . time after time."[170]

- Consultant to Investor A and Baron: "Completely slipped my mind. With so much going on, it isn't hard to be so focused to forget to return a phone call. I am already into Monday's agenda . . . I will get that call in to you sometime today."[171]

- Investor A to Consultant, Baron, and D'Arrigo, two weeks later: "Are you back from your long trip? Anything positive to report at last? Waiting to hear from you as you promised."[172]

- Consultant to Investor A, Baron, and D'Arrigo: "I read that while driving and have absolutely no idea what any of that means. I'm just staying focused on the London peace [sic] and the Texas peace and that's about it plus the one from Dave. I'm in the vehicle with a shareholder as we speak so I'm going to need to call you back when done."[173]

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[167] CX-65; Tr. 1082–83 (Investor A).

[168] CX-65.

[169] CX-65.

[170] CX-66; Tr. 1086–87 (Investor A).

[171] CX-66; Tr. 1087 (Investor A).

[172] CX-67; Tr. 1088 (Investor A).

[173] CX-67; Tr. 1089 (Investor A).

- Investor A to Consultant, Baron, and D'Arrigo: "It is pretty clear . . . When are we done with NAGP? Happy you have a nice drive!"[174]

- Investor A to Consultant, Baron, and D'Arrigo: "Are you talking about London peace or London piece. Same as Texas!"[175]

#### 4. Baron to Investor A: "The returns will be extremely high and will resolve everything in your life"

Investor A emailed Baron on October 1, 2018 with a subject heading of, "Sad to read this!"[176] Investor A included in this email a link to a New York state court slip opinion in a civil action against Native American, D'Arrigo, and Baron.[177] Baron replied to the email stating, "Not so sad . . . they tried stealing the company away and the lawsuit was thrown out . . . if anything it proved how real everything really is."[178]

Then Investor A focused on Baron in her efforts to get information about Native American. These text messages were exchanged in December 2018:

- Investor A to Baron: "Unfortunately nothing new . . . Waiting for Joe [D'Arrigo]'s end of year report. I believe in Santa."[179]

- Baron to Investor A: "Ok . . . I will reach out to Joe."[180]

- Investor A to Baron: "Holding my breath."[181]

- Investor A to Baron, five days later: "Any progress?"[182]

- Baron to Investor A: "Yes, there is progress. I'm getting update shortly . . . just back from over seas."[183]

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[174] CX-67; Tr. 1090 (Investor A).

[175] CX-67.

[176] CX-68; Tr. 1091–93 (Investor A).

[177] CX-68. This was the same civil action that Baron failed to disclose on his Form U4, leading to the 2013 AWC. *See* Section II. A. of this Decision.

[178] CX-68.

[179] CX-70; Tr. 401 (Baron), 1094 (Investor A).

[180] CX-70; Tr. 1095 (Investor A).

[181] CX-70.

[182] CX-70; Tr. 1096 (Investor A).

[183] CX-70; Tr. 404–05 (Baron), 1097 (Investor A).

- Investor A to Baron: "Ok. Will see."[184]
- Investor A to Baron: "What is the new deal?"[185]
- Investor A to Baron, one day later: "What's the new deal?"[186]
- Baron to Investor A: "There is no new deal . . . waiting on the information of where we are at."[187]
- Investor A to Baron: "We are sooo miserable! This has messed up our retirement. Sad."[188]
- Baron to Investor A: "[T]his will work out the way it is intended, and when it does nobody will ever be upset, Because the returns will be extremely high and will resolve everything in your life."[189]

**5. Baron to Investor A: D'Arrigo "says he will fix whatever you need and make you happy"**

Baron sent Investor A a text message on January 21, 2019 stating, "[I got] in touch with Joe and he wants to sit down with you and [Investor B]. I am very sorry I referred him to you, but he assured me that he will take care of it all."[190] Investor A replied stating, "We'll make ourselves available anytime to accommodate Darrigo [sic] . . . !"[191] A meeting seems to have been scheduled because, nine days after these text messages, Baron sent Investor A a text stating, "Joe just called me 10 min ago, I understand he had to reschedule."[192] Baron followed up with another text, "I had plans to see u tomorrow and rearranged my schedule around his . . . but he

[184] CX-70.

[185] CX-71; Tr. 1098 (Investor A).

[186] CX-71; Tr. 1098 (Investor A).

[187] CX-71.

[188] CX-72; Tr. 407 (Baron), 1099 (Investor A).

[189] CX-72; Tr. 407 (Baron), 1101–02 (Investor A). At the time of Baron's text, he did not have any financial statements from Native American that would support his representations to Investor A about extremely high returns. Instead, he testified he made the representations to Investor A after speaking with D'Arrigo. Tr. 410, 414 (Baron).

[190] CX-73; Tr. 424–25 (Baron), 1103 (Investor A).

[191] CX-73.

[192] CX-74; Tr. 430 (Baron).

says he will fix whatever you need and make you happy."[193] Investor A replied, "Tell him to come with his check book then. He did not convince me."[194]

The meeting with D'Arrigo eventually took place, on February 7, 2019. Investor A testified that D'Arrigo told her and Investor B he was "preparing some papers" and they would have to deal with his lawyer:

> [W]e were hoping Mr. D'Arrigo will sit down and explain to us what happened, what was happening, and how we will recoup our money. He told us that he was preparing some papers. We didn't know what was the paper, the purpose of these papers and that we will have to deal with his lawyer. And then he sat down and start crying, explaining to us that he was a good family man. He always did his best for everybody, especially his family and he talked at length about himself instead of giving us comfort.[195]

#### 6. Baron to Investor A: "Nothing is lost"

Investor A's take-away from the meeting with D'Arrigo was that she and Investor B would recover all the money they had lost and would receive more information about this on March 1, 2019. Investor A confirmed her understanding in a text message to D'Arrigo and Baron. This and other text messages were exchanged in February and March 2019:

- Investor A to D'Arrigo and Baron: "Thank you for coming to our office on Feb 7-19. We missed Keith Baron. After all he introduced us. One more time you reassured us with the great news coming up for NAGP . . . it has been over 3 years. We need to get back our funds. Last night you agreed: to give back all our funds; --to contact us on March 1st 2019; --to send us documents from your lawyer in Singapore. Let me remind you of our mailing address."[196]

- Investor A to Baron and D'Arrigo: "We lost sooo much."[197]

- Baron to Investor A and D'Arrigo: "Nothing is lost! Joe assured me that it is being resolved."[198]

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[193] CX-74; Tr. 432 (Baron).

[194] CX-74.

[195] Tr. 1105 (Investor A).

[196] CX-75, at 1; Tr. 1109 (Investor A). The record does not disclose why Native American—a Delaware corporation whose purported business operations had been in Montana—needed the services of a lawyer in Singapore.

[197] CX-75, at 1; Tr. 1110 (Investor A).

[198] CX-75, at 1.

- Investor A to Baron and D'Arrigo: "March 1st is the date . . !"[199]

- Investor A to Baron and D'Arrigo, nine days later: "March 1st is around the corner . . . , we did not receive any lawyer s [sic] papers for review? Any thoughts?"[200]

- Baron to Investor A and D'Arrigo: "If Joe said he will get you paperwork [Investor A] I'm sure he will . . . from what I hear it's all going very good . . . hope you enjoy this beautiful day."[201]

- Baron to Investor A and D'Arrigo: "From Joe: Hi Keith, please contact [Investor A] and let her know as per our conversation in her office on February 7th, I will have the paperwork to her the first week in March. I never said to her that I would have it to her on March 1st. I'm getting on a flight today and will be back by the 1st week of March, once I review the document the attorney sends me, I will forward it to you and she can review and sign it then. Everything is finally going great and apologize for this big delay, it was unforeseen and I'm sorry for any headaches it caused thanks."[202]

- Investor A to Baron, two weeks later: "Still nothing today! Why?"[203]

- Baron to Investor A: "[C]an you please listen to what Joe is telling you to do? . . . I referred Joe to you guys because I can't offer anything close to what he can . . . Joe's company is alot bigger than what your being told and understand."[204]

- Baron to Investor A: "[C]an I meet you at hospital?"[205]

[199] CX-75, at 2; Tr. 438 (Baron).

[200] CX-76.

[201] CX-76; Tr. 1112 (Investor A).

[202] CX-76; Tr. 443–44 (Baron).

[203] CX-79, at 20; Tr. 1115 (Investor A).

[204] CX-79, at 20.

[205] CX-79, at 20.

### 7. Baron to Investor A: "They are processing request as [D'Arrigo] promised"

Investor A testified that in March 2019 (following the text immediately above), Baron met with her at the hospital where she worked and told her he wanted to be an intermediary between her and D'Arrigo:

> Mr. Baron came to Flushing Hospital where I work and probably on a Wednesday in the afternoon. And he told me again that he wanted to resolve the deal of NAEG reasonably between Mr. D'Arrigo and myself and him in-between.[206]

In this meeting, Baron told Investor A not to report her concerns to any regulatory authorities.[207] The meeting was followed by more text messages in March and April 2019:

- Investor A to Baron: "Still waiting . . . This is plain ridiculous at this point."[208]
- Baron to Investor A: "I know, the form online was submitted . . . I will follow up."[209]
- Investor A to Baron: "We really need our $$$$ for end of March. It shouldn't be a problem for Joe big business as you told me."[210]
- Baron to Investor A: "You will receive some type of contact threw [sic] your email."[211]
- Investor A to Baron: "Today March 29 . . . Nothing yet."[212]
- Investor A to Baron: "[H]ope to receive the email today."[213]
- Baron to Investor A: "I'm in the same boat with you."[214]

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[206] Tr. 1118-19 (Investor A).

[207] Tr. 1119 (Investor A).

[208] CX-79, at 2; Tr. 1120 (Investor A).

[209] CX-79, at 2.

[210] CX-79, at 2; Tr. 1121 (Investor A).

[211] CX-79, at 2; Tr. 1122 (Investor A).

[212] CX-79, at 3.

[213] CX-79, at 4; Tr. 1123 (Investor A).

[214] CX-79, at 4.

- Investor A to Baron: "Not sure."[215]

- Investor A to Baron: "It's already Friday in Singapore. I don't count on any news again this week. Joe and you have abused my patience, my friendship and worse my trust! . . . You are leaving us with very few choices."[216]

- Baron to Investor A: "I absolutely cherish your friendship and more . . . let me try and call and get an update."[217]

- Baron to Investor A: "They are processing request as [D'Arrigo] promised. It will be released to you is what I was told . . . they are verifying stock certificate, seems to me that it's all ok . . . I'll try and get more of a date, but they received request."[218]

**8. Baron to Investor A: "You guys are getting it back"**

D'Arrigo sent Baron and copied Investor A on an email on April 5, 2019, in which D'Arrigo stated Native American would soon send Investor A an acknowledgment of her interest in participating in a buyback:

> Please let [Investor A] know that the company did receive the information regarding her interest in participating in a buyback and will formally acknowledge its receipt this week. We are currently experiencing an issue with the server where our Native American Energy Group Inc emails are sent and received. Therefore the company is limiting its use until the problem is rectified which is why I'm using my personal email for this. However please note that I was told that we did receive her submission and she will receive acknowledgement as soon as we are able to do so.[219]

Yet Investor A did not receive an acknowledgment from Native American. The text messages exchanged between Investor A and Baron over the next two months show that, even though Baron represented to Investor A that she and Investor B were "getting it back," in fact Baron and D'Arrigo left them empty-handed:

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[215] CX-79, at 4.

[216] CX-79, at 4; Tr. 1125–26 (Investor A).

[217] CX-79, at 4.

[218] CX-79, at 4.

[219] CX-77; Tr. 445–46 (Baron).

- Investor A to Baron: "Please give us back our funds!!!!!!!! So painful."[220]

- Baron to Investor A: "I really feel terrible . . . you guys are getting it back and I'm so upset this has gotten you so frustrated . . . the company has been successful in what they were looking to accomplish and monies are being released . . . that's why Joe has been out of the country, he has been there expediting things . . . I am on top of this for you."[221]

- Investor A to Baron: "Any possibility to get some funds this week? It is sooo vital."[222]

- Baron to Investor A: "Trying . . . never forgot you."[223]

- Investor A to Baron: "How long can we Humanly wait . . . !!!!!!!!"[224]

- Baron to Investor A: "I agree, but Joe explained to me the process of them bringing funds into U.S., it's all under way and believe at the end of this nightmare."[225]

- Investor A to Baron, 28 days later: "Still nothing in the mail."[226]

Investor A's text immediately above was the last one she sent to Baron. Baron's final message to Investor A was, "Let me get back to you, [D'Arrigo] is overseas walking this transaction threw [sic]."[227]

### O. Baron Submits for Equity Services' Review Misleading Draft Responses to a FINRA Request for Information

On May 30, 2019, FINRA received a written complaint against Baron through FINRA's publicly available website ("FINRA Complaint").[228] This FINRA Complaint alleged that Baron

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[220] CX-78; Tr. 448–49 (Baron).

[221] CX-78. The record does not disclose why it would be necessary for D'Arrigo to embark on foreign travel to expedite the release of Investors A and B's lost investment funds.

[222] CX-78; Tr. 452 (Baron).

[223] CX-78.

[224] CX-78.

[225] CX-78.

[226] CX-78; Tr. 453 (Baron), 1129–30 (Investor A).

[227] CX-78.

[228] Stip. ¶ 97.

had defrauded Investors A and B in their purchases of Native American stock.[229] FINRA forwarded the FINRA Complaint to Equity Services, adding a request for information and documents.[230] The firm's director of compliance forwarded it to Baron and Julie Muscara.[231] The record does not show that Baron made written statements directly to Equity Services about Investors A and B's purchases of Native American stock. Yet Baron, with Muscara's assistance, wrote a response to the FINRA Complaint to be sent to FINRA.[232] Because Baron submitted drafts of his response to Muscara with the intention that she believe his statements to be true, the Hearing Panel considers these drafts to be representations to Equity Services about Investors A and B's purchases of Native American stock.

Baron made these representations in his draft response:

> I explained to [Investors A and B] that I did not trade stocks or investments and that I was only selling Insurance Products. They then asked me if I could refer them to someone who could assist them with alternative investments. It was then that I referred them to Joe Darrigo [sic], CEO of NAEG. They met with Joe Darrigo and made the decision to invest in NAEG for their self-directed IRA's. I had no involvement or compensation regarding their investment's [sic] with NAEG.
>
> . . . .
>
> . . . Upon speaking with [Investor A] several months ago, she stated that the income producing annuities are giving them income for life as they are designed to do, and that they wanted to rescind their NAEG investment. I explained to them that they must contact Joe Darrigo, as I was not involved with that investment or company.[233]

Baron's response to FINRA was dated August 7, 2019. Equity Services submitted Baron's response to FINRA nine days later.[234] As for oral representations Baron made to Equity Services, Muscara testified that Baron was not truthful with her about his relationship with Native American.[235]

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[229] CX-114, at 5.

[230] CX-114, at 2.

[231] CX-114, at 1–2.

[232] Stip. ¶ 101.

[233] CX-141, at 1–2.

[234] CX-141; Tr. 460–61 (Baron).

[235] Tr. 802 (Muscara).

### P. Baron Responds to FINRA's Requests for Information

On September 6, 2019, FINRA sent Baron a FINRA Rule 8210 request for information and documents.[236] In this request, FINRA sought information about Investors A and B's purchases of Native American stock and Baron's business relationship with D'Arrigo:

> In your response to FINRA, dated August 7, 2019, you stated that you referred [Investors A and B] to Joe D'Arrigo, CEO of Native American Energy Group Inc. ("NAEG"), to assist with alternative investments. Please provide a written explanation regarding your personal involvement in the referral. Specifically, the following information:
>
> a. Your recollection of the referral of [Investors A and B] to D'Arrigo and NAEG;
>
> b. Reason for referring [Investors A and B] to D'Arrigo and NAEG;
>
> c. Prior history selling NAEG, and/or referring clients to D'Arrigo or NAEG;
>
> d. Any use of advertising materials related to NAEG in communications with [Investors A and B] and/or other clients;
>
> e. A description of any communications held with NAEG representatives or D'Arrigo prior to referral;
>
> f. An explanation of your relationship with D'Arrigo (including, but not limited to, length of relationship, origin of relationship, any business dealings past or present, etc.).
>
> g. An explanation of any complaints received related to previous referrals of clients to NAEG or D'Arrigo.[237]

On September 20, 2019, Baron submitted his response to this FINRA Rule 8210 request.[238] In his response, Baron represented:

> a) My recollection of the introduction of [Investors A and B] was strictly to Mr. D'Arrigo and not NAEG. I was asked by [Investor A] if I would help take over [Investor B's] day trading activity or move the monies into another investment that they can make monies on, because

[236] Stip. ¶ 105; CX-143; Tr. 494–95 (Baron).

[237] CX-143, at 1.

[238] Stip. ¶ 109; CX-144; Tr. 522–23 (Baron). As with the first FINRA request, Baron submitted his draft responses to Muscara for her review. Stip. ¶¶ 106–08.

[Investor B] has already lost around $250k day trading himself. I explained to both [Investors A and B] I no longer trade any stocks or get involved with any type of investing other than insurance products. [Investor B] at the time had no interest in annuities, they informed me they were looking to be introduced to someone that can help them with the request. I believed the introduction to Mr. Darrigo would be advantageous for [Investors A and B] because of what they were looking for. [Investors A and B] met with Mr. Darrigo multiple times before making their own decisions to be part of the company.

b) I did not introduce them to NAEG, however I introduced them to Mr. Darrigo primarily because I have a relationship with Mr. Darrigo and know of him to have always been genuine, honest and has always conducted himself with integrity. I introduced Mr. Darrigo as I have many other people in different areas of business.

c) Let me begin by clarifying the question, I never sold any NAEG, my participation was strictly an introduction of 2 people. Let me further clarify by stating that I never introduced any clients to NAEG, nor did I introduce any friends or family to NAEG. My introduction was to Mr. Darrigo. Which I have known for over 25 years.

d) I am not aware of any advertising materials of NAEG and never participated in the sale of it, after [Investors A and B] had made there [sic] own decision to participate in the company, [Investor A] asked me for the form required to participate and asked me to fax documents on her behalf as she had done several times in the past. I do not have these documents but recalled this a few days ago.

e) The question is too broad, considering I have known Mr. darrigo [sic] for over 25 years, however if the question is specific to introducing [Investors A and B] to Mr. Darrigo I simply stated to Mr. Darrigo that [Investor A] was very upset that her husband lost 250k dollars day trading, and if he would be willing to speak with them.[239]

f) I met Mr. Darrigo approximately 25 years ago, through a mutual friend. My only business dealings with Mr. Darrigo lasted for a short length of time, when I was a consultant for the company with the sole role of introducing companies looking for or needing financing. The

[239] Investor A testified that, even though Investor B lost "a little sum" in the stock market, he did not lose money by day trading and "never was a day trader ever." Tr. 1250 (Investor A).

company's objective was to grow threw [sic] acquisitions and or partnerships with other companies.

g) There are no complaints, however I was included in a lawsuit against the company back in 2010 which was later dismissed with prejudice, after the corporate attorney admitted that he lied, in his attempt to steal the company. The attorney was disbarred over this.[240]

Even though Baron's response stated his business dealings with D'Arrigo lasted only a "short length of time," Baron admitted in the hearing that their business dealings in fact spanned the period from 2005 through 2017.[241] Baron's response failed to disclose his three-year Consulting Agreement with Native American,[242] as well as the $284,890 in compensation he received under the Consulting Agreement.[243]

Around this time, FINRA came into possession of a previously unknown email Baron had sent to his personal email address. Attached to Baron's email was a copy of the Native American subscription agreement.[244] The evidence shows that, from his personal email address, Baron emailed the subscription agreement to Investor A.[245] FINRA had some questions about Baron's email. So on September 24, 2019, FINRA sent Equity Services a request for information attaching the email and seeking "A detailed written statement from Baron regarding the purpose of the . . . e-mail that included a subscription agreement for the Native American Energy Group, Inc."[246] Baron responded on October 4, 2019 stating, "I do not remember why I have an email of the document, and I don't even recall seeing such a document."[247]

### Q. Baron Resigns from Equity Services and Investors A and B Recover One-Half of Their Lost Investment Funds

In December 2021, Baron voluntarily resigned his position as a registered representative for Equity Services.[248] At the time, Baron was under internal review by Equity Services for

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[240] CX-144, at 1–2.

[241] Tr. 517 (Baron).

[242] CX-144.

[243] CX-144.

[244] CX-37; Tr. 310 (Baron).

[245] Tr. 310–11 (Baron). *See* Section II. I. of this Decision.

[246] Stip. ¶ 111; CX-126, at 4; Tr. 524–25 (Baron).

[247] Stip. ¶ 112; CX-146; Tr. 528 (Baron). It is possible Baron anticipated FINRA would eventually find his email attaching the subscription agreement because his earlier, September 20, 2019 response to FINRA's request for information stated, "[Investor A] asked me for the form required to participate and asked me to fax documents on her behalf . . . I do not have those documents but recalled this a few days ago." CX-144, at 1.

[248] CX-181; Tr. 538–39 (Baron).

violating investment-related statutes, regulations, rules or industry standards of conduct.[249] The firm's internal review was prompted by Baron's receipt of a subpoena from the SEC seeking information about Investors A and B's purchases of Native American stock. In his resignation email, Baron stated his decision was motivated by business reasons:

> After reviewing my business this past year, I decided that I DO NOT want to renew with ESI for 2022, I believe I already told them yes initially and may have paid fees, please see if I did, if it can be reversed. If anything should change and I need to be re-registered, we can discuss, but I did no business in 2021 to justify.[250]

Baron's resignation ended Equity Services' internal review.[251] Baron continued working for National Life as an insurance agent.

Investors A and B received no money from Baron or D'Arrigo to compensate them for their total loss of investment funds in purchasing Native American stock. In 2023, Investor A retained an attorney and filed an arbitration claim against Equity Services for their loss of investment funds.[252] Equity Services settled Investor A's arbitration claim by paying damages of $175,000—one-half the money Investors A and B lost purchasing Native American stock.[253] Investors A and B have not recovered lost funds from any other source.[254]

### R. Investors A and B's Hearing Testimony Was Credible; Baron's Was Not

The Hearing Panel finds that Investors A and B were credible witnesses on critical issues. They gave detailed and plausible testimony about their purchases of Native American stock and Baron's misrepresentations and material omissions about the stock.[255] Their testimony was corroborated by the documentary evidence—in particular, the large volume of text messages in which Baron and D'Arrigo deflected and delayed Investor A's multiple requests for the recovery of their lost investment funds.[256] In contrast, Baron was not a credible witness. Most important, the evidence shows Baron made false representations to Equity Services and FINRA about Investors A and B's purchases of Native American stock and Baron's consulting arrangement with Native American.[257] The falsity of Baron's representations became clear with the later discovery of irrefutable documentary evidence: the text messages between Baron, Investor A,

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[249] CX-181, at 2; Tr. 539 (Baron).

[250] Respondent's Exhibit 66; Tr. 542 (Baron).

[251] CX-181, at 5–6.

[252] Tr. 1136–37 (Investor A).

[253] CX-82, at 2; Tr. 1138–39 (Investor A).

[254] Tr. 1139 (Investor A).

[255] *See* Sections II. G., II. H., and II. I. of this Decision.

[256] *See* Section II. N. of this Decision.

[257] *See* Sections III. D. and III. E. of this Decision.

and D'Arrigo; and the three-year Consulting Agreement.[258] The Hearing Panel concludes that, when Baron's statements were shown to be false by the later production of documentary evidence, he could not be trusted to tell the truth the next time around.

## III. Conclusions of Law

### A. Baron Made Misrepresentations and Material Omissions to Investors A and B in Violation of FINRA Rule 2010 (First Cause of Action)

In the first cause of action of the Complaint, Enforcement charges Baron with violating FINRA Rule 2010 because he made misrepresentations and omitted material information in his conversations with Investors A and B about Native American stock. FINRA Rule 2010 provides, "A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade." FINRA Rule 2010 encompasses all business-related conduct that does not conform to moral norms or standards of professional behavior.[259] Such conduct reflects poorly on an associated person's ability to comply with the regulatory requirements of the securities industry.[260] FINRA Rule 2010 is not limited to illegal conduct but articulates a broad ethical principle.[261]

Misrepresentations and material omissions to investors violate FINRA Rule 2010.[262] When making representations to investors, the associated person has a duty to investigate and cannot rely primarily on the statements of others.[263] The associated person violates FINRA Rule 2010 when he makes misrepresentations to investors about the reasons why they cannot recover their lost investment funds.[264] It is unnecessary to prove scienter.[265]

The evidence in the hearing shows that Baron made misrepresentations to Investors A and B about Native American stock. His misrepresentations included these statements:

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[258] *See* CX-33; CX-65; CX-66; CX-67; CX-70; CX-71; CX-72; CX-73; CX-74; CX-75; CX-76; CX-78; CX-79.

[259] *Dep't of Enforcement* v. *Tranchina*, No. 2018058588501, 2023 FINRA Discip. LEXIS 3, at *14 (NAC Mar. 23, 2023), *appeal docketed*, No. 3-21390 (SEC April 20, 2023); *Dep't of Enforcement v. Mantei*, No. 2015045257501, 2023 FINRA Discip. LEXIS 10, at *25 (NAC May 30, 2023), *appeal docketed*, No. 3-21516 (SEC June 27, 2023).

[260] *Keilen Dimone Wiley*, Exchange Act Release No. 76558, 2015 SEC LEXIS 4952, at *15 (Dec. 4, 2015).

[261] *Dep't of Enforcement v. Maheshwari*, No. 2017055608101, 2020 FINRA Discip. LEXIS 46, at *15 (NAC Dec. 17, 2020).

[262] *Dep't of Enforcement v. NYPPEX, LLC*, No. 2019064813801, 2024 FINRA Discip. LEXIS 6, at *87 (NAC Apr. 8, 2024), *appeal docketed*, No. 3-21933 (SEC May 7, 2024).

[263] *Dep't of Enforcement v. Titan Sec.*, No. 2013035345701, 2021 FINRA Discip. LEXIS 5, at *44 (NAC June 2, 2021), *appeal docketed*, No. 3-20387 (SEC June 29, 2021).

[264] *Dep't of Enforcement v. Braeger*, No. 2015045456401, 2019 FINRA Discip. LEXIS 55, at *30–31 (NAC Dec. 16, 2019).

[265] *Dep't of Enforcement v. Kielczewski*, No. 2017054405401, 2021 FINRA Discip. LEXIS 22, at *25 (NAC Sept. 30, 2021), *appeal docketed*, No. 3-20636 (SEC Oct. 27, 2021).

- "I am going to fix your problem and I have something coming up, I will talk to you about it and you will make money very fast."[266] This statement was false. Investors A and B did not make money "very fast" from purchasing Native American stock. They did not make any money at all.

- Native American "was guarantee[d] stock coming . . . on the stockmarket."[267] This was false. Native American never "came on" the stock market. The company was unlikely to be listed on a stock exchange because it had gone out of business and was almost three years delinquent in its SEC filings.[268] If the stock was "guaranteed" at all, it was guaranteed to fail and generate no return.

- "[B]efore the end of year 2016, it will be worth three to $10."[269] This was false. Native American was *never* worth $3 to $10 per share, much less before the end of 2016.

- "Mr. Baron presented this as something magnificent, which was going to help us pay for our mortgages."[270] This was false. Native American was the very opposite of "magnificent." The company's nonexistent returns did not help Investors A and B pay for their mortgages.

When Investor A became concerned about the security of her and Investor B's investment in Native American, Baron made these misrepresentations to her:

- About a civil action against Native American: "[I]f anything it proved how real everything really is."[271] This statement was false. Native American was not "real" at all. The company had no business operations or revenue, and its stock could not be traded on any securities exchange.[272]

- "This will work out the way it is intended, and when it does nobody will ever be upset."[273] This was false. Native American never "worked out,"

[266] Tr. 1044 (Investor A).

[267] Tr. 1046 (Investor A); *accord* Tr. 1270–71 (Investor B).

[268] *See* Stip. ¶¶ 24–25, 29.

[269] Tr. 1063 (Investor A).

[270] Tr. 1276 (Investor B).

[271] CX-68.

[272] *See* Stip. ¶¶ 24–25, 29–30.

[273] CX-72.

and Investors A and B remained "upset" because they failed to recover their lost investment funds.

- "The returns will be extremely high and will resolve everything in your life."[274] This was false. The returns were not "extremely high." They were nonexistent. They did not "resolve" anything in Investors A and B's lives.

- D'Arrigo "will take care of it all."[275] This was false. D'Arrigo did not "take care" of anything.

- D'Arrigo "says he will fix whatever you need and make you happy."[276] This was false. D'Arrigo failed to "fix" anything Investor A "needed." She was far from "happy."

- "Nothing is lost!"[277] This was false. *Everything* (all of Investors A and B's investment funds) was "lost."

- "Joe assured me that it is being resolved."[278] This was false. Investors A and B's investment loss was never "resolved."

- "If Joe said he will get you paperwork . . . I'm sure he will."[279] This was false. D'Arrigo never got Investor A the "paperwork." Baron's purported faith in D'Arrigo was unfounded yet again.

- "They are processing request as he promised."[280] This was false. This Decision was completed in January 2025—nearly six years after Baron made this representation, and Native American still has not finished "processing" Investor A's request for recovery of her lost investment funds.

- "[T]hey are verifying stock certificate, seems to me that it's all ok."[281] This was false. If Native American were in fact "verifying" Investors A

[274] CX-72.

[275] CX-73.

[276] CX-74.

[277] CX-75, at 1.

[278] CX-75, at 1.

[279] CX-76.

[280] CX-79, at 4.

[281] CX-79, at 4.

and B's "stock certificate," nothing came of that process. Nothing was "ok."

- "[Y]ou guys are getting it back."[282] This was false. Investors A and B never "got it back." Native American never returned any money to Investors A and B.

- "[T]he company has been successful in what they were looking to accomplish and monies are being released."[283] If Native American were looking to accomplish the retention of Investors A and B's investment funds despite their repeated demands for the return of their funds, the company was "successful." But the statement that "monies are being released" was false. No monies were released.

- D'Arrigo "has been out of country, he has been there expediting things."[284] This was false. First, the record does not disclose why the recovery of Investors A and B's lost investment funds would require foreign travel. Second, "things" were not "expedited." Investors A and B never recovered their funds.

Baron failed to disclose to Investors A and B that: (1) he had a Consulting Agreement with Native American;[285] (2) Native American was contracted to pay him $10,000 per month;[286] (3) Native American had gone out of business and had lost the bond necessary to conduct oil and gas operations;[287] and (4) in the eight years Native American had been in business, the company had generated only $200,508 in revenue (an average of $25,064 per year) and was not generating any revenue when Investors A and B made their purchases of the company's stock.[288]

A reasonable investor would view Baron's misrepresentations and omissions as significantly altering the total mix of information made available.[289] Thus, Baron's misrepresented and omitted facts were material.

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[282] CX-78.

[283] CX-78.

[284] CX-78.

[285] Tr. 1065 (Investor A).

[286] Tr. 1285 (Investor B).

[287] *See* Stip. ¶¶ 24–25. Baron had a duty to investigate Native American before he made representations and omitted material information about the company. *Titan Sec.*, 2021 FINRA Discip. LEXIS 5, at *44.

[288] CX-15, at 6.

[289] *Titan Sec.*, 2021 FINRA Discip. LEXIS 5, at *52.

For these reasons, the Hearing Panel concludes that Baron violated FINRA Rule 2010 when he made misrepresentations and material omissions to Investors A and B about Native American stock.

### B. Baron Failed to Disclose his OBA in Violation of FINRA Rules 3270 and 2010 (Second Cause of Action)

In the second cause of action, Enforcement charges Baron with violating FINRA Rules 3270 and 2010 because he failed to provide written notice to Equity Services of his OBA with Native American. Among other things, FINRA Rule 3270 prohibits a registered person from being an independent contractor or being compensated by an OBA without providing prior written notice to his employer firm:

> No registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated, or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member.[290]

FINRA Rule 3270 requires fulsome, prompt, and written disclosure of an OBA to the employer firm.[291] The Rule applies to all OBAs so the firm can raise its objections, if any, at a meaningful time and can exercise appropriate supervision.[292] OBAs are of serious concern, and the careful monitoring of these activities carries important protections for member firms and customers.[293] A registered person's business activity is outside the scope of his employer firm's relationship when the firm does not direct, approve, or otherwise have any involvement with the activity.[294] A consulting agreement is an OBA that the registered person must disclose.[295] A violation of FINRA Rule 3270 violates FINRA Rule 2010.[296]

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[290] *Accord Titan Sec.*, 2021 FINRA Discip. LEXIS 5, at *53–54.

[291] *Dep't of Enforcement v. Akindemowo*, No. 2011029619301, 2015 FINRA Discip. LEXIS 58, at *44 (NAC Dec. 29, 2015), *aff'd*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769 (Sept. 30, 2016).

[292] *Dep't of Enforcement v. Mathieson*, No. 2014040876001, 2018 FINRA Discip. LEXIS 9, at *15 (NAC Mar. 19, 2018); *accord Kenny Akindemowo*, Exchange Act Release No. 79007, 2016 SEC LEXIS 3769, at *31–32 (Sept. 30, 2016).

[293] *Dep't of Enforcement v. Ghosh*, No. 2016051615301, 2021 FINRA Discip. LEXIS 32, at *51 (NAC Dec. 16, 2021); *Dep't of Enforcement v. Connors*, No. 2012033362101, 2017 FINRA Discip. LEXIS 2, at *32 (NAC Jan. 10, 2017).

[294] *Ghosh*, 2021 FINRA Discip. LEXIS 32, at *33.

[295] *Dep't of Enforcement v. Seol*, No. 2014039839101, 2019 FINRA Discip. LEXIS 9, at *17–18, 38 (NAC Mar. 5, 2019).

[296] *Ghosh*, 2021 FINRA Discip. LEXIS 32, at *31.

Baron does not dispute that he violated his obligation to provide Equity Services with written notice of his Native American OBA.[297] The evidence shows that when Baron became registered through Equity Services, his OBA Disclosure did not disclose his Consulting Agreement with Native American.[298] Throughout his five-month onboarding, he failed to disclose he had a contemporaneous and ongoing consulting arrangement with an outside company.[299] His consulting arrangement made him an independent contractor for Native American under FINRA Rule 3270. Baron had a reasonable expectation of compensation in the form of the $10,000 monthly fee he was due to receive under the Consulting Agreement.[300] Baron's compensation evolved from expectation to reality shortly after Investors A and B made their four purchases of Native American stock.

For these reasons, the Hearing Panel concludes that Baron violated FINRA Rules 3270 and 2010 when he engaged in an OBA without giving written notice to Equity Services.

### C. Baron Failed to Disclose His Participation in Private Securities Transactions in Violation of FINRA Rules 3280 and 2010 (Third Cause of Action)

In the third cause of action, Enforcement charges Baron with violating FINRA Rules 3280 and 2010 because he participated in Investors A and B's purchases of Native American stock without giving prior written notice to Equity Services. FINRA Rule 3280 prohibits an associated person from participating in a private securities transaction without providing prior written notice to his employer firm:

> Prior to participating in any private securities transaction, an associated person shall provide written notice to the member with which he is associated describing in detail the proposed transaction and the person's proposed role therein and stating whether he has received or may receive selling compensation in connection with the transaction.[301]

FINRA Rule 3280 defines a private securities transaction as "any securities transaction outside the regular course or scope of an associated person's employment with a member."[302] Participating in private securities transactions includes soliciting investors by providing information that may influence their investment decisions and facilitating the execution of

[297] Tr. 688–89 (admission of Baron's attorney).

[298] Stip. ¶ 61; Tr. 234–35 (Baron).

[299] Tr. 218–19 (Baron), 667, 675 (Muro).

[300] *See* Stip. ¶ 38; CX-33.

[301] FINRA Rule 3280(b); *accord Kielczewski*, 2021 FINRA Discip. LEXIS 22, at *24–25.

[302] FINRA Rule 3280(e)(1).

transactions.[303] Participation also includes making specific recommendations and vouching for the validity of the investment.[304]

The principal issue in this cause of action is whether Baron participated in Investors A and B's four purchases of Native American stock. The evidence shows that Baron introduced Investors A and B to D'Arrigo for them to make investments, and that Baron made misrepresentations and material omissions to them about Native American stock.[305] He helped them open a self-directed IRA account at Entrust Financial Group to hold their stock, thus facilitating the execution of their purchase transactions.[306] He emailed a Native American stock subscription agreement to Investor A.[307] He delivered stock certificates memorializing Investors A and B's ownership of Native American stock.[308] Within five days following each of Investors A and B's purchases, Native American paid Baron 50 percent of the amount of the proceeds.[309] When Investor A expressed her worry about the safety of their investment, Baron sent multiple text messages giving false assurances they would get their money back.[310]

These facts, singly and in combination, show that Baron participated in Investors A and B's purchase transactions under FINRA Rule 3280. Yet Baron failed to provide prior written notice to Equity Services of his participation in the purchase transactions.[311]

For these reasons, the Hearing Panel concludes that Baron violated FINRA Rules 3280 and 2010 when he participated in four undisclosed private securities transactions by which Investors A and B bought Native American stock.

### D. Baron Made Misrepresentations to Equity Services in Violation of FINRA Rule 2010 (Fourth Cause of Action)

In the fourth cause of action, Enforcement charges Baron with violating FINRA Rule 2010 because he made misrepresentations to Equity Services about his consulting relationship with Native American and his participation in Investors A and B's purchases of Native American stock. FINRA Rule 2010 requires that an associated person truthfully disclose material

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[303] *Akindemowo*, 2021 SEC LEXIS 3769, at *25–27.

[304] *Mark H. Love*, Exchange Act Release No. 49248, 2004 SEC LEXIS 318, at *9 (Feb. 13, 2004).

[305] Tr. 1045-46 (Investor A), 1269–71 (Investor B).

[306] Stip. ¶ 91; Tr. 467 (Baron), 1049 (Investor A).

[307] CX-37; Tr. 310–11 (Baron).

[308] Tr. 1059 (Investor A); CX-61.

[309] Stip. ¶ 41; Tr. 247–48 (Baron).

[310] *See* Section II. N. of this Decision.

[311] Stip. ¶¶ 72, 75, 85–89; Tr. 785–86 (Muscara).

information to his employer firm.[312] False answers on the associated person's annual compliance questionnaires are misrepresentations to the employer firm in violation of FINRA Rule 2010.[313]

The evidence shows that Baron's misrepresentations to Equity Services took two forms. First, in two annual compliance certifications and two renewal data forms, Baron failed to disclose to Equity Services that he had a Consulting Agreement with Native American and participated in four private securities transactions by which Investors A and B bought the company's stock.[314] Instead, Baron represented to the firm that he had no OBAs or private securities transactions to report. These representations were false.[315]

Second, Baron submitted for Equity Services' review draft responses to FINRA requests for information in which he minimized his business dealings with Native American and denied that he had participated in Investors A and B's purchases of the company's stock. The Hearing Panel finds the representations were false. Because Equity Services passed on Baron's representations to FINRA, the Hearing Panel discusses these in detail in the next Section of this Decision.

For these reasons, the Hearing Panel concludes that Baron violated FINRA Rule 2010 when he made misrepresentations to Equity Services about his consulting arrangement and his participation in the four private securities transactions by which Investors A and B bought Native American stock.

### E. Baron Made Misrepresentations to FINRA in Violation of FINRA Rules 2010 and 8210 (Fifth Cause of Action)

In the fifth cause of action, Enforcement charges Baron with violating FINRA Rules 2010 and 8210 because he made misrepresentations to FINRA about his consulting relationship with Native American and his participation in Investors A and B's purchases of Native American stock. FINRA Rule 8210 requires an associated person to provide information and documents requested by FINRA:

> For the purpose of an investigation, complaint, examination, or proceeding authorized by the FINRA By-Laws or rules, an Adjudicator or FINRA staff shall have the right to . . . require a member, person associated with a member, or any other person subject to FINRA's jurisdiction to provide information orally, in writing, or electronically . . . with respect to any matter involved in the investigation, complaint, examination, or proceeding . . . No member or person

[312] *Kielczewski*, 2021 FINRA Discip. LEXIS 22, at *26.

[313] *Seol*, 2019 FINRA Discip. LEXIS 9, at *40.

[314] Stip. ¶¶ 71, 74, 75, 84, 88, 89; Tr. 279–84 (Baron).

[315] *See* Sections II. E., II. G., and II. H. of this Decision.

shall fail to provide information or testimony or to permit an inspection and copying of books, records, or accounts pursuant to this Rule.[316]

Providing false or misleading information to FINRA in response to a FINRA Rule 8210 request violates FINRA Rule 8210.[317] A violation of FINRA Rule 8210 violates FINRA Rule 2010.[318] And providing false and misleading information to a FINRA request violates FINRA Rule 2010 even if that request does not cite FINRA Rule 8210.[319] Because FINRA lacks subpoena power, it must rely on FINRA Rule 8210 to investigate possibly violative activities of its members and associated persons.[320] The Rule is the principal way FINRA learns about such activities.[321] Thus, the Rule is indispensable to FINRA's ability to fulfill its regulatory function.[322]

The evidence shows that on August 7, 2019, Baron submitted a response to a request FINRA had made for information about Investors A and B's purchases of Native American stock.[323] In his response, Baron made these misrepresentations to FINRA:

- "[Investors A and B] then asked me if I could refer them to someone who could assist them with alternative investments."[324] This statement was false. According to Investor A, when she told Baron she was concerned about her finances, Baron told her "I am going to fix your problem and I have something coming up, I will talk to you about it and you will make

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[316] FINRA Rule 8210(a)(1) and (c).

[317] *Dep't of Enforcement v. Milberger*, No. 2015047303901, 2020 FINRA Discip. LEXIS 24, at *17 (NAC Mar. 27, 2020).

[318] *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *2–3 n.2 (Nov. 14, 2008), *petition for review denied,* 347 F. App'x 692 (2d Cir. 2009)*; accord Dep't of Enforcement v. Meyers Assoc., L.P.*, No. 2010020954501, 2018 FINRA Discip. LEXIS 1, at *13 n.13 (NAC Jan. 4, 2018), *aff'd*, Exchange Act Release No. 86497, 2019 SEC LEXIS 1869 (July 26, 2019).

[319] *Dep't of Enforcement v. Saliba*, No. 2013037522501r, 2022 FINRA Discip. LEXIS 12, at *21–22 (NAC Oct. 6, 2022), *aff'd*, Exchange Act Release No. 99940, 2024 SEC LEXIS 852 (Apr. 11, 2024); *Dep't of Enforcement v. Elgart*, No. 2013035211801, 2017 FINRA Discip. LEXIS 9, at *32–33 (NAC Mar. 16, 2017), *aff'd*, Exchange Act Release No. 81779, 2017 SEC LEXIS 3097 (Sept. 29, 2017), *petition for review denied*, 750 F. App'x 821 (11th Cir. 2018).

[320] *Dep't of Enforcement v. N. Woodward Fin. Corp.*, No. 2010021303301, 2014 FINRA Discip. LEXIS 32, at *19–20 (NAC July 21, 2014), *aff'd*, Exchange Act Release No. 74913, 2015 SEC LEXIS 1867 (May 8, 2015), *petition for review denied sub nom., Troszak v. SEC*, No. 15-3729, 2016 U.S. App. LEXIS 24259 (6th Cir. June 29, 2016).

[321] *Merrimac Corp. Sec., Inc.*, Exchange Act Release No. 86404, 2019 SEC LEXIS 1771, at *6 (July 17, 2019).

[322] *David Kristian Evansen*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080, at *63 (July 27, 2015); *Dep't of Enforcement v. Saliba*, No. 2013037522501, 2019 FINRA Discip. LEXIS 1, at *44 (NAC Jan. 8, 2019), *remanded*, Exchange Act Release No. 91527, 2021 SEC LEXIS 865 (Apr. 9, 2021).

[323] CX-141.

[324] CX-141, at 1.

money very fast."[325] There is no evidence that Investor A asked Baron to refer her to anyone who could assist her with alternative investments.

- "I referred them to Joe Darrigo [sic], CEO of NAEG."[326] This was misleading. According to Investor A, when Baron introduced her and Investor B to D'Arrigo, he represented, among other things, that Native American "was guarantee[d] stock coming . . . on the stock market."[327] Baron's response to FINRA does not mention the representations he made as he made the referral.

- Investors A and B "met with Joe Darrigo [sic] and made the decision to invest in NAEG for their self-directed IRA's [sic]."[328] This was false. Investor A testified she did not speak with D'Arrigo as she and Investor B considered whether to buy Native American stock.[329] As for the self-directed IRAs, Baron failed to disclose to FINRA that he had helped Investors A and B open these IRAs to hold their Native American stock.[330] Baron falsely made it sound as if Investors A and B already had their IRAs open before he brought Native American stock to their attention.

- "I had no involvement or compensation regarding their investment's [sic] with NAEG."[331] This was false. Baron was involved with Investors A and B's purchases of Native American stock because he made misrepresentations and material omissions about the stock.[332] Baron's involvement extended beyond misrepresentations to include helping Investors A and B open their self-directed IRAs; emailing a Native American stock subscription agreement to Investor A; picking up the purchase money; delivering the stock certificates; and other activities.[333] Baron was compensated with payments of tens of thousands of dollars within five days after each purchase of Native American stock by Investors A and B.[334] In each purchase, the amount of Baron's

[325] Tr. 1044 (Investor A).

[326] CX-141, at 1.

[327] Tr. 1046 (Investor A); *accord* Tr. 1270–71 (Investor B).

[328] CX-141, at 1.

[329] Tr. 1048 (Investor A).

[330] *See* Stip. ¶ 91; Tr. 467 (Baron), 1049 (Investor A).

[331] CX-141, at 1.

[332] Tr. 1044, 1046, 1063 (Investor A); *accord* Tr. 1270–71 (Investor B).

[333] *See* Section II. I. of this Decision.

[334] Tr. 421 (Baron).

compensation was 50 percent of the purchase amount paid by Investors A and B.[335]

- "Upon speaking with [Investor A] several months ago, she stated that the income producing annuities are giving them income for life as they are designed to do, and that they wanted to rescind their NAEG investment."[336] This was false. About rescinding her purchases of Native American stock, what Investor A "stated" was, "We are so miserable! This has messed up our retirement;"[337] "We lost sooo much;"[338] "Joe and you have abused my patience, my friendship and worse my trust!;"[339] "Please give us back our funds!!!!!!!! So painful;"[340] and other words of similar purport and substance. Baron failed to disclose the long history of text messages by which Investor A sought, unsuccessfully, to rescind her purchases of Native American stock.[341]

- "I explained to them that they must contact Joe D'Arrigo, as I was not involved with that investment or company."[342] This was false. In response to Investor A's request that her purchases of Native American stock be rescinded, what Baron "explained" was, "[T]he returns will be extremely high and will resolve everything in your life;"[343] D'Arrigo "says he will fix whatever you need and make you happy;"[344] "Nothing is lost!;"[345] "They are processing request as [D'Arrigo] promised;"[346] and other words of similar purport and substance. Baron failed to disclose to FINRA the text messages he had sent Investor A trying to deflect and delay her requests for the recovery of her lost investment funds.

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[335] Tr. 421 (Baron).

[336] CX-141, at 2.

[337] CX-72; Tr. 1099 (Investor A).

[338] CX-75, at 1; Tr. 1110 (Investor A).

[339] CX-79, at 4; Tr. 1125–26 (Investor A).

[340] CX-78.

[341] *See* Section II. N. of this Decision.

[342] CX-141, at 2.

[343] CX-72.

[344] CX-74.

[345] CX-75, at 1.

[346] CX-79, at 4.

On September 20, 2019, Baron submitted a response to a FINRA Rule 8210 request for information. In his response, Baron made these misrepresentations to FINRA:

- "My recollection of the introduction of [Investors A and B] was strictly to Mr. D'Arrigo and not NAEG."[347] This statement was false. According to Investor A, Baron introduced her and Investor B to a specific stock, Native American, and represented to them that it was "guarantee[d] stock coming on the . . . stock market."[348]

- "[Investors A and B] met with Mr. Darrigo multiple times before making their own decisions to be a part of the company."[349] This was false. According to Investor A, she and Investor B did not meet D'Arrigo before they decided to purchase Native American stock.[350] Their point of contact was Baron, not D'Arrigo.

- "I did not introduce them to NAEG."[351] This was false. Baron introduced Investors A and B to Native American by telling them that "before the end of the year 2016, it will be worth three to $10."[352]

- "I never sold any NAEG, my participation was strictly an introduction of 2 people."[353] This was false. Baron's misrepresentations about Native American had the form and substance of a sales pitch. He was selling the stock. Baron's participation in the sale of the stock went beyond the introduction of two people. It included making misrepresentations and material omissions; helping Investors A and B open self-directed IRAs to hold their Native American stock; emailing a subscription agreement to Investor A; picking up the purchase money from Investors A and B; dropping off the stock certificates; and sending many text messages to Investor A falsely assuring her she would get her money back.[354] Baron received tens of thousands of dollars (50 percent of the purchase price) to

[347] CX-144, at 1.

[348] Tr. 1046 (Investor A); *accord* Tr. 1270–71 (Investor B).

[349] CX-144, at 1.

[350] Tr. 1048 (Investor A).

[351] CX-144, at 1.

[352] Tr. 1063 (Investor A).

[353] CX-144, at 1.

[354] *See* Sections II. G., II. I., and II. N. of this Decision.

compensate him for his participation in Investors A and B's purchases of Native American stock.[355]

- "I am not aware of any advertising materials of NAEG and never participated in the sale of it."[356] This was false. Baron participated in the sale of Native American stock, as described in the bullet point immediately above.

- "My only business dealings with Mr. Darrigo lasted for a short length of time, when I was a consultant for the company with the sole role of introducing companies looking or needing financing."[357] This was false. Baron admitted in the hearing that his business dealings with D'Arrigo spanned the period from 2005 to 2017.[358] Baron had a five-year consulting arrangement with Native American from 2005 to 2010 and a three-year written Consulting Agreement from 2014 to 2017.[359] His business dealings with D'Arrigo extended beyond 2017 because the two of them worked together sending text messages to Investor A to make her believe she would be repaid her lost investment funds.[360] Baron's description of his business dealings with D'Arrigo had two gaping omissions: his three-year written Consulting Agreement; and the $284,890 in compensation he received in exchange for his consulting services.[361]

For these reasons, the Hearing Panel concludes that Baron violated FINRA Rules 2010 and 8210 when he made misrepresentations to FINRA about his consulting arrangement and his participation in four private securities transactions by which Investors A and B bought Native American stock.

## IV. Sanctions

According to FINRA's Sanction Guidelines ("Guidelines"), the purpose of the disciplinary process is to protect the investing public, support and improve overall business standards in the securities industry, and decrease the likelihood of recurrence of misconduct by the disciplined respondent.[362] The Guidelines contain General Principles Applicable to All

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[355] *See* Section II. J. of this Decision.

[356] CX-144, at 1.

[357] CX-144, at 1; Stip. ¶ 110; Tr. 502 (Baron).

[358] Stip. ¶¶ 35, 37; Tr. 120–22, 160 (Baron).

[359] Stip. ¶¶ 35–38; CX-33, Tr. 122, 160 (Baron).

[360] *See* Section II. N. of this Decision.

[361] *See* Stip. ¶¶ 37, 41.

[362] Guidelines at 2 (Mar. 2024) (General Principle No. 1), https://finra.org/rules/guidance/sanctionguidelines.

Sanction Determinations, Principal Considerations in Determining Sanctions, and Guidelines applicable to specific violations.

### A. Aggravating Factors

The Hearing Panel finds many aggravating factors in this case.

Baron has relevant disciplinary history.[363] In 2013, he agreed to an AWC for his failure to disclose a civil action for fraud on his Form U4.[364] This AWC emphasized the importance for a registered representative to disclose reportable events to his employer firm and on his Form U4. In a notarized document Baron submitted to his then-employer firm, he stated about the AWC, "I have been taught a very expensive lesson."[365] But for Baron, the lesson did not extend to his involvement with Native American.[366] A year after the AWC, when he became registered through Equity Services, he failed to disclose his Consulting Agreement and ongoing OBA with Native American.[367] Later, he failed to disclose his participation in the private securities transactions by which Investors A and B bought Native American stock.[368]

Baron failed to accept responsibility for and acknowledge his misconduct.[369] He engaged in many acts and a pattern of misconduct.[370] He engaged in the misconduct for three years—a long time.[371] Baron's lack of credibility in the hearing reflects negatively on his fitness to serve in the securities industry.[372]

Baron tried to conceal his misconduct and lull into inactivity, mislead, and deceive Investors A and B and Equity Services.[373] Baron's misconduct led to monetary injury to other persons, in the form of the $359,806 that Investors A and B lost purchasing Native American

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[363] Guidelines at 7 (Principal Consideration No. 1: The respondent's relevant disciplinary and arbitration history).

[364] CX-177; Tr. 130–31 (Baron).

[365] CX-85, at 2.

[366] The Hearing Panel notes that Baron said the AWC was an "expensive" lesson, not a "valuable" one.

[367] CX-86, at 6; Tr. 185–86 (Baron), 647–49 (Muro).

[368] Stip. ¶¶ 75, 89; Tr. 283 (Baron).

[369] Guidelines at 7 (Principal Consideration No. 2: Whether the respondent accepted responsibility for and acknowledged the misconduct to his employer firm prior to detection and intervention).

[370] *Id.* (Principal Consideration No. 8: Whether the respondent engaged in numerous acts or a pattern of misconduct).

[371] *Id.* (Principal Consideration No. 9: Whether the respondent engaged in the misconduct for a long time).

[372] *Dep't of Mkt. Reg. v. Burch*, No. 2005000324301, 2011 FINRA Discip. LEXIS 16, at *47 (NAC July 28, 2011).

[373] Guidelines at 7 (Principal Consideration No. 10: Whether the respondent attempted to conceal his misconduct or lull into inactivity, mislead, deceive, or intimidate a customer or his employer firm).

stock.[374] These innocent victims were left with worthless stock in a company that did not trade on any securities exchange, had no business operations or revenue, had liabilities of $5,510,486, and a shareholders' deficit of $4,750,213.[375] For their losses, they recovered only $175,000—half the money they paid for their Native American stock. They recovered this money from Baron's employer firm, not Baron.[376]

Baron made false representations in his responses to FINRA's requests for information.[377] Baron acted intentionally when he misrepresented the profitability of Native American stock to Investors A and B and omitted the material fact he had a Consulting Agreement with the company.[378] He engaged in an undisclosed OBA despite prior warnings from FINRA—in the form of an AWC no less—that failures of disclosure to his employer firm violated FINRA Rules.[379] His misconduct led to his own monetary gain in the form of the $284,890 in consulting fees he was paid by Native American.[380] Investors A and B were not sophisticated investors.[381] Investors A and B were older than 65.[382] Thus, Baron chose vulnerable senior investors and made misrepresentations to them about worthless Native American stock.

The sanctions factors relied on by Baron are not mitigating. The possible impact a disciplinary proceeding might have on a respondent's career is not mitigating.[383] Appropriate sanctions depend on the facts of each case and cannot be determined by comparison with sanctions in other proceedings.[384] There are thus no mitigating factors.

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[374] *Id.* (Principal Consideration No. 11: With respect to other parties, including the investing public, (a) whether the respondent's misconduct resulted directly or indirectly in injury to such other parties, and (b) the nature and extent of the injury).

[375] Stip. ¶¶ 24–25, 29–30; CX-15, at 4, 6.

[376] CX-82, at 1.

[377] Guidelines at 8 (Principal Consideration No. 12: Whether the respondent provided inaccurate or misleading testimony or documentary information to FINRA).

[378] *Id.* (Principal Consideration No. 13: Whether the respondent's misconduct was the result of an intentional act, recklessness, or negligence).

[379] *Id.* (Principal Consideration No. 14: Whether the respondent engaged in the conduct at issue notwithstanding prior warnings from FINRA that the conduct violated FINRA Rules).

[380] *Id.* (Principal Consideration No. 16: Whether the respondent's misconduct resulted in the potential for the respondent's monetary or other gain).

[381] *Id.* (Principal Consideration No. 18: The level of sophistication of the injured or affected customer).

[382] *Id.* (Principal Consideration No. 20: Whether the customer was age 65 or older).

[383] *Dep't of Enforcement v. Laverty*, No. 2016050205901, 2020 FINRA Discip. LEXIS 47, at *37 (NAC Dec. 22, 2020).

[384] *Kielczewski*, 2021 FINRA Discip. LEXIS 22, at *54.

With the aggravating factors in mind, the Hearing Panel turns to the sanctions called for by each cause of action.

### B. Misrepresentations and Material Omissions in Violation of FINRA Rule 2010 (First Cause of Action)

The first cause of action charges Baron with misrepresentations and material omissions to Investors A and B about Native American stock. The Sanction Guideline for Fraud, Misrepresentations or Omissions of Material Fact recommends a fine of $5,000 to $50,000 for negligent misconduct.[385] For intentional or reckless misconduct, adjudicators should impose a fine of $10,000 to $100,000.[386] As for a suspension, bar, or other sanction, adjudicators should suspend the respondent for a period of one month to two years for negligent misconduct.[387] When the misconduct is intentional or reckless, adjudicators should strongly consider a bar.[388] Where mitigating factors predominate, adjudicators should suspend the respondent for six months to two years.[389]

The Hearing Panel finds that Baron's misrepresentations and material omissions about Native American were intentional and that aggravating factors predominate in his misconduct. Baron failed to take responsibility for the fact that, because of him, Investors A and B lost $359,806 purchasing worthless Native American stock. He made his misrepresentations and material omissions without going back and reading the company's most recent Report on Form 10-Q, which showed it had no business operations, no revenue, and a shareholders' deficit of $4,750,213.[390] He continued making misrepresentations after Investor A expressed her worry about the safety of her investment and as she sought the recovery of her lost investment funds.[391] Baron should have been honest and informed Investor A there would be *no* recovery of lost investment funds. It is reasonable to infer that the purpose of Baron's many text messages to Investor A was to keep her from going to the authorities.

For these reasons, for Baron's misrepresentations and material omissions, the Hearing Panel bars Baron from associating in any capacity with any FINRA member firm. We do not impose a fine.

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[385] Guidelines at 116.

[386] *Id.*

[387] *Id.*

[388] *Id.*

[389] *Id.*

[390] For Native American's financial condition, *see* Stip. ¶ 20–21; CX-15, at 4, 6.

[391] *See* Section II. N. of this Decision.

### C. OBA in Violation of FINRA Rules 3270 and 2010 (Second Cause of Action)

The second cause of action charges Baron with an undisclosed OBA with Native American. The Sanction Guideline for Outside Business Activities recommends a fine of $2,500 to $20,000.[392] As for a suspension, bar, or other sanction, adjudicators should consider suspending the respondent for 10 business days to three months.[393] When the outside business activity involves aggravating factors, adjudicators should consider a suspension of up to one year.[394] Where aggravating factors predominate, adjudicators should consider a suspension of up to two years or a bar.[395]

The considerations specific to this Guideline are:

- Whether the OBA involved customers of the firm.
- Whether the OBA resulted directly or indirectly in injury to other parties, including the investing public, and, if so, the nature and extent of the injury.
- The duration of the OBA, the number of customers and the dollar volume of sales.
- Whether the respondent's marketing and sale of the product or service could have created the impression that the firm had approved the product or service.
- Whether the respondent misled his or her firm about the existence of the OBA or otherwise concealed the activity from the firm.
- The importance of the role played by the respondent in the OBA.[396]

The Hearing Panel finds aggravating factors predominate as to Baron's OBA with Native American. Baron's prior disciplinary history concerning disclosure to his employer firm is reflected in his AWC for failure to disclose a civil action against him for fraud.[397] This AWC should have taught Baron the importance of full disclosure, but he failed to learn the lesson. He did not accept responsibility for his OBA disclosure failure until the hearing, when his attorney admitted he had failed in his obligation to provide written notice of his OBA to Equity

[392] Guidelines at 79.

[393] *Id.*

[394] *Id.*

[395] *Id.*

[396] *Id.*

[397] CX-177; Tr. 130–31 (Baron).

Services.[398] He engaged in the misconduct for a long time—the full three-year term of the Consulting Agreement.[399] He provided false information to FINRA about his OBA, misrepresenting that his business dealings with D'Arrigo "lasted for a short length of time," when the Consulting Agreement, by itself, lasted three years.[400] Baron's failure to disclose his OBA was intentional.[401]

As for the considerations specific to this Sanction Guideline, Baron's OBA resulted in injury to Investors A and B, and this injury amounted to $359,806.[402] The dollar volume of Baron's undisclosed activity was the same amount, based on the money Investors A and B lost purchasing Native American stock.[403] Baron misled Equity Services about the OBA and concealed it from the firm.[404] Baron played an important role in Investors A and B's purchases of Native American stock.[405]

For these reasons, for Baron's OBA the Hearing Panel would fine Baron $20,000 and suspend him for two years from associating in any capacity with any FINRA member firm but, in light of the bars imposed for other causes of action, we decline to impose these sanctions.

In connection with the second cause of action, Enforcement requests that Baron be ordered to disgorge $284,890 plus prejudgment interest. This represents the money he was paid by Native American under the Consulting Agreement. Disgorgement may be appropriate where the respondent obtained a financial benefit because of his misconduct.[406] Disgorgement serves to remedy the violation of FINRA Rules by depriving the violator of the fruits of his misconduct.[407] The amount of disgorgement must be a reasonable approximation of profits causally connected to the violation.[408] When disgorgement is ordered, prejudgment interest is usually assessed, calculated at the rate in Section 6621(a)(2) of the Internal Revenue Code.[409]

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[398] Tr. 688–89.

[399] Guidelines at 7 (Principal Consideration No. 9).

[400] Guidelines at 8 (Principal Consideration No. 12).

[401] *Id.* (Principal Consideration No. 13).

[402] Guidelines at 7 (Principal Consideration No. 11); Stip. ¶ 92.

[403] Guidelines at 79.

[404] *Id.*; CX-86, at 6; Tr. 185-86 (Baron), 648–49 (Muro).

[405] Guidelines at 79.

[406] *Akindemowo*, 2015 FINRA Discip. LEXIS 58, at *50–51.

[407] *Dep't of Enforcement v. William H. Murphy & Co.*, No. 2012030731802, 2018 FINRA Discip. LEXIS 24, at *80 (NAC Oct. 11, 2018), *remanded*, Exchange Act Release No. 90759, 2020 SEC LEXIS 5218 (Dec. 21, 2020).

[408] *Kimberley Springsteen-Abbott*, Exchange Act Release No. 88156, 2020 SEC LEXIS 2684, at *40 (Feb. 7, 2020).

[409] 26 U.S.C. § 6621(a)(2).

Disgorgement is warranted for Baron's OBA because Native American's payments under the Consulting Agreement were compensation for his undisclosed consulting services. The parties stipulated that Baron received consulting fees of $284,890 from Native American.[410] This is a reasonable approximation of the financial benefit Baron received from his undisclosed OBA. For these reasons, and for Baron's OBA as alleged in the second cause of action, the Hearing Panel orders Baron to disgorge to FINRA the $284,890 in consulting fees he received. The Hearing Panel also orders that Baron pay interest on the $284,890 disgorgement amount, accruing from October 31, 2016 (the date of the last consulting fee payment), until paid in full.

### D. Private Securities Transactions in Violation of FINRA Rules 3280 and 2010 (Third Cause of Action)

The third cause of action charges Baron with undisclosed private securities transactions in Investors A and B's purchases of Native American stock. The Sanction Guideline for Selling Away (Private Securities Transactions) recommends a fine of $5,000 to $40,000.[411] As for a suspension, bar, or other sanction, the first step is for adjudicators to assess the extent of the selling away, including the dollar amount of sales, the number of customers, and how long the selling away occurred.[412] Adjudicators should consider these ranges of suspensions as sanctions based on the dollar amount of sales:

- Up to $100,000 in sales: a suspension of 10 business days to three months.
- $100,000 to $500,000 in sales: a suspension of three to six months.
- $500,000 to $1,000,000 in sales: a suspension of six to 12 months.
- Over $1,000,000 in sales: a suspension of 12 months to a bar.[413]

Following this assessment, adjudicators should apply the considerations specific to this Sanction Guideline and the General Principles of the Sanction Guidelines.[414] The presence of one or more aggravating factors may either raise or lower the sanction.[415]

The considerations specific to this Guideline are:

- The dollar volume of sales.

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[410] Stip. ¶ 41.

[411] Guidelines at 80.

[412] *Id.*

[413] *Id.*

[414] *Id.*

[415] *Id.*

- The number of customers.
- The length of time over which the selling away activity occurred.
- Whether the product sold away has been found to involve a violation of federal or state securities laws or federal, state or self-regulatory organization rules.
- Whether the respondent had a proprietary or beneficial interest in, or was otherwise affiliated with, the selling enterprise or issuer and, if so, whether the respondent disclosed this information to his or her customers.
- Whether respondent attempted to create the impression that his or her employer member firm sanctioned the activity, for example, by using the employer member firm's premises, facilities, name, or goodwill for the selling away activity or by selling a product similar to the products that the employer member firm sells.
- Whether the respondent's selling away activity resulted, directly or indirectly, in injury to the investing public and, if so, the nature and extent of the injury.
- Whether the respondent sold away to customers of his or her employer member firm.
- Whether the respondent provided his or her employer member firm with oral notice of the details of the proposed transaction and, if so, the firm's oral or written response, if any.
- Whether the respondent sold away after being instructed by his or her employer member firm not to sell the type of the product involved or to discontinue selling the specific product involved in the case.
- Whether the respondent participated in the sale by referring customers or selling the product directly to customers.
- Whether the respondent recruited other individuals to sell the product.
- Whether the respondent misled his or her employer member firm about the existence of the selling away activity or otherwise concealed the selling away activity from the firm.[416]

[416] *Id.* at 80–81.

The Hearing Panel finds that the dollar volume of sales to Investors A and B was $359,806, which would place the range of a suspension within three to six months.[417] Yet it is appropriate to go beyond this suspension range because Baron's sales entailed egregious misrepresentations and material omissions. These led to Investors A and B's misinformed decision to buy worthless stock in a company that had no business operations or revenue and was not trading on a securities exchange. The $359,806 volume of sales irretrievably found its way into the pockets of Baron and Native American.[418]

Additional aggravating factors predominated in Baron's participation in the private securities transactions. Baron engaged in many acts to bring about Investors A and B's purchases of Native American stock.[419] His selling away activity occurred over a long time—six months between Investors A and B's first two purchases of Native American stock and their last two purchases.[420] He had a beneficial interest in the purchase transactions because of the tens of thousands of dollars he received under the Consulting Agreement, yet he failed to disclose his beneficial interest to Investors A and B.[421] Baron's selling away activity resulted in monetary injury to the investing public, in the form of the $359,806 that Investors A and B lost purchasing Native American stock.[422]

For these reasons, for Baron's private securities transactions, the Hearing Panel would fine Baron $40,000 and suspend him for two years from associating in any capacity with a FINRA member firm but, in light of the bars imposed for other causes of action, we decline to impose these sanctions.

### E. Misrepresentations to Equity Services and Misrepresentations to FINRA, in Violation of FINRA Rules 2010 and 8210 (Fourth and Fifth Causes of Action)

The fourth cause of action charges Baron with making misrepresentations to Equity Services, and the fifth cause of action charges Baron with making misrepresentations to FINRA. Baron's misrepresentations to Equity Services and his misrepresentations to FINRA were related. Most of the time, Baron's misrepresentations were the same even if the receiving party was different. They all had to do with his participation in Investors A and B's purchases of Native American stock, and his Consulting Agreement with Native American.

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[417] Stip. ¶ 92.

[418] The Guidelines at 80 provide, "The presence of one or more aggravating factors may either raise or lower the sanction."

[419] Guidelines at 7 (Principal Consideration No. 8).

[420] *Id.* (Principal Consideration No. 9).

[421] Tr. 1065, 1068 (Investor A), 1285 (Investor B).

[422] Guidelines at 80.

The imposition of a unitary sanction is appropriate where the respondent's violations stem from related misconduct.[423] Here, the Hearing Panel has decided to impose a unitary sanction on Baron for the fourth and fifth causes of action. Baron's misrepresentations to Equity Services and FINRA derived from the same underlying problem and arose from a continuous, related course of misconduct.[424]

There is no Sanction Guideline for an associated person's misrepresentations to his employer firm. If the Guidelines do not specifically address the violation committed, they provide for consideration of the most closely analogous Guideline.[425] Because Baron's most serious misrepresentations to Equity Services were passed on to FINRA, the Hearing Panel has decided that the most applicable Sanction Guideline for Baron's misrepresentations to both Equity Services and FINRA is the Guideline for Failure to Respond Truthfully to Requests Made Pursuant to FINRA Rule 8210. This Guideline recommends a fine of $10,000 to $50,000.[426] As for a suspension, bar, or other sanction, the Guidelines treat a failure to respond truthfully to a FINRA Rule 8210 request as equivalent to a complete failure to respond, and provide that a bar is standard for such a violation.[427] The sole consideration specific to this Guideline is the importance of the information requested as viewed from FINRA's perspective.[428]

The Hearing Panel finds that the standard sanction of a bar is warranted for Baron's misrepresentations to Equity Services and FINRA. Some of Baron's misrepresentations to Equity Services were in compliance records he submitted to the firm, falsely stating he had not engaged in OBAs or private securities transactions.[429] For sanction purposes, these records are important documents for both the employer firm and FINRA.[430] Baron made his other misrepresentations to Equity Services' compliance officer in draft responses to information requests sent by FINRA in its 2019 inquiry about Investors A and B's purchases of Native American stock. Equity Services passed these misrepresentations on to FINRA.[431]

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[423] *Dep't of Enforcement v. McNamara*, No. 2016049085401, 2019 FINRA Discip. LEXIS 29, at *30 (NAC July 30, 2019); *Dep't of Enforcement v. Mielke*, No. 2009019837302, 2014 FINRA Discip. LEXIS 24, at *55–56 (NAC July 18, 2014), *aff'd*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927 (Sept. 24, 2015).

[424] *Dep't of Enforcement v. Silver Leaf Partners, LLC*, No. 2014042606902, 2020 FINRA Discip. LEXIS 36, at *72 (NAC June 29, 2020), *appeal docketed*, No. 3-19896 (SEC July 28, 2020).

[425] *Wedbush Sec., Inc.*, Exchange Act Release No. 78568, 2016 SEC LEXIS 2794, at *44 (Aug. 12, 2016), *petition for review denied*, 719 F. App'x 724 (9th Cir. 2018).

[426] Guidelines at 93.

[427] *Dep't of Enforcement v. Harari*, No. 2011025899601, 2015 FINRA Discip. LEXIS 2, at *31 (NAC May 9, 2015).

[428] Guidelines at 93.

[429] *See* Stip. ¶¶ 71, 74, 75, 84, 88, 89.

[430] *Dep't of Enforcement v. DiPaola*, No. 2018057274302, 2023 FINRA Discip. LEXIS 4, at *49 (NAC Mar. 23, 2023), *appeal docketed*, No. 3-21402 (SEC May 1, 2023).

[431] CX-141; CX-144.

The information FINRA requested was important as viewed from FINRA's perspective. The requested information went to the heart of FINRA's inquiry: what role did Baron play in Investors A and B's purchases of Native American stock, and what was his relationship with that company and its CEO? The false information that Baron provided caused FINRA to close its investigation, which FINRA revived only after an SEC subpoena and an internal review by Equity Services that was cut short by Baron's resignation as a registered representative.[432] Baron's misrepresentations were intentional and designed to conceal his misconduct.[433]

For these reasons, for Baron's misrepresentations to his employer firm and to FINRA, the Hearing Panel bars Baron from associating in any capacity with any FINRA member firm. We do not impose a fine.

## V. Order

The Hearing Panel orders that, for making misrepresentations and material omissions to Investors A and B in violation of FINRA Rule 2010 as alleged in the first cause of action, Respondent Keith C. Baron is barred from associating in any capacity with any FINRA member firm.

For engaging in an OBA without providing written notice to his employer firm in violation of FINRA Rules 3270 and 2010 as alleged in the second cause of action, the Hearing Panel would fine Baron $20,000 and suspend him for two years from associating in any capacity with any FINRA member firm but, in light of the bars imposed for other causes of action, we decline to impose these sanctions. Baron is ordered to pay to FINRA disgorgement of $284,890 plus prejudgment interest on the unpaid balance from October 31, 2016, until paid in full. The prejudgment interest shall be calculated at the rate in Section 6621(a)(2) of the Internal Revenue Code.

For participating in private securities transactions without providing prior written notice to his employer firm in violation of FINRA Rules 3280 and 2010 as alleged in the third cause of action, the Hearing Panel would fine Baron $40,000 and suspend him for two years from associating in any capacity with any FINRA member firm but, in light of the bars imposed for other causes of action, we decline to impose these sanctions.

For making misrepresentations to his employer firm and to FINRA in violation of FINRA Rules 2010 and 8210 as alleged in the fourth and fifth causes of action, Baron is barred from associating in any capacity with any FINRA member firm.

This Extended Hearing Panel Decision may be appealed pursuant to FINRA Rule 9311 or called for review pursuant to FINRA Rule 9312. Accordingly, this Decision will not become FINRA's final action until after the 25-day appeal period and 45-day call for review period have

[432] *See* Tr. 938 (Akers); CX-181, at 2, 5–6.

[433] Guidelines at 8 (Principal Considerations Nos. 12, 13).

passed. If this Extended Hearing Panel Decision becomes FINRA's final disciplinary action, the bars herein shall be effective immediately. Respondent is ordered to pay costs in the amount of $12,402.68, which includes a $750 administrative fee and $11,652.68 for the cost of the hearing transcript. The costs, disgorgement, and prejudgment interest 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.[434]

**SO ORDERED**.

Richard E. Simpson
Hearing Officer
For the Extended Hearing Panel

Copies to:

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