

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
Release No. 82879 / March 14, 2018

Admin. Proc. File No. 3-17934

In the Matter of the Application of

AHMED GADELKAREEM

For Review of Disciplinary Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION—REVIEW OF DISCIPLINARY  
PROCEEDING

**Conduct Inconsistent with Just and Equitable Principles of Trade**

Former registered representative of former FINRA member firm appeals from FINRA disciplinary action finding that he harassed and threatened personnel of former firm, and engaged in related deceptive conduct, in connection with an employment dispute. *Held*, association's findings of violation and imposition of sanctions are *sustained*.

APPEARANCES:

*Ahmed Gadelkareem, pro se.*

*Alan Lawhead, Colleen Durbin, and Celia L. Passaro for FINRA.*

Appeal filed: April 19, 2017

Last brief received: July 14, 2017

Ahmed Gadelkareem, formerly a registered representative with Blackbook Capital, LLC, a former FINRA member firm located in New York City, appeals from FINRA disciplinary action. FINRA found that Gadelkareem violated FINRA Rule 2010, which requires adherence to "just and equitable principles of trade," based on his transmission of harassing, threatening, and deceptive communications to Blackbook personnel in connection with an employment dispute with Blackbook following his termination. FINRA barred Gadelkareem from acting in any

capacity with a member firm. After Gadelkareem appealed, we denied his request for a stay of FINRA’s action.<sup>1</sup> We now sustain FINRA’s findings of violation and the bar it imposed.

## I. Background

Gadelkareem entered the securities industry in 1997. During his career, he has been associated with nineteen FINRA member firms. Gadelkareem was a registered representative at Blackbook from July 2013 to April 2014.

On April 2, 2014, Gadelkareem had an argument with a Blackbook receptionist when she was not able to assist Gadelkareem immediately because she was assisting another representative. Gadelkareem admits in his brief that there was a “verbal altercation” with the receptionist, but he claims that she initiated the dispute because he refused to supplement her salary with a “percentage of his commission payout.” According to Gadelkareem, the receptionist “claim[ed] that Gadelkareem verbally abused her . . . and made her feel threatened while she was attempting to complete a task he had given her.” Other Blackbook personnel witnessed the incident. Witnesses testified that such occurrences were common during Gadelkareem’s tenure. They described him as disruptive and “very confrontational,” as unpredictable and “uncontrollable in the office,” and as prone to losing his temper “for whatever reason.” A co-worker also testified that Gadelkareem made derogatory comments about women such as referring to a co-worker’s wife as a prostitute and “was constantly getting into arguments with the [firm’s] female employees.” The receptionist filed a formal complaint with Blackbook, in which she asserted that this was “NOT the first [such] incident” (emphasis in original).

On April 7, 2014, Blackbook terminated Gadelkareem. In its Form U5, the Uniform Termination Notice for Securities Industry Registration, dated April 21, 2014, Blackbook reported that Gadelkareem “was terminated for repeatedly engaging in unprofessional conduct in the workplace, including without limitation, threatening and abusive interaction with female employees.” The conduct at issue in this proceeding followed Gadelkareem’s termination.<sup>2</sup>

### A. Gadelkareem harassed Blackbook personnel as part of a dispute following his termination.

During the months after his termination, Gadelkareem and Blackbook officials argued over outstanding sales commissions he claimed to be owed and the return of certain of his personal effects. As part of that dispute, Gadelkareem made a series of abusive and at times deceptive communications to various Blackbook personnel.

<sup>1</sup> Ahmed Gadelkareem, Exchange Act Release No. 80586, 2017 WL 1735943 (May 3, 2017).

<sup>2</sup> We note that, although the conduct at issue occurred after Blackbook terminated Gadelkareem, most of the conduct occurred while Gadelkareem was associated with another FINRA member firm. Gadelkareem remained associated with another FINRA member firm through the filing of FINRA’s complaint. As a result, FINRA retained jurisdiction over Gadelkareem.

## **1. Gadelkareem threatened Blackbook personnel in abusive and vulgar terms.**

On April 9, 2014, two days after he was fired, Gadelkareem left an expletive-filled voicemail with Blackbook registered representative DH. DH had introduced Gadelkareem to Blackbook management because they knew each other from another firm, but he testified that he played no role in Blackbook’s decision to hire Gadelkareem. Although Gadelkareem referred to DH as a Blackbook “managing director,” DH testified that he was merely an “account executive” and that he had no supervisory authority. DH testified further that he played no role in Gadelkareem’s termination at Blackbook. In the voicemail, Gadelkareem made highly vulgar and disparaging comments about DH’s mother.

The following day, Gadelkareem sent two emails to RW, one of Blackbook’s co-owners. Gadelkareem alleged, without any support, that DH had engaged in unauthorized trading in a client’s account producing losses of \$600,000 and “a lot of fraudulent deals,” and was “having sex and drugs” with the receptionist. He followed those initial two emails with another to RW on the same day, in which he stated that FO, the firm’s president, was a “Nigerian scam” who tried to steal the paycheck of a former employee.

On April 11, 2014, FO sent Gadelkareem the first of five written requests from Blackbook personnel to stop harassing them. FO further informed Gadelkareem that Blackbook was authorized under Gadelkareem’s employment agreement to withhold his commission check “against the claim which the firm and [FO] will institute against you in due course.” Indeed, Blackbook’s employment agreement with Gadelkareem allowed Blackbook to withhold commissions to offset claims it had against him.

Gadelkareem ignored FO’s request to stop and left three new voicemail messages for DH on April 12, 2014. The first voicemail disparaged DH’s mother in similar terms to the earlier voicemail; the second threatened to report DH to Blackbook’s compliance officer, followed by laughter; and the third simply repeated “hello” multiple times. That same day, Gadelkareem sent an email to FO, which he copied to a former firm client, repeating his charge that FO had tried to “scam” a former employee’s paycheck. Later that night, Gadelkareem sent FO another email accusing him of “bullying” a client into retracting a complaint against the firm, calling FO a “liar,” and alleging that the firm was full of criminals. He finished by threatening that he would “see [FO] in court, unless you want to settle . . . and pay me my commission. . . .”

On April 16, 2014, Gadelkareem forwarded to DH and RW emails he sent to FINRA in which he made various accusations against Blackbook. In forwarding FINRA’s response to DH, in which FINRA assigned an investigator for Gadelkareem to contact, Gadelkareem threatened that the firm needed to “[s]ettle” with him by giving him a “100% pay out and my stuff or I will keep going!!!” He similarly threatened RW: “Settlement, or you want me to continue. . . .”

**2. Gadelkareem escalated his attacks after Blackbook contacted its outside counsel.**

As a result of these threats, Blackbook contacted MU, its outside counsel. MU wrote to Gadelkareem to advise him that he had improperly retained client information after his termination “for purposes of engaging in a defamatory campaign elicited at tortiously interfering with Blackbook’s business relations” and had engaged in a “pattern of harassment and threats . . . which has continued to this day notwithstanding your termination.” MU also wrote to FINRA staff explaining that Gadelkareem’s complaints were “undoubtedly for the disingenuous purpose of attempting to secure additional leverage to comply with his demands.”

After seeing a copy of MU’s letter to FINRA and receiving a separate email from MU referring to Gadelkareem’s claims as those of a “disgruntled terminated employee,” Gadelkareem told MU that he had filed a police report against Blackbook. DH testified that police officers came to Blackbook’s office three times to investigate Gadelkareem’s charges of theft of his property and harassment and that the officers eventually “realized this was some malicious work” and “stopped responding to [Gadelkareem’s] calls.” Gadelkareem admitted in his testimony that, around this time, he also called MU pretending to be a police detective and told MU that the police would “have to bring you to the station.” Gadelkareem’s admission came after DH testified that MU told him that Gadelkareem had called MU and impersonated a New York City police officer purportedly investigating alleged criminal activity on the part of DH. Gadelkareem claimed that he made the call impersonating a police officer because MU had allegedly called him several times and immediately hung up the phone.

In his communications with MU, Gadelkareem also threatened to contact the New York attorney general’s office regarding his allegations that Blackbook and its employees had engaged in fraud. And Gadelkareem filed a complaint against MU with the New York City Bar Association accusing him of “aggravated harassment” and “insulting” Gadelkareem.

On April 23, 2014, shortly after Blackbook filed the Form U5, Gadelkareem forwarded an email to DH purportedly from a FINRA examiner named “Steven McMellon.” The email stated that DH “did a lot of fraudulent deals,” that “McMellon” had contacted the FBI, and that “an order of arrest will be issued soon.” In his own message transmitting the McMellon email, Gadelkareem advised DH to “Run run run.” FINRA, however, had no employee named Steven McMellon.

Around this time, Gadelkareem invented another alias, “Sergey Alperovich.” In several emails to a Bloomberg reporter, between April 18 and May 5, 2014, “Alperovich” charged that FO and RW had defrauded customers in investments in real estate-related private placements and had engaged in unauthorized trading; that Blackbook was under investigation by FINRA and the FBI; and that FO was a “Nigerian Scam.” Gadelkareem also used the Alperovich alias to forward the purported McMellon email to at least one former Blackbook client. And Gadelkareem sent emails to a prospective Blackbook business partner that, according to FO, caused Blackbook to lose the partner’s potential multimillion dollar investment in a proposed joint venture.

In June 2014, Gadelkareem left yet another expletive-filled voicemail message for DH in which he threatened that he was going to “get [his] job, you jobless [expletive].” He followed the voicemail with several text messages to DH’s brother stating that MU or DH was “going to serve 20 years in jail” and that DH “will be kicked out of the industry.” In late June, Gadelkareem sent DH a text message with a photo showing a doll with a stake through its heart that said “voodoo.”

Over a year later, in December 2015, the parties settled their dispute. Blackbook paid Gadelkareem \$7,357, and Gadelkareem dropped his pending legal actions against Blackbook. As part of the settlement, Gadelkareem executed a letter to the prospective Blackbook business partner referenced above stating that Gadelkareem had been “informed” that the prospective partner had “received emails bad-mouthing [Blackbook’s] reputation” and that “the claims made in those emails are false.” Gadelkareem further stated that he was “saddened to learn that your firm has ceased its business relationship with Blackbook Capital” and added that “it is a shame that what could have been a very fruitful and mutually beneficial relationship was ruined by baseless rumors.”

**B. FINRA instituted a disciplinary proceeding against Gadelkareem based on his conduct and ultimately barred him from association with a FINRA member firm.**

On April 13, 2015, FINRA’s Department of Enforcement charged Gadelkareem with violations of FINRA Rules 2010 and 5240. Rule 2010 requires members to “observe high standards of commercial honor and just and equitable principles of trade.”<sup>3</sup> Rule 5240 prohibits “conduct that threatens, harasses, coerces, intimidates or otherwise attempts improperly to influence another member, a person associated with a member, or any other person.”

FINRA held a hearing, at which Gadelkareem continued to harass, threaten, and deceive. For example, as the hearing panel noted in its decision, Gadelkareem made a throat-slashing gesture at DH when DH took the stand to testify against him. He also repeatedly interrupted witnesses’ testimony and called one of his own witnesses a “damn liar.” And he created and submitted phony documents such as subpoenas that he drafted and served on prospective witnesses. These documents warned: “Failure to comply with this subpoena is punishable as a contempt to Court . . . .” Gadelkareem did so despite being told repeatedly, by FINRA staff and the hearing officer, that subpoenas could not be issued because FINRA lacks subpoena power.<sup>4</sup>

The evidence also established that the McMellon email was fictitious—there was nobody by that name on FINRA’s staff. Indeed, a friend and former co-worker at another firm testified that Gadelkareem admitted that he might have sent the email but that if he did it was because of a “health condition.” Gadelkareem testified that he admitted telling the friend, “maybe I did, maybe [I did] not,” send the email. And FINRA introduced a report from an expert witness

<sup>3</sup> See FINRA Rule 2010; see also FINRA Rule 0140(a) (providing that associated persons of member firms “shall have the same duties and obligations as a member”).

<sup>4</sup> See, e.g. *Charles C. Fawcett*, Exchange Act Release No. 56770, 2007 WL 3306105, at \*6 (Nov. 8, 2007) (stating that FINRA “lacks subpoena power”).

concluding that the email could not have been sent by anyone other than Gadelkareem based on an analysis of the “IP address” from which the message was sent.

Gadelkareem challenged that conclusion by testifying that DH had sent the McMellan email, as part of an effort to “frame” him, by obtaining Gadelkareem’s computer after his termination and hacking into his email account. In support, Gadelkareem introduced an email purporting to be from his email service provider, AOL. The email stated that, during a portion of the period at issue, Gadelkareem “did not have control of his email account and any email was not find in his sent email file was not send by him [sic].” Enforcement, in turn, introduced a letter from AOL describing Gadelkareem’s purported AOL email as “fraudulent” because its email address was “not an official internal AOL customer support email address.” When confronted with Enforcement’s AOL letter, Gadelkareem claimed that, while Gadelkareem had drafted the AOL email, an AOL employee had “signed off” on his wording. The hearing panel, which heard his testimony, found Gadelkareem to be “not truthful” on this point and his explanation of what transpired “an implausible scenario.”

Gadelkareem also defended his conduct by introducing testimony from his psychiatrist regarding a medical condition that Gadelkareem claimed was responsible for the conduct at issue. But the doctor testified that he did not begin treating Gadelkareem until April 2015, long after the relevant period, and that he had no direct knowledge of Gadelkareem’s medical condition before such time. Nor did the doctor have knowledge of the “work conditions” at Blackbook, and therefore could not evaluate Gadelkareem’s claim that the environment he was subjected to at the firm contributed to the conduct at issue.

Regarding Gadelkareem’s condition generally, the doctor testified that the “symptomatology can vary and can be along a whole spectrum of symptoms” and that one of those potential symptoms was “impulsivity.” Although he testified that the treatment Gadelkareem was receiving at the time of the hearing was “helpful [in] keeping [Gadelkareem] in control of [his] behavior and being a bit calmer,” the doctor acknowledged that conditions like Gadelkareem’s are “usually chronic conditions with remissions and exacerbations.” The doctor further testified that Gadelkareem had a history of “poor compliance” with treatment protocols, missed medical appointments, and skepticism about taking medicines—thereby raising doubts about the likelihood that Gadelkareem would be able to effectively manage his condition in the future.

Following the hearing, the hearing panel found that Gadelkareem engaged in the alleged misconduct, that the conduct violated the FINRA rules at issue, and that the conduct was egregious and therefore warranted a bar. Gadelkareem appealed the hearing panel’s decision to FINRA’s National Adjudicatory Council (“NAC”). The NAC found that Gadelkareem engaged in the same conduct as did the hearing panel and agreed that that conduct violated FINRA Rule 2010, but it dismissed the charges under FINRA Rule 5240. According to the NAC, Rule 5240 was “aimed at price manipulation and anticompetitive behavior” and was “meant to prohibit intimidating and harassing conduct in connection with pricing.”<sup>5</sup> In any case, the NAC agreed

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<sup>5</sup> We express no opinion on whether the NAC’s view of Rule 5240 was correct.

with the hearing panel that Gadelkareem’s actions were egregious and justified barring him from association with a FINRA member.

## II. Analysis

Under Section 19(e)(1) of the Securities Exchange Act of 1934, we review FINRA disciplinary action to determine whether the applicant engaged in the conduct FINRA found, whether such conduct violates the rule FINRA found it to violate, and whether such rule is, and was applied in a manner, consistent with the purposes of the Exchange Act.<sup>6</sup>

### **A. Gadelkareem engaged in the conduct FINRA found.**

The preponderance of the evidence establishes that Gadelkareem engaged in the harassing, threatening, and deceptive conduct that was the basis for FINRA’s findings of violation. Gadelkareem concedes that his conduct was “unseemly,” “unethical,” and “outrageous.” Indeed, Gadelkareem does not dispute that he engaged in the conduct FINRA found except with respect to the McMellon email. And although he does not admit responsibility for the McMellon email, the hearing panel found that his denial and efforts at exculpation were “not truthful” and implausible. We see no basis to disturb this finding.<sup>7</sup>

### **B. Gadelkareem’s harassing, threatening, and deceitful conduct violates Rule 2010.**

We find further that Gadelkareem’s conduct violates Rule 2010. In *Jay Frederick Keeton*, which involved a disputed sales commission, we found that the applicant violated his obligation to observe “high standards of commercial honor and just and equitable principles of trade” when he “irresponsibly attempted to coerce payment [of the commission] by threatening adverse publicity.”<sup>8</sup> We found that “in a dispute over a commission, it was hardly necessary to threaten to place a company’s reputation and financial position at risk.”<sup>9</sup> Despite the possibility that the applicant actually “deserved” the disputed commission, we held that “his method of

<sup>6</sup> 15 U.S.C. § 78s(e)(1).

<sup>7</sup> See *Mitchell H. Fillet*, Exchange Act Release No. 75054, 2015 WL 3397780, at \*8 (May 27, 2015) (“We generally accord considerable weight and deference to the fact finder’s credibility determination.”).

<sup>8</sup> *Jay Frederick Keeton*, Exchange Act Release No. 31082, 1992 WL 213846, at \*5 (Aug. 24, 1992). In *Keeton*, we found that the applicant’s conduct violated Article III, Section 1 of NASD’s Rules of Fair Practice, which required “the observance of high standards of commercial honor and just and equitable principles of trade.” *Id.* This provision was the predecessor to NASD Rule 2110, which was the predecessor to FINRA Rule 2010. *Rani T. Jarkas*, Exchange Act Release No. 77503, 2016 WL 1272876, at \*6 n.22 (Apr. 1, 2016). The provisions are all substantively identical. See, e.g., *John M.E. Saad*, Exchange Act Release No. 76118, 2015 WL 5904681, at \*1 & n.2 (Oct. 8, 2015) (opinion after remand), *petition denied in part and remanded in part*, 873 F.3d 297 (D.C. Cir. 2017).

<sup>9</sup> *Keeton*, 1992 WL 213846, at \*5.

pursuing that claim represented intentional and abusive misconduct.”<sup>10</sup> Accordingly, the applicant “transgressed th[e] bounds” of conduct that the rule required.<sup>11</sup>

So too here. Gadelkareem’s threats were likewise intended to coerce Blackbook to pay commissions he claimed he was owed and likewise involved highly inappropriate efforts to tarnish Blackbook’s reputation. As in *Keeton*, “the use of such tactics in the securities industry violates high standards of commercial honor and just and equitable principles of trade.”<sup>12</sup>

Gadelkareem acknowledges making what he concedes were “poor behavioral decisions . . . in the heat of a passionate employment dispute” but disputes that his conduct constituted “a regulatory violation” because it “had no [e]ffect on any investors or markets . . . .” As *Keeton* demonstrates, however, the scope of Rule 2010 is not as narrow as Gadelkareem contends. To the contrary, rule provisions requiring adherence to just and equitable principles of trade incorporate “broad ethical principles” and apply to ““a wide variety of conduct that may operate as an injustice to investors or other participants in the marketplace’ . . . .”<sup>13</sup> We have long held that “conduct that reflects negatively on an applicant’s ability to comply with regulatory requirements fundamental to the securities industry is inconsistent with just and equitable principles of trade.”<sup>14</sup> Rule 2010 applies “when the misconduct reflects on the associated person’s ability to comply with the regulatory requirements of the securities business and to fulfill his fiduciary duties in handling other people’s money.”<sup>15</sup>

In *John M.E. Saad*, for example, we found a violation of just and equitable principles of trade where the applicant “intentionally falsified receipts, submitted a fraudulent expense report, and accepted \$1,144.63 in unentitled reimbursement” from his firm.<sup>16</sup> This conduct “reflect[ed]

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*; see also *Stephen B. Carlson*, Exchange Act Release No. 40672, 1998 WL 786951, at \*3 (Nov. 12, 1998) (finding that applicant’s use of “threatening, coercive, and intimidating tactics in his attempt to obtain . . . stock at below-market prices” was “highly unethical” and therefore inconsistent with just and equitable principles of trade); cf. *Gregory W. Gray* Exchange Act Release No. 60361, 2009 WL 2176836, at \*9 (July 22, 2009) (holding liable applicant who made harassing phone calls, in violation of NYSE rule prohibiting conduct detrimental to the exchange, based in part on finding that the “frequency and tone of the telephone calls . . . were unreasonable and inconsistent with the behavior that is expected of a registered representative”).

<sup>13</sup> *Steven Robert Tomlinson*, Exchange Act Release No. 73825, 2014 WL 6985131, at \*5 & nn.17, 19 (Dec. 11, 2014) (citing cases), *aff’d*, 637 F. App’x. 49 (2d Cir. 2016).

<sup>14</sup> *Geoffrey Ortiz*, Exchange Act Release No. 58416, 2008 WL 3891311, at \*7 (Aug. 22, 2008).

<sup>15</sup> *Daniel D. Manoff*, Exchange Act Release No. 46708, 2002 WL 31769236, at \*4 (Oct. 23, 2002).

<sup>16</sup> *John M.E. Saad*, Exchange Act Release No. 62178, 2010 WL 2111287, at \*5 (May 26, 2010), *petition for review granted on other grounds*, 718 F.3d 904 (D.C. Cir. 2013).

negatively on both Saad’s ability to comply with regulatory requirements and his ability to handle other people’s money.”<sup>17</sup> “In short, Saad’s actions betray[ed] a dishonest character that is wholly inconsistent with the high standards demanded of securities professionals.”<sup>18</sup>

As in *Saad*, Gadelkareem engaged in a series of dishonest acts— impersonating a police officer, fabricating the McMellon email, and adopting the Alperovich alias. He engaged in those acts as part of his harassing and threatening campaign against Blackbook designed to extract commissions he believed he was owed. Gadelkareem’s harassing, threatening, and deceitful conduct violates Rule 2010, even if the conduct did not involve his professional responsibilities as a broker or harm investors or markets, because his attempts to extract commissions were unethical and such unethical misconduct is “actionable” under the rule.<sup>19</sup>

### C. Rule 2010 is, and was applied in a manner, consistent with the Exchange Act.

We have held previously that FINRA Rule 2010 is consistent with the purposes of the Exchange Act because it reflects the mandate of Exchange Act Section 15A(b)(6) that FINRA’s rules “promote just and equitable principles of trade.”<sup>20</sup> Because Gadelkareem’s misconduct was inconsistent with just and equitable principles of trade, FINRA’s application of Rule 2010 to Gadelkareem’s misconduct furthered the purposes of the Exchange Act.

### III. Sanctions

Exchange Act Section 19(e)(2) directs us to sustain FINRA’s sanctions unless we find, having due regard for the public interest and the protection of investors, that the sanctions are excessive or oppressive or impose an unnecessary or inappropriate burden on competition.<sup>21</sup> As

<sup>17</sup> *Id.*

<sup>18</sup> *Saad*, 2015 WL 5904681, at \*7; *see also Denise M. Olson*, Exchange Act Release No. 75838, 2015 WL 5172954, at \*2 & n.8 (Sept. 3, 2015) (finding violation of just and equitable principles of trade where associated person falsified expense reports); *Leonard John Ialeggio*, Exchange Act Release No. 37910, 1996 WL 632974, at \*3 & n.15 (Oct. 31, 1996) (finding violation of just and equitable principles of trade where registered representative accepted reimbursement for expenses he did not incur and stating that such conduct “cast doubt on his commitment to the fiduciary standards demanded of registered persons in the securities industry and thus properly are the subject of NASD disciplinary action”), *aff’d*, 185 F.3d 867 (9th Cir. 1999) (Table).

<sup>19</sup> *James A. Goetz*, Exchange Act Release No. 39796, 1998 WL 130849, at \*3 (Mar. 25, 1998) (rejecting applicant’s claim that his conduct was not actionable because it had “nothing to do with his functions as a securities salesman”); *see also Henry E. Vail*, Exchange Act Release No. 35872, 1995 WL 380152, at \*3 (June 20, 1995) (finding violation of just and equitable principles of trade based on respondent’s misappropriation of funds from political club unaffiliated with his securities firm while club treasurer), *aff’d*, 101 F.3d 37 (5th Cir. 1996).

<sup>20</sup> *Jarkas*, 2016 WL 1272876, at \*10 (quoting 15 U.S.C. § 78o-3(b)(6)).

<sup>21</sup> 15 U.S.C. § 78s(e)(2). Gadelkareem does not allege, and the record does not show, that  
(continued...)

part of this review, we consider evidence of any aggravating or mitigating factors.<sup>22</sup> We also consider whether the sanctions serve remedial rather than punitive purposes.<sup>23</sup>

Although they are not binding on us, we begin with FINRA's Sanction Guidelines as a benchmark.<sup>24</sup> The Guidelines state that a bar may be an appropriate sanction in the case of "egregious misconduct."<sup>25</sup> We agree with FINRA's finding that Gadelkareem's misconduct was egregious. Although the Guidelines do not include specific recommendations for violations of Rule 2010, they include nineteen "Principal Considerations in Determining Sanctions" that apply in all cases.<sup>26</sup> Based on these Principal Considerations, the record establishes the presence of numerous aggravating factors that support FINRA's finding that Gadelkareem's conduct was egregious. Among the Principal Considerations, the following are relevant and aggravating: (1) Gadelkareem engaged in numerous acts and a pattern of misconduct over an extended period of time;<sup>27</sup> (2) he attempted to intimidate and mislead Blackbook and mislead FINRA through various false or unsupported communications;<sup>28</sup> (3) he provided inaccurate or misleading testimony and evidence, relating to the McMellon email, during the hearing;<sup>29</sup> (4) he acted intentionally;<sup>30</sup> and (5) his actions were taken to obtain financial gain.<sup>31</sup>

We also find that the bar is remedial. Gadelkareem's abusive and dishonest conduct raises serious concerns about his fitness to continue in any capacity as a securities professional.

(...continued)

the bar FINRA imposed creates an undue burden on competition.

<sup>22</sup> *Saad v. SEC*, 718 F.3d 904, 906 (D.C. Cir. 2013).

<sup>23</sup> *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1065 (D.C. Cir. 2007).

<sup>24</sup> *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 WL 2898033, at \*11 & n.68 (June 14, 2013).

<sup>25</sup> See FINRA Sanction Guidelines, at 4.

<sup>26</sup> See *Dante J. DiFrancesco*, Exchange Act Release No. 66113, 2012 WL 32128, at \*9 (Jan. 6, 2012) ("The Guidelines contain no specific recommendation for the conduct at issue [violation of just and equitable principles of trade]. Accordingly, FINRA properly considered the Guidelines' Principal Considerations in Determining Sanctions applicable to all violations.").

<sup>27</sup> FINRA Sanction Guidelines, at 7 (Principal Considerations Nos. 8 and 9) (whether respondent engaged in numerous acts and/ or a pattern of misconduct over an extended period).

<sup>28</sup> *Id.* (Principal Consideration No. 10) (whether respondent attempted to . . . mislead, deceive, or intimidate a customer, regulatory authorities, or . . . the member firm).

<sup>29</sup> *Id.* at 8 (Principal Consideration No. 12) (whether respondent . . . provided inaccurate or misleading testimony or documentary evidence to FINRA).

<sup>30</sup> *Id.* (Principal Consideration No. 13) (whether respondent's misconduct was the result of an intentional act, recklessness, or negligence).

<sup>31</sup> *Id.* (Principal Consideration No. 16) (whether respondent's misconduct resulted in the potential for respondent's monetary or other gain).

Of further concern is his insistence that his conduct was justified and his testimony that he would “do it again.” Regardless of whether the conduct at issue here directly involved customers or securities, FINRA could “justifiably conclude that on another occasion it might.”<sup>32</sup> Gadelkareem’s continued association with a FINRA member, therefore, would present a threat to the integrity of the markets and to investors. In short, Gadelkareem’s conduct “cannot be tolerated in an industry that depends on high standards of professional conduct.”<sup>33</sup>

Gadelkareem argues that the sanctions should be reduced “to a suspension of less than one year or a year if not . . . dismissed, since [he] has already been out of the industry since May 2016.” In support of his request for leniency, he contends that his conduct did not harm investors. But we have held consistently that the lack of customer harm is not mitigating.<sup>34</sup> Gadelkareem also points to his lack of a disciplinary history. The lack of a disciplinary history is also not mitigating.<sup>35</sup>

Nor do we agree with Gadelkareem that the evidence he presented regarding his medical condition justifies a lesser sanction. We agree that a medical disability can be mitigating if it interfered with an applicant’s ability to comply with the rule at issue,<sup>36</sup> but we do not find that Gadelkareem established that this was the case. The evidence he introduced addressed his condition at the time of the hearing and not during the period at issue. Even assuming that he suffered from the condition earlier, and that it made him more impulsive, that would not explain or excuse the several instances where his conduct was repeated or where such conduct was the result of premeditation on his part. Nor would the described condition, with its asserted tendency towards aggression, explain or excuse his repeated willingness to resort to dishonest and deceptive conduct to achieve his objectives. The evidence also does not warrant a lesser sanction because there are serious doubts about whether Gadelkareem’s condition, to the extent it contributed to his misconduct, is likely to be effectively controlled in the future given his doctor’s reservations about Gadelkareem’s willingness to obtain the necessary treatment.

We also do not find mitigating Gadelkareem’s claims that the environment at Blackbook was “toxic” and that its “petty and unprofessional actions” sent him “into a rage.” The record does not support Gadelkareem’s negative characterization of Blackbook or the actions of its

<sup>32</sup> See *Thomas E. Jackson*, Exchange Act Release No. 11476, 1975 WL 160390, at \*2 (June 16, 1975).

<sup>33</sup> *Keeton*, 1992 WL 213846, at \*7 (sustaining a bar).

<sup>34</sup> See, e.g., *William Scholander and Talman Harris*, Exchange Act Release No. 77492, 2016 WL 1255596, at \*10 & n.63 (citing cases).

<sup>35</sup> See, e.g., *Rooms v. SEC*, 444 F.3d 1208, 1214 (10th Cir. 2006).

<sup>36</sup> See *Paul David Pack*, Exchange Act Release No. 34660, 1994 WL 512478, at \*3-4 (Sept. 13, 1994) (citing as a mitigating factor “uncontroverted expert medical evidence that [applicant’s] misconduct was the product of stress compounded by clinical depression and a chronic sleep disorder”); cf. *Saad*, 2015 WL 5904681, at \*6 (rejecting stress as a significant mitigating factor where misconduct was not “an unthinking reaction during a stressful moment that is later redressed”).

personnel. In any event, the conduct at issue occurred after his termination when he was no longer subject to the asserted toxic environment.

Similarly unconvincing is Gadelkareem's claim that he acted "with ethical intentions." FINRA does not dispute that Gadelkareem believed he had been mistreated by Blackbook, or that he may have been entitled to the commissions and personal effects he sought. But that cannot in any way excuse the methods he employed.<sup>37</sup>

Gadelkareem further claims that FINRA erred in considering his behavior during the hearing. We disagree that this conduct was "irrelevant." To the contrary, we find his behavior highly relevant to a determination of sanctions. Deceiving regulatory authorities, as Gadelkareem sought to do at the FINRA hearing with respect to the McMellon email and otherwise, "justifies the severest sanctions."<sup>38</sup> His attempts to intimidate witnesses are also "aggravating factors appropriately weighed in imposing sanctions."<sup>39</sup>

Finally, Gadelkareem claims that the sanction is more severe than that imposed in a similar proceeding, *FINRA Dep't of Enforcement v. McCrudden*.<sup>40</sup> But "[t]he appropriate sanction . . . depends on the facts and circumstances of each particular case."<sup>41</sup> In *McCrudden*, FINRA imposed a one-year suspension and a \$50,000 fine based in part on findings that the respondent engaged in harassing and intimidating behavior. *McCrudden* did not involve repeated instances of dishonest and deceptive conduct. FINRA could have concluded reasonably that the particular facts and circumstances of this case justified more stringent sanctions than in *McCrudden*.

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<sup>37</sup> See *Keeton*, 1992 WL 213846, at \*5 ("[R]egardless of the merits of [applicant's] underlying claim for compensation, his method of pursuing that claim represented intentional and abusive misconduct."); see also *Hugh M. Casper*, Exchange Act Release No. 7479, 1964 WL 66925, at \*2 (Dec. 7, 1964) (applicant's "good intentions" in engaging in the behavior at issue were not mitigating).

<sup>38</sup> *Fillet*, 2015 WL 3397780, at \*14 & n.83.

<sup>39</sup> *Luis Miguel Cespedes*, Exchange Act Release No. 59404, 2009 WL 367026, at \*11 (Feb. 13, 2009).

<sup>40</sup> *Dep't of Enf't v. McCrudden*, Complaint No. 2007008358101, 2010 FINRA Discip. LEXIS 25 (FINRA NAC Oct. 15, 2010).

<sup>41</sup> *Raghavan Sathianathan*, Exchange Act Release No. 54722, 2006 WL 3228694, at \*15 (Nov. 8, 2006).

We therefore hold that, having due regard for the public interest and the protection of investors, FINRA's action in barring Gadelkareem is neither excessive nor oppressive.<sup>42</sup>

An appropriate order will issue.<sup>43</sup>

By the Commission (Chairman CLAYTON and Commissioners STEIN, PIWOWAR, JACKSON and PEIRCE).

Brent J. Fields  
Secretary

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<sup>42</sup> Gadelkareem attached six exhibits to his brief in support of his application for review. We construe Gadelkareem's attachment of the exhibits to his brief as a motion to adduce additional evidence under Rule of Practice 452. *See* 17 C.F.R. § 201.452. Under Rule 452, Gadelkareem must establish "that there were reasonable grounds for failure to adduce such evidence previously and that the additional evidence is material." *Guang Lu*, Exchange Act Release No. 51047, 2005 WL 106888, at \*8 n.44 (Jan. 14, 2005). We have reviewed these exhibits and find that they are immaterial to this proceeding. On that basis, we deny Gadelkareem's motion to adduce them.

<sup>43</sup> We have considered all the arguments advanced by the parties. We reject or sustain them to the extent that they are inconsistent or in accord with the views expressed herein.

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 82879 / March 14, 2018

Admin. Proc. File No. 3-17934

In the Matter of the Application of

AHMED GADELKAREEM

For Review of Action Taken by

FINRA

**ORDER SUSTAINING DISCIPLINARY ACTION**

On the basis of the Commission's opinion issued this day, it is

ORDERED that the disciplinary action by FINRA against Ahmed Gadelkareem is sustained.

By the Commission.

Brent J. Fields  
Secretary