

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Release No. 103498 / July 18, 2025

Admin. Proc. File No. 3-20703

In the Matter of the Application of

THOMAS J. LYKOS, JR.

for Review of Disciplinary Action Taken by

FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION — REVIEW OF DISCIPLINARY
PROCEEDING

FINRA found that an individual formerly associated with a FINRA member firm violated NASD Rule 1080 and FINRA Rule 2010 by receiving assistance on a general securities principal qualification exam and violated Rule 2010 by violating rules of conduct governing the exam. *Held*, FINRA's findings of violations are *sustained in part* and *set aside in part*; and the sanctions imposed are *reduced*.

APPEARANCES:

Justin L. Chretien and *Natalie A. Napierala*, of Carlton Fields, for Thomas J. Lykos, Jr.

Celia Passaro for FINRA

Appeal filed: January 10, 2022
Last brief received: June 16, 2022

Thomas J. Lykos, Jr., an individual formerly associated with a FINRA member firm, seeks review of a FINRA disciplinary action.¹ FINRA found that Lykos violated NASD Rule 1080² and FINRA Rule 2010 by receiving assistance on a general securities principal qualification exam and violated Rule 2010 by violating certain rules of conduct governing the exam. FINRA barred Lykos in all capacities for those violations. We sustain in part and set aside in part FINRA’s findings of violations, and we reduce the sanctions imposed.

I. Background

A. Lykos was hired into a position requiring registration as a general principal.

In February 2018, Sanders Morris Harris LLC (“SMH”), a FINRA member firm, hired Lykos, an attorney with over 20 years of experience in the securities industry, to serve as the firm’s General Counsel and Chief Compliance Officer (“CCO”). Although Lykos was registered as a general securities representative at the time, FINRA rules required Lykos to pass the Series 24 General Securities Principal Qualification Exam to remain in the CCO position.³ Shortly after Lykos started, SMH’s chairman and chief executive officer, George Ball, began prompting Lykos to take the exam.

B. Lykos failed the Series 24 exam in April 2018.

Lykos registered for the exam in April 2018. In doing so, he received a confirmation email, which stated that all exam-takers must attest to FINRA’s Qualification Examination Rules of Conduct (the “Rules of Conduct”), which “prohibit assistance on a test, the use of study materials and misconduct at any time” during the exam. The email also provided a website link to the complete rules and warned that violating them could result in disciplinary action. On April 6, 2018, Lykos received a second confirmation email containing the same information. And before beginning the exam on April 9, 2018, Lykos agreed to follow FINRA’s Rules of Conduct by clicking “agree” in response to prompts on the computer screen.

Lykos failed the April 9, 2018, exam and SMH temporarily removed him as CCO. Ball advised Lykos that he had three chances to pass the Series 24 exam while at SMH and encouraged him to retake the test “promptly.”

¹ *Dep’t of Enf’t v. Thomas John Lykos, Jr.*, Complaint No. 2018059510201, 2021 WL 6050420 (NAC Dec. 16, 2021).

² NASD Rule 1080 was superseded by FINRA Rule 1201.05 on September 30, 2018. *See Notice of Filing of a Proposed Rule Change To Adopt Consolidated FINRA Registration Rules, Restructure the Representative-Level Qualification Examination Program and Amend the Continuing Education Requirements*, Exchange Act Release No. 80371, 2017 WL 1245082 (Apr. 4, 2017).

³ *See* FINRA Rule 1210.04 (providing that, during the relevant time, a principal could continue functioning or acting in such a role for only 90 days before passing an appropriate principal-level qualification exam).

C. Lykos retook the Series 24 exam in July 2018.

Lykos registered to retake the Series 24 exam in July 2018. Before the test, Lykos again received two confirmation emails containing the same instructions and warnings as before the April exam.

1. Lykos wrote on his driver's license and fingers during the exam.

Lykos took the Series 24 exam on July 20, 2018, at a test center run by Prometric, a third-party contractor FINRA used to administer exams. As part of the check-in process, Lykos received a calculator, two dry erase boards, and two dry erase pens to use during the exam. Lykos then entered the exam room with only the materials Prometric provided and his driver's license.

Once at his exam workstation, Lykos reviewed and agreed to the Rules of Conduct by checking a box. Among other things, Lykos agreed that (i) he understood that unscheduled breaks were permitted only for restroom use; (ii) he would not leave the building during the exam; (iii) he would not receive or attempt to receive any assistance during the exam; (iv) he would "not remove or attempt to remove, whether through physical means," certain materials from the test center; and (vi) he would not engage in any conduct that was disruptive, disrespectful, that created a disturbance, or that interfered with test center operations. Lykos also acknowledged that any violation of the Rules of Conduct or suspicion of cheating would be reported to FINRA and could result in him being barred from employment in the financial services industry.

Video footage shows Lykos writing notes on the dry erase board over the course of the morning. Later in the morning, he began to write on his driver's license with the dry erase pen. At several points, Lykos would write on his license for a few seconds, pausing to look up at the computer screen, and then flip the license over so the writing was not visible. At another point he flipped his license face down—and began writing on the dry erase board—when two individuals walked behind his workstation. Later, Lykos began to write between the fingers on his left hand with the dry erase pen while periodically looking up at the computer screen.

Lykos admitted at the hearing that he wrote on his driver's license multiple times during the exam and that he knew at the time that doing so was inconsistent with the Rules of Conduct. But Lykos contended that he "wasn't writing out anything," but only "checking off or making a notation, like A, B, C, or D." Lykos further claimed that he wrote on his fingers and license because the dry erase pens were too dry to write on the boards Prometric provided, but at no time did Lykos request a new dry erase pen or communicate this issue to a proctor.

2. Lykos left the test center on a 24-minute unscheduled break.

Around noon, Lykos put his driver's license in his jacket pocket and exited the exam room with his left hand in his pant pocket. Video surveillance evidence shows that, when a proctor asked to see his identification as part of the checkout process, Lykos pointed toward and re-entered the exam room, seemingly suggesting that he had left his driver's license in the exam room. As he approached his workstation, Lykos took the license out of his pocket, licked his

finger, then sat down and rubbed the writing off the license. Lykos advanced to the next question on the test, then exited the exam room again. During the checkout process, he kept his left hand in his pant pocket. His unscheduled break lasted approximately 24 minutes.

The record does not contain video evidence of what Lykos did when he left the exam area, but Lykos admitted at the hearing that he visited a bank in the same building as the test center. Lykos claimed that he took the break because he was experiencing pain and side effects from a recent dental surgery and that he sat in the office of the bank's assistant branch manager, whom he knew, to rest and take a painkiller he had in his pocket.

Although Lykos testified during his November 2018 on-the-record interview ("OTR") that he "may have made notes" related to the exam on a business card while he was in the bank, he later testified at the hearing that, upon further reflection, he "did not sit down and make notes at that point in time." Lykos testified that he instead had picked up the business card—which was for the building's leasing agency—because he knew two people who were looking for office space. Lykos testified at both the OTR and the hearing that he did not access any information about the exam while in the bank. And while a FINRA investigator testified that FINRA had contacted the bank's assistant branch manager whose office Lykos visited, the assistant branch manager said that she "was not in a position to observe what [Lykos] was doing" while he was in the bank.

Video shows that a proctor then examined Lykos when he returned from his break. During this process, the proctor noticed the business card in Lykos's jacket pocket and told him to throw it away. Lykos tore the card in half and threw the pieces in a trash can. The proctor did not retrieve the business card, and a Prometric account manager later told FINRA during its investigation that the proctor did not recall seeing handwriting on the business card.

When he returned to his seat, Lykos answered the question to which he had advanced before his unscheduled break. He answered that question incorrectly. Lykos then spent about fourteen minutes reviewing questions he had answered previously. During this review, he changed two answers: one from a wrong answer to the correct answer and another from a wrong answer to another wrong answer.

3. After Lykos completed the exam, a proctor discovered writing on Lykos's fingers.

After changing the two answers, Lykos began finishing the rest of the exam. Video shows that, at one point, while answering questions, Lykos licked and rubbed his fingers clean, then wrote on them while viewing exam questions. Lykos also rolled up his left sleeve and wrote on his forearm while viewing exam questions. At another point, Lykos looked around the room before leaning forward to write on his arm. He then looked directly at the camera monitoring his workstation, stopped writing on his arm, and started writing on the dry erase boards provided by the test center. This was the first time Lykos looked directly at the camera. After that, Lykos no longer wrote on his body. Shortly before he finished the test and left the exam room, Lykos rolled his left sleeve down, concealing the writing on his arm.

During checkout, a proctor noticed the writing on Lykos's fingers and asked to see his hands. Lykos protested that it was not writing, but only an ink stain resulting from a problem with his pen. "I'm sorry for being messy," he said. Several seconds later, Lykos commented, "those pens, they dried out." At the hearing, Lykos admitted that when the proctor stated that she needed to photograph his hand, he began licking and rubbing his fingers to prevent her from seeing the writing between his fingers. The proctor told Lykos to stop and gestured to the video camera, reminding Lykos that he was being recorded. Only then did Lykos allow her to photograph his hand.

Lykos asked the proctor, "Are you going to say I cheated?" The proctor responded that she had to report the writing on his hand. Lykos continued to object, stating that the pens "were leaking all over the place." When Lykos asked the proctor what would happen next, she responded that she would report the incident, the video footage from the test center would be examined, and a FINRA representative would contact him. Lykos exclaimed "you're kidding" and asked the proctor not to report what happened, telling her that his job "depends on this." The proctor responded that she had no choice but to make the report.

Lykos ultimately passed the exam, but a report of Lykos's conduct was made.

D. FINRA found that Lykos violated NASD Rule 1080 and FINRA Rule 2010 by acting unethically during the Series 24 exam.

Following an investigation, FINRA's Department of Enforcement issued a one-count complaint on September 17, 2019, alleging that Lykos's unethical conduct during the Series 24 exam violated NASD Rule 1080, which prohibits receiving assistance on an exam, and FINRA Rule 2010, which prohibits unethical and unfair practices. On May 1, 2020, after a two-day hearing, a FINRA hearing panel issued a decision concluding that Lykos violated NASD Rule 1080 and FINRA Rule 2010 by receiving assistance on the Series 24 exam and violated Rule 2010 by violating the Rules of Conduct governing the exam. The hearing panel barred Lykos for this misconduct.

Lykos appealed to FINRA's National Adjudicatory Council ("NAC"), which issued its decision on December 16, 2021. Like the panel, the NAC found "compelling circumstantial evidence that Lykos cheated by receiving assistance on the exam during his unscheduled break." The NAC also found that "Lykos's actions subverted the integrity of the examination process and violated several Rules of Conduct." The NAC therefore affirmed the hearing panel's findings of violations and the bar imposed.⁴ This appeal followed.

II. Analysis

Section 19(e)(1) of the Securities Exchange Act of 1934 governs our review of this self-regulatory organization disciplinary action. Under Section 19(e)(1), we determine whether the applicant engaged in the conduct that FINRA found; whether such conduct violates FINRA's

⁴ The NAC specified that the bar became effective immediately upon issuance of its decision.

rules; and whether those rules are, and were, applied in a manner consistent with the purposes of the Exchange Act.⁵ We base our findings on an independent review of the record and apply a preponderance-of-the-evidence standard.⁶ Applying this framework, we sustain in part, and set aside in part, FINRA’s liability findings.

A. We sustain FINRA’s finding that Lykos violated FINRA Rule 2010 by violating multiple rules of conduct.

FINRA Rule 2010 requires members to observe “high standards of commercial honor and just and equitable principles of trade.”⁷ Here, Lykos admits—and the record shows—that he failed to comply with this standard by violating FINRA’s Rules of Conduct during the Series 24 exam. Specifically, Lykos admits that he violated the Rules of Conduct by taking an unscheduled break for a purpose other than using a restroom and by attempting (as he describes it) “to conceal or minimize the writing on his person,” which actions he concedes “may have ultimately interfered with Prometric’s operations and were, arguably, disrespectful and disruptive.”

We thus sustain FINRA’s finding that Lykos violated FINRA Rule 2010 on these bases.

B. We set aside FINRA’s finding that Lykos violated NASD Rule 1080 and FINRA Rule 2010 by receiving assistance during the exam.

NASD Rule 1080 prohibited an applicant from “receiv[ing] assistance while taking the examination.” And FINRA Rule 2010, as noted, requires members to observe “high standards of commercial honor and just and equitable principles of trade.” FINRA found that Lykos violated these provisions by receiving assistance on his Series 24 exam during an unscheduled break. We set this finding aside.

Although FINRA may use circumstantial evidence (as it introduced here) to establish a violation, we cannot conclude that a preponderance of the evidence shows that Lykos received outside assistance during the exam. Lykos concedes that the break he took during the exam provided him “an opportunity” to obtain outside assistance. Lykos also admits that he left the exam area during that break with writing on the fingers of his left hand—which he concealed by keeping his hand in his pocket during the checkout process. But FINRA did not make a finding about what exactly Lykos wrote on his finger, nor is it clear what Lykos did when he left the exam area. Although the evidence shows that Lykos went to an unmonitored bank office—where he picked up a business card that he may or may not have written on—he then returned to respond correctly to only one of the next three questions that he answered or changed upon returning to the exam. And there is no other evidence that Lykos received assistance during the

⁵ 15 U.S.C. § 78s(e)(1).

⁶ *Richard G. Cody*, Exchange Act Release No. 64565, 2011 WL 2098202, at *1, *9 (May 27, 2011), *aff’d*, 693 F.3d 251 (1st Cir. 2012).

break. This is not enough for us to conclude, by a preponderance of the evidence, that Lykos received outside assistance during that break.

We accordingly set aside FINRA’s finding that Lykos violated NASD Rule 1080 and FINRA Rule 2010 by receiving assistance on an exam.

III. Sanctions

Under Exchange Act Section 19(e)(2), if we find, “having due regard for the public interest and the protection of investors,” that a sanction imposed by FINRA “is excessive or oppressive,” or imposes an unnecessary or inappropriate burden on competition, we “may cancel, reduce, or require the remission of such sanction.”⁸ As part of our review, we consider any aggravating or mitigating factors.⁹ We also consider whether the sanctions are remedial or punitive.¹⁰ Although not binding on us, we use FINRA’s Sanctions Guidelines as a benchmark.¹¹ Applying this framework, we find it appropriate to reduce the bar that FINRA imposed.

FINRA barred Lykos because it found that he cheated by receiving assistance on a qualification exam, for which the Sanctions Guidelines recommend imposing a bar as the standard sanction.¹² But we have now set aside FINRA’s finding that Lykos received outside assistance on the exam. Because of that and the other circumstances described below, we conclude that a bar is excessive and should be reduced.¹³

The evidence shows (and Lykos admits) that he violated FINRA Rule 2010 by not complying with the Rules of Conduct during a Series 24 exam. Although those failures to comply with the Rules of Conduct do not rise to the level of cheating on a qualification exam, they are serious breaches. The record also includes certain aggravating factors. Lykos attempted to conceal his conduct, including by writing between his fingers and attempting to rub the

⁸ 15 U.S.C. § 78s(e)(2).

⁹ *Saad v. SEC*, 718 F.3d 904, 906 (D.C. Cir. 2013).

¹⁰ *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1065-66 (D.C. Cir. 2007).

¹¹ *See, e.g., John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 WL 2898033, at *11 & n.68 (June 14, 2013) (using the Guidelines as a benchmark but explaining they are not binding).

¹² FINRA Sanction Guidelines (Oct. 2021), at 40, https://www.finra.org/sites/default/files/2022-09/2021_Sanctions_Guidelines.pdf (advising that for “cheating” on a qualifications examination a “bar is standard”).

¹³ *See, e.g., Dennis Todd Lloyd Gordon*, Exchange Act Release No. 57655, 2008 WL 1697151, at *13 (Apr. 11, 2008) (reducing a bar to a suspension after setting aside findings that certain markup violations were fraudulent); *John Edward Mullins*, Exchange Act Release No. 66373, 2012 WL 423413, at *21 (Feb. 10, 2012) (reducing a suspension and fine after setting aside, in part, findings of violations).

writing off his fingers before a Prometric employee could photograph it after the exam.¹⁴ Indeed, in his opening brief, Lykos admits that his conduct during the exam was “deceptive.” Lykos was also aware of the prohibitions against his conduct, as FINRA twice emailed him the rules before the exam, and he agreed to those rules during a computer-based orientation before beginning the exam.¹⁵

Although Lykos acknowledges that his conduct was “disrespectful and disruptive,” we are concerned by Lykos’s attempts to minimize his conduct and characterize it in ways that directly contradicts video footage, such as by claiming that he did not flip his driver’s license over so that his writing would be face down.¹⁶ Finally, although Lykos’s misconduct did not involve direct harm to customers and did not occur over an extended period,¹⁷ it does reflect a disregard of the ethical standards to which members of this industry must adhere.¹⁸

For these reasons, and recognizing that a bar has been in effect since December 16, 2021, we conclude that reducing that bar to a suspension in all capacities, ending as of the date of this opinion, is appropriate to protect the investing public and is remedial and not punitive. An appropriate order will issue.¹⁹

By the Commission (Chairman ATKINS and Commissioners PEIRCE, and UYEDA; Commissioner CRENSHAW dissenting).

Vanessa A. Countryman
Secretary

¹⁴ *Cf.* FINRA Sanction Guidelines at 7 (directing adjudicators to consider whether the respondent attempted to conceal his or her misconduct from regulatory authorities).

¹⁵ *Cf. id.* at 8 (directing adjudicators to consider whether the respondent engaged in the misconduct notwithstanding prior warnings from FINRA that the conduct violated FINRA rules).

¹⁶ *Cf. id.* at 7 (directing adjudicators to consider whether the respondent accepted responsibility for and acknowledged the misconduct to his or her employer or a regulator prior to detection and intervention).

¹⁷ *Cf. id.* (directing adjudicators to consider whether the respondent engaged in misconduct over an extended period of time and whether the respondent’s misconduct resulted directly or indirectly in injury to another party).

¹⁸ *See Stephen Grivas*, Exchange Act Release No. 77470, 2016 WL 1238263, at *5 (Mar. 29, 2016) (noting that, even if particular misconduct does not involve a security, in the future it “could very well involve securities”).

¹⁹ Because our decisional process would not be significantly aided by oral argument, Lykos’s motion for oral argument is denied. Rule of Practice 451, 17 C.F.R. § 201.451.

UNITED STATES OF AMERICA
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In the Matter of the Application of

THOMAS J. LYKOS, JR.

For Review of Disciplinary Action taken by

FINRA

ORDER SUSTAINING IN PART AND SETTING ASIDE IN PART ACTION TAKEN BY
FINRA

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

ORDERED that FINRA's findings of violation against Thomas J. Lykos, Jr. are sustained, except as set forth in the Commission's opinion; and it is further

ORDERED that the sanctions FINRA imposed are reduced as set forth in the Commission's opinion.

By the Commission.

Vanessa Countryman
Secretary