

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

STEPHEN G. WHITMAN
(CRD No. 2230369),

Respondent.

Disciplinary Proceeding
No. 2021071227301

Hearing Officer–MJD

DEFAULT DECISION

July 12, 2022

Respondent is barred from associating with any FINRA member firm in any capacity for failing to comply with requests for information and documents during a FINRA investigation, in violation of FINRA Rules 8210 and 2010.

Appearances

For the Complainant: Mark J. Fernandez, Esq., and Loyd Gattis, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: No appearance

DECISION

In April 2021, Respondent Stephen G. Whitman’s employer terminated him for allegedly accepting a loan from a customer without providing notice to the firm. FINRA staff immediately began an investigation. The staff sent Respondent two requests to provide information and documents pursuant to FINRA Rule 8210. Respondent did not respond to the requests.

The Department of Enforcement properly served Respondent with two Notices of Complaint and the Complaint. Respondent did not file an Answer to the Complaint. On May 27, 2022, Enforcement filed a Motion for Entry of Default Decision (“Default Motion”) supported by the Declaration of Enforcement counsel Mark Fernandez (“Fernandez Decl.”) and 16 exhibits (CX-1 through CX-16). Respondent did not respond to the Default Motion.

For the reasons set forth below, I find Respondent in default. I grant Enforcement’s Default Motion and deem the facts alleged in the Complaint admitted pursuant to FINRA Rules 9215(f) and 9269(a). For violating FINRA Rules 8210 and 2010, Respondent is barred from associating with any FINRA member firm in any capacity.

I. Findings of Fact and Conclusions of Law

A. Background

Respondent entered the securities industry in 1992. He was registered with Oppenheimer & Co., Inc. (“Oppenheimer”) from November 2007 to April 2021 as a general securities representative. On April 27, 2021, Oppenheimer filed a Uniform Termination Notice for Securities Industry Registration (Form U5) terminating Respondent’s registration.¹

B. Jurisdiction

Respondent was last registered with FINRA on April 27, 2021. Although he is not currently associated with a FINRA member firm, FINRA has jurisdiction over this disciplinary proceeding pursuant to Article V, Section 4(a) of FINRA’s By-Laws because (i) the Complaint was filed within two years of the effective date of the Form U5 that terminated Respondent’s association with a member firm, and (ii) the Complaint charges him with failing to comply with requests for information from FINRA staff within two years of the termination of his registration.²

C. Origin of the Investigation

FINRA commenced an investigation into whether Respondent accepted a loan from a customer without disclosing it to Oppenheimer. Respondent’s Form U5 stated that Oppenheimer discharged Respondent “following a customer complaint alleging he took a loan from [the] customer. The customer later clarified that he provided the money to Mr. Whitman for a private investment away from the Firm and was only paid a small percentage back.”³ FINRA Rule 3240 generally prohibits associated persons from borrowing money from or lending money to a customer, except under certain circumstances. As part of its investigation, FINRA sought information and documents from Respondent about the alleged loan from the customer. The investigation led to the filing of the Complaint in this matter.

D. Respondent Defaulted by Failing to Answer the Complaint

Enforcement served Respondent with the First and Second Notices of Complaint and the Complaint in accordance with FINRA Rules 9131 and 9134. Enforcement served the First Notice of Complaint and Complaint on March 8, 2022, and the Second Notice of Complaint and Complaint on April 7, 2022. In each case, Enforcement served Respondent by certified mail and

¹ Complaint (“Compl.”) ¶¶ 2-3; Fernandez Decl. ¶¶ 5, 7; CX-1; CX-4, at 3, 5, 9, 13.

² Compl. ¶¶ 2-4; Fernandez Decl. ¶¶ 8, 10.

³ Compl. ¶ 3; Fernandez Decl. ¶ 5; CX-1, at 2.

first-class mail at his last known residential address recorded in the Central Registration Depository (“CRD”).⁴ Respondent thus received valid constructive notice of this proceeding.⁵

Pursuant to FINRA Rule 9215, Respondent was required to file an Answer or otherwise respond to the Complaint by April 25, 2022. Respondent did not respond to the Complaint. I thus find that Respondent defaulted.

On April 29, 2022, I issued an Order instructing Enforcement to file a Default Motion. On May 27, 2022, Enforcement filed its Default Motion. Pursuant to FINRA Rules 9215(f) and 9269(a)(2), I grant the Default Motion,⁶ and deem the allegations in the Complaint admitted.

E. Respondent Violated FINRA Rules 8210 and 2010 by Failing to Produce Information and Documents

The Complaint contains one cause of action. It alleges that Respondent violated FINRA Rules 8210 and 2010 by failing to comply with FINRA staff’s requests to produce information and documents. The staff sent Respondent two requests for information pursuant to Rule 8210. Respondent never responded. Each request sought information about Oppenheimer’s allegation that Respondent borrowed money from a customer.⁷

Rule 8210 requires persons subject to FINRA’s jurisdiction to provide information to FINRA upon request. Rule 8210(a)(2) authorizes FINRA to “inspect and copy the books, records, and accounts” of persons subject to its jurisdiction “with respect to any matter involved in [an] investigation ... that is in such ... person’s possession, custody or control.” Rule 8210(c) provides that “[n]o member or person shall fail to provide information or testimony or to permit an inspection and copying of books, records, or accounts pursuant to this Rule.”

Rule 8210 “is at the heart of the self-regulatory system for the securities industry” and “provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations.”⁸ “FINRA Rule 8210 is unequivocal and grants FINRA broad authority to obtain information concerning an associated person’s securities-

⁴ Fernandez Decl. ¶¶ 11-13, 20. Enforcement also sent the First and Second Notices of Complaint and Complaint to another address provided to FINRA staff during the investigation by Oppenheimer. Fernandez Decl. ¶¶ 11, 20. Enforcement is not aware of any other addresses for Respondent besides the one recorded in CRD and the one provided by Oppenheimer. Fernandez Decl. ¶¶ 12, 20.

⁵ See, e.g., *Dep’t of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at *20-21 & n.21 (NAC June 3, 2014), *aff’d*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080 (July 27, 2015).

⁶ Respondent may move to set aside the default under FINRA Rule 9269(c) upon a showing of good cause.

⁷ Compl. ¶¶ 30-32.

⁸ *Howard Brett Berger*, Exchange Act Release No. 58950, 2008 SEC LEXIS 3141, at *13 (Nov. 14, 2008), *petition for review denied*, 347 F. App’x 692 (2d Cir. 2009).

related business ventures.”⁹ Associated persons must cooperate fully in providing FINRA with information.¹⁰ It is therefore a violation of Rule 8210 for a person to fail to provide information sought by FINRA.¹¹

On September 22, 2021, FINRA staff sent Respondent a letter pursuant to Rule 8210 asking that he provide documents and written answers to questions about the customer he allegedly borrowed from, the amount of money involved, copies of correspondence with the customer, and a current accounting of the loan. The staff also asked Respondent about the purported private securities transaction Oppenheimer referred to in its Form U5 filing.¹² The staff sent the letter to Respondent’s CRD address via certified mail and first-class mail.¹³

After Respondent failed to respond to the September 22 request, FINRA staff conducted an internet search for addresses associated with Respondent. The search did not yield a more current address for Respondent other than the one identified in CRD.¹⁴ The staff then contacted Oppenheimer to ask if it had a more recent address for Respondent. Oppenheimer provided an alternate address for Respondent and a telephone number.¹⁵

FINRA staff then sent Respondent another written request, pursuant to Rule 8210, on October 19, 2022, to Respondent’s CRD address and the alternate address that Oppenheimer

⁹ *Dep’t of Enforcement v. Gallagher*, No. 2008011701203, 2012 FINRA Discip. LEXIS 61, at *12 (NAC Dec. 12, 2012).

¹⁰ See *CMG Inst’l Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *21 (Jan. 30, 2009) (member firms and their associated persons have an obligation to respond to FINRA’s request for information “fully and promptly”). See also *Dep’t of Enforcement v. Vedovino*, No. 2015048362402, 2019 FINRA Discip. LEXIS 20, at *20 (NAC May 15, 2019) (Rule 8210 “requires associated persons to comply fully with FINRA’s requests for information, testimony, and documents with respect to any matter involved in a FINRA investigation, complaint, examination, or proceeding.”).

¹¹ See *Dep’t of Enforcement v. Felix*, No. 2018058286901, 2021 FINRA Discip. LEXIS 7, at *20 (NAC May 26, 2021) (respondent violated Rule 8210 by failing to produce his Internal Revenue Service wage and income transcript), *appeal docketed*, No. 3-20380 (SEC June 28, 2021).

¹² Compl. ¶ 6; CX-2.

¹³ Compl. ¶ 8; CX-2; CX-4, at 1. Respondent’s residential address as reflected in CRD may have been out of date. The certified mailing and the first-class mailing were returned to FINRA as undeliverable. Compl. ¶¶ 9-10. Respondent has an obligation to inform FINRA of his current address. See *Warren B. Minton, Jr.*, Exchange Act Release No. 46709, 2002 SEC LEXIS 2712, at *13 n.15 (Oct. 23, 2002) (quoting *William T. Banning*, Exchange Act Release No. 28588, 1990 SEC LEXIS 3453, at *4 (Oct. 31, 1990) (associated persons have “a continuing duty to notify [FINRA] . . . of [their] current address, and to receive and read mail sent to [them] at that address”)); *Dennis A. Pearson, Jr.*, Exchange Act Release No. 54913, 2006 SEC LEXIS 2871, at *23-24 (Dec. 11, 2006) (“It is the responsibility of [FINRA] members and their associated persons to keep [FINRA] apprised of any changes in their addresses, and a failure to respond to [FINRA] in connection with an investigation . . . is not excused by that person’s having temporarily moved from the address listed in the CRD.”).

¹⁴ Compl. ¶ 12.

¹⁵ Compl. ¶¶ 13-14. In mid-October 2021, the staff called Respondent at the number Oppenheimer provided but received no response. Compl. ¶ 15.

provided, via certified mail and first-class mail. The second letter asked for the same information and documents the staff sought in the first request.¹⁶ Respondent did not respond to the October 19 request.¹⁷

By failing to produce the information and documents requested by FINRA staff, Respondent violated FINRA Rules 8210 and 2010.¹⁸

II. Sanctions

FINRA’s Sanction Guidelines (“Guidelines”) recommend that if an individual does not respond in any manner to a request for information made pursuant to Rule 8210, a bar should be standard.¹⁹ The only principal consideration for a complete failure to respond is the importance of the requested information as viewed from FINRA’s perspective.²⁰ FINRA was investigating potentially serious misconduct by Respondent—borrowing money from a customer.²¹ I find that the information was necessary to assist in FINRA’s investigation and Respondent’s failure to provide it prevented FINRA from fulfilling its regulatory responsibilities.

The evidence reveals no justification for Respondent’s failure to respond to FINRA’s requests. I find no mitigating factors. Thus, the appropriate sanction is a bar in all capacities. The bar is remedial because it will protect the investing public by encouraging the cooperation essential to the investigation and remediation of industry misconduct.

¹⁶ Compl. ¶¶ 16-18; CX-3.

¹⁷ Compl. ¶ 22. As of the date of the filing of the Complaint on March 8, 2022, Respondent had not provided any information or documents requested nor did he communicate with FINRA staff. Compl. ¶¶ 23-24.

¹⁸ FINRA Rule 2010 requires a member to “observe high standards of commercial honor and just and equitable principles of trade.” It is well established that a violation of Rule 8210 is also a violation of Rule 2010. *See CMG Inst’l Trading*, 2009 SEC LEXIS 215, at *29-30; *Stephen J. Gluckman*, Exchange Act Release No. 41628, 1999 SEC LEXIS 1395, at *22-23 (July 20, 1999).

Respondent had constructive notice of the two requests FINRA staff sent him. *See* FINRA Rule 8210(d) (stating that a notice issued under Rule 8210 is “deemed received” by a currently or formerly registered person when it is mailed to the person’s last known residential address as reflected in CRD).

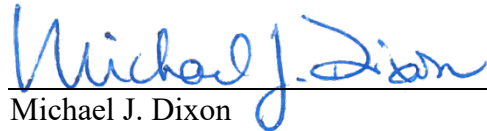
¹⁹ FINRA Sanction Guidelines at 33 (2021), <http://www.finra.org/industry/sanction-guidelines>.

²⁰ *Id.*

²¹ When the Securities and Exchange Commission (“SEC”) approved the adoption of FINRA Rule 3240, it explained that the Rule “is to give FINRA member broker-dealers the opportunity to evaluate the appropriateness of particular lending arrangements between their registered persons and customers ... and the potential for conflicts of interests.” SR-FINRA-2009-095, Order Approving Proposed Rule Change to Adopt FINRA 3240, Exchange Act Release No. 61537, 75 Fed. Reg. 8772 (Feb. 18, 2010). FINRA’s National Adjudicatory Council recently explained the importance of the Rule, stating that “FINRA takes a legitimate interest in loans between registered persons and their customers because such arrangements are ripe for misconduct.” *Dep’t of Enforcement v. Laverty*, No. 2016050205901, 2020 FINRA Discip. LEXIS 47, at *33 (NAC Dec. 20, 2020).

III. Order

Respondent Stephen G. Whitman is barred from associating with any FINRA member firm in any capacity for violating FINRA Rules 8210 and 2010. The bar shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action.


Michael J. Dixon
Hearing Officer

Copies to:

Stephen G. Whitman (overnight courier, certified mail, and first-class mail)
Mark Fernandez, Esq. (via email)
Loyd Gattis, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)