

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MARK FOSTER
(CRD No. 719105),

Respondent.

Disciplinary Proceeding
No. 2014039867601

Hearing Officer – CC

DEFAULT DECISION

August 7, 2014

Respondent is barred from associating with any FINRA member firm in any capacity for failing to respond to FINRA requests for information and failing to appear for on-the-record interviews, in violation of FINRA Rules 8210 and 2010.

Appearances

Ronald W. Sannicandro, Esq., for the Department of Enforcement, Complainant.

No appearance by or on behalf of Mark Foster, Respondent.

DECISION

I. Introduction

On April 11, 2014, FINRA’s Department of Enforcement (“Enforcement”) filed the attached Complaint with FINRA’s Office of Hearing Officers. The Complaint alleges that Respondent Mark Foster (“Foster”) failed twice to respond to FINRA Rule 8210 requests for information and documents and twice to appear for on-the-record testimony, in violation of FINRA Rules 8210 and 2010.¹

¹ FINRA’s Rules are available at www.finra.org/Rules.

Foster failed to answer or otherwise respond to the Complaint. Accordingly, on June 24, 2014, Enforcement filed a Motion for Entry of Default Decision (“Default Motion”).² Foster did not respond to the Default Motion.

For the reasons set forth below, the Hearing Officer finds Foster in default, grants Enforcement’s Default Motion, and deems the allegations in the attached Complaint admitted, pursuant to FINRA Rules 9215(f) and 9269(a).

II. Findings of Fact and Conclusions of Law

A. Foster’s Background

Foster first entered the securities industry in 1984.³ From December 6, 2006, through May 2, 2012, Foster was associated with member firm Stern Fisher Edwards, Inc. (“Stern Fisher”) and registered with FINRA as a general securities representative and registered options and general securities principal.⁴ Stern Fisher filed a Uniform Termination Notice for Securities Industry Registration (“Form U5”) reporting Foster’s voluntary termination on May 2, 2012.⁵ On January 21, 2014, Stern Fisher filed an amendment to the Form U5 in which the firm changed the reason for termination from “voluntary” to “permitted to resign” and reported that Foster “was under internal review due to misconduct and was permitted to resign.”⁶ Stern Fisher also reported that a customer had filed a complaint against Foster in December 2012 alleging that he misappropriated customer funds and that, in September 2013, the firm settled the customer

² Enforcement’s Default Motion is supported by the Declaration of Ronald W. Sannicandro, Esq., (“Sannicandro Decl.”), the Supplemental Declaration of Ronald W. Sannicandro, Esq., (“Supp. Sannicandro Decl.”), and multiple exhibits, which are labeled CX-1 through CX-11.

³ CX-1.

⁴ *Id.*

⁵ CX-2.

⁶ CX-2A.

complaint for \$625,000.⁷ Since May 2, 2012, Foster has not been associated with a FINRA member.⁸

B. FINRA’s Jurisdiction

FINRA has jurisdiction over this disciplinary proceeding, pursuant to Article V, Section 4(a) of FINRA’s By-Laws, because (1) Enforcement filed the Complaint within two years after FINRA terminated Foster’s registration, and (2) the Complaint alleges that Foster failed, while subject to FINRA’s jurisdiction during the two years following the termination of his registration, to provide information requested by FINRA pursuant to FINRA Rule 8210.⁹

C. Origin of the Investigation

FINRA commenced an investigation of Foster in February 2014 regarding allegations that Foster misappropriated more than \$2 million in customer funds.¹⁰ In January 2014, Stern Fisher filed an amended Form U5 disclosing its internal review of Foster and a customer complaint against Foster that alleged misappropriation of customer funds.¹¹

D. Foster’s Default

On April 11, 2014, Enforcement served Foster with the First Notice of Complaint and Complaint by certified mail at his residential address recorded in the Central Registration Depository (“CRD”).¹² Enforcement also sent the First Notice of Complaint and Complaint by certified mail to an address for Foster that Enforcement obtained through LEXIS/NEXIS (“the

⁷ *Id.*

⁸ CX-1.

⁹ See Article V, Sec. 4(a), FINRA By-Laws, available at www.finra.org/Rules (then follow “FINRA Manual” hyperlink to “Corporate Organization: By-Laws”).

¹⁰ Complaint (“Compl.”) ¶ 9.

¹¹ Sannicandro Decl. ¶ 8.

¹² Sannicandro Decl. ¶ 28; CX-1; CX-9.

LEXIS/NEXIS address”).¹³ Enforcement also sent a copy of the First Notice of Complaint and Complaint to the CRD address and the LEXIS/NEXIS address by first-class mail.¹⁴ The USPS did not return the first class and certified mailings to Foster’s CRD address.¹⁵ Foster’s Answer was due on or before May 9, 2014.¹⁶ Foster did not file an answer or otherwise respond to the complaint.¹⁷

On May 13, 2014, Enforcement served Foster at his CRD address and the LEXIS/NEXIS address with the Second Notice of Complaint and Complaint via certified mail.¹⁸ Enforcement also sent a copy of the Second Notice of Complaint and Complaint to both addresses by first-class mail.¹⁹ The USPS returned the mailings sent to the LEXIS/NEXIS address.²⁰ The USPS did not return the mailings sent to the CRD address.²¹ Foster’s Answer was due on or before May 30, 2014.²² Foster did not file an Answer or otherwise respond to the Complaint.²³

FINRA Rule 9134(b) provides for service on a natural person at the person’s residential address as indicated in the CRD. The Hearing Officer finds that Foster received constructive notice of the Notice of Complaint and the Second Notice of Complaint.²⁴ Accordingly, the

¹³ Sannicandro Decl. ¶¶ 10, 28.

¹⁴ Sannicandro Decl. ¶ 28. The United States Postal Service (“USPS”) returned the first class and certified mailings to the LEXIS/NEXIS address to Enforcement. Sannicandro Decl. ¶ 29; CX-9A.

¹⁵ Supp. Sannicandro Decl. ¶ 6.

¹⁶ CX-9.

¹⁷ Sannicandro Decl. ¶ 30.

¹⁸ Sannicandro Decl. ¶ 31; CX-10.

¹⁹ *Id.*

²⁰ Sannicandro Decl. ¶ 31; CX-10A.

²¹ Sannicandro Decl. ¶ 31.

²² CX-10.

²³ Sannicandro Decl. ¶ 32; CX-11.

²⁴ FINRA Rule 9134(b) provides for service on a natural person at the person’s residential address as indicated in CRD. See *Dep’t of Enforcement v. Moore*, Complaint No. 2008015105601, 2012 FINRA Discip. LEXIS 45, at *21

Hearing Officer finds that Foster defaulted by failing to answer or otherwise respond to the Complaint.

E. Failure to Respond to FINRA Rule 8210 Requests for Information and Testimony

The Complaint alleges that Foster failed to respond to two requests pursuant to FINRA Rule 8210 for information and documents and two requests pursuant to FINRA Rule 8210 to appear and provide sworn testimony. FINRA Rule 8210(a) authorizes FINRA staff, for purposes of an investigation, examination, or proceeding, to require a person subject to FINRA's jurisdiction to provide information orally, in writing or electronically, testify at a location specified by FINRA staff under oath, and produce documents with respect to any matter involved in the investigation, examination, or proceeding. FINRA Rule 8210(d) provides that notice shall be deemed received by a formerly registered person by mailing it to the last known residential address of the person as reflected in CRD. Rule 8210(d) further provides that, if FINRA staff is aware that a CRD address is out of date or inaccurate, FINRA staff shall mail or otherwise transmit a copy of its request to any other current address known to staff. The Hearing Officer finds that Enforcement complied with the requirements of FINRA Rule 8210, and Foster failed to respond to Enforcement's two requests for information and documents and two requests for Foster to appear and provide sworn testimony.

In furtherance of Enforcement's investigation of Foster's possible misappropriation of customer funds, Enforcement requested documents and information from Foster.²⁵ On February 7, 2014, Enforcement sent Foster a request for information and documents ("First Request") related to the customer allegation that he misappropriated funds while associated with Stern

(FINRA NAC July 26, 2012) (finding constructive notice of a complaint served on respondent at his last known residential address, as indicated in CRD, by first-class and certified mail).

²⁵ Compl. ¶ 10.

Fisher.²⁶ Enforcement sent the First Request by first class and certified mail, return receipt requested, to Foster's CRD address and the LEXIS/NEXIS address.²⁷ The First Request required Foster to respond by February 18, 2014.²⁸ The USPS returned the mailings sent to Foster's LEXIS/NEXIS address.²⁹ The USPS Tracking and Information System indicated that the certified mailing of the First Request was delivered to Foster's CRD address on February 10, 2014.³⁰ Enforcement received an undated USPS delivery receipt signed by "Claudia Foster."³¹ The USPS did not return the first class mailing that Enforcement sent to Foster's CRD address.³² Foster did not respond to the First Request.³³

On February 7, 2014, Enforcement also sent Foster a request pursuant to FINRA Rule 8210 for Foster to appear and testify under oath at 9:00 a.m., on February 20, 2014, at FINRA's One World Financial Center office in New York City.³⁴ Enforcement sent the February 7, 2014 letter to Foster's CRD address and the LEXIS/NEXIS address by certified mail, return receipt requested, and first class mail.³⁵ The USPS returned the mailings sent to Foster's LEXIS/NEXIS address.³⁶ The USPS Tracking and Information System indicated that the certified mailing of the February 7, 2014 letter was delivered to Foster's CRD address on February 10, 2014.³⁷

²⁶ Sannicandro Decl. ¶ 9, 10; CX-3.

²⁷ *Id.*

²⁸ CX-3.

²⁹ Sannicandro Decl. ¶ 12; CX-3C.

³⁰ Sannicandro Decl. ¶ 11; CX-3A.

³¹ Sannicandro Decl. ¶ 11; CX-3B.

³² Sannicandro Decl. ¶ 11.

³³ Sannicandro Decl. ¶ 13.

³⁴ Sannicandro Decl. ¶ 14; CX-4.

³⁵ Sannicandro Decl. ¶ 15; CX-4.

³⁶ Sannicandro Decl. ¶ 17; CX-4C.

³⁷ Sannicandro Decl. ¶ 16; CX-4A.

Enforcement received an undated USPS delivery receipt signed by “Claudia Foster.”³⁸ The USPS did not return the first class mailing that Enforcement sent to Foster’s CRD address.³⁹ Foster did not appear for an on-the-record interview on February 20, 2014.⁴⁰

On March 4, 2014, Enforcement sent Foster a second request for information and documents (“Second Request”) related to the customer allegation that Foster misappropriated funds while associated with Stern Fisher.⁴¹ Enforcement sent the Second Request by first class and certified mail, return receipt requested, to Foster’s CRD address and the LEXIS/NEXIS address.⁴² The Second Request required Foster to respond by March 13, 2014.⁴³ The USPS returned the mailings sent to Foster’s LEXIS/NEXIS address.⁴⁴ The USPS Tracking and Information System indicated that the certified mailing of the Second Request was delivered to Foster’s CRD address on March 8, 2014.⁴⁵ Enforcement received a USPS delivery receipt dated March 8, 2014, and signed by “Brendon Tatman.”⁴⁶ The USPS did not return the first class mailing that Enforcement sent to Foster’s CRD address.⁴⁷ Foster did not respond to the Second Request.⁴⁸

On March 4, 2014, Enforcement sent Foster a second request pursuant to FINRA Rule 8210 for Foster to appear and testify under oath at 9:00 a.m., on March 14, 2014, at FINRA’s

³⁸ Sannicandro Decl. ¶ 16; CX-4B.

³⁹ Sannicandro Decl. ¶ 16.

⁴⁰ Sannicandro Decl. ¶ 18; CX-5.

⁴¹ Sannicandro Decl. ¶ 19; CX-6.

⁴² *Id.*

⁴³ CX-6.

⁴⁴ Sannicandro Decl. ¶ 21; CX-6C.

⁴⁵ Sannicandro Decl. ¶ 20; CX-6A.

⁴⁶ Sannicandro Decl. ¶ 20; CX-6B.

⁴⁷ Sannicandro Decl. ¶ 20.

⁴⁸ Sannicandro Decl. ¶ 22.

One World Financial Center office in New York City.⁴⁹ Enforcement sent the March 4, 2014 letter to Foster's CRD address and the LEXIS/NEXIS address by certified mail, return receipt requested, and first class mail.⁵⁰ The USPS returned the mailings sent to Foster's LEXIS/NEXIS address.⁵¹ The USPS Tracking and Information System indicated that the certified mailing of the March 4, 2014 letter was delivered to Foster's CRD address on March 11, 2014.⁵² Enforcement received an undated USPS delivery receipt signed by "Claudia Foster."⁵³ The USPS did not return the first class mailing that Enforcement sent to Foster's CRD address.⁵⁴ Foster did not appear for an on-the-record interview on March 14, 2014.⁵⁵

Enforcement properly served Foster with multiple requests for information, documents, and sworn testimony pursuant to FINRA Rule 8210, and Foster failed to respond and appear for testimony. By doing so, Foster violated FINRA Rule 8210.⁵⁶ A violation of FINRA Rule 8210 constitutes conduct inconsistent with just and equitable principles of trade and therefore also violates FINRA Rule 2010.⁵⁷

III. Sanctions

FINRA's Sanction Guidelines ("Guidelines") advise that, if an individual did not respond in any manner to a Rule 8210 request, a bar in all capacities should be standard.⁵⁸ The

⁴⁹ Sannicandro Decl. ¶ 23; CX-7.

⁵⁰ *Id.*

⁵¹ Sannicandro Decl. ¶ 25; CX-7C.

⁵² Sannicandro Decl. ¶ 24; CX-7A.

⁵³ Sannicandro Decl. ¶ 24; CX-7B.

⁵⁴ Sannicandro Decl. ¶ 24.

⁵⁵ Sannicandro Decl. ¶ 26; CX-8.

⁵⁶ See *Charles C. Fawcett, IV*, Exchange Act Release No. 56770, 2007 SEC LEXIS 2598, at *11 (Nov. 8, 2007) ("Fawcett has admitted . . . that he failed to provide information and to appear for testimony as requested by NASD. Such failure establishes a prima facie violation of [Rule 8210].").

⁵⁷ See *CMG Inst. Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at *30 (Jan. 30, 2009).

⁵⁸ FINRA Sanction Guidelines at 33 (2013), available at www.finra.org/Industry/Enforcement/SanctionGuidelines.

Guidelines further provide that, where an individual provided a partial but incomplete response, a bar is standard unless the person can demonstrate that the information provided substantially complied with all aspects of the request.⁵⁹

Enforcement's two requests for information and documents asked Foster for detailed, written responses to a variety of questions and for Foster's response to the allegation that he mismanaged, embezzled, and misappropriated funds from identified customers.⁶⁰ FINRA also requested accompanying documentation.⁶¹ Foster did not respond in any manner.⁶² Enforcement also twice requested that Foster appear and provide sworn testimony.⁶³ Twice Foster failed to appear.⁶⁴

There are no mitigating factors, but there is an aggravating factor present in this case. The Guidelines direct adjudicators to consider the importance of the information requested as viewed from FINRA's perspective.⁶⁵ Enforcement learned from Stern Fisher that a customer alleged that Foster misappropriated more than \$2 million and that the firm paid the customer \$625,000 to settle the matter.⁶⁶ The misappropriation or misuse of customer funds is egregious misconduct, particularly in the securities industry where registered representatives often have access to customer funds. Foster's failure to respond had a significant, negative impact on FINRA's investigation of this potentially egregious misconduct by a registered person. Foster's conduct is aggravating.

⁵⁹ *Id.*

⁶⁰ CX-3; CX-6.

⁶¹ *Id.*

⁶² Sannicandro Decl. ¶¶ 13, 22.

⁶³ CX-4; CX-7.

⁶⁴ Sannicandro Decl. ¶¶ 18, 26; CX-5; CX-8.

⁶⁵ Guidelines at 33.

⁶⁶ Compl. ¶ 9; CX-2A.

Accordingly, the Hearing Officer bars Foster from associating with any FINRA member firm in any capacity for violating FINRA Rules 8210 and 2010, as alleged in the Complaint.

IV. Order

Respondent Mark Foster is barred from associating with any member firm in any capacity for failing to respond to FINRA requests for information, documents, and sworn testimony, in violation of FINRA Rules 8210 and 2010, as alleged in the Complaint. The bar shall become effective immediately if this Default Decision becomes the final disciplinary action of FINRA.



Carla Carloni
Hearing Officer

Copies to: Mark Foster (*via overnight courier and first-class mail*)
Ronald W. Sannicandro, Esq. (*via electronic and first-class mail*)
Jeffrey D. Pariser, Esq. (*via electronic mail*)

EXHIBIT A

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

Mark Foster
(CRD No. 719105),

Respondent

DISCIPLINARY PROCEEDING
No. 2014039867601

COMPLAINT

The Department of Enforcement alleges:

SUMMARY

1. In February and March 2014, while registered with a FINRA member firm, Respondent Mark Foster (“Respondent” or “Foster”) failed to respond twice to requests for documents and information and failed to appear twice for on-the-record interviews noticed pursuant to FINRA Rule 8210. Foster therefore violated FINRA Rules 8210 and 2010.

RESPONDENT AND JURISDICTION

2. Foster was registered with FINRA as a General Securities Representative (“GS”), Registered Options Principal (“OP”) and General Securities Principal (“GP”) through Stern Fisher Edwards, Inc. (“Stern Fisher Edwards” or the “Firm”) (BD No. 7548) from December 6, 2006 to May 2, 2012.

3. On May 2, 2012 Stern Fisher Edwards filed a Uniform Termination Notice for Securities Industry Registration ("Form U5") terminating Foster's registration as of May 2, 2012. The Form U5 lists "Voluntary" as the "Reason for Termination" and does not provide any other additional information regarding Respondent's termination.
4. On January 21, 2014, Stern Fisher Edwards filed an amendment to Respondent's Form U5 ("Form U5A"). In the Form U5A, the Firm, for the first time, reported that a customer complaint alleging misappropriation of client funds was filed by customer MLS on December 27, 2012. The Form U5A also reported that, on September 30, 2013, the Firm settled the customer complaint with MLS for \$625,000. In addition, the Firm amended the "Reason for Termination" from "Voluntary" to "Permitted to resign" and under the heading "Termination Explanation," the Firm stated the following: "Subject was under internal review due to misconduct and was permitted to resign."
5. Respondent has not been associated with a FINRA member firm since his registration was terminated on May 2, 2012.
6. Although Respondent is no longer registered or associated with a FINRA member firm, he remains subject to FINRA's jurisdiction for purposes of this proceeding, pursuant to Article V, Section 4 of FINRA's By-Laws, because (1) the Complaint was filed within two years after the effective date of termination of Respondent's registration with Stern Fisher Edwards; and (2) the Complaint charges him with failing to respond to requests for documents and information and with failing to

appear for an on-the-record interview during the two-year period after the date upon which he ceased to be registered or associated with a FINRA member firm.

7. Respondent is therefore subject to FINRA's jurisdiction.

**FIRST CAUSE OF ACTION
FAILURE TO COOPERATE WITH A FINRA INVESTIGATION
VIOLATION OF FINRA RULES 8210 AND 2010**

8. The Department re-alleges and incorporates by reference paragraphs 1 through 7 above.
9. In or about February 2014, FINRA Enforcement began an investigation of Respondent regarding allegations that Foster had misappropriated more than \$2 million in customer funds while registered with a FINRA member firm.
10. As part of its investigation, Enforcement requested documents and information, including a written statement from Respondent, and an on-the-record interview.

First Request for Documents and Information

11. On February 7, 2014, the staff of FINRA's Department of Enforcement (the "Staff") sent Respondent a letter (the "First Request for Information") seeking, *inter alia*, documents and information relating to allegations of misappropriation of customer funds while registered with a FINRA member firm.
12. Pursuant to FINRA Rule 8210, the First Request for Information was sent via certified mail, return receipt requested, and first class mail to Foster at his current address in Pasadena, California, as reflected in the records of the Central Registration

Depository: 326 S. Parkwood Avenue Pasadena, California 91107-5036 (“Foster’s CRD Address”) and to the following address listed as current according to a LEXIS/NEXIS search: 44697 Warner Trail Indian Wells, California 92210-7503 (“Foster’s LEXIS/NEXIS Address”). A response was required by no later than February 18, 2014.

13. The Staff confirmed through the U.S. Postal Service Tracking and Information System that the certified mailing for the First Request for Information was delivered to Foster’s CRD Address on February 10, 2014.
14. Following delivery of the First Request for Information, Enforcement received from the U.S. Postal Service a signed return receipt for the certified mailing. The return receipt is not dated, but contains the signature of “Claudia Foster” below the signature line.
15. The First Request for Information sent by first class mail to Foster’s CRD Address was not returned by the U.S. Postal Service.
16. The First Request for Information letters sent to Foster’s LEXIS/NEXIS Address via certified mail, return receipt requested and first class mail were returned to FINRA by the U.S. Postal Service.
17. Respondent did not provide the documents and information on February 18, 2014 as requested pursuant to FINRA Rule 8210.

Respondent’s First Request for Testimony

18. On February 7, 2014, the Staff requested that Foster appear for an on-the-record interview on February 20, 2014 at FINRA’s offices at One World Financial Center,

200 Liberty Street, New York, New York at 9:00 AM (the “First Request for Testimony”).

19. Pursuant to FINRA Rule 8210, the First Request for Testimony was sent via certified mail, return receipt requested, and first class mail to Foster’s CRD Address and to Foster’s LEXIS/NEXIS Address.

20. The Staff confirmed through the U.S. Postal Service Tracking and Information System that the certified mailing for the First Request for Testimony was delivered to Foster’s CRD Address on February 10, 2014.

21. Following delivery of the First Request for Testimony, Enforcement received from the U.S. Postal Service a signed return receipt for the certified mailing. The return receipt is not dated, but contains the signature of “Claudia Foster” below the signature line.

22. The U.S. Postal Service did not return the First Request for Testimony sent by first class mail to Foster’s CRD Address.

23. The First Request for Testimony letters sent to Foster’s LEXIS/NEXIS Address via certified mail, return receipt requested and first class mail were returned to FINRA by the U.S. Postal Service.

24. Respondent did not appear on February 20, 2014 for an on-the-record interview.

Respondent’s Second Request for Documents and Information

25. On March 4, 2014, the Staff sent Respondent a second request letter for documents and information (the “Second Request for Information”) seeking, *inter alia*,

information relating to allegations of misappropriation of customer funds while registered with a FINRA member firm.

26. Pursuant to FINRA Rule 8210, the Second Request for Information was sent via certified mail, return receipt requested, and first class mail to Foster's CRD Address and to Foster's LEXIS/NEXIS Address. A response was required by no later than March 13, 2014.
27. The Staff confirmed through the U.S. Postal Service Tracking and Information System that the certified mailing for the Second Request for Information was delivered to Foster's CRD Address on March 8, 2014.
28. Following delivery of the Second Request for Information, Enforcement received from the U.S. Postal Service a signed return receipt for the certified mailing. The return receipt is dated March 8, 2014 and contains the signature of "Brendon Tatman" below the signature line. Under the section that reads "Received by (Print Name)" Brendon Tatman's name is written in print form.
29. The U.S. Postal Service did not return the Second Request for Information sent by first class mail to Foster's CRD Address.
30. The Second Request for Information letters sent to Foster's LEXIS/NEXIS Address via certified mail, return receipt requested and first class mail were returned to FINRA by the U.S. Postal Service.
31. Respondent did not provide the documents and information on March 13, 2014 as requested pursuant to FINRA Rule 8210.

Respondent's Second Request for Testimony

32. On March 4, 2014, the Staff issued a second request for Foster to appear for an on-the-record interview. The interview was scheduled for March 14, 2014 at FINRA's offices at One World Financial Center, 200 Liberty Street, New York, New York at 9:00 AM (the "Second Request for Testimony").
33. Pursuant to FINRA Rule 8210, the Second Request for Testimony was sent via certified mail, return receipt requested, and first class mail to Foster's CRD Address and to Foster's LEXIS/NEXIS Address.
34. The Staff confirmed through the U.S. Postal Service Tracking and Information System that the certified mailing for the Second Request for Testimony was delivered to Foster's CRD Address on March 11, 2014.
35. Following delivery of the Second Request for Testimony, Enforcement received from the U.S. Postal Service a signed return receipt for the certified mailing. The return receipt is not dated, but contains the signature of "Claudia Foster" below the signature line.
36. The U.S. Postal Service did not return the Second Request for Testimony sent by first class mail to Foster's CRD Address.
37. The Second Request for Testimony letters sent to Foster's LEXIS/NEXIS Address via certified mail, return receipt requested and first class mail were returned to FINRA by the U.S. Postal Service.
38. Respondent did not appear on March 14, 2013 for the on-the-record interview.

Respondent's Continuing Failure to Cooperate

39. To date, Respondent has failed to provide requested documents and information sought through multiple FINRA Rule 8210 requests. In addition, Respondent has neither appeared for an on-the-record interview in accordance with Enforcement's FINRA Rule 8210 request nor provided Enforcement with a date certain for appearing for the interview.
40. FINRA Rule 8210 requires associated persons "to provide information orally, in writing or electronically... and testify at a location specified by FINRA staff, under oath or affirmation ...with respect to any matter involved in the investigation, complaint, examination, or proceeding...."
41. By reason of the facts alleged above, including failing to respond twice to requests for information and for failing to appear twice for an on-the-record interview scheduled pursuant to FINRA Rule 8210, Respondent violated FINRA Rules 8210 and 2010.

RELIEF REQUESTED

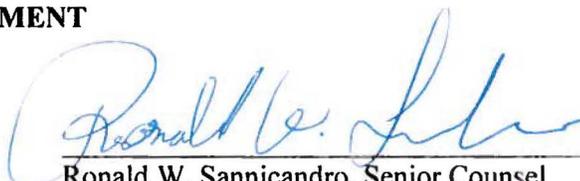
WHEREFORE, the Department respectfully requests that the Panel:

- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under FINRA Rule 8310(a), including monetary sanctions, be imposed.
- C. Order that Respondent bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with FINRA Rule 8330.

FINRA DEPARTMENT OF ENFORCEMENT

Date: _____

4/11/14



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