

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

DAVID HIXON  
(CRD No. 4707468),

Respondent.

Disciplinary Proceeding  
No. 2021070867702

Hearing Officer–BEK

**DEFAULT DECISION**

December 16, 2022

**Respondent is barred from associating with any FINRA member firm in any capacity for failing to provide information and documents to FINRA staff, in violation of FINRA Rules 8210 and 2010.**

*Appearances*

For the Complainant: Michelle Galloway, Esq., and Loyd Gattis, Esq., Department of Enforcement, Financial Industry Regulatory Authority

For the Respondent: David Hixon, pro se

**DECISION**

**I. Introduction**

The Department of Enforcement properly served Respondent David Hixon with the First and Second Notices of Complaint and the Complaint. The Complaint alleges that Hixon violated FINRA Rules 8210 and 2010 by failing to provide information and documents requested by FINRA staff. Hixon did not file an Answer to the Complaint. As a result, on October 10, 2022, Enforcement filed a motion for entry of default decision and request for imposition of sanctions (“Default Motion”). The Default Motion is supported by the declaration of Enforcement counsel Michelle Galloway, Esq. (“Galloway Decl.”) and 25 supporting exhibits (CX-1 through CX-25).

On October 7, 2022, Hixon emailed the Office of Hearing Officers Case Administrator (“Case Administrator”) assigned to this case indicating that he had not received the Complaint and other documents and expressing his willingness to provide Enforcement with the requested information and documents. On October 18, 2022, I held a Status Conference. At the Status Conference, Enforcement stated that it had properly served Hixon with the First and Second Notices of Complaint and the Complaint and was ready to proceed on Enforcement’s Default

Motion. Under FINRA’s rules, Hixon had until October 24, 2022, to file his opposition or response to the Default Motion. Hixon stated that he would respond to Enforcement’s Default Motion by then. Hixon did not file a response to Enforcement’s Default Motion or an Answer to the Complaint.

For the reasons stated below, I find Hixon in default, deem the allegations in the Complaint admitted, and grant Enforcement’s Default Motion.

## **II. Findings of Fact and Conclusions of Law**

### **A. Respondent’s Background**

Hixon began working in the securities industry in 2000. In June 2013, he registered as a General Securities Representative and General Securities Sales Supervisor with Morgan Stanley. On March 17, 2021, Morgan Stanley filed a Uniform Termination Notice for Securities Industry Registration (Form U5) stating that Hixon was terminated for concerns that he (1) borrowed from a customer and (2) asked another customer and a co-worker for a loan. On March 29, 2021, Morgan Stanley amended Hixon’s Form U5 to report a written customer complaint alleging “misrepresentation with respect to annuity exchange.”<sup>1</sup>

### **B. FINRA’s Jurisdiction**

Although Hixon 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(a) of FINRA’s By-Laws. This is because: (1) the Complaint was filed within two years after March 29, 2021, the date of the amendment to Hixon’s notice of termination and that amendment (a) was filed within two years of the notice of termination, and (b) disclosed possible misconduct actionable under an applicable statute, rule, or regulation; and (2) the Complaint charges Hixon with misconduct during the two-year period after March 29, 2021.

### **C. Origin of the Investigation**

In March 2021, FINRA staff began investigating the circumstances of Hixon’s termination from Morgan Stanley. During their investigation, FINRA staff requested information and documents relating to Hixon’s solicitation and acceptance of loans from two customers, repayment of a loan from a customer, and any documents relating to loans from customers or co-workers. Additionally, FINRA staff wanted Hixon to provide information pertaining to a customer complaint against him regarding an annuity exchange. Although Hixon submitted some information to FINRA staff, he failed to fully and timely provide much of the requested information and documents, leading to this disciplinary proceeding.<sup>2</sup>

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<sup>1</sup> Complaint (“Compl.”) ¶¶ 2-4; Complainant’s Exhibit (“CX-\_\_”) 1, at 1; CX-2, at 1.

<sup>2</sup> Compl. ¶¶ 6-7, 9-10, 12-13, 15, 19-22, 24; Galloway Decl. ¶ 4; CX-4, at 1; CX-5, at 2.

#### D. Respondent's Default

Enforcement served Hixon with the First Notice of Complaint and the Complaint on July 20, 2022, and a Second Notice of Complaint and the Complaint on August 18, 2022. In each case, Enforcement served Hixon by first-class certified mail, return receipt requested, at his last known residential address as reflected in the Central Registration Depository ("CRD"). Enforcement also sent copies to Hixon by first-class certified mail, return receipt requested, at two additional addresses he had disclosed in CRD; Enforcement also sent courtesy copies of the First and Second Notices of Complaint and the Complaint to Hixon's personal email address.<sup>3</sup>

The certified mail sent on July 20 to Hixon's CRD address and one of the additional addresses disclosed in CRD were returned to FINRA, but the mail sent to Hixon's other additional address was left with an individual who signed for the mail with the printed signature "Hixon."<sup>4</sup> The email sent to Hixon's personal email address was not returned as undeliverable.<sup>5</sup> The certified mail sent on August 18 to Hixon's CRD address was returned, but the mail sent to Hixon's two additional addresses disclosed in CRD was left with an individual at each address who signed for the mail with the printed signature "Hixon."<sup>6</sup> The email sent to Hixon's personal email address was not returned as undeliverable.<sup>7</sup>

Because Hixon did not file an Answer, on October 10, Enforcement filed its Default Motion. However, on October 7, Hixon emailed the Case Administrator indicating that he had not received the Complaint and other documents and expressing his willingness to provide Enforcement with the requested information and documents.<sup>8</sup>

In light of Hixon's October 7 email, I held a Status Conference on October 18, 2022, during which Hixon indicated that he had not received a copy of the Complaint; however, he confirmed his mailing address as one of the three listed in CRD.<sup>9</sup> Enforcement stated that it was ready to proceed on its Default Motion. I advised Hixon that, under FINRA's rules, he had until

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<sup>3</sup> Galloway Decl. ¶¶ 10-15, 19-21; CX-14; CX-15; CX-16; CX-20; CX-21. The email address to which the First and Second Notices of Complaint and the Complaint were sent is the same email address Hixon used to correspond with FINRA in March 2022. Galloway Decl. ¶¶ 14, 16; CX-16, at 1; CX-21 at 1.

<sup>4</sup> Galloway Decl. ¶ 16; CX-17; CX-18; CX-19.

<sup>5</sup> Galloway Decl. ¶ 16.

<sup>6</sup> Galloway Decl. ¶ 22; CX-22; CX-23; CX-24.

<sup>7</sup> Galloway Decl. ¶ 22.

<sup>8</sup> CX-25. The Case Administrator forwarded a copy of Hixon's email to Enforcement the same day – October 7, 2022.

<sup>9</sup> Status Conference Transcript ("Tr.") 4-5, 10-11; Galloway Decl. ¶¶ 11-12. Hixon's confirmed mailing address is also the same address to which Enforcement mailed a copy of the First and Second Notices of Complaint and the Complaint, and for which an individual signed for the mail with the printed signature "Hixon." *Compare* Tr. 10-11 with CX-17; CX-22; and CX-23. At the Status Conference, Hixon also stated that one of his personal email addresses is [xxx@mail.com](mailto:xxx@mail.com), which is the same email address to which Enforcement emailed the courtesy copies of the First and Second Notices of Complaint and Complaint. *Compare* Tr. 10 with CX-16, at 1 and CX-21, at 1.

October 24, 2022, to file an opposition or response to Enforcement’s Default Motion. Hixon stated he could respond by the deadline. I further advised Hixon that I could rule on Enforcement’s Default Motion if he failed to file an opposition or response to the Default Motion. Hixon did not file a response.<sup>10</sup>

Under FINRA Rule 9134, service of a complaint is valid if sent to an individual respondent by certified mail at the person’s most recent residential address reflected in CRD, unless the staff has actual knowledge that the CRD address is outdated and knows of a more current address.<sup>11</sup> Here, Enforcement served the First and Second Notices of Complaint and the Complaint on Hixon at his CRD address and two additional addresses disclosed by Hixon in CRD, with the service acknowledged on three occasions by a person who signed for the mail with the printed signature “Hixon.” And one of the addresses for which the First and Second Notices of Complaint and the Complaint were signed for is the same address Hixon confirmed at the October 18, 2022 Status Conference as his current address. I thus find that Hixon had constructive notice of the Complaint.<sup>12</sup>

Pursuant to FINRA Rule 9215, Hixon was required to file an Answer or otherwise respond to the Second Notice of Complaint by September 6, 2022.<sup>13</sup> He has not done so. He also had the opportunity to file an opposition or response to Enforcement’s Default Motion. He has not done that either and his failure to do so is deemed a waiver of any objection to my granting the motion.<sup>14</sup> I thus find that he has defaulted. Pursuant to FINRA Rules 9215(f) and 9269(a)(2), I grant the Default Motion and deem the allegations in the Complaint admitted.<sup>15</sup>

#### **E. Hixon Failed to Provide Information and Documents**

FINRA Rule 8210 requires anyone subject to FINRA’s jurisdiction to provide the information and testimony requested by FINRA staff and “is at the heart of the self-regulatory system for the securities industry.”<sup>16</sup> Because FINRA lacks subpoena power, it relies on Rule

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<sup>10</sup> Tr. 7-8, 13-14; *see also* FINRA Rule 9146(d) (providing 14 days to file an opposition or response after service of a written motion). Enforcement served the Default Motion, which included CX-1 through CX 25, on Hixon at the three addresses listed in CRD.

<sup>11</sup> FINRA Rule 9134 alternatively provides that a complaint may be served on a person at the CRD address of an entity employing that person. This option does not apply here because Hixon was no longer employed by a FINRA member after Morgan Stanley terminated his employment.

<sup>12</sup> *See* FINRA Rules 9131(b) and 9134(b)(3) (together, stating that service of the Complaint “by mail is complete upon mailing”); *Dep’t of Enforcement v. Verdiner*, No. CAF020004, 2003 NASD Discip. LEXIS 42, at \*5-6 & n.1 (NAC Dec. 9, 2003) (citing NASD Rule 9134(b)(1), the predecessor to FINRA Rule 9134(b)(1), and finding respondent received constructive notice when the Complaint was mailed to respondent’s CRD address).

<sup>13</sup> Galloway Decl. ¶ 23; CX-20.

<sup>14</sup> FINRA Rule 9146(d).

<sup>15</sup> Hixon may move to set aside the default pursuant to FINRA Rule 9269(c) upon a showing of good cause.

<sup>16</sup> *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).

8210 to obtain information necessary to carry out “its investigations and fulfill its regulatory mandate.”<sup>17</sup> The failure to fully and timely respond to information requests violates FINRA Rules 8210 and 2010.<sup>18</sup>

The single cause of action in the Complaint alleges that Hixon failed to provide information and documents in response to FINRA’s Rule 8210 requests. On July 15 and August 12, 2021, FINRA staff sent Hixon written requests to provide information and documents related to his solicitation of loans from customers or information pertaining to a customer complaint regarding an annuity exchange.<sup>19</sup> FINRA staff’s August 12 request required Hixon to provide the information and documents by September 2, 2021, but he failed to do so.<sup>20</sup>

On October 1, 2021, FINRA staff sent Hixon a third request for information and documents, enclosing the July and August 2021 Rule 8210 requests and requiring a complete response by October 15, 2021.<sup>21</sup> When Hixon failed to respond, FINRA staff sent him a Notice of Suspension pursuant to FINRA Rule 9552. The Notice of Suspension informed him that he would be suspended from associating with any FINRA member firm in any capacity on January 7, 2022, unless he provided FINRA the requested information and documents.<sup>22</sup> Thereafter, FINRA staff notified him by a letter dated January 7, 2022, that he was suspended from associating with any FINRA member in any capacity, and that he would be automatically barred on March 17, if he did not request termination of the suspension on grounds of full compliance.<sup>23</sup>

On March 10, 2022, Hixon sent an email to FINRA staff stating that he had not received the July, August, and October 2021 Rule 8210 requests for information and documents. That same day, FINRA staff sent Hixon copies of these requests as well as a copy of the Notice of Suspension. On March 17, Hixon submitted information to FINRA and requested that his suspension be terminated.<sup>24</sup>

The information submitted by Hixon was incomplete. He failed to provide any documents—or state that he had none—relating to his loan and receipt of funds from a certain customer or relating to his repayment of that loan. He also failed to confirm or deny whether he solicited or obtained a loan from any customers other than the two that were named in the Rule 8210 requests, and, if he did solicit other loans, he failed to state the intended purpose of any

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<sup>17</sup> *CMG Inst’l Trading, LLC*, Exchange Act Release No. 59325, 2009 SEC LEXIS 215, at \*15 (Jan. 30, 2009).

<sup>18</sup> *Dep’t of Enforcement v. Evansen*, No. 2010023724601, 2014 FINRA Discip. LEXIS 10, at \*24-25 (NAC June 3, 2014), *aff’d*, Exchange Act Release No. 75531, 2015 SEC LEXIS 3080 (July 27, 2015).

<sup>19</sup> Compl. ¶¶ 7, 10; CX-4; CX-5.

<sup>20</sup> Compl. ¶¶ 10, 12; CX-5.

<sup>21</sup> Compl. ¶ 13; CX-6.

<sup>22</sup> Compl. ¶ 15; CX-8.

<sup>23</sup> Compl. ¶ 17; CX-9.

<sup>24</sup> Compl. ¶¶ 18-19; CX-10; CX-11.

such solicited or obtained loan. These deficiencies were noted in a March 29, 2022 letter from FINRA.<sup>25</sup> A second letter of the same date denied Hixon’s request to terminate his suspension due to the incomplete nature of his response.<sup>26</sup> Prior to filing the Complaint in this matter, Hixon did not further respond to FINRA.<sup>27</sup>

Because Hixon failed to timely and fully provide the requested information and documents, I find that he has violated FINRA Rules 8210 and 2010.

### III. Sanctions

FINRA’s Sanction Guidelines (“Guidelines”) recommend that, if an individual provided a partial but incomplete response to a Rule 8210 request, a bar should be standard unless the person can demonstrate that the information provided substantially complied with all aspects of the request.<sup>28</sup> Factors relevant to the appropriate sanction include the following:

- The importance of the information requested that was not provided as viewed from FINRA’s perspective, and whether the information provided was relevant and responsive to the request.
- The number of requests made, the time the respondent took to respond, and the degree of regulatory pressure required to obtain a response.
- The reasons offered by the respondent to justify the partial but incomplete response.<sup>29</sup>

Here, FINRA staff sought information and documents from Hixon to further FINRA’s investigation into whether Hixon had solicited or obtained loans from customers. Although Hixon provided some of the information and documents requested by FINRA, he did so only after FINRA exerted significant regulatory pressure, including the initiation of this disciplinary proceeding. Hixon failed to provide all of the requested information and documents, as noted

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<sup>25</sup> CX-12; *see also* Compl. ¶¶ 20-21.

<sup>26</sup> Compl. ¶ 21; CX-13.

<sup>27</sup> Compl. ¶ 24. In his October 7, 2022 email to the Office of Hearing Officers, Hixon states that the loan he had with a “client” was not in writing and it was “paid back immediately.” Hixon’s email, however, does not include any documents evidencing Hixon’s repayment of the loan. It also does not provide confirmation that Hixon did not solicit or obtain loans from customers other than the two identified in the Rule 8210 requests. *See* CX-25.

<sup>28</sup> Guidelines at 93 (2022), <https://www.finra.org/sanctionguidelines>. The Guidelines also suggest a monetary fine from \$5,000 to \$20,000. *Id.* Fines, however, generally are not appropriate when a bar is imposed and there is no customer loss. *Id.* at 9. Here, there is no assertion in the Complaint that a customer sustained a loss. Because I am imposing a bar for Hixon’s violation of Rules 8210 and 2010, I am not imposing a fine.

<sup>29</sup> *Id.* at 93; *see also Blair C. Mielke*, Exchange Act Release No. 75981, 2015 SEC LEXIS 3927, at \*51-52 (Sept. 24, 2015) (failing to provide requested information and documents necessary to assist in FINRA’s investigation is a “serious violation justifying stringent sanctions”).


above, and he failed to demonstrate that the information provided substantially complied with all aspects of the request.

The information sought (and not provided) was material to FINRA's investigation and necessary to complete FINRA's regulatory mandate to fully investigate potential rule violations and to protect the investing public.<sup>30</sup> Moreover, even accepting Hixon's March 10, 2022, assertion that he had not received the July, August, and October 2021 Rule 8210 requests, he had since mid-March 2022 to provide the requested information and documents; yet he has failed to fully do so. Considering this failure over the past many months, I find it unlikely that a continued suspension of Hixon will prompt him to fully comply with the outstanding Rule 8210 requests. I thus find that a bar in all capacities from the securities industry is appropriate.

#### **IV. Order**

Respondent David Hixon is barred from associating with any FINRA member firm in any capacity for failing to fully and timely provide information and documents requested by FINRA staff, in violation of FINRA Rules 8210 and 2010, as alleged in the sole cause of the Complaint.

The bar shall become effective immediately if this Default Decision becomes FINRA's final disciplinary action.

  
Bruce E. Kasold  
Hearing Officer

Copies to:

David Hixon (via email, overnight courier, and first-class mail)  
Michelle Galloway, Esq. (via email)  
Loyd Gattis, Esq. (via email)  
Jennifer Crawford, Esq. (via email)

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<sup>30</sup> *Joseph Ricupero*, Exchange Act Release No. 62891, 2010 SEC LEXIS 2988, at \*21 (Sept. 10, 2010) (“Without subpoena power, [FINRA] must rely on Rule 8210 to obtain information from its members necessary to carry out its investigations and fulfill its regulatory mandate.”), *petition for review denied*, 436 F. App'x 31 (2d Cir. 2011).