

BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of

Department of Enforcement,

Complainant,

vs.

CMG Institutional Trading, LLC
Chicago, IL,

and

Shawn D. Baldwin
Chicago, IL,

Respondents.

DECISION

Complaint No. 2008012026601

Dated: October 7, 2010

Respondents failed to respond to FINRA requests for information. Held, findings and sanctions affirmed.

Appearances

For the Complainant: Pamela L. Shu, Senior Regional Counsel, Richard S. Schultz, Senior Regional Counsel, Department of Enforcement, Financial Industry Regulatory Authority

For the Respondents: Shawn D. Baldwin

Decision

CMG Institutional Trading, LLC (“CMG Institutional” or “the Firm”) and Shawn D. Baldwin appeal a June 9, 2009 Hearing Panel decision. The Hearing Panel expelled CMG Institutional and barred Baldwin from associating with any member firm in any capacity for failing to respond to written requests for information in violation of NASD Rules 8210 and

2110.¹ After a complete review of the record, we affirm the Hearing Panel's liability findings and sanctions.

I. Facts and Procedural History

A. Background

CMG Institutional became registered with FINRA in 2001. From November 2001 until April 2008, Baldwin was registered as a general securities representative and general securities principal with CMG Institutional. Baldwin was the Firm's founder, president, chief executive officer, chief compliance officer, and the owner of at least 75 percent of the Firm.

B. Financial Condition Requests for Information

In October 2006, FINRA examiners met with Baldwin and CMG Institutional's financial and operations principal ("FINOP"), Kila Weaver, to discuss the examiners' concerns about the Firm's capital contributions and whether they were permanent. The examiners were also concerned about the currency and accuracy of CMG Institutional's financial books and records. The examiners told Baldwin and Weaver that the Firm would have to submit monthly financial reports and related documents to FINRA.

On October 4, 2006, FINRA Supervisor of Examiners Shawn O'Neill faxed a letter to Baldwin in which he specified that for the period covering the three prior months, CMG Institutional must deliver to the FINRA office within two weeks the following:

- 1) Balance Sheet,
- 2) Income Statement,
- 3) Net Capital calculation,
- 4) Supporting documents for assets treated as allowable, and
- 5) Deposit slips and corporate minutes and/or any other documents evidencing proof of ownership and source(s) of funds for any capital infusions.

For each month going forward, O'Neill requested that CMG Institutional provide the same documents by the seventeenth business day following the end of the month, until further notice. The letter explained that the requests were being made pursuant to Rule 8210. No documents were provided during the two-week period.

¹ Following the consolidation of NASD and the member regulation, enforcement and arbitration functions of NYSE Regulation into FINRA, FINRA began developing a new "Consolidated Rulebook" of FINRA Rules. The first phase of the new consolidated rules became effective on December 15, 2008. See *FINRA Regulatory Notice 08-57* (Oct. 2008). Because the complaint in this case was filed before December 15, 2008, the procedural rules that apply are those that existed on December 14, 2008. The conduct rules that apply are those that existed at the time of the conduct at issue.

On December 8, 2006, CMG Institutional submitted financial reports from its accountant for October 2006 including a balance sheet, income statement, Financial and Operational Combined Uniform Single (“FOCUS”) report,² trial balances, general ledger, and journal entries. In the following two months, CMG Institutional provided similar financial statements and accounting documents for November and December 2006. The Firm then stopped providing these financial reports and related documents.

On March 9, 2007, Baldwin wrote to the District Director of District 8 and requested an end to the on-going requirement that CMG Institutional provide financial reports and related documents each month. Baldwin explained that the requirement was onerous and that the Firm had not conducted any investment banking business since April 2006. Less than two weeks later, the District Director responded that the district office was still concerned about CMG Institutional’s compliance with the net capital rule and that the Firm should provide all the requested information “up to and including month end February 2007.”

Also in March 2007, FINRA’s examiners made several telephone calls to Weaver to ask that the Firm submit its financial reports and supporting documents for January and February 2007. When CMG Institutional did not provide these documents, FINRA examiner Dennis Stralka wrote to Baldwin on April 11, 2007, reminding him that the Firm was required to provide this information, repeating the request, and noting that it was made pursuant to Rule 8210.

Stralka sent another letter on April 26, 2007, noting that CMG Institutional had not submitted any documents for January and February 2007 and adding that the Firm had not submitted the required financial reports and related documents for March 2007. Stralka sent similar letters, all citing Rule 8210 for authority, for each of the successive months in 2007. Each of these letters gave CMG Institutional a new deadline of approximately two additional weeks to submit the requested documents. When Stralka sent his December 28, 2007 letter, he had received no financial information from CMG Institutional for 2007.

On January 4, 2008, Baldwin faxed a letter to Stralka that attached a balance sheet, income statement, and FOCUS report for March 2007, which were prepared by CMG Institutional’s outside accountant. Although Baldwin’s letter stated that the accountant would be sending financial reports for November 2007, FINRA never received those documents. Baldwin explained that CMG Institutional had not conducted any securities business since some time in 2006, after NASD had filed a disciplinary case against him and the Firm. Baldwin stated that he “was forced to effectively shut down” the Firm. Baldwin explained that he was personally paying the rent and office expenses for the Firm as a capital contribution. The FOCUS report attached to Baldwin’s letter showed that the Firm was below its net capital requirement of \$5,000 as of March 2007.

Stralka responded to Baldwin’s letter on January 9, 2008. The letter noted that CMG Institutional had not provided supporting documentation for the Firm’s capital contributions in November and December 2006, and had not provided any financial reports or related documents

² Broker-dealers complete FOCUS reports when they compute their net capital.

for January, February and April through November 2007. The letter also pointed out that the Firm had not provided supporting documents for allowable assets and capital infusions. After receiving no response to his January 9 letter, Stralka sent a final letter to Baldwin on January 31, 2008, again requesting all previously requested documents. CMG Institutional did not respond.

C. Capital Infusion Requests for Information

After receiving CMG Institutional's November and December 2006 FOCUS reports, Stralka contacted the Firm's FINOP to request supporting documents for allowable assets and for capital infusions. FINRA's examiners sought to verify the details of a \$49,000 capital infusion to CMG Institutional, which took place in the fourth quarter of 2006. On February 1, 2007, CMG Institutional sent to FINRA three corporate resolutions regarding capital contributions in 2006, among other information. The resolutions reflected that the sole member of CMG Institutional, Baldwin, had contributed \$10,000, \$12,000, and \$27,000 in November and December 2006.

In a series of telephone calls between FINRA's examiners and CMG Institutional's FINOP or Baldwin, the examiners requested copies of the three checks totaling \$49,000 that had been deposited into the Firm's account and other documentation. In an April 11, 2007 letter, Stralka summarized that the Firm had provided corporate minutes regarding the \$49,000 of capital, CMG Institutional's bank statement showing that the funds were received, and heavily redacted bank statements for Baldwin's wife's account, which showed two checks in amounts that matched two of the capital contributions, but showed no additional information. Stralka's letter specifically requested that Baldwin provide copies of the canceled checks for the three deposits. Stralka asked whether Baldwin's wife had contributed the capital to CMG Institutional, and if so what ownership she had in the Firm and documentation thereof. If she was not an owner, he asked why she was eligible to make a capital contribution to the Firm. Finally, Stralka asked if CMG Institutional had entered into a clearing agreement with First Southwest Company and, if so, the purpose of such an agreement. The letter set a deadline of April 25, 2007 for CMG Institutional to comply.

In an April 13, 2007 letter, a CMG Institutional employee responded that Baldwin was in London until April 17, and would contact Stralka when he returned. CMG Institutional and Baldwin, however, did not respond to Stralka's request by April 25. Stralka sent CMG Institutional and Baldwin a second and third letter on April 26 and May 8, 2007, repeated the requests, and set new deadlines of May 7 and 15, 2007. CMG Institutional and Baldwin did not provide the canceled checks or answer the questions.

D. Customer Complaint Request for Information

In December 2007, Stralka's supervisor asked him to follow up on a telephone call that FINRA had received from T.B., who complained about an investment she had made with Baldwin. Stralka contacted T.B., who told him that she had invested \$15,000 with CMG Institutional in August 2007 and had been unsuccessful in getting the money returned. T.B. sent Stralka a receipt for a wire transfer of \$15,000 to an account in the name of CMG Institutional held at Washington Mutual Bank. The wire transfer reflected that the account transferring the funds was a custodial account, a joint Uniform Transfer to Minors Act account ("JUTMA").

Supervisor of Examiners O'Neill testified that FINRA had not previously been aware of CMG Institutional having an account at Washington Mutual Bank. Under the Firm's membership agreement, it was not allowed to accept customer funds. O'Neill further testified that—if CMG Institutional were accepting customer funds—the Firm would trigger a higher net capital requirement.

On January 9, 2008, Stralka sent a Rule 8210 request to Baldwin that asked for a copy of CMG Institutional's Washington Mutual bank statement for August 2007 and asked several questions about how T.B.'s funds were used by the Firm or Baldwin. Stralka's letter set a deadline of January 28, 2008, for a response. Stralka also sent a copy of his letter to CMG Institutional's outside counsel, Nichole Patton. CMG Institutional and Baldwin did not respond by January 28.

On January 29, 2008, O'Neill sent a "Final Request" letter to Baldwin that noted Baldwin's failure to respond and—pursuant to Rule 8210—set a new deadline of February 5, 2008, for the Firm to respond. CMG Institutional did not respond by the deadline.

On February 6, 2008, O'Neill wrote to Baldwin and requested his appearance at an on-the-record interview ("OTR") on February 15, 2008, pursuant to Rule 8210. Baldwin's attorney contacted FINRA and rescheduled the OTR for six days later; however, Baldwin did not attend the OTR. On the day scheduled for the OTR, February 21, 2008, Baldwin's attorney called 15 minutes before the scheduled start and notified O'Neill that Baldwin was unavailable. In a letter sent later in the day, the attorney stated that she would call to reschedule once her client informed her of his availability. Baldwin later explained that he had been assisting his grandmother, who had been taken to a hospital for emergency treatment.

Also on February 21, 2008, Baldwin's attorney sent a letter that responded to Stralka's questions concerning customer T.B.'s funds. In response to the request that had asked for a copy of the August 2007 Washington Mutual bank statement, Baldwin stated that he had submitted a request to Washington Mutual for the bank statement and it would be forwarded upon receipt. Baldwin and CMG Institutional, however, never provided any bank statements for this account.

In other answers that Baldwin provided, he stated that T.B. was the "executor" of a JUTMA and the trust had purchased a debenture. Baldwin's response also stated that the JUTMA's funds had been returned to T.B. That same day, T.B. faxed a letter to FINRA's Chicago office in which she suggested that she had been too hasty in contacting FINRA to complain about Baldwin. T.B. instructed that she no longer wished to file a complaint against Baldwin or CMG Institutional.

In a letter, examiner O'Neill asked Baldwin several follow-up questions, pursuant to Rule 8210, regarding the Washington Mutual bank account, including the following:

- An explanation of why the Washington Mutual bank statement was not readily accessible to CMG Institutional;

- A list of all individuals and institutions that had provided funds to the issuer, Capital Management Group Securities,³ in connection with the August 2007 debenture; and
- Copies of CMG Institutional's reserve formula computations that would have been required if CMG Institutional were holding customer funds.

Baldwin responded to these questions in a letter from his counsel on March 12, 2008. The letter explained that the Washington Mutual bank statement was not readily accessible because CMG Institutional had lost staff and the Firm was moving its location to Baldwin's home and was in a transition period. The letter explained that the debenture was issued by a non-regulated entity and CMG Institutional's bank account was used as a "conduit." Based on this claim of the bank account being a conduit, Baldwin contended that the Firm was not required to perform a reserve formula computation or otherwise comply with customer protection rules. Although the letter stated that the Washington Mutual bank statements would be forthcoming, Baldwin and CMG Institutional did not provide these statements to FINRA.

E. Procedural History

On September 12, 2008, FINRA's Department of Enforcement filed a one-cause complaint against CMG Institutional and Baldwin. The complaint alleged that CMG Institutional, acting through Baldwin, violated NASD Rules 8210 and 2110 by failing to respond to numerous written requests for three categories of information. CMG Institutional and Baldwin filed an answer denying Enforcement's allegations.

Following a hearing, the Hearing Panel found that CMG Institutional and Baldwin failed to provide information requested by Enforcement, in violation of NASD Rules 8210 and 2110. The Hearing Panel imposed the sanction of an expulsion from FINRA membership on CMG Institutional and a bar in all capacities on Baldwin.

II. Discussion

NASD Rule 8210 requires firms and persons subject to FINRA's jurisdiction to provide information requested by FINRA and to permit the inspection and copying of books, records or accounts. Firms and associated persons must cooperate fully in providing requested information.⁴

We find that CMG Institutional and Baldwin failed to respond in violation of Rule 8210 in each of the three areas alleged in the complaint. First, CMG Institutional and Baldwin failed to provide a balance sheet, income statement, net capital calculation, supporting documents for allowable assets, and documents showing the source of funds for capital infusions for ten months

³ Capital Management Group Securities was not a FINRA member. The debenture identifies Baldwin as the chairman of the issuer.

⁴ See *Michael David Borth*, 51 S.E.C. 178, 180 (1992).

in 2007. They completely failed to provide these documents from January to November 2007, with the sole exception of documents for March 2007. These documents had been requested by a FINRA examiner, and Baldwin's request to have this requirement terminated had been denied by the Director of District 8. Nevertheless, CMG Institutional and Baldwin did not provide them.

Second, CMG Institutional and Baldwin did not provide copies of three checks that totaled \$49,000, the funds from which the Firm had treated as capital contributions. FINRA's examiner requested these canceled checks in three separate letters in April and May 2007. In addition, FINRA's examiner asked if CMG Institutional had entered into a clearing agreement. CMG Institutional and Baldwin did not provide the canceled checks nor did they answer the question.

Third, CMG Institutional and Baldwin failed to provide a Washington Mutual bank statement for the Firm's account in response to questions about what funds had been deposited in that account. Despite Baldwin's assurance that the bank statement would be forthcoming, he never provided it. As to Baldwin's statement in his March 12, 2008 letter that CMG Institutional had lost staff and was moving its location, these reasons do not excuse the complete failure to produce the Firm's own bank statement.⁵

In reviewing the Rule 8210 requests and the record in this case, we note that the requests for documents that CMG Institutional and Baldwin disregarded were in furtherance of an investigation into several potential rule violations. Rule 8210 is an essential means for FINRA's investigators to obtain information necessary to conduct investigations. Responding to Rule 8210 requests is uniquely important because "[d]elay and neglect on the part of members and their associated persons undermine the ability of [FINRA] to conduct investigations and thereby protect the public interest."⁶

As to the Firm's financial reports, FINRA's examiners were seeking to monitor the Firm's net capital position on a monthly basis. For each of the ten months in which the Firm never submitted financial reports, FINRA's examiners were unable to monitor the Firm's net capital position.

For the Firm's \$49,000 contribution to capital, the examiners were seeking to verify whether the contribution was a *temporary* capital infusion, which is properly characterized as a

⁵ See *Donald T. Sheldon*, 51 S.E.C. 59, 84 n.105 (1992) (finding that even if a firm is ill-equipped to respond to a request for information, it must correct the situation and respond), *aff'd*, 45 F.3d 1515 (11th Cir. 1995).

⁶ *Barry C. Wilson*, 52 S.E.C. 1070, 1075 (1996) (citation omitted).

liability under the net capital rule, or a permanent contribution.⁷ Proper net capital contributions “should be permanent capital and not merely a temporary infusion.”⁸

The examiners asked Baldwin about a new clearing agreement with First Southwest Company based on CMG Institutional’s filing of an amended Form BD. A new clearing agreement would have raised the issue of whether the Firm was continuing in business while not in net capital compliance. Baldwin had repeatedly stated that CMG Institutional was not engaged in any securities business during 2007. And FINRA’s examiners asked for the Firm’s Washington Mutual bank statements to determine if customer funds had been held in that account, which would have violated the Firm’s membership agreement. Moreover, if the Firm had held such funds, it may have triggered a higher net capital requirement.⁹ As to each of these legitimate regulatory inquiries, CMG Institutional and Baldwin placed a roadblock in the investigation when they failed to provide the requested information.

While we uphold the Hearing Panel’s liability findings in all other respects, we reverse one aspect of the Hearing Panel’s decision. The Hearing Panel found that Baldwin failed to appear for an OTR and therefore violated Rule 8210. We find, however, that Baldwin’s failure to appear was reasonably excused and we find no violation. Baldwin did not attend the OTR because he was assisting with a family medical emergency. His attorney offered to reschedule the OTR, but Enforcement did not do so. We decline to find that Baldwin’s failure to attend the OTR on February 21, 2008, was a violation of Rule 8210.¹⁰

On appeal, CMG Institutional and Baldwin make two main arguments. They first contend that they provided all requested information to FINRA as part of a separate, earlier disciplinary proceeding. Specifically, respondents argue that they submitted to FINRA documents relating to written supervisory procedures, books and records, anti-money laundering, and business continuity planning. These types of documents, however, are not the documents that CMG Institutional and Baldwin failed to produce in this case. We find that the record before us conclusively proves that CMG Institutional and Baldwin failed to produce the requested information.

In addition, CMG Institutional and Baldwin stipulated at the hearing below that they did not provide the requested documents. We give these stipulations substantial weight. Further undermining respondents’ argument is their statement in another part of their appellate brief, in

⁷ See Securities Exchange Act of 1934 (“Exchange Act”) Rule 15c3-1(c)(1); *FINRA Interpretations of Financial and Operational Rules* 156 n.20 (2008), <http://www.finra.org/web/groups/industry/@ip/@reg/@rules/documents/industry/p037763.pdf>.

⁸ See *Net Capital Rule*, Exchange Act Rel. No. 28927, 1991 SEC LEXIS 332, at *18 (Feb. 28, 1991).

⁹ See Exchange Act Rule 15c3-1(a)(2)(i).

¹⁰ We also note that the complaint did not allege a failure to appear for the OTR.

which they state that they filed no FOCUS reports or annual audits after being suspended in April 2006 and that they “withdrew all capital and discontinued reporting of any type after being suspended.” We find CMG Institutional and Baldwin’s stipulations to be supported by the record and conclude that they failed to respond to FINRA’s requests for information.

Second, Baldwin argues that on April 19, 2006, NASD notified him in a letter that the Firm was suspended from NASD membership for failing to file an annual audit report. Based on a section of this letter that explained that if a firm does not request termination of the suspension within six months the firm will be expelled, Baldwin maintains that CMG Institutional was expelled six months later and never reinstated its NASD membership. CMG Institutional did, nevertheless, file its annual report within six months of the suspension letter, and NASD did not expel the Firm or notify it of its expulsion.

Baldwin’s argument is based on the faulty premise that a firm that is expelled from FINRA membership has no obligation to respond to requests for information pursuant to Rule 8210. Even assuming for the sake of argument that CMG Institutional was expelled by NASD in 2006, which it was not, Rule 8210 applies to all firms and persons subject to FINRA’s jurisdiction. *See* Rule 8210(a). FINRA’s jurisdiction extends for two years beyond when a member has had its membership canceled or revoked. CMG Institutional therefore was required to respond to requests for information for two years following any hypothetical expulsion in October 2006.¹¹

CMG Institutional and Baldwin assert that this case was based on a vendetta conducted by Enforcement and others that included an “inherent bias” against them. They further assert that FINRA witnesses testified falsely and acted deceitfully, but they cite to findings from an earlier disciplinary case for support.

We find no evidence to substantiate these claims. The earlier case that Baldwin relies on did not uphold any allegations of false testimony, deceitful actions, or bias on behalf of FINRA examiners or Enforcement. Although the Hearing Panel’s December 12, 2006 decision in that case ruled in CMG Institutional and Baldwin’s favor on the point that Enforcement did not prove that respondents failed to respond to a request for information concerning an exit conference

¹¹ *See* FINRA By-Laws, Art. IV, Sec. 6. NASD’s By-Laws in 2006 had the same requirement. *See* NASD By-Laws, Art. IV, Sec. 6 (2006). Baldwin’s argument is factually incorrect as well. After the Firm filed its annual audit report, NASD ended the Firm’s suspension and reinstated its membership on August 30, 2006. In addition, a host of facts demonstrate that CMG Institutional acted as an NASD member in 2007. We do not find relevant Baldwin’s argument that he believed his firm had been expelled because he never saw an NASD letter informing him of the Firm’s reinstatement. Rule 8210 does not require Enforcement to prove that an associated person subjectively believed that he was covered by the rule. Rather, the rule requires only that a FINRA adjudicator or staff request documents from an associated person, among others. *See* NASD Rule 8210(a)(2). In any event, we rely on the Central Registration Depository (“CRD”®) entry and find that CMG Institutional was reinstated to NASD membership on August 30, 2006.

report, the Hearing Panel explained that its ruling was based on a failure of proof: not establishing the allegation by a preponderance of the evidence. *Dep't of Enforcement v. CMG Institutional Trading, LLC*, Compl. No. E8A20050252, 2006 NASD Discip. LEXIS 48, at *8-9 & n.10 (NASD Hearing Panel decision Dec. 12, 2006). On appeal to us, we affirmed the Hearing Panel's finding of a Rule 8210 violation based on other requests and we specifically rejected CMG Institutional and Baldwin's argument that the case was the result of bias against them. *Dep't of Enforcement v. CMG Institutional Trading, LLC*, Compl. No. E8A20050252, 2008 FINRA Discip. LEXIS 3, at *27-28 (FINRA NAC Feb. 20, 2008), *aff'd*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215 (Jan. 30, 2009). Respondents are therefore mistaken that the 2006 Hearing Panel decision supports their bias argument.

In the case before us, the evidence shows that FINRA examiners made repeated requests for information, to which CMG Institutional and Baldwin did not respond, that consequently turned into Rule 8210 violations. Respondents have not specified any evidence or findings to support their claim. We find no evidence of a vendetta, false testimony, deceitful action, or bias in this case.

We affirm the Hearing Panel's finding that CMG Institutional and Baldwin violated Rules 8210 and 2110 by failing to provide the documents that FINRA requested.¹²

III. Sanctions

The Hearing Panel found that CMG Institutional and Baldwin displayed a pattern of disregarding FINRA's requests for information and imposed an expulsion on the Firm and a bar on Baldwin from associating in any capacity with any FINRA member firm. The Hearing Panel also found that CMG Institutional and Baldwin had relevant disciplinary history, including a previous violation of failing to provide information to FINRA. For the reasons discussed below, we affirm the Hearing Panel's sanctions.

The FINRA Sanction Guidelines ("Guidelines") provide that for a failure to respond to Rule 8210 requests, a bar is the standard sanction for the responsible individual, and in egregious cases, the firm should be expelled.¹³ In addition to considering the principal considerations and general principles applicable to all violations, the Guidelines instruct adjudicators to consider the nature of the information requested and whether the information was provided and, if so, the number of requests made, the time it took respondent to respond, and the degree of regulatory pressure required to obtain a response.¹⁴

¹² A violation of NASD Rule 8210 constitutes a violation of NASD Rule 2110. *Stephen J. Gluckman*, 54 S.E.C. 175, 185 (1999). NASD Rules 8210 and 2110 apply equally to associated persons pursuant to NASD Rule 0115.

¹³ *FINRA Sanction Guidelines* 35 (2007), <http://www.finra.org/web/groups/industry/@ip/@sg/documents/industry/p011038.pdf> [hereinafter "*Guidelines*"].

¹⁴ *Id.*

We begin by finding that CMG Institutional and Baldwin have significant prior disciplinary violations. On January 30, 2009, the SEC affirmed the NAC's findings that Baldwin and CMG Institutional failed to provide requested information and failed to provide complete and timely responses to requests for information, in violation of Rule 8210. The NAC had imposed, and the SEC affirmed, a two-year suspension on Baldwin in all capacities, a two-year suspension on CMG Institutional, and a \$25,000 fine.¹⁵ In addition, on May 3, 2010, we issued a decision in which we found that CMG Institutional and Baldwin: engaged in securities-related activity without a qualified FINOP; failed to maintain adequate net capital; made inaccurate net capital calculations and failed to prepare an accurate general ledger and trial balances; failed to file timely an annual audit report and FOCUS report; failed to develop and implement an AML compliance program; violated the terms of CMG Institutional's membership agreement; made improper communications to the public; failed to create and maintain a business continuity plan; engaged in a municipal securities business without a qualified municipal securities principal; failed to maintain and enforce adequate written supervisory procedures; failed to file timely a list of issuers with the MSRB Board; and failed to prepare accurate books and records.¹⁶ For sanctions, we expelled the Firm and barred Baldwin.

The Guidelines' General Principles regarding disciplinary history instruct that we should consider a respondent's disciplinary history in determining sanctions.¹⁷ Moreover, we "should consider imposing more severe sanctions when a respondent's disciplinary history includes" similar past misconduct.¹⁸ We follow this principle and conclude that the disciplinary history of CMG Institutional and Baldwin is an aggravating factor in determining sanctions.

We agree with the Hearing Panel that the nature of the information that FINRA's examiners requested was important. Much of the information related to monitoring CMG Institutional's net capital, and the net capital rule serves to protect investors from the possible collapse of a firm. The principal purposes of the net capital rule "are to protect customers and other market participants from broker-dealer failures and to enable those firms that fall below the minimum net capital requirements to liquidate in an orderly fashion without the need for a formal proceeding or financial assistance from the Securities Investor Protection Corporation."¹⁹

¹⁵ *CMG Institutional Trading, LLC*, 2009 SEC LEXIS 215, at *40.

¹⁶ *Dep't of Enforcement v. CMG Institutional Trading, LLC*, Compl. No. 2006006890801, 2010 FINRA Discip. LEXIS 7, at *1-3 (FINRA NAC May 3, 2010). This decision was not appealed to the SEC and is final.

¹⁷ *See Guidelines*, at 2.

¹⁸ *Id.*; see *Michael T. Studer*, Exchange Act Rel. No. 50543, 2004 SEC LEXIS 2347, at *28 (Nov. 30, 2004) (finding numerous regulatory actions to be an aggravating factor in assessing sanctions), *aff'd*, 260 F. App'x. 342 (2d Cir. 2008) (table case).

¹⁹ *Fox & Co. Invs., Inc.*, Exchange Act Rel. No. 52697, 2005 SEC LEXIS 2822, at *18 (Oct. 28, 2005).

CMG Institutional and Baldwin make several arguments that the Hearing Panel's sanctions were too severe. They argue that the factors listed by the court for a misappropriation violation in *Otto v. SEC*, 253 F.3d 960, 966-67 (7th Cir. 2001), are the same factors to be applied to this case. We disagree. The Guidelines specify individual considerations for different violations and we have followed the Guideline for a Rule 8210 violation in this case.

CMG Institutional and Baldwin also contend that the sanctions should be lower because no investors were harmed and they committed no crime or fraud. We find no merit in these arguments. Although CMG Institutional and Baldwin's failure to respond did not cause customer harm, "[t]he harm in such instances, as here, is to the self-regulatory process and to investors' confidence in that process."²⁰ Similarly although a failure to respond to FINRA's requests for information is not a crime or a fraud, it is an extremely grave violation that should presumptively result in a bar or expulsion.²¹

In summary, we find aggravating factors in this case, but no mitigating ones. CMG Institutional's violation was egregious and we accordingly impose the sanction of expulsion from FINRA membership. Baldwin's violation was also egregious and we impose a bar in all capacities.

IV. Conclusion

We affirm the Hearing Panel's finding that CMG Institutional and Baldwin violated NASD Rules 8210 and 2110 by failing to respond to written requests for information. Accordingly, we expel CMG Institutional from FINRA membership, bar Baldwin from associating with any FINRA member in any capacity, and assess appeal costs of \$1,441. The expulsion and bar are effective immediately upon service of this decision.²²

On Behalf of the National Adjudicatory Council,

Marcia E. Asquith
Senior Vice President and Corporate Secretary

²⁰ *Dep't of Enforcement v. Dieffenbach*, Compl. No. C06020003, 2004 NASD Discip. LEXIS 10, at *40 n.18 (NASD NAC July 30, 2004), *aff'd*, *Michael A. Rooms*, Exchange Act Rel. No. 51467, 2005 SEC LEXIS 728 (Apr. 1, 2005), *aff'd on other grounds*, *Rooms v. SEC*, 444 F.3d 1208 (10th Cir. 2006).

²¹ *See PAZ Secs., Inc.*, Exchange Act Rel. No. 57656, 2008 SEC LEXIS 820, at *13 (Apr. 11, 2008), *aff'd*, 566 F.3d 1172 (D.C. Cir. 2009).

²² We have considered and reject without discussion all other arguments made by respondents.