



Information and Testimony Requests

FINRA Rule 8210 Frequently Asked Questions

- 1. When are books, records and accounts under the “control” of a member firm, associated person or person subject to FINRA’s jurisdiction?**

For purposes of Rule 8210, whether a particular document is within a member firm’s or person’s “control” is determined by the facts and circumstances of each situation. Generally, a document will be considered to be in the control of a member firm or person if the firm or person has the legal right, authority or ability to obtain the document upon demand.¹

- 2. An associated person submits to his member firm expense reports for expenses that he did not actually incur, and the firm subsequently reimburses him for the false expenses. Can FINRA obtain copies of the expense reports from the firm *and* the associated person?**

Yes. Rule 8210 authorizes FINRA to obtain the expense reports from both the firm and the associated person. A member firm’s books, records and accounts include those documents that the member firm makes or keeps relating to its operations, as well as documents that the member firm makes or keeps relating to an associated person’s association with the firm.² The expense reports in this instance would constitute the books, records and accounts of the member firm under either classification.

In addition, if the associated person has possession, custody or control of copies of the expense reports, he or she would also be required to produce them. An associated person’s books, records and accounts are documents made or kept by the associated person relating to the member firm’s operations or his or her association with the member firm, including documents relating to his or her obligation to observe high standards of commercial honor and just and equitable principles of trade.³

- 3. FINRA is investigating an associated person’s alleged conversion of customer funds. The associated person maintains that he does not keep his checking account statements nor does he have copies of checks he deposited. Can FINRA staff issue a Rule 8210 request to the associated person to provide his checking account records, which are available from his bank?**

Yes. An associated person must make available to FINRA books, records or accounts that are within his or her possession, custody or control. As noted above, “control” includes situations where records are in the possession of another person or entity and the associated person has a right to obtain them upon demand.⁴ The associated person in this instance would have the legal right, authority or ability to obtain his or her records held by the bank.

- 4. A member firm that is dually registered as a broker-dealer and futures commission merchant with the Commodity Futures Trading Commission has been ordered to pay a monetary award in National Futures Association arbitration. The member firm claims that it has reached a settlement with the arbitration claimant that reduces the monetary award. FINRA staff issues a Rule 8210 request to obtain the arbitration award and settlement documents in connection with concerns that the firm has not properly accounted for the award and settlement in its net capital calculation. Must the firm turn over these documents?**

Yes. Rule 8210 authorizes FINRA to inspect and copy the books, records and accounts of a member firm with respect to any matter involved in an investigation, complaint, examination or proceeding.⁵ These records include documents relating to compliance with just and equitable principles of trade, other FINRA rules, SEC rules (including broker-dealer net capital and anti-money laundering rules), MSRB rules and the federal securities laws.⁶ As relevant to this question, books, records and accounts of a member firm consist generally of any documents that the member makes or keeps relating to its operations, including its liability for an arbitration award.⁷ In this example, FINRA is authorized to investigate whether a member firm is in compliance with the SEC's net capital rule or other applicable rules. Thus, Rule 8210 allows FINRA staff to request documents such as arbitration awards and settlements involving FINRA member firms.

5. **An associated person sells insurance products as part of his affiliation with an independent insurance agency and has failed to notify his member firm of such outside business activity. FINRA subsequently receives a complaint from a customer of the member firm that the associated person and the member firm did not purchase an insurance product as requested by the customer, and the customer's funds that were given to the associated person have not been returned. Can FINRA obtain books and records from the associated person concerning his insurance business?**

Yes. Rule 8210 grants FINRA authority to inspect and copy documents that are within the associated person's possession, custody or control. In this example, because the books and records are sought from the associated person as part of, and are relevant to, FINRA's investigation into the connection between the associated person's outside business activities and a member firm, FINRA can obtain such documents concerning the associated person's insurance business that are within his possession, custody or control.⁸

6. **FINRA seeks to obtain information from a person subject to FINRA's jurisdiction who was formerly associated with a member firm in an unregistered capacity, and the person is represented by counsel. In serving a Rule 8210 request upon counsel for the formerly associated and unregistered person, must FINRA's manner of service upon counsel be personal service?**

Personal service upon counsel is not necessary. FINRA added a section to Rule 8210 that allows adjudicators or FINRA staff to serve notice of a Rule 8210 request on counsel in recognition of the fact that counsel can act as an authorized agent of a client. Accordingly, if an adjudicator or FINRA staff responsible for transmitting a Rule 8210 request knows that a person subject to FINRA's jurisdiction who was formerly associated with a member firm in an unregistered capacity is represented by counsel regarding the investigation, complaint, examination or proceeding that is the subject of the request, then the request shall be served upon counsel for the person by mailing or otherwise transmitting the request to counsel.

Endnotes

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- ¹ See 77 Fed. Reg. 74253, 74254 (explaining that the clarification of Rule 8210 to include “possession, custody or control” parallels language in the Federal Rules of Civil Procedure regarding document requests and subpoenas for documents).
- ² See *Supplementary Material .01 to Rule 8210*.
- ³ *Id.*; see also *Leonard John Ialiggio*, 53 S.E.C. 601, 606 (1998) (affirming FINRA’s sanctions where registered representative requested and obtained reimbursement for expenses that he did not incur in contravention of high standards of commercial honor and just and equitable principles of trade), *petition for review denied*, 1999 U.S. App. LEXIS 10362 (9th Cir. May 7, 1999) (unpublished decision). FINRA’s recent amendments to Rule 8210 do not alter any of the “well-established case law” involving the rule and FINRA’s ability to obtain information from associated persons and member firms under the rule, including for potential violations of their obligations to observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. See *Gregory Goldstein*, Exchange Act Release No. 68904, 2013 SEC LEXIS 552, at *19 (Feb. 11, 2013) (order denying stay).
- ⁴ See *Supplementary Material .01 to Rule 8210*.
- ⁵ See FINRA Rule 8210(a)(2).
- ⁶ See *Supplementary Material .01 to Rule 8210*.
- ⁷ See *id.*
- ⁸ See FINRA Rule 8210(a)(2) (providing that an Adjudicator or FINRA staff shall have the right to inspect and copy the books, records, and accounts of an associated person with respect to any matter involved in an investigation if such books, records, or accounts are in the associated person’s possession, custody or control). As relevant to this question, books, records and accounts refer to documents made or kept by an associated person relating to his association with a member firm or the operations of the member firm. See *Supplementary Material .01 to Rule 8210*. These documents include records relating to a FINRA investigation of, among other things, outside business activities. *Id.*