FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. KENT M. HOUSTON (CRD No. 1514831), Respondent.	Disciplinary Proceeding No. 2006005318801 **HEARING PANEL DECISION** Hearing Officer – SW Dated: December 17, 2008

Respondent is barred from associating with any FINRA member firm in any capacity for violating Conduct Rule 2110 and Procedural Rule 8210 by failing to respond to FINRA's requests for information issued pursuant to Rule 8210. In addition, Respondent is fined $100,000 and suspended for one year in all capacities for violating Conduct Rules 3030 and 2110 when he engaged in an outside business activity without providing prompt written notice of the activity to his employer.

Appearances

Joel T. Kornfeld, Esq., Senior Regional Counsel, Los Angeles, CA, for the Department of Enforcement.

Kent M. Houston, pro se.

DECISION

I. PROCEDURAL HISTORY

A. Complaint and Answer

On February 1, 2008, FINRA's Department of Enforcement ("Enforcement") filed a two-count Complaint against Respondent Kent M. Houston ("Respondent"). Count one of the Complaint alleges that, while associated with First Wall Street Corp. ("First Wall Street" or the "Firm"), Respondent violated Conduct Rules 3030 and 2110 by failing to provide his Firm with prompt written notice that he was a trustee for his

great aunt's trust and received compensation for his trustee duties. Respondent is also alleged to have failed repeatedly to disclose the outside business activity on his Firm's compliance forms.

Count two of the Complaint alleges that Respondent violated Conduct Rule 2110 and Procedural Rule 8210 by failing to appear for an on-the-record interview scheduled for November 27, 2007, as requested by FINRA staff pursuant to Rule 8210.

Respondent admits that he did not provide prompt written notice of his trusteeship to his Firm and that he filled out the compliance forms incorrectly, but argues that his Firm knew of his activities. Respondent also admits that he did not appear for the on-the-record interview, but argues that he believed he had provided all the information that FINRA staff requested.

B. Submissions in Lieu of a Hearing

In his March 4, 2008 Answer, Respondent waived his right to a hearing. On May 9, 2008, Respondent confirmed in writing his intent to waive a hearing after participating in two pre-hearing conferences.

On May 12, 2008, the Hearing Officer issued a Scheduling Order directing the Parties to file written submissions in lieu of a hearing. The written submissions were to be a narrative statement of the case, as well as all evidence that the Parties wished the Hearing Panel to consider, both as to liability and sanctions. After an extension, the submissions were due on September 19, 2008.[1]

[1] Pursuant to a request filed by Respondent on July 14, 2008, the Hearing Officer extended the deadline for filing submissions from August 25, 2008 to September 19, 2008. In addition, the Hearing Officer extended the deadline from September 4, 2008 to October 2, 2008 for the Parties to file any objections to the other Party's declarations or other exhibits.

On September 19, 2008, Respondent filed and served his written submission, which he signed under penalty of perjury, and Enforcement filed and served its written submission along with 69 exhibits and four declarations.[2] On October 27, 2008, Respondent filed a statement in response to Enforcement's September 19, 2008 written submission.[3]

Accordingly, based upon the written submissions of the Parties, the Hearing Panel (i) imposes a bar in all capacities on Respondent for his failure to appear for an on-the-record interview, and (ii) suspends him for one year in all capacities and fines him $100,000 for failing to provide prompt notice of his outside business activity to his Firm.[4]

II. FINDINGS OF FACT AND CONCLUSION OF LAW

A. Facts

1. Respondent

Respondent first became registered with a FINRA member firm as a general securities representative on May 18, 1988. (CX-1, pp. 7-8). First Wall Street employed Respondent on November 20, 1989, where he was registered as a general securities representative from January 11, 1990 to May 15, 2006. (CX-1, p. 7).

[2] The exhibits are numbered one through 87, but 18 of the exhibits are blank. Enforcement provided written declarations, under penalty of perjury, of: (i) Michael Hegeman, FINRA examiner; (ii) Fred Princiotta, First Wall Street employee; (iii) Katrina Dudley, First Wall Street employee; and (iv) Joel Kornfeld, FINRA Senior Regional Counsel.

[3] On September 29, 2008, Respondent filed a request that the October 2, 2008 deadline for him to respond to Enforcement's submission be extended, which was granted.

[4] "Enf. Sub., p." refers to the written submission submitted by Enforcement; "Resp. Sub. at ¶" refers to the written submission submitted by Respondent; "CX-" refers to the exhibits submitted by Enforcement; and "DECL at ¶" refers to the declarations submitted by Enforcement.

Respondent is currently registered as a general securities representative with R.W. Towt & Associates. (CX-1, p. 6).

2. The Trust Account of Respondent's Great Aunt

In 1971, Respondent's great aunt and uncle, VB and WB, set up a trust with a national bank as trustee (the "BD Trust"). (CX-22). The BD Trust provided that the trustee was entitled to compensation. (CX-22, p. 9). On January 2, 2001, a number of years after Mr. WB died, Ms. VB executed a fifth amendment to the BD Trust, which removed the national bank as trustee and appointed Ms. VB and Ms. MM to serve as co-trustees.[5] (CX-23; CX-25). The fifth amendment also provided that, in the event Ms. MM was unwilling or unable to serve as co-trustee, Respondent would serve as co-trustee with Ms. VB. (CX-25).

Four months later, on April 24, 2001, Ms. VB executed a sixth amendment removing Ms. MM as co-trustee and appointing Respondent as co-trustee of the BD Trust. (CX-26). On April 24, 2001, Respondent executed an affidavit declaring that he was a successor trustee of the BD Trust. (CX-27).

Two days later, on April 26, 2001, Respondent opened a cash securities account for the BD Trust at First Wall Street, where he was registered, with a deposit of securities and funds. (CX-30). The First Wall Street account application listed Ms. VB, who was 84 years old at the time, and Respondent as co-successor trustees of the BD Trust, and listed Respondent as the account representative. (*Id.*). The co-trustees had the ability to write checks on the account. (CX-60, pp. 2-61). On October 21, 2001, Ms. VB wrote a

[5] Between August 1985 and May 1995, the BD Trust was amended five times. (CX-22; CX-26, p. 1).

check payable to Respondent for $9,500. (CX-60, p. 2). Respondent wrote in his notes for the BD Trust brokerage account on June 26, 2001, that Ms. VB had agreed to pay trustee fees, and on November 21, 2002, he wrote that he had discussed being paid for his separate trust work with Ms. VB. (CX-51, p. 3).

On December 31, 2002, Respondent executed his annual independent contractor agreement with First Wall Street ("2002 Contract"). (CX-44). The 2002 Contract provided that Respondent was obligated to notify the Firm of any and all outside business activities in which he engaged or intended to engage. (CX-44, p. 3).

First Wall Street's Standards of Conduct required that the written notification provided by its registered representatives should contain at a minimum the following information: (i) name of potential outside employer; (ii) type of business to be performed; (iii) method of compensation; and (iv) amount of time involved in the outside activity. (CX-49, p. 1). The 2002 Contract stated that outside business activities included, but were not limited to, positions as a proprietor, officer, director, trustee, agent, independent contractor, or employee. (CX-44, p. 3).

Despite the 2002 Contract's explicit provision, Respondent did not disclose his appointment as a co-trustee of the BD Trust on the outside business activity notification form, which was part of the 2002 Contract. (CX-44, pp. 9-10). In 2002, Ms. VB wrote ten checks payable to Respondent totaling $89,300. (CX-60, pp. 3-16).

In 2003, Respondent again failed to disclose his appointment as co-trustee of the BD Trust to First Wall Street when he completed his annual independent contractor agreement, and in 2004, Respondent not only failed to disclose his trusteeship in completing his annual independent contract agreement, but checked "no" on his outside

business activities statement to affirmatively indicate that he had not conducted any outside business activities during the past year. (CX-45; CX-46; CX-47). Respondent made the representations that he had not conducted any outside business activity even though in 2003 he wrote five checks totaling $41,600 payable to himself on the BD Trust account for trust services that he provided.[6] (CX-51, pp. 1-2; CX-60, pp. 17, 23-26). In 2004, Respondent wrote seven checks--three checks payable to himself and four checks payable to Countrywide Bank for his benefit--totaling $167,000, for his trust services.[7] (CX-51, pp. 1-2; CX-60, pp. 27-29, 32-33, 40-41).

On June 13, 2005, Respondent executed (i) an agreement to act as successor trustee of the BD Trust, and (ii) a certification that he was the sole trustee of the BD Trust.[8] (CX-28; CX-29). Previously, on March 8, 2005, two of Ms. VB's doctors wrote a letter addressed "to whom it may concern," indicating that Ms. VB suffered from "probable Alzheimer's Disease" and lacked "the capacity and decisional ability to manage her finances or to handle her personal affairs." (CX-8).

On August 29, 2005, First Wall Street's compliance department issued a memorandum reminding its registered representatives to contact the compliance department immediately in writing if the representative was then listed as a trustee, successor trustee, executor, etc., or performed any duties that involved compensation of any kind that did not come through the Firm. (CX-80). On September 8, 2005, First Wall

[6] As of July 31, 2003, the BD Trust account had a net worth of $1.04 million. (CX-31, p. 2).

[7] The checks payable to Countrywide Bank were used to pay Respondent's personal home equity line of credit. (CX-51, pp. 1-2).

[8] Respondent's Form U4 amendment, dated July 29, 2005, indicated that he was not involved in any other businesses. (CX-3).

Street's compliance department issued a follow-up memorandum reiterating to its registered representatives that if they had not received approval to be appointed trustee, successor trustee, executor, etc., over any client account, including for a family member, they were required to request approval for such activity. (CX-81).

Despite the issuance of the two 2005 compliance memoranda, on October 17, 2005, Respondent checked "I have not accepted any appointment" on a disclosure of appointment form, indicating that he had "not accepted any appointment as trustee, successor trustee, executor, or power of attorney" including for his "immediate family during the past year."[9] (CX-48). Between January 10, 2005 and August 18, 2005, Respondent wrote three checks on the BD Trust account payable to Countrywide Bank for his personal benefit totaling $119,000. (CX-60, pp. 43, 45-46).

On December 19, 2005, Katrina Dudley, chief compliance officer of First Wall Street, wrote to Respondent requesting certain information about the BD Trust. (CX-35).

On January 5, 2006, Respondent sent an email to Ms. Dudley advising her that he was the sole trustee of the BD Trust. (CX-36; CX-82). On January 13, 2006, Respondent wrote a $27,500 check on the BD Trust account payable to Countrywide Bank for his own benefit. (CX-60, p. 48). On February 14, 2006, Respondent sought permission to serve as sole trustee of the BD Trust from Fred Princiotta, who became First Wall Street's new chief compliance officer on February 6, 2006. (CX-7, p. 1).

[9] In addition, although he was now the sole trustee of the BD Trust, Respondent's Form U4 amendment, dated October 20, 2005, was checked "no" to indicate that Respondent was not engaged in any other businesses. (CX-4).

On May 4, 2006, First Wall Street wrote Respondent notifying him that (i) the Firm had opened a formal investigation and wanted all amendments to the BD Trust and a written statement concerning the reasons for each of the 20 listed checks written on the account dated from 2004 through 2006, and (ii) the Firm was freezing the BD Trust account until the conclusion of its investigation. (CX-11). On May 5, 2006, Respondent wrote Mr. Princiotta that Respondent's fiduciary responsibility started on June 13, 2005, when he was named trustee. (CX-21).

On May 12, 2006, Respondent sent an email to Mr. Princiotta stating that, pursuant to the directions of Ms. VB, Respondent was obligated to transfer the assets of the BD Trust account out of First Wall Street, and he was unable to provide a more detailed explanation for the checks without a waiver of confidentiality from Ms. VB. (CX-12, p. 1).

On May 15, 2006, Mr. Princiotta sent a termination letter severing Respondent's association with First Wall Street (CX-12, pp. 2-3). Respondent responded to Mr. Princiotta's termination letter on May 15, 2006, acknowledging his termination. (CX-13, p. 2).

On May 16, 2006, First Wall Street filed a Form U5 on behalf of Respondent with FINRA disclosing Respondent's termination by First Wall Street for his failure to abide by the Firm's policy and supply documents in an internal investigation. (CX-5). On June 20, 2006, Ms. VB died. (CX-51, pp. 1, 3). A review of the checks written on the account prior to June 20, 2006, revealed that Respondent and Ms. VB wrote checks totaling

$453,900[10] payable to Respondent or Countrywide Bank.[11] (CX-60).

B. Respondent Failed to Provide His Employer with Prompt Written Notice of His Outside Business Activity

Count one of the Complaint alleges that Respondent violated Conduct Rules 3030 and 2110 by failing to provide his employer with prompt written notice of his outside business activity as a trustee of the BD Trust.

Conduct Rule 3030 provides that "[n]o person associated with a member shall be employed by, or accept compensation from, any other person as a result of any business activity … outside the scope of his relationship with his employer firm, unless he has provided prompt written notice to the member … in the form required by the member."

The purpose of Rule 3030 is to provide member firms with prompt notice of outside business activities so that the member's objections, if any, to such activities can be raised at a meaningful time and the member can exercise appropriate supervision as necessary under applicable law.[12]

Respondent admitted that when he opened the account for the BD Trust at First Wall Street, he did not provide written notice to First Wall Street that he would be receiving compensation for his trustee duties.[13] Respondent stated that the Firm's

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[10] Respondent disputed that his fees approximated $400,000, arguing that deductions should be made for the $189,500 labeled as gifts and fees for the care provider. (Resp. Sub. at ¶ 6). The $453,900 figure is calculated by subtracting the $189,500 for gifts and fees for the care provider from the $643,400 in disbursements from the account that occurred prior to September 2006. (CX-60).

[11] On September 13, 2006, First Wall Street lifted the restriction on the BD Trust, and proceeds from the BD Trust account were distributed to the beneficiaries on September 14, 2006. (CX-60, pp. 49-61; CX-86).

[12] *Proposed Rule Change by NASD Relating to Outside Business Activities of Associated Persons*, Exch. Act Rel. No. 26,063, 1988 SEC LEXIS 1841 (Sept. 6, 1988), adopted at Exch. Act Rel. No. 26,178, 1988 SEC LEXIS 2032 (Oct. 13, 1988).

[13] Mr. Princiotta wrote to FINRA that First Wall Street's files did not contain written notification that Respondent would be receiving any compensation for his services as co-trustee of the BD Trust. (CX-41).

compliance officer, Ms. Dudley, was aware that he was receiving funds from the BD Trust account. (CX-76). Ms. Dudley wrote that she was aware that Respondent was receiving commissions from the account, but she was unaware that Respondent had ever received compensation for acting as co-trustee. (Dudley DECL at ¶ 7).

In addition, Respondent admitted that he responded inaccurately to First Wall Street's disclosure questions regarding his outside business activities in 2002, 2003, 2004, and 2005. (Resp. Sub. at ¶¶ 10, 11). In his submission, Respondent wrote that he viewed his trusteeship as a family obligation rather than an outside business activity, and argued that his supervisor at First Wall Street should have caught Respondent's mistake when reviewing certain transactions in the account. (Resp. Sub. at ¶ 10).

The Hearing Panel finds that Respondent had an affirmative obligation to disclose his outside employment, and that, when Respondent received his first annual trustee fee in October 2001, he should have realized that he was no longer merely fulfilling a family obligation, but rather engaging in outside business activity that he had to disclose on the requisite forms or at least discuss with his Firm. Even assuming, as Respondent claims, that he returned $75,000 to the BD Trust, Respondent's total compensation from 2001 to 2005 was $378,900 for his alleged "trust work."[14] (CX-51, p. 2; CX-60; Resp. Sub. at ¶ 6).

On a number of occasions between 2002 and 2004, Respondent signed forms reassuring his Firm, without qualification, that he was not involved in any outside

[14] Respondent provided evidence that on August 24, 2006, he wrote a personal check for $75,000 payable to the BD Trust account to reimburse the Trust, in part, for the last two checks paid to Countrywide Bank, totaling $76,500. (CX-51, p. 2; CX-57, p. 14; CX-60, pp. 46, 48). Respondent, however, provided no documents showing that the $75,000 check was actually cashed or deposited by the BD Trust. (CX-57, p. 14; CX-31).

businesses. (CX-44; CX-45; CX-47). In 2005, Respondent signed a form stating that he had not accepted any appointment as a trustee or successor trustee, which was obviously false because he was named as successor trustee on the BD Trust account records. (CX-48). Despite the information on the account documents, it was Respondent's obligation to accurately complete First Wall Street's disclosure forms.[15]

Based on the evidence provided by Enforcement and Respondent's admissions, the Hearing Panel finds that Respondent violated Conduct Rules 3030 and 2110 when engaged in an outside business activity for compensation while registered with First Wall Street without providing prompt written notice of his outside business activity to the Firm.[16]

C. Respondent Failed to Appear for a FINRA On-the-Record Interview

1. FINRA's Investigation

After receipt of Respondent's Form U5 from First Wall Street indicating possible misconduct by Respondent, FINRA staff began an investigation. On May 25, 2006, FINRA staff issued a Rule 8210 request for information to First Wall Street. (CX-6). On June 9, 2006, Mr. Princiotta responded to FINRA raising questions about the appropriateness of Respondent's disbursements from the BD Trust. (CX-7).

Subsequently, on June 13, 2006, FINRA staff sent a Rule 8210 request for information to Respondent. (CX-50). Between June 2006 and November 2006, there were a number of letters exchanged between FINRA staff and Respondent regarding the BD Trust. (CX-51; CX-52; CX-53; CX-54; CX-55; CX-56; CX-57; CX-58; CX-59). For

[15] *See, e.g., Michael David Borth*, 51 S.E.C. 178, 181, 1992 SEC LEXIS 3248, at *7 (1992) (finding that a respondent may not "shift his responsibility to others").

example, Respondent disclosed that he had entered into a compensation agreement with Ms. VB prior to accepting the co-successor trustee position, but he wrote that he could not locate the agreement. (CX-55; CX-57).

On September 7, 2007, FINRA staff sent Respondent a Rule 8210 request that required him to appear for an on-the-record interview on September 27, 2007. (CX-70). On September 10, 2007, Respondent sent a letter to FINRA staff, requesting certain information before he would agree to set a date for the interview. (CX-71). On September 17, 2007, FINRA staff sent a reminder to Respondent that his on-the-record interview had not been cancelled. (CX-72).

On September 21, 2007, Respondent sent a request to postpone the on-the-record interview, and FINRA staff agreed to reschedule the interview to October 19, 2007. (CX-73; CX-74). At the oral request of Respondent's counsel, on October 10, 2007, FINRA staff again agreed to reschedule the interview from October 19, 2007 to November 27, 2007 because Respondent's counsel would be unable to attend on October 19, 2007.[17] (CX-75; Hegeman DECL at ¶ 36).

In a letter to FINRA staff dated November 21, 2007, Respondent indicated that he did not intend to appear for the interview on November 27, 2007, referred to in FINRA's October 10, 2007 letter. (CX-76; Resp. Sub. at ¶ 18). FINRA staff did not reschedule, and Respondent did not appear on November 27, 2007, for his on-the-record interview. (Hegeman DECL at ¶ 37; Resp. Sub. at ¶ 18).

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[16] *Dep't of Enforcement v. Schneider*, No. C10030088, 2005 NASD Discip. LEXIS 6, at *13-14 (NAC. Dec. 7, 2005).

[17] Although Respondent denied that he actually retained counsel or authorized counsel to seek an extension, FINRA staff sent a copy of the October 10, 2007 extension letter to Respondent. (CX-75; Resp. Sub. at ¶ 17).

2. Respondent Violated Conduct Rule 2110 and Procedural Rule 8210

Count two of the Complaint alleges that Respondent violated Conduct Rule 2110 and Procedural Rule 8210 by failing to appear for an on-the-record interview scheduled for November 27, 2007, as requested by FINRA staff pursuant to Rule 8210.

When Respondent elected to become associated with a FINRA member, he agreed to be bound by FINRA's rules, including Procedural Rule 8210, which imposes an unqualified affirmative obligation on members and associated persons to cooperate in FINRA investigations: "No member or person shall fail to provide information or testimony . . . pursuant to this Rule."[18]

In his November 21, 2007 letter to FINRA, Respondent affirmed that he was aware of FINRA's request that he appear for an on-the-record interview scheduled for November 27, 2007. There is no dispute that Respondent stated that he would not appear, and he did not appear, for the scheduled November 27, 2007 on-the-record interview.

Furthermore, it is clear that the information to be provided at the on-the-record interview was directly relevant to FINRA staff's investigation of possible rule violations by Respondent. Rule 8210 "provides a means, in the absence of subpoena power, for [FINRA] to obtain from its members information necessary to conduct investigations."[19] By refusing to appear, Respondent impeded FINRA staff's ability to pursue its investigation, and thereby undermined FINRA's ability to carry out its regulatory mandate.

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[18] *See Joseph G. Chiulli*, Exch. Act Rel. No. 42359, 2000 SEC LEXIS 112, at *18 (Jan. 28, 2000).

Respondent argued that he thought he had provided all the information needed and would have nothing more to add at the on-the-record interview. The National Adjudicatory Council has repeatedly stated that associated persons "cannot take it upon themselves to determine whether information requested is material to [a FINRA] investigation of their conduct."[20]

Accordingly, the Hearing Panel finds that Respondent violated Conduct Rule 2110 and Procedural Rule 8210 by intentionally failing to appear for the scheduled FINRA on-the-record interview.

III. SANCTIONS

A. Respondent Failed to Disclose His Outside Business Activity

The *FINRA Sanction Guidelines* for Outside Business Activities suggest a fine of $2,500 to $50,000 and suspensions of (i) up to 30 business-days where the conduct does not involve aggravating factors, (ii) up to one year where aggravating factors are present, and (iii) over one year or a bar where the conduct is egregious.[21]

Under the facts of this case, the relevant principal considerations in determining sanctions for a Rule 3030 violation include: (i) whether the outside activity involved customers of the firm; (ii) whether the outside activity resulted directly or indirectly in injury to customers of the firm and, if so, the nature and extent of the injury; (iii) the duration of the outside activity, and the number of customers; and (iv) whether the

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[19] *Richard J. Rouse*, 51 S.E.C. 581, 584 (1993). *See also Elliot M. Hershberg*, Exch. Act Rel. No. 53,145 (Jan. 19, 2006), 2006 SEC LEXIS 99, at *10 (Jan. 19, 2006) (finding that respondent's refusal to testify constituted a complete failure to respond), *aff'd*, 210 Fed. Appx. 125 (2d Cir. 2006).

[20] *Dep't of Enforcement v. Sturm*, Complaint No. CAF000033, 2002 NASD Discip. LEXIS 2, at *9 (NAC March 21, 2002).

[21] *FINRA Sanction Guidelines*, p. 14 (2007) available at http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf.

respondent misled his or her employer member firm about the existence of the outside activity or otherwise concealed the activity from the firm.[22]

The Hearing Panel finds that a number of aggravating factors are present in this case. The activity involved a customer of the Firm. Respondent obtained almost $400,000 in fees for the outside activity over approximately five and half years. Respondent argued that he was merely negligent in failing to disclose his compensation and that his supervisors, *i.e.*, branch manager and compliance department, were negligent in not catching his error earlier, but Respondent had an affirmative obligation to disclose his activity.

The Hearing Panel finds that, at the very least, Respondent's conduct in failing to disclose his trustee arrangement was reckless, and that his reckless conduct misled his employer about the existence of a fee arrangement for Respondent's trusteeship. Moreover, Respondent repeatedly failed to disclose the activity on his annual agreements, falsely represented that he had no outside business activities, and after being sent at least two written reminders of his obligation to obtain approval from the Firm to serve as trustee, falsely represented that he had not been appointed as a trustee.

In addition, Respondent's failure to appear for on-the-record testimony prevented FINRA staff from determining whether the customer suffered any damages as a result of Respondent's misconduct.

Accordingly, the Hearing Panel finds that the appropriate remedial sanction for Respondent's violation of Conduct Rules 3030 and 2110 by not disclosing his outside

[22] *Id.*

business activity is a suspension from associating with any FINRA member in all capacities for one year and a fine of $100,000.[23]

B. Failure to Appear for a FINRA On-the-Record Interview

With respect to count two of the Complaint, the applicable *Guideline* recommends that, where an individual respondent does not respond in any manner, a bar should be standard, and a fine ranging between $25,000 and $50,000 should be imposed.[24]

The *Guidelines* list two relevant principal considerations with respect to Rule 8210 violations: (1) the nature of the requested information; and (2) whether the requested information has been provided.[25]

Both of these factors are aggravating. First, Enforcement was attempting to investigate, inter alia, whether the disbursements that Respondent obtained from a customer's account were improper, and Respondent hampered this inquiry by refusing to provide testimony. Second, the information was never provided because Respondent never appeared for the requested interview. The Hearing Panel also noted that Respondent refused to appear after engaging in several delaying tactics.[26] Respondent's unequivocal refusal to comply with FINRA's request to appear for an on-the-record interview demonstrates that he poses too great a risk to the self-regulatory system -- and

[23] *Guidelines* at p. 14 (2007) explicitly provide that adjudicators may increase the recommended fine amount by adding the amount of a respondent's financial benefit. The Hearing Panel finds that imposing a fine approximating 25% of Respondent's financial benefit is appropriate. Enforcement recommended that Respondent be barred. (Enf. Sub., p. 24).

[24] *Guidelines*, p. 35 (2007).

[25] *Id.* at 35.

[26] *Toni Valentino*, Exch. Act Rel. No. 49,255, 2004 SEC LEXIS 330, at *15-16 (Feb. 13, 2004) (sustaining bar imposed by FINRA where respondent failed to appear after numerous attempts to schedule the interview).

the markets and investors it protects -- to be permitted to remain in the securities industry.

Considering the importance of Procedural Rule 8210, and noting the extensive case law addressing the need to respond to Rule 8210 requests, the Hearing Panel finds no mitigating factors and no reason to impose a sanction below those recommended by the *Guidelines*.[27]

Accordingly, the Hearing Panel bars Respondent from association with any FINRA member in all capacities for violating Conduct Rule 2110 and Procedural Rule 8210 by failing to appear for an on-the-record interview scheduled pursuant to Rule 8210.

IV. CONCLUSION

For his failure to appear for a FINRA on-the-record interview, in violation of Conduct Rule 2110 and Procedural Rule 8210, Respondent is barred from associating with any FINRA member firm in any capacity. For his failure to disclose his outside business activities, in violation of Conduct Rules 3030 and 2110, Respondent is suspended from associating with any FINRA member firm in any capacity for one year and fined $100,000.

These sanctions shall become effective on a date set by FINRA, but not earlier than 30 days after this decision becomes FINRA's final disciplinary action in this matter,

[27] *Dep't of Market Reg. v. Nicholas R. Sciascia,* No. CMS040069, 2006 NASD Discip. LEXIS 22, at * 25 (NAC August 7, 2006) (sustaining the sanction of a bar for failure to appear for on-the-record interviews).

except that if this decision becomes FINRA's final disciplinary, the bar shall become effective immediately.[28]

HEARING PANEL.

By:_____
Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
December 17, 2008

Copies to:

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[28] The Hearing Panel considered all of the arguments of the Parties. They are rejected or sustained to the extent they are inconsistent or in accord with the views expressed herein.