

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CMG INSTITUTIONAL TRADING, LLC
(CRD No. 47264),

and

SHAWN D. BALDWIN
(CRD No. 4281564),

Respondents.

Disciplinary Proceeding
No. 2008012026601

Hearing Officer – LBB

HEARING PANEL DECISION

June 9, 2009

Respondent CMG Institutional Trading, LLC is expelled from FINRA membership, and Respondent Shawn D. Baldwin is barred from associating with any FINRA member firm in any capacity, for providing incomplete responses to certain written requests for information, failing to respond to other written requests for information, and failing to appear for an on-the-record interview, in violation of Rules 8210 and 2110.

Appearances

Pamela L. Shu, Senior Regional Counsel, Richard S. Schultz, Senior Regional Counsel, Chicago, Illinois, for the Department of Enforcement.

Shawn D. Baldwin, *pro se*, and for CMG Institutional Trading, LLC, Chicago, Illinois.

DECISION

On September 12, 2008, the Department of Enforcement filed a Complaint charging that Respondents Shawn D. Baldwin (“Baldwin”) and CMG Institutional Trading, LLC (“CMG”) failed to respond adequately to written requests for documents and information, and failed to appear at an on-the-record interview (“OTR”), in violation of NASD Procedural Rule 8210 and

Conduct Rule 2110.¹ Respondents filed an Answer denying the charges and requesting a hearing. The hearing was held in Chicago, Illinois, on March 5, 2009, before a Hearing Panel composed of a Hearing Officer, a former member of the District 8 Committee, and a current member of the District 11 Committee.

I. Respondents

CMG was founded and first registered with FINRA in 2001. CX-2; Tr. 221.² FINRA suspended CMG on April 19, 2006, for failure to file its Annual Audit Report by March 1, 2006, as required by SEC Rule 17a-5. The firm was reinstated on August 30, 2006, soon after CMG filed its Annual Audit Report. CX-5 at 3, 4; CX-7 at 34; Tr. 32 – 34, 105 – 106, 109, 150 – 152, 202 – 203, 287 – 288. On May 24, 2007, CMG filed its FOCUS report for March 2007, showing a net capital of negative \$3,907, or a net capital deficiency of \$8,907. The firm reported that it had ceased conducting securities business, and would not conduct any securities business until its net capital was above the minimum required level. CX-9 at 11, 14, 21; Tr. 42 – 43. On May 29, 2007, FINRA notified Baldwin and CMG that the firm should cease doing business because it fell below the net capital requirement of \$5,000. Tr. 44; CX-9 at 29. FINRA canceled CMG's registration in April 2008 for failure to pay fees, and the firm is no longer a FINRA member.

CX-2.

¹ As of July 30, 2007, NASD consolidated with the member regulation and enforcement functions of NYSE Regulation and began operating under a new corporate name, the Financial Industry Regulatory Authority ("FINRA"). References in this decision to FINRA include, where appropriate, NASD. Following consolidation, FINRA began developing a new FINRA "Consolidated Rulebook." The first phase of the new consolidated rules became effective on December 15, 2008, including certain conduct rules and procedural rules. *See* Regulatory Notice 08-57 (Oct. 2008). This decision refers to and relies on the NASD Conduct Rules that were in effect at the time of Respondents' alleged misconduct. In addition, because the Complaint was filed before December 15, 2008, the NASD Procedural Rules were applied in this disciplinary proceeding. Effective December 15, 2008, Conduct Rule 2110 was incorporated into the FINRA Consolidated Rules as FINRA Conduct Rule 2010, without substantive change. *See* NTM 08-57.

² References to the testimony set forth in the transcripts of the hearing are designated as "Tr. __," with the appropriate page number. References to the exhibits offered by the Department of Enforcement are designated as "CX-__," and may include page numbers because Enforcement offered multiple documents on the same issue grouped into a single exhibit. Respondents offered no exhibits.

Baldwin was registered with FINRA through CMG as a General Securities Representative and General Securities Principal from December 2001 until April 2008. Baldwin was CMG's founder, president, chief executive officer, chief compliance officer, and the owner of at least 75% of the company. CX-1; CX-2; Tr. 221.

Both CMG and Baldwin have been respondents in two prior FINRA disciplinary proceedings. In the first, the Securities and Exchange Commission ("SEC") affirmed FINRA's decision suspending both Respondents for two years and imposing a \$25,000 fine for their failure to provide complete and timely responses to requests for information pursuant to Rule 8210. *CMG Institutional Trading, LLC and Shawn D. Baldwin*, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215 (Jan. 30, 2009). In the second, a Hearing Panel issued an order expelling CMG and barring Baldwin for violation of numerous FINRA, SEC, and MSRB Rules. *Dep't of Enforcement v. CMG Institutional Trading, LLC and Shawn Baldwin*, No. 2006006890801, 2008 FINRA Discip. LEXIS 51 (O.H.O. Oct. 14, 2008), *appeal pending*. Baldwin and CMG have appealed that Hearing Panel decision.

II. Jurisdiction

FINRA has jurisdiction over both Respondents. FINRA has jurisdiction over CMG because the Complaint was filed within two years of the cancelation of its membership, and charges CMG with violations that occurred while the firm was a FINRA member. FINRA By-Laws, Article IV, Section 6. FINRA has jurisdiction over Baldwin because the Complaint charges him with violations that took place while he was registered, and was filed within two years after the termination of his registration. FINRA By-Laws, Article V, Section 4.

III. FINRA's Requests for Information, Documents, and Testimony, and Respondents' Responses

There are three general categories of Rule 8210 requests at issue in this case. The first relates to requests for financial information, including a requirement for monthly financial reporting beginning in October 2006, as a result of FINRA staff's concerns about the firm's net capital. The second category requested documents and information relating to capital contributions that were allegedly made in November and December 2006.³ The third category requested documents, information, and an OTR, relating to a complaint from someone who called FINRA staff complaining that she had invested \$15,000 with Respondents but had been unable to get her money back or to get adequate responses from Respondents to inquiries about her investment.

A. FINRA's Requests for Financial Information and Documentation

In early October 2006, FINRA examiners met with Baldwin and Kila Weaver, CMG's financial operations principal ("FINOP"), to discuss the concerns of the SEC and FINRA examiners about the adequacy of CMG's net capital. The examiners were concerned that CMG might have misclassified certain cash infusions as capital contributions, and therefore they should not have been included as capital in the computation of the firm's net capital. The examiners told Respondents that CMG would have to submit monthly financial reports to FINRA. Tr. 29 – 30, 123. On October 4, 2006, FINRA staff confirmed the monthly financial reporting requirement with a letter to CMG, to Baldwin's attention, sent pursuant to Rule 8210.

³ When CMG submitted its March 2007 FOCUS report, FINRA staff specifically requested supporting information for the capital contributions, in addition to continuing its broader requests for monthly financial information and documentation. This specific request was probably unnecessary because the documents supporting those capital contributions should have been submitted in response to the October 4, 2006, letter, and the numerous follow-up requests, without additional requests.

The letter directed CMG to deliver to the FINRA office,

for months ending **May, July, and August 2006** and, by the **seventeenth business day following** each subsequent month end, beginning **October 24, 2006, until further notice**, copies of the following:

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

CX-6 at 1; Tr. 119 – 120 (emphasis in original).

On December 8, 2006, Respondents submitted some of the information requested for October 2006. Tr. 121 – 122; CX-6 at 2 – 18. Staff received similar information for November and December on December 15, 2006, and January 25, 2007, respectively. Tr. 121 – 125; CX-6, pages 35 – 61. The information submitted was not fully responsive to FINRA’s request because Respondents did not include the supporting documentation concerning the allowable assets shown on the statements. Tr. 122 – 124.

After receiving the November and December submissions, FINRA staff contacted CMG’s FINOP to request the complete backup documentation that had been required by the October 4 letter. Tr. 123. On February 1 and 4, 2007, CMG submitted some of the supporting documentation for November and December 2006, but did not provide all of the backup documents that FINRA requested to support the financial information provided. CX-7 at 1 – 17, 22 – 31; Tr. 124 – 125.

On March 9, 2007, Baldwin requested relief from the monthly filing requirement, complaining about the burden of the requirement, and representing that the firm had not conducted business since its suspension in 2006. CX-8 at 1; Tr. 41. By letter of March 21,

FINRA denied Baldwin's request, stating that the staff would consider the request for relief after receipt of the required financial information and supporting documents through February, if the information satisfied the District Office that the firm was in capital compliance. CX-8 at 2.

FINRA staff made several calls to CMG's FINOP in an effort to get the complete backup documentation. The FINOP told the staff that she had been unable to obtain the documentation from Baldwin. On April 11, 2007, the staff sent a "Second and Final Request" to Respondents at CMG's CRD address⁴ for the documents and information requested by the October 4, 2006, letter, specifically noting that the documents and information for January and February 2007 had not been received. Tr. 125 – 128; CX-9 at 1 – 3.

FINRA issued another "Second and Final Request" with respect to the October 4, 2006, request for financial information and documents, on April 26, 2007, noting the failure to submit documents for March 2007. CX-9 at 5; Tr. 135. FINRA staff issued further requests for financial information to Respondents on May 29, June 25, June 26, July 26, August 24, September 27, October 25, December 7, and December 28, noting the failure to submit information for each successive month. Tr. 140 – 141; CX-9 at 32 – 65. All requests were expressly issued pursuant to Rule 8210. Beginning with the July 26 letter, each letter also noted that the matter had been referred to the Department of Enforcement. At the time FINRA staff sent the December 28 letter, it had not received any financial information for CMG for 2007. Tr. 141; CX-9 at 62.

⁴ The parties stipulated that all the requests in CX-9, CX-10, and CX-13, which include all of the requests at issue in this proceeding, were sent to CMG's CRD address, were received by CMG at its CRD address, and were eventually received by Baldwin, although Baldwin asserted that he did not necessarily receive all the requests at the same time they were received by CMG. Tr. 130 – 132.

On January 4, 2008,⁵ Respondents faxed a letter to FINRA staff, enclosing a March 2007 financial compilation report, described as the March 2007 FOCUS schedules, prepared by CMG's outside accountant. CX-9 at 77; CX-10 at 14. In addition to the standard accounting disclaimer that accompanies a compiled report⁶ the compilation included a further limitation:

Management has elected to omit substantially all of the disclosures and the statement of cash flows required by generally accepted accounting principles. If the omitted disclosures and statements of cash flows were included in the financial statements, they might influence the user's conclusions about the Company's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

CX-9 at 69; CX-10 at 14 – 22. In his cover letter, Baldwin represented that CMG's accountant was also sending CMG's November 2007 financial information, but FINRA never received the information. CX-9 at 67; Tr. 142 – 143. The January 4 response also failed to include much of the documentation requested. It did not provide information concerning the capital infusions, or the canceled checks. Tr. 162.

By letter of January 9, 2008, FINRA staff acknowledged receipt of Respondents' January 4 letter, but noted deficiencies in the submission, including both the absence of information for January, February, and April through November, and the absence of supporting documentation. The letter directed Respondents to submit certain financial information by January 28, 2008. CX-9 at 75; CX-10 at 23; Tr. 143. On January 10, 2008, the staff followed up with a letter to Respondents' counsel, enclosing the January 9 letter. CX-9 at 77; Tr. 143, 163. When the

⁵ The letter was incorrectly dated as January 4, 2007. CX-9 at 66; Tr. 142, 256, 259.

⁶ As the report notes, a compilation report is not the same as an audited financial statement, or even a review. "A compilation is limited to presenting in the form of financial statements information that is the representation of management. I have not audited or reviewed the accompanying financial statements, and accordingly, do not express an opinion or any other form of assurance on them." CX-9 at 69. Thus, the accountant who prepared the compilation did not vouch for the accuracy of the report.

information requested by the January 9 letter was not received, the staff issued a “Second and Final Request” for the information on January 31, 2008. CX-10 at 25; Tr. 163.

FINRA never received a response to the January 9 letter. Tr. 164 – 165. FINRA has never received the financial information for January, February, and April through December 2007, or the requested supporting documentation. Despite specific requests, FINRA has never received copies of the canceled checks for the alleged capital contributions, or information about the source of funds that were used for the capital infusions that were allegedly made in November and December 2006. Tr. 39 – 40, 122 – 125, 134, 144, 164 – 165.

B. FINRA’s Requests for Specific Financial Information Concerning Alleged Capital Contributions

CMG’s December 31, 2006, FOCUS filing reported three capital contributions totaling \$49,000 during the last quarter of 2006. In several telephone conversations with CMG’s FINOP, FINRA staff requested backup documentation showing the source of the contributions. On January 30 and February 4, 2007, CMG’s FINOP provided some corporate resolutions and bank statements for the period showing that deposits were made and treated as capital contributions, but they did not identify the source of the funds, and therefore were not sufficient to determine if the funds were allowable as net capital. If the funds had been borrowed or were not contributed by an owner, the firm might have had to record an offsetting liability, in which case the funds would not qualify as net capital contributions. CX-10 at 1 – 3; Tr. 124 – 125, 144 – 146.

After further requests from FINRA staff, on March 3, 2007, Baldwin faxed heavily redacted bank statements for an account in his wife’s name to FINRA staff, allegedly in support of the allowability of the capital contributions. CX-10 at 2; CX-14 at 29 – 36; Tr. 146 – 147. The bank statements were not adequate support. It was not possible to determine if checks that appeared to match the alleged capital contributions were actually payable to CMG, and one of

the alleged capital contributions was not listed at all. Tr. 146 – 148. Additionally, Baldwin’s wife was not an owner of CMG (or registered with FINRA), so funds coming from her might not be allowable as capital contributions. Tr. 98, 147 – 149. CMG would not have been in capital compliance if the contributions were not allowable. Tr. 148 – 150.

By letter of April 11, 2007, pursuant to Rule 8210, FINRA staff sent a request to Respondents for documents and information about the capital infusions shown on CMG’s December 31, 2006, FOCUS filing. CX-10 at 1 – 4; Tr. 152 – 154. The letter stated that the staff had called Respondents’ office several times, and had spoken to Kila Weaver or Baldwin, requesting information about the capital contributions. The letter noted that CMG had not yet provided adequate documentation concerning the capital contributions, and requested six categories of documents and information. CX-10 at 1 – 4. The letter also asked for information about an apparently new clearing agreement with First Southwest Company that had come to the staff’s attention as a result of CMG’s recent filing of an amendment to its Form BD. Tr. 156. This new clearing agreement was a cause for concern because it suggested that CMG might be continuing in business while not in capital compliance, contrary to several representations by Respondents that the firm was not engaging in any securities business at the time. In addition, if CMG had entered into a new clearing agreement to engage in a new type of business, CMG’s capital requirement might have been higher than \$5,000. Tr. 56, 158; CX-10 at 2; CX-5 at 5, 7; CX-8 at 1; CX-14 at 29.

Anne Sprecher, who worked at CMG, responded to the April 11 letter on April 13, 2007, saying that Baldwin was in London and would respond after his return on April 17, 2007. CX-10 at 6. Baldwin did not respond when he returned. Tr. 158 – 159. The staff followed up on the April 11 letter with another letter on April 26, 2007, requesting the same information. CX-10 at

8; Tr. 159 – 160. Respondents did not respond to the April 26, 2007, letter. The examiner sent a third request for the same information on May 8, 2007, and again received no response from Respondents. CX-10 at 12; Tr. 160 – 161.

Baldwin's letter of January 4, 2008, discussed in the previous section, did not include the backup documentation for the capital contributions that had been requested generally in the October 4, 2006, letter, and more specifically in the April 11, 2007, letter. FINRA staff's letter of January 9, 2008, noted that the submission did not include supporting documentation for the November and December 2006 capital contributions. CX-9 at 75; CX-10 at 23; Tr. 143, 163.

Despite multiple requests, FINRA has never received copies of the canceled checks or other information that the staff requested concerning the funds that were used for the capital contributions that were allegedly made in November and December 2006. Tr. 164 – 165. In addition, FINRA has not received the information requested about the clearing agreement with First Southwest Company. Tr. 158.

C. FINRA's Requests for Information Arising from the Complaint from T.B.

In January 2008, FINRA staff received a telephone call from someone who complained that she had invested \$15,000 with Baldwin in August 2007, and had been unsuccessful in her efforts to get her money back or to get information about the investment. Tr. 70 – 72, 165 – 170; CX-12 at 2. The complainant, T.B., submitted a number of documents to the staff, including a receipt for a wire transfer showing that she had wired the funds to an account in the name of CMG at Washington Mutual Bank. No such account had previously been disclosed to FINRA. CX-12 at 2; Tr. 74 – 75, 235.⁷ The discovery of this account raised concerns because CMG's

⁷ Baldwin alleged at the hearing that the account had been the broker-dealer's account "when the broker-dealer was in existence." He claimed that at the time of the wire transfer from T.B., the account was used as a conduit for funds for another company. If true, Respondent would not have been relieved of his obligation to provide complete answers to the staff's requests pursuant to Rule 8210.

membership agreement with FINRA did not allow it to accept customer funds. If it did, the firm's net capital requirement would go up from \$5,000 to \$250,000. Tr. 65. In addition, Respondents had represented repeatedly for more than a year that CMG was not engaged in the securities business, and the documents and information received from T.B. suggested that those representations might not have been accurate. Tr. 56 – 61, 76, 152, 158.

On January 9, 2008, pursuant to Rule 8210, the staff sent a request for documents and information to Respondents concerning T.B.'s investment. The letter specifically requested a bank statement for CMG's Washington Mutual account. CX-13 at 1; Tr. 174 – 176. The staff sent the letter to Respondents' counsel on January 10. CX-13 at 4; Tr. 178 – 179. On January 29, 2008, the staff sent a "Final Request" to Respondents concerning the documents and information the staff had previously requested about the transaction with T.B. by the January 9, 2008, letter. CX-13 at 5.

In addition, FINRA requested an OTR with Baldwin, and agreed with Respondents' counsel to conduct the OTR on February 21, 2008. Tr. 212 – 214; CX-14 at 59. Fifteen minutes before the agreed-upon time for the OTR, Respondents' attorney telephoned one of the examiners, and faxed a letter to the examiner, to say Baldwin would not appear. CX-14 at 10, 24, 41; Tr. 214 – 216. The fax said the attorney would call to reschedule, "if this is still an option." CX-14 at 10. A letter was attached to the fax, with Respondents' responses to questions raised in FINRA's letter to Respondents of January 9, 2008, although it did not include the bank statements for CMG's Washington Mutual account, as the staff had requested. CX-14 at 11. Respondents' February 21 letter asserted that T.B. had been repaid. CX-14 at 13. Immediately after Baldwin's failure to appear for the OTR, FINRA staff contacted T.B. She

responded with a fax that same afternoon, saying she no longer wanted to pursue her complaint. CX-14 at 18; Tr. 218 – 219.

FINRA staff sent a letter to Respondents on February 22, 2008, noting Baldwin’s failure to appear at the OTR, and requesting additional information. CX-14 at 24; Tr. 63. FINRA staff sent another letter to Baldwin on March 3, 2008, pursuant to Rule 8210, noting the absence of a response to the February 22 letter, and stating that the response must arrive at FINRA’s office by March 10. CX-14 at 20. On March 12, 2008, Respondents’ counsel faxed a letter to FINRA staff, responding to the requests for information and documents in the February 22, 2008, letter. CX-14 at 38. Through counsel, Baldwin represented that he had been unable to attend the OTR due to a family medical emergency. He responded to the other questions, but claimed that the Washington Mutual bank statement for CMG was not readily accessible and would be “forthcoming.” CX-14 at 38 – 39. FINRA staff has never received the Washington Mutual bank statements for the CMG account. Tr. 83, 103 – 104, 176, 234 – 235, 237.

IV. Respondents Violated NASD Rules 8210 and 2110

Rule 8210 authorizes FINRA to require any person subject to its jurisdiction to provide information and testimony related to any matter under investigation. The Rule serves as a key element in FINRA’s oversight function and allows FINRA to carry out its regulatory functions without subpoena power.⁸ When FINRA does not receive timely responses to its requests, FINRA’s ability to perform its regulatory responsibilities is subverted.⁹ Moreover, a recipient

⁸ See, e.g., *Dep’t of Enforcement v. Valentino*, No. FPI010004, 2003 NASD Discip. LEXIS 15, at *12 (N.A.C. May 21, 2003), *aff’d*, 2004 SEC LEXIS 330 (Feb. 13, 2004) (“It is well established that because NASD lacks subpoena power over its members, a failure to provide information fully and promptly undermines NASD’s ability to carry out its regulatory mandate.”) (citation omitted); *Joseph G. Chiulli*, Exchange Act Rel. No. 42359, 2000 SEC LEXIS 112, at *16 (Jan. 28, 2000) (noting that Rule 8210 provides a means for FINRA to conduct its investigations effectively, and emphasizing that FINRA members and associated persons must fully cooperate with requests for information); *Dep’t of Enforcement v. Sturm*, No. CAF000033, 2002 NASD Discip. LEXIS 2, at *9 (N.A.C. Mar. 21, 2002).

⁹ *Joseph P. Hannan*, Exchange Act Rel. No. 40438, 1998 SEC LEXIS 1955, at *9 (Sept. 14, 1998).

cannot dictate the terms and conditions under which information will be furnished, nor can FINRA members “take it upon themselves to determine whether information requested is material to an NASD investigation of their conduct.”¹⁰

As president of CMG, Baldwin was responsible for “compliance with all the requirements imposed on his firm unless and until he reasonably delegates particular functions to another person in that firm, and neither knows nor has reason to know that such person’s performance is deficient.”¹¹ Baldwin has not disputed that he was responsible for his firm’s responses to the Rule 8210 requests or asserted that he delegated the responsibility. In fact, all written requests were directed to him.

Although Respondents provided some of the documents and information requested, the responses were rare, late, and incomplete. Respondents never provided any financial information for most of the months requested. They never provided most of the supporting documentation requested. They never provided the supporting documentation for the November and December 2006 capital contributions. They never provided bank statements for CMG’s Washington Mutual bank account. Baldwin failed to appear at his OTR.

Baldwin asserts he believed his firm had been expelled in October 2006, pursuant to a FINRA Notice of Suspension of April 19, 2006, and had no obligation to respond to any FINRA requests. Tr. 228, 230, 238 – 239, 262 – 263, 306; CX-5 at 4. While Respondents provided some information to the staff on several occasions, and Baldwin agreed to appear at his OTR, he

¹⁰ *General Bond & Share Co. v. SEC*, 39 F.3d 1451, 1461 (10th Cir. 1994); see also *Paul Joseph Benz*, Exchange Act Rel. No. 51046, 2005 SEC LEXIS 116 (Jan. 14, 2005); *Robert Fitzpatrick*, Exchange Act Rel. No. 44956, 2001 SEC LEXIS 2185 (Oct. 19, 2001); *Joseph Patrick Hannan*, Exchange Act Rel. No. 40438, 1998 SEC LEXIS 1955, at *11 (Sept. 14, 1998) (“an NASD member may not second guess or impose conditions on the NASD’s request for information”) (internal quotes omitted).

¹¹ It is well established that “the president of a corporate broker-dealer is responsible for compliance with all of the requirements imposed on his firm unless and until he reasonably delegates particular functions to another person in that firm, and neither knows nor has reason to know that such person’s performance is deficient.” *William H. Gerhauser, Sr.*, 53 S.E.C. 933, 940-41, 1998 SEC LEXIS 2402, at *17 – *18 (Nov. 4, 1998).

contends that his compliance with FINRA's requests was purely voluntary, as a courtesy to the staff. Tr. 230 – 231.

Respondents' excuse is both legally insufficient and contradicted by the facts. Even if the firm had been expelled in October 2006, both Baldwin and the firm would still have been obligated to respond to all of the requests for information. Rule 8210 extends to all persons subject to FINRA's jurisdiction, and, pursuant to FINRA's By-Laws, CMG would have been subject to FINRA's jurisdiction for two years after its expulsion. By-Laws, Article IV, Section 6. Similarly, even if barred, Baldwin would have been subject to FINRA's jurisdiction when all of the requests were issued, and required to respond to each of them. By-Laws, Article V, Section 4.

In addition, the evidence contradicts Baldwin's assertion that he believed CMG had been expelled. He wrote to FINRA on August 29, 2006, shortly before the first Rule 8210 request at issue in this case, demanding CMG's immediate reinstatement. CX-5 at 5. The firm's suspension was lifted the next day, and it was reflected in CRD. Tr. 287 – 289. At the meeting in October 2006 at which Baldwin was informed of the requirement to submit monthly information, Baldwin discussed his plans for CMG, including changing the focus of the business. Tr. 281 – 284, 286. In September 2006 and January 2007, the firm submitted amendments to its Form BD. Tr. 290 – 291; CX-19; CX-20. Neither planning for the business nor amending the Form BD would have made sense if Baldwin believed CMG had been expelled.

The alleged capital infusions in December 2006 and the filing of the December 2006 and March 2007 FOCUS reports are also inconsistent with a belief that CMG had been expelled. The filing of the March 2007 FOCUS report and a capital deficiency notice also demonstrates that CMG believed that the firm was still subject to the Net Capital Rule, and had not been

expelled. CX-9 at 11 – 21. FINRA’s response to the FOCUS report, notifying CMG that it must cease conducting a securities business, other than liquidating transactions, while out of capital compliance, also provided notice that the firm had not been expelled. CX-9 at 29. Even as late as January 4, 2008, Baldwin represented that CMG’s accountant would be forwarding a FOCUS report and the November 2007 financial reports. CX-14 at 17.

Respondents violated Rules 8210 and 2110 by failing to respond to requests for documents and information, and failing to appear at an OTR.

V. 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. In assessing sanctions, the Guidelines suggest consideration of the nature of the information requested, whether it was provided, the number of requests made, the time respondent took to respond, and the degree of regulatory pressure required to obtain a response. *Guidelines* at 35 (2007).

Most of the information that Respondents failed to provide related to the staff’s attempts to monitor CMG’s net capital. In Respondents’ previous case involving failure to provide financial information, both the NAC and the SEC emphasized the importance of information concerning compliance with the Net Capital Rule. As the SEC stated,

The information NASD requested was important. The Net Capital Rule is a fundamental rule governing the operations of broker-dealers. The principle purposes of the 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.” As we have held, “[e]nsuring compliance with the net capital rule is important to protect investors from the possible financial collapse of a firm.” While a \$ 5,000 introducing broker-dealer, such as CMG, is precluded under the Net Capital Rule from holding or receiving customer funds or securities, its collapse can nonetheless expose investors to pecuniary loss, including leaving its

customers “unable to liquidate their securities positions [with the clearing firm] or open new positions until their accounts are transferred to another broker-dealer.”

CMG Institutional Trading, LLC and Shawn D. Baldwin, Exchange Act Rel. No. 59325, 2009 SEC LEXIS 215, at *32 – *33 (Jan. 30, 2009) (citations omitted); *see also Dep’t of Enforcement v. CMG Institutional Trading, LLC and Shawn D. Baldwin*, No. E8A20050252, 2008 FINRA Discip. LEXIS 3, at *31 (N.A.C. Feb. 20, 2008) (“We agree that FINRA’s requests to respondents in November and December 2005 concerned important information regarding CMG’s capitalization and compliance with the net capital rule.”).

The information concerning customer T.B. also was important to determine if Respondents had engaged in any misconduct with respect to the handling of T.B.’s funds. T.B.’s complaint also suggested that CMG had misrepresented to FINRA that it was not engaged in the securities business, and raised the possibility that its capital requirement was \$250,000, rather than \$5,000. In addition, the information about First Southwest Company was important because it also suggested that CMG was engaged in the securities business, despite representations that it was not, and that the nature of its business might have changed.

Respondents’ pattern of disregard supports the imposition of an expulsion and a bar. FINRA staff repeatedly requested documents and information from Respondents, yet often received no response at all until, months later, Respondents finally provided partial information and inadequate documentation. Respondents’ conduct here continues the pattern that led to one of Respondents’ prior disciplinary actions. In addition to that action, Respondents have further disciplinary history. As noted above, a Hearing Panel decision, which Respondents appealed, expelled CMG and barred Baldwin for a variety of violations.

Additionally, the violations charged in this case took place after the first complaint for Rule 8210 violations had been filed against Respondents, and some of the violations occurred

after the Hearing Panel's decision in that matter. The Department of Enforcement filed a complaint against Respondents in that matter on April 18, 2006, charging them with failure to respond to requests for documents and information, in violation of Rules 8210 and 2110. The Hearing Panel decision was issued on December 12, 2006, finding that Respondents had failed to respond to requests for information, in violation of Rules 8210 and 2110, and expelling CMG and barring Baldwin. *Dep't of Enforcement v. CMG Institutional Trading, LLC and Shawn D. Baldwin*, No. E8A20050252, 2006 NASD Discip. LEXIS 48 (O.H.O. Dec. 12, 2006). Given the pendency of a disciplinary proceeding for precisely the same conduct, Respondents should have been especially aware of the importance of prompt and complete compliance with staff requests for information.

VI. Conclusion

Respondent CMG Institutional Trading, LLC is expelled from FINRA membership, and Respondent Shawn D. Baldwin is barred from associating with any FINRA member firm in any capacity, for providing untimely and incomplete responses to certain written requests for information, failing to respond to other written requests for information, and failing to appear for an on-the-record interview, in violation of Rules 8210 and 2110.¹²

This decision shall become effective immediately if it becomes FINRA's final disciplinary action.

HEARING PANEL.

By: Lawrence B. Bernard
Hearing Officer

¹² The Hearing Panel considered and rejected without discussion all other arguments of the parties.

Copies to: Shawn D. Baldwin (*via email, facsimile, overnight courier, and first-class mail*)
Pamela L. Shu, Esq. (*via email and first-class mail*)
Richard S. Schultz, Esq. (*via email and first-class mail*)
Mark P. Dauer, Esq. (*via email*)
David R. Sonnenberg, Esq. (*via email*)